

No. 21-40680

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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STATE OF TEXAS; STATE OF ALABAMA; STATE OF ARKANSAS;  
STATE OF LOUISIANA; STATE OF NEBRASKA; STATE OF SOUTH  
CAROLINA; STATE OF WEST VIRGINIA; STATE OF KANSAS;  
STATE OF MISSISSIPPI,  
*Plaintiffs-Appellees,*

v.

UNITED STATES OF AMERICA; ALEJANDRO MAYORKAS,  
SECRETARY, U.S. DEPARTMENT OF HOMELAND SECURITY, *et*  
*al.,*  
*Defendants-Appellants.*

ELIZABETH DIAZ; JOSE MAGANA-SALGADO, *et al.,*  
*Intervenor Defendants - Appellants*

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On Appeal from the United States District Court  
for the Southern District of Texas,  
No. 1:18-CV-68, Hon. Andrew S. Hanen

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**BRIEF FOR U.S. COMPANIES AND BUSINESS ASSOCIATIONS  
AS *AMICI CURIAE*  
IN SUPPORT OF APPELLANTS**

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**CORPORATE DISCLOSURE STATEMENT AND  
SUPPLEMENTAL STATEMENT OF INTERESTED PARTIES**

**Case No. 21-40680, *Texas v. United States***

The undersigned counsel of record certifies that, in addition to the persons and entities identified in Intervenor Defendants-Appellants DACA Recipients' Certificate of Interested Persons, the following listed persons and entities as described in Rule 28.2.1 have an interest in this case's outcome. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Amazon.com, Inc.

Amazon.com, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

Apple Inc.

Apple Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

Asana, Inc.

Asana, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

Aspen Skiing Company, LLC

Aspen Skiing Company, LLC has no parent corporation and no publicly held corporation owns 10% or more of its stock.

Azavea Inc.

Azavea Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

Berry Appleman & Leiden LLP

Berry Appleman & Leiden LLP has no parent corporation and no publicly held corporation owns 10% or more of its stock.

Best Buy Co., Inc.

Best Buy Co., Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

Block, Inc.

Block, Inc. has no parent corporation and the following publicly held corporation owns 10% or more of its stock: Invesco Ltd.

Box, Inc.

Box, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

Braze, Inc.

Braze, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

BSA | The Software Alliance

BSA | The Software Alliance has no parent corporation and no publicly held corporation owns 10% or more of its stock.

Chegg, Inc.

Chegg, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

### Cisco Systems Inc.

Cisco Systems Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

### Consumer Technology Association

Consumer Technology Association has no parent corporation and no publicly held corporation owns 10% or more of its stock.

### Dropbox, Inc.

Dropbox, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

### eBay Inc.

eBay Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

### Ernst & Young LLP

Ernst & Young LLP has no parent corporation and no publicly held corporation owns 10% or more of its stock.

### Meta Platforms, Inc.

Meta Platforms, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

### Gateway X

Gateway X has no parent corporation and no publicly held corporation owns 10% or more of its stock.

### Google Inc.

Google Inc. is a wholly owned subsidiary of Alphabet Inc. Alphabet Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

### Graham Holdings Company

Graham Holdings Company has no parent corporation and no publicly held corporation owns 10% or more of its stock.

### HP Inc.

HP Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

### IBM Corporation

IBM Corporation has no parent corporation and no publicly held corporation owns 10% or more of its stock.

### Intel Corporation

Intel Corporation has no parent corporation and no publicly held corporation owns 10% or more of its stock.

### Levi Strauss & Co.

Levi Strauss & Co. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

### Medidata Solutions, Inc.

Medidata Solutions, Inc. is a wholly-owned subsidiary of Dassault Systemes Americas Corp., which is a wholly-owned subsidiary of Dassault Systemes Holdings LLC, which is a wholly-owned subsidiary of Dassault Systemes Corp., which is a wholly-owned subsidiary of Dassault Systemes

### Microsoft Corporation

Microsoft Corporation has no parent corporation and no publicly held corporation owns 10% or more of its stock.

### Momentive, Inc.

Momentive, Inc.'s parent corporation is Momentive Global Inc. and no person or entity owns more than 10% of Momentive Inc.'s stock.

### The National Association of Manufacturers

The National Association of Manufacturers (NAM) is a nonprofit organization with no parent corporation and no publicly held corporation has a 10% or greater ownership interest in NAM.

### National Retail Federation

National Retail Federation has no parent corporation and no publicly held corporation owns 10% or more of its stock.

### Niskanen Center

Niskanen Center has no parent corporation and no publicly held corporation owns 10% or more of its stock.

### North Texas Commission

North Texas Commission is a 501(c)(6) organization and has no parent corporation and no publicly held corporation owns 10% or more of its stock.

### OpenAI, Inc.

OpenAI, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

### Partnership for a New American Economy Action Fund

Partnership for a New American Economy Action Fund has no parent corporation and no publicly held corporation owns 10% or more of its stock.

### Retail Industry Leaders Association

Retail Industry Leaders Association has no parent corporation and no publicly held corporation owns 10% or more of its stock.

### Spokeo, Inc.

Spokeo, Inc. has no parent corporation and no publicly-held corporation owns 10% or more of its stock.

## Target

Target has no parent corporation and no publicly held corporation owns 10% or more of its stock.

## TechNet

TechNet is a nonprofit organization that does not have any stock, and therefore no publicly held corporation owns 10% or more of its stock.

## TESOL International Association

TESOL International Association has no parent corporation and no publicly held corporation owns 10% or more of its stock.

## TexTESOL III

TexTESOL III has no parent corporation and no publicly held company owns 10% or more of its stock.

## The Nielsen Company, LLC

The Nielsen Company, LLC has no parent corporation and the following publicly held corporations own 10% or more of its stock: The Vanguard Group and FMR LLC.

## TNTP, Inc.

TNTP, Inc. is a 501(c)(3) organization and has no parent corporation and no publicly held corporation owns 10% or more of its stock.

## Vail Valley Partnership

Vail Valley Partnership has no parent corporation and no publicly held corporation owns 10% or more of its stock.

## Workday, Inc.

Workday, Inc. has no parent corporation and no publicly held corporation holds 10% or more of its stock.

Yelp Inc.

Yelp Inc. has no parent corporation and BlackRock, Inc. may own 10% or more of its stock.

*/s/ Andrew Pincus*

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## INTEREST OF *AMICI CURIAE*

*Amici* are 45 U.S. companies and business associations that collectively contribute trillions of dollars in annual revenue to the American economy and have millions of employees. Many *amici* and their members employ individuals who participate in the Deferred Action for Childhood Arrivals (DACA) program—young people who are now able to live and work in the country that has been their home for most of their lives. In addition, *amici*'s customers are DACA recipients; and *amici*'s businesses benefit from DACA recipients' contributions to the overall economy through their tax payments, spending, and investments. Accordingly, *amici* have a strong interest in DACA recipients' continued ability to work and participate in our country's economy and in our society generally.<sup>1</sup>

A list of the *amici* is set forth in the Appendix.

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<sup>1</sup> No counsel for a party authored this brief in whole or in part, and no person other than *amici curiae* or their counsel contributed money that was intended to fund the preparation or submission of this brief. *See* Fed. R. App. P. 29(a)(4)(E). All parties have consented to the filing of this brief.

## INTRODUCTION AND SUMMARY OF ARGUMENT

Since its inception in 2012, the DACA program has transformed the lives of roughly 833,000<sup>2</sup> young adults who “were brought to this country as children and know only this country as home.”<sup>3</sup> Over the past decade, these individuals—who have become known as “Dreamers”—have been able to conduct their daily lives free from the constant, crippling fear of deportation, and to participate in many aspects of American society for the first time. Dreamers have been able to attend school, find gainful employment, and contribute to their communities in ways that were not imaginable just a decade ago—as students, employees, business owners, and neighbors.

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<sup>2</sup> This is the estimate of the total number of individuals who have participated in the program. See Am. Immigration Council, *Deferred Action for Childhood Arrivals (DACA): An Overview* (Sep. 30, 2021), <https://www.americanimmigrationcouncil.org/research/deferred-action-childhood-arrivals-daca-overview>.

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But DACA has not just transformed the lives of these young people; it has also benefited American companies, our Nation's economy, and all Americans. By making hundreds of thousands of DACA recipients eligible for work authorization, the program expands work opportunities for everyone, because employment is not a zero-sum game. New workers' economic activity creates additional jobs that can be filled by others.

DACA recipients have helped to drive and sustain the American economy by filling crucial labor shortages, creating new businesses, spending their incomes on American products and services, and paying taxes. DACA recipients have played a particularly important role as front-line workers responding to the COVID-19 pandemic. Today, as the American economy recovers from the pandemic, which continues to jeopardize economic growth in unpredictable ways—including a shortage of workers to fill millions of vacant jobs—the contributions of Dreamers are more important than ever.

Invalidating DACA will therefore inflict serious harm on U.S. companies, workers, and the American economy as a whole. If the District Court's decision is upheld, approximately 1,700 people will lose their jobs each day—because their DACA status will end. Companies will

lose valued employees, workers will lose employers and colleagues, and our national GDP will contract by up to \$460 billion.

These harms can and should be avoided, however, because the District Court's decision should be reversed. Decades of administrative practice and congressional action establish that DACA is lawful, because it falls within the Department's statutory authority.

## ARGUMENT

### I. INVALIDATING DACA WILL HARM U.S. COMPANIES AND THE ENTIRE ECONOMY.

Immigrants have long been essential to the growth and prosperity of America's economy. Since our nation's founding, immigrants have contributed to important breakthroughs in science and innovation<sup>4</sup>; they have created businesses—including many Fortune 500 companies—that generate over \$775 billion in sales and create thousands of jobs for

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<sup>4</sup> Matthew Denhart, George W. Bush Institute, *America's Advantage: A Handbook on Immigration and Economic Growth* 70, 76 (3d ed., Sept. 2017), [gwbcenter.imgix.net/Resources/gwbi-americas-advantage-immigration-handbook-2017.pdf](http://gwbcenter.imgix.net/Resources/gwbi-americas-advantage-immigration-handbook-2017.pdf).

others<sup>5</sup>; and they pay over \$300 billion in yearly state, local, and federal taxes.<sup>6</sup>

Although DACA is relatively new, DACA recipients are contributing to the American economy in important ways. The program has enabled more than 830,000 young immigrants to come out of the shadows for the first time and participate fully in the economy as workers, employers, and job creators. When the pandemic forced American businesses to adapt to a shifting economic landscape, Dreamers stepped into important roles and helped to sustain U.S. businesses in the face of those unexpected challenges. Invalidating DACA now would not only disrupt the lives of Dreamers and their families, friends, and co-workers, but also the U.S. businesses that count on them to help fuel continued innovation and economic growth.

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<sup>5</sup> P'ship for a New Am. Econ., *Open for Business: How Immigrants Are Driving Business Creation in the United States* 12, 14 (Aug. 2012), <http://www.newamericaneconomy.org/wp-content/uploads/2013/07/openforbusiness.pdf>.

<sup>6</sup> Dan Kosten, Nat'l Immigration Forum, *Immigrants as Economic Contributors: Immigrant Tax Contributions and Spending Power* (Sept. 6, 2018), <https://immigrationforum.org/article/immigrants-as-economic-contributors-immigrant-tax-contributions-and-spending-power/>.



**A. American Businesses Rely On DACA Recipients As Employees, Consumers, And Job Creators.**

Dreamers are essential contributors to American businesses and the American economy. Prior to DACA, these young people—who have obtained at least a high school degree and, in many cases, finished college and graduate school—were not permitted to obtain work authorization and therefore were unable to put their education and skills to productive use. DACA enabled Dreamers to step out of the shadows for the first time. Today, these DACA recipients support U.S. companies and the economy in multiple ways.

1. *DACA recipients are valued employees in virtually every sector of the American economy who would be particularly hard to replace in the midst of the pandemic.*

Dreamers contribute directly to the success of U.S. companies, including many *amici*. Nearly 90% of DACA recipients were employed in 2019, and they benefited virtually every sector of the economy.<sup>7</sup> More

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<sup>7</sup> Congressional Rsch. Serv., *Deferred Action for Childhood Arrivals (DACA): By the Numbers* (Apr. 14, 2021), <https://sgp.fas.org/crs/homsec/R46764.pdf>; Nicole Prchal Svajlenka, Ctr. for Am. Progress, *What We Know About DACA Recipients, by Metropolitan Area: Spring 2020 Edition* (Apr. 30, 2020), <https://www.americanprogress.org/issues/>

than 75% of the top 25 Fortune 500 companies employ DACA recipients—including Walmart, Apple, IBM, Microsoft, Amazon, and JPMorgan Chase, among others.<sup>8</sup>

In addition, Dreamers have been helping to keep the American economy running by serving as essential front-line workers during the pandemic.<sup>9</sup> As of July 2021, approximately 49% of DACA-eligible immigrants, or over half a million people, played some role in essential industries, such as hospitals and other health care providers, supermarkets, and essential food services.<sup>10</sup> That is more than twice the

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[immigration/news/2020/04/30/484225/know-daca-recipients-metropolitan-area-2/](https://www.immigration/news/2020/04/30/484225/know-daca-recipients-metropolitan-area-2/).

<sup>8</sup> Kevin Gray, Nat'l Ass'n of Colleges and Employers, *Supporting Dreamers During Their Career Exploration, Job Search* (Feb. 19, 2021), <https://www.naceweb.org/diversity-equity-and-inclusion/best-practices/supporting-dreamers-during-their-career-exploration-job-search/>.

<sup>9</sup> Claudia Flores and Nicole Prchal Svajlenka, Ctr. for Am. Progress, *Why DACA Matters* (Apr. 29, 2021), <https://www.americanprogress.org/issues/immigration/news/2021/04/29/498944/why-daca-matters/>.

<sup>10</sup> Nicole Prchal Svajlenka and Trinh Truong, Ctr. for Am. Progress, *The Demographic and Economic Impacts of DACA Recipients: Fall 2021 Edition* (Nov. 24, 2021), <https://www.americanprogress.org/article/the-demographic-and-economic-impacts-of-daca-recipients-fall-2021-edition/> (estimating that 343,000 DACA recipients are working in essential occupations); FWD. US, *Undocumented Immigrant Essential Workers: 5*

rate of the U.S. population as a whole, and includes approximately 34,000 Dreamers who work in healthcare and 100,000 who work in essential food and restaurant services.<sup>11</sup>

Even before the pandemic placed unprecedented burdens on the country's health care infrastructure, the Association of American Medical Colleges and the American Medical Association warned that the loss of DACA health care workers would cripple the nation's health care system.<sup>12</sup> Now, the health care system depends on DACA employees more than ever before.<sup>13</sup>

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*Things to Know* (Feb. 22, 2021), <https://www.fwd.us/news/undocumented-essential-workers-5-things-to-know/>; see also Ctr. for Am. Progress, *A Demographic Profile of DACA Recipients on the Frontlines of the Coronavirus Response* (Apr. 6, 2020), <https://www.americanprogress.org/article/demographic-profile-daca-recipients-frontlines-coronavirus-response/> (“Nearly 203,000 DACA recipients are working in occupations at the forefront of the COVID-19 response in health care, education, and food services.”).

<sup>11</sup> Svajlenka and Truong, *supra* n. 10.

<sup>12</sup> Brief for the Association of American Medical Colleges, et al. at 2-3, *Department of Homeland Security v. Regents of the University of California*, 140 S. Ct. 1891 (2020), No. 18-587; Justice for Immigrants, *Dreamers on the Frontlines of the COVID-19 Pandemic* (Jun. 18, 2020), <https://justiceforimmigrants.org/wp-content/uploads/2020/06/Dreamers-on-the-Frontlines-of-the-COVID-19-Pandemic-6.18.20.pdf>.

<sup>13</sup> Adam Liptak, “Dreamers” Tell Supreme Court Ending DACA During Pandemic Would be “Catastrophic,” *The New York Times* (Mar. 27,

The health care sector is not unique. Thousands of smaller businesses around the country rely on DACA beneficiaries to provide a stable workforce—in retail, construction, food services, education, and social services.<sup>14</sup> Invalidating DACA would cost small business employers an estimated \$6 billion in turnover costs.<sup>15</sup> These companies would forfeit the substantial investments they have made in training Dreamers, and incur additional costs recruiting and training new employees, who will be less experienced and therefore inevitably less productive—if new employees can even be found.<sup>16</sup>

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2020), <https://www.nytimes.com/2020/03/27/us/dreamers-supreme-court-daca.html>.

<sup>14</sup> Nydia M. Velazquez, Democrats of the Comm. on Small Bus., *Economic Impact of DACA: Spotlight on Small Business* (Feb. 2018), [https://smallbusiness.house.gov/sites/democrats.smallbusiness.house.gov/files/documents/economic impact of daca report.pdf](https://smallbusiness.house.gov/sites/democrats.smallbusiness.house.gov/files/documents/economic%20impact%20of%20daca%20report.pdf).

<sup>15</sup> David Bier, Cato Institute, *Ending DACA Will Impose Billions in Employer Compliance Costs* (Sep. 1, 2017), <https://www.cato.org/blog/ending-daca-will-impose-billions-employer-compliance-costs>.

<sup>16</sup> Heather Boushey & Sarah Jane Glynn, Ctr. for Am. Progress, *There Are Significant Business Costs to Replacing Employees* (Nov. 16, 2012), <https://www.americanprogress.org/article/there-are-significant-business-costs-to-replacing-employees/>.

America's own history confirms these consequences. When Arizona restricted employment of immigrant workers by enacting the Legal Arizona Workers Act in 2007, for example, the state's total employment rate promptly fell, and its GDP was reduced by an average of 2 percent a year between 2008 and 2015.<sup>17</sup>

Moreover, studies repeatedly show that a diverse workforce is more innovative. People with different backgrounds naturally offer new perspectives when confronted with problems, and these novel perspectives identify new possibilities.<sup>18</sup> This phenomenon has been demonstrated by a number of economic studies, such as one finding that “a 1 percentage point increase in *immigrant college graduates*' population

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<sup>17</sup> See Bob Davis, *The Thorny Economics of Illegal Immigration*, Wall St. J. (Feb. 9, 2016), <https://www.wsj.com/articles/the-thorny-economics-of-illegal-immigration-1454984443>; see also Sarah Bohn et al., *Do E-Verify Mandates Improve Labor Market Outcomes of Low-Skilled Native and Legal Immigrant Workers?* 17-18, 21, 24-25 (May 2014), <https://gspp.berkeley.edu/assets/uploads/research/pdf/p82.pdf> (finding that employment rates of U.S. men dropped post-LAWA).

<sup>18</sup> Katherine W. Phillips, *How Diversity Makes Us Smarter*, Scientific American, Oct. 1, 2014, <https://www.scientificamerican.com/article/how-diversity-makes-us-smarter/>; see also Deloitte, *Waiter, Is That Inclusion in My Soup? A New Recipe to Improve Business Performance* 8 (2013), [deloitte-au-hc-diversity-inclusion-soup-0513.pdf](https://www.deloitte.com/au/hc-diversity-inclusion-soup-0513.pdf).

share increases patents per capita by 9-18 percent.”<sup>19</sup> Invalidating DACA would hamper the growth of American businesses, which will lose capable employees and potential future leaders.

2. *Dreamers are job creators and business owners who generate significant revenues and hire tens of thousands of workers.*

DACA recipients themselves have become entrepreneurs, creating companies and running businesses in communities across the country. Six percent of Dreamers (and nearly nine percent of those 25 years and older) started their own businesses after they were granted deferred

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<sup>19</sup> Jennifer Hunt and Marjolaine Gauthier-Loiselle, *How Much Does Immigration Boost Innovation?*, 2 *American Economic Journal: Macroeconomics* 31, 31 (2010) (emphasis added).

action under DACA, according to one survey.<sup>20</sup> That is nearly twice the rate of the American public as a whole.<sup>21</sup>

DACA recipients' businesses employ nearly 86,000 people.<sup>22</sup> They also generate significant revenue: businesses started by Dreamers reported a total income of \$658.7 million in 2015, which is then invested in employees and in purchases from other local businesses.<sup>23</sup> Indeed, small businesses run by Dreamers have helped to revitalize declining neighborhoods and reverse declining population trends.<sup>24</sup> Revived

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<sup>20</sup> Tom K. Wong, et al., Ctr. for Am. Progress, *DACA Recipients' Livelihoods, Families, and Sense of Security Are at Stake This November* (Sept. 19, 2019), <https://www.americanprogress.org/article/daca-recipients-livelihoods-families-sense-security-stake-november/>; see also Justice for Immigrants, *The Financial Contributions of Dreamers: What the U.S. Economy Stands to Lose* (June 18, 2020), <https://justiceforimmigrants.org/wp-content/uploads/2020/06/Economy-and-DACA.pdf> (In 2017, 5 percent of DACA-eligible immigrants owned their own businesses.).

<sup>21</sup> John Suh, *Ending DACA Doesn't Just Hurt Immigrants – Businesses Across the U.S. Will Feel the Impact*, Entrepreneur (Aug. 9, 2018), <https://www.entrepreneur.com/article/318045>.

<sup>22</sup> Flores and Svajlenka, *supra* n. 9.

<sup>23</sup> David Dyssegaard Kallick, Americas Soc'y/Council of the Americas, *Bringing Vitality to Main Street: How Immigrant Small Businesses Help Local Economies Grow* 2, 5, 8-9 (Jan. 2015), <https://www.ascoa.org/sites/default/files/ImmigrantBusinessReport.pdf>.

<sup>24</sup> *Id.* at 12.

communities range from Philadelphia to Lexington, Nebraska to Minneapolis-St. Paul to Nashville.<sup>25</sup>

Invalidating DACA would force many of these businesses to close. Tens of thousands of employees would suddenly find themselves out of work and the American economy would forfeit hundreds of millions of dollars in productive revenues.

3. *DACA recipients are consumers who stimulate the American economy by exercising their significant purchasing power.*

Dreamers purchase goods and services sold by U.S. companies, which contributes to the growth of those companies and of the U.S. economy as a whole.

The eligibility for work authorization provided by DACA has increased recipients' incomes, producing a corresponding increase in purchasing power.<sup>26</sup> Thus, DACA recipients and their households

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<sup>25</sup> *Id.* at 14-34; Sara McElmurry, Ctr. for Am. Progress, *Proactive and Patient: Managing Immigration and Demographic Change in 2 Rural Nebraska Communities* (Nov. 14, 2018), <https://tinyurl.com/y4lu3etx>.

<sup>26</sup> Tom K. Wong et al., *Results from Tom K. Wong et al., 2020 National DACA Study 2-3* (2020), <https://cdn.americanprogress.org/content/uploads/2020/10/02131657/DACA-Survey-20201.pdf> (finding that study respondents who were 25 or older reported wage increases of 129% after they received work authorization under DACA); *see also* Milady Nazir, Univ. of Tex, at San Antonio, *UTSA Study: DACA Protection Leads to*



exercise \$25.3 billion in after-tax spending power.<sup>27</sup> Spending totaled at least \$100 million in 26 different states.<sup>28</sup> Dreamers are spending this money on goods and services produced by American businesses.

A 2019 survey found that 79% of DACA recipients became financially independent as a result of work authorization, with 60% of respondents reporting that they bought their first car after receiving DACA status and 14% reporting that they bought their first house.<sup>29</sup>

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*Sizable Economic Gains*, UTSA Today (Oct. 1, 2021), <https://www.utsa.edu/today/2021/10/story/study-daca-protection.html> (A new study found that “[t]he incomes of DACA beneficiaries more than doubled over the four-year span of the research, from \$7,627 to \$18,229.”); *see also* Am. Immigration Council, *supra* n. 2 (“According to the results of the 2019 survey and four previous annual surveys, the average hourly wage of respondents increased by 86 percent after receiving DACA .... This not only helped 79 percent of respondents to ‘become financially independent,’ but benefited the U.S. economy by increasing their purchasing power and tax payments at the federal, state, and local levels.”).

<sup>27</sup> Svajlenka and Truong, *supra* n. 10; *see also* Nicole Prchal Svajlenka, Ctr. for Am. Progress, *What We Know About DACA Recipients, by Metropolitan Area: Spring 2020 Edition* (Apr. 30, 2020), <https://www.americanprogress.org/issues/-immigration/news/2020/04/30/484225/know-daca-recipients-metropolitan-area-2/>.

<sup>28</sup> Velazquez, *supra* n. 14.

<sup>29</sup> Am. Immigration Council, *supra* n. 2.

DACA recipients own 68,000 homes, pay \$760 million in mortgages and \$2.5 billion in rental payments each year.<sup>30</sup>

Dreamers also make enormous economic contributions to their communities by paying federal, state, and local taxes, which help fund schools, infrastructure investments, and services like police, fire protection, and economic development. Households with DACA recipients account for \$6.2 billion in federal taxes and \$3.3 billion in state and local taxes each year.<sup>31</sup> In 19 metropolitan areas around the country, Dreamers contribute more than \$25 million in tax revenue.<sup>32</sup>

Through these myriad contributions, Dreamers have supported the growth and success of countless American businesses and the entire U.S. economy.

**B. DACA Recipients Fill Jobs That Otherwise Would Remain Vacant Because The U.S. Economy Today Suffers From a Worker Shortage.**

DACA's benefits to the U.S. economy do not come at the expense of U.S. workers. Studies have consistently demonstrated that immigrants

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<sup>30</sup> Svajlenka and Truong, *supra* n. 10.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

do not displace other workers. They instead help grow the economy and create more opportunities for all by filling positions that otherwise would remain vacant because of a shortage of qualified workers.

1. *Dreamers' participation in the workforce expands the number of jobs available for everyone.*

Employment is not a zero sum game—to the contrary, jobs beget more jobs. Economists from across the policy and political spectrum have discredited the notion that “there is a fixed amount of work to be done—a lump of labour,” such that increasing the number of potential workers just creates more competition for a fixed number of jobs.<sup>33</sup> Rather, job creation stimulates the economy as a whole, which in turn creates more jobs as wage-earners spend the money they earn on goods and services produced by other businesses. “When people work for a living,” in other words, “they earn money. They spend that money on goods and services that are produced by other people.”<sup>34</sup> That increased demand, in turn, creates additional jobs.

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<sup>33</sup> Paul Krugman, *Opinion, Lumps of Labor*, N.Y. Times (Oct. 7, 2003), <https://www.nytimes.com/2003/10/07/opinion/lumps-of-labor.html>.

<sup>34</sup> Buttonwood, *Keep on Trucking*, The Economist (Feb. 11, 2012), <https://www.economist.com/finance-and-economics/2012/02/11/keep-on-trucking>.

A number of recent studies confirm this phenomenon and demonstrate that enabling immigrants to find gainful employment in turn creates more job opportunities.<sup>35</sup> That has been true throughout history: increased immigration levels into the U.S. have had largely positive impacts on the employment levels and incomes of U.S. workers.<sup>36</sup>

Similarly, DACA has not had any significant effect on the wages of U.S. workers.<sup>37</sup> Indeed, providing Dreamers with the opportunity to attain higher education and seek employment that matches their skills not only makes the economy more productive, but also decreases the extent to which immigrants compete with American citizens for lower-

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<sup>35</sup> See, e.g., Adi Gaskell, *Immigrants Create More Jobs Than They Take*, *Forbes* (Nov. 11, 2020), <https://www.forbes.com/sites/adigaskell/2020/11/11/immigrants-create-more-jobs-than-they-take/?sh=7f3e966719ea>.

<sup>36</sup> See Jacqueline Varas, Am. Action Forum, *How Immigration Helps U.S. Workers and the Economy* (Mar. 20, 2017), <https://www.americanactionforum.org/insight/immigration-helps-u-s-workers-economy/>; U.S. Chamber of Commerce, *Immigration Myths and Facts* (Apr. 14, 2016), [https://www.uschamber.com/assets/archived/images/documents/files/022851\\_mythsfacts\\_2016\\_report\\_final.pdf](https://www.uschamber.com/assets/archived/images/documents/files/022851_mythsfacts_2016_report_final.pdf).

<sup>37</sup> Francesc Ortega *et al.*, *The Economic Effects of Providing Legal Status to DREAMers* 18, IZA Discussion Paper No. 11281 (Jan. 2018), <https://docs.iza.org/dp11281.pdf>.

income jobs.<sup>38</sup> A number of studies have concluded, for example, that the presence of skilled immigrant workers improves wages and employment for both college-educated and non-college-educated native workers.<sup>39</sup>

2. *Dreamers fill critical labor shortages.*

Studies repeatedly show that immigrants complement, rather than compete with, U.S. workers in the workforce.<sup>40</sup> That is particularly true of DACA recipients.

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<sup>38</sup> Ike Brannon, *Extending DACA's Protection Creates Jobs and Tax Revenue for the U.S. Economy*, Forbes (Jul. 31, 2021), <https://www.forbes.com/sites/ikebrannon/2021/07/31/extending-dacas-protection-creates-jobs-and-tax-revenue-for-the-us-economy/?sh=6f69dce3ad46>.

<sup>39</sup> The National Academies of Sciences Engineering Medicine, *The Economic and Fiscal Consequences of Immigration* (2017), <https://www.nap.edu/catalog/23550/the-economic-and-fiscal-consequences-of-immigration>.

<sup>40</sup> Denhart, *supra* n. 4, at 118; Gretchen Frazee, *4 Myths About How Immigrants Affect the U.S. Economy*, PBS NewsHour (Nov. 2, 2018), <https://www.pbs.org/newshour/economy/making-sense/4-myths-about-how-immigrants-affect-the-u-s-economy>; Maria E. Enchautegui, *Immigrant and Native Workers Compete for Different Low-Skilled Jobs*, The Urban Institute: Urban Wire (Oct. 13, 2015), <https://www.urban.org/urban-wire/immigrant-and-native-workers-compete-different-low-skilled-jobs>; U.S. Chamber of Commerce, *supra* n.36.

Even before the COVID-19 pandemic, American businesses faced a shortage of skilled workers. Over the past several years, U.S. job creation has been outpacing supply: the U.S. unemployment rate has been dropping even as the number of available job openings around the country remains high.<sup>41</sup> In a 2019 survey, 64% of small business owners reported that they had tried to hire workers, but 89% of that group reported that they found “few or no qualified applicants.”<sup>42</sup>

The pandemic has significantly worsened the national worker shortage. A recent National Association of Business Economics survey found that nearly half of American companies are having difficulty hiring skilled workers.<sup>43</sup> “Labor shortages are now a hallmark of the recovering

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<sup>41</sup> See, e.g., News Release, U.S. Dep’t of Labor, Bureau of Labor Statistics, *The Employment Situation – November 2021* (Dec. 3, 2021), <https://www.bls.gov/news.release/pdf/empisit.pdf>; U.S. Dep’t of Labor, Bureau of Labor Statistics, *Graphics for Economic News Releases: Job Openings, Hires, and Separation Levels, Seasonally Adjusted* (last visited Dec. 15, 2021), <https://www.bls.gov/charts/job-openings-and-labor-turnover/opening-hire-seps-level.htm>.

<sup>42</sup> Nat’l Fed’n of Indep. Bus., *Small Business Optimism Index* (Nov. 2021), <https://www.nfib.com/surveys/small-business-economic-trends/>.

<sup>43</sup> Annaken Tappe, *Nearly Half of American Companies Say They Are Short on Skilled Workers*, CNN Business (Oct. 25, 2021), <https://www.cnn.com/2021/10/25/economy/business-conditions-worker-shortage/index.html>.

pandemic economy,” as “[c]ompanies have a hard time attracting the workers they need to feed increased demand from consumers, while the risk of infections remains.”<sup>44</sup>

Dreamers have helped to fill these critical worker shortages, and the DACA program will prove essential as employers attempt to fill skilled labor positions in the post-pandemic market. As DHS recently explained, 16,391 new workers could enter the U.S. labor force in the first year after promulgating its proposed rule codifying DACA.<sup>45</sup>

Before DACA, young immigrants were often “restricted to particular sectors of the economy, such as agriculture, construction, and leisure and hospitality, where employers often do not insist on legal status and where wages are lower on average.”<sup>46</sup> But DACA beneficiaries

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<sup>44</sup> *Id.*

<sup>45</sup> Deferred Action for Childhood Arrivals, 86 Fed. Reg. 53,736, 53,800 (Sept. 28, 2021).

<sup>46</sup> Cecilia Rouse, et al., Council of Economic Advisors, *The Economic Benefits of Extending Permanent Legal Status to Unauthorized Immigrants* (Sep. 17, 2021), <https://www.whitehouse.gov/cea/written-materials/2021/-09/17/the-economic-benefits-of-extending-permanent-legal-status-to-unauthorized-immigrants/> (“Without legal status, unauthorized immigrants have limited opportunities for job mobility, a key channel by which other workers find better, more productive employment matches over their careers.”).

are able to “pursue and accept jobs for which their skills are well-suited.”<sup>47</sup> Indeed, a recent survey found that over 50% of DACA recipients were able to move to a job that better fit their education and training after obtaining work authorization.<sup>48</sup>

Qualifying for deferred action also has encouraged recipients to obtain additional education and training, which has better prepared them for skilled labor jobs.<sup>49</sup> Indeed, a survey tracking DACA recipients after the program’s first seven years reported that “DACA facilitated the completion of vocational programs, associate’s degrees, bachelor’s degrees, and even graduate and professional degrees from master’s programs to law and medical school. Respondents then acquired jobs in related fields. Many used these initial employment opportunities as stepping-stones to launch new careers.”<sup>50</sup>

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<sup>47</sup> *Id.*

<sup>48</sup> Tom K. Wong, et al., Ctr. for Am. Progress, *New DHS Policy Threatens to Undo Gains Made by DACA Recipients* (Oct. 5, 2020), <https://www.americanprogress.org/article/new-dhs-policy-threatens-undo-gains-made-daca-recipients/>.

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

<sup>50</sup> Roberto G. Gonzales et al., Immigration Initiative at Harvard, *The Long-Term Impact of DACA: Forging Futures Despite DACA’s Uncertainty* 9 (2019), <https://www.immigrationresearch.org/node/2875>



Forty percent of DACA beneficiaries are currently in school,<sup>51</sup> and nearly a third of them are pursuing studies in STEM fields that will equip them with the knowledge and skills that U.S. companies need to compete in today's global marketplace.<sup>52</sup> Moreover, because immigrants “are much more disposed to relocating for work,” Dreamers can fill geographic labor shortages that are created when skilled and qualified workers leave small towns for greener pastures.<sup>53</sup> In this way, preserving DACA will help sustain local economies across the country, and “help stave off job decline in less urban areas of the country where skilled labor shortages persist.”<sup>54</sup>

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(In the years since the DACA program was created, Dreamers have earned higher education degrees, obtained better-paying jobs, and ascended to positions of leadership in their communities and places of employment).

<sup>51</sup> Wong, et al., *DACA Recipients' Livelihoods, Families, and Sense of Security Are at Stake This November*, *supra* n. 20.

<sup>52</sup> The UndocuScholars Project, *In the Shadows of the Ivory Tower: Undocumented Undergraduates and the Liminal State of Immigration Reform* 8 (2015), <https://static1.squarespace.com/static/5aa69fbe8f51307aa7d7cdcb/t/5aa6c5718165f57981de21d6/1520878966718/undocu-scholarsreport2015.pdf>.

<sup>53</sup> Brannon, *supra* n. 38.

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

For these reasons, invalidating DACA would inflict serious harm on American companies, workers, and the U.S. economy as a whole. Employers would lose qualified, valued employees at a time when they desperately need skilled workers. Companies would lose dependable consumers. Workers would lose employers and colleagues. The United States could stand to lose as much as \$460 billion in national GDP if it were to remove DACA protections for Dreamers.<sup>55</sup> On the other hand, strengthening and preserving DACA would improve the educational and economic prospects of another generation of young Dreamers, which, by one estimate, “would increase tax revenues by nearly \$90 billion” over the next decade.<sup>56</sup>

## II. DACA IS LAWFUL

Congress has given DHS broad authority to grant deferred action and work authorization—and has enacted statutes expressly recognizing

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<sup>55</sup> Tom K. Wong, et al., Ctr. for Am. Progress, *DACA Recipients’ Economic and Educational Gains Continue to Grow* (Aug. 28, 2017), <https://www.americanprogress.org/issues/immigration/news/2017/08/28/437956/daca-recipients-economic-educational-gains-continue-grow/>; see also Garry Davis, Davis & Associates, *The Economic Benefits of the DACA Program* (Apr. 1, 2021), <https://gldlaw.com/economic-benefits-daca-program/>.

<sup>56</sup> Brannon, *supra* n. 38.

that authority. The District Court erred in holding that DACA falls outside that broad grant of authority.

1. *DHS has broad authority to confer deferred action and work authorization.*

Congress has expressly authorized the Department of Homeland Security to exercise discretion in enforcing the immigration laws—including to “[e]stablish[] national immigration enforcement policies and priorities”—which is precisely what the DACA program does. 6 U.S.C. § 202(5); *see also* 8 U.S.C. § 1103(a)(1) (charging the Secretary with the “administration and enforcement” of the immigration laws); *id.* § 1103(a)(3) (authority to “perform such other acts as he deems necessary for carrying out his authority” under the immigration laws); H.R. Rep. No. 111-157, at 8 (2009) (“Rather than simply rounding up as many illegal immigrants as possible, which is sometimes achieved by targeting the easiest and least threatening among the undocumented population, DHS must ensure that the government’s huge investments in immigration enforcement are producing the maximum return in actually making our country safer.”).

Presidents since 1956 have exercised this authority to implement formal “deferred action” programs—deferring government enforcement

action under the immigration laws to remove individuals present in the United States. That long-established practice has been recognized expressly by Congress and the Supreme Court. Deferred-action programs have enabled over two million otherwise-removable individuals to remain temporarily in the country.

In the 1950s, President Eisenhower authorized the admission of (“paroled”) almost 1,000 foreign-born children into the United States; and he and Presidents Kennedy, Johnson, and Nixon later paroled another 600,000 Cubans.<sup>57</sup> In the 1970s and 1980s, the Ford and Carter Administrations granted “extended voluntary departure,” which “temporarily suspend[ed] enforcement” of deportation, to “particular group[s]” of immigrants.<sup>58</sup>

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<sup>57</sup> See President Dwight Eisenhower, *Statement by the President Concerning the Entry Into the United States of Adopted Foreign-Born Orphans* (Oct. 26, 1956), <https://goo.gl/BkztnZ>; Am. Immigration Council, *Executive Grants of Temporary Immigration Relief, 1956-Present* (Oct. 2014), <https://goo.gl/Q87gqn>.

<sup>58</sup> *Hotel & Rest. Emps. Union, Local 25 v. Smith*, 846 F.2d 1499, 1510 (D.C. Cir. 1988) (en banc); Andorra Bruno et al., Congressional Rsch. Serv., *Analysis of June 15, 2012 DHS Memorandum, Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children 20-23* (July 13, 2012), <https://goo.gl/deiGYz>.

The Reagan Administration introduced the “Family Fairness” program, which deferred removal actions against minor children whose parents were in the process of obtaining legal status but who did not themselves qualify for legal status.<sup>59</sup> President George H.W. Bush then extended the program in 1990 to cover qualified spouses.<sup>60</sup> And on at least four additional occasions, immigration officials have extended deferred action to specified classes of individuals.<sup>61</sup>

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<sup>59</sup> Alan Nelson, *Legalization and Family Fairness: An Analysis* (Oct. 21, 1987), in 64 No. 41 Interpreter Releases 1191, app. I., at 76-77 (Oct. 26, 1987).

<sup>60</sup> Mem. from Gene McNary, Comm’r, INS, to Reg’l Comm’rs, *Family Fairness: Guidelines for Voluntary Departure under 8 CFR 242.5 for the Ineligible Spouses and Children of Legalized Aliens* (Feb. 2, 1990), in 67 No. 6 Interpreter Releases 153, app. I., at 164-65 (Feb. 5, 1990).

<sup>61</sup> See, e.g., Mem. from Paul Virtue, INS, *Supplemental Guidance on Battered Alien Self-Petitioning Process and Related Issues* 3 (May 6, 1997), 74 No. 41 Interpreter Releases 962 app. I; U.S. Citizenship & Immigration Servs. (USCIS), *Interim Relief for Certain Foreign Academic Students Adversely Affected by Hurricane Katrina: Frequently Asked Questions (FAQ)* 1, 7 (Nov. 25, 2005); Mem. from Michael D. Croning, INS, for Michael A. Pearson, INS, *VTVPA Policy Memorandum #2—“T” and “U” Nonimmigrant Visas* (Aug. 30, 2001), <https://tinyurl.com/yxpztydf>; Mem. from Donald Neufeld, USCIS, *Guidance Regarding Surviving Spouses of Deceased U.S. Citizens and Their Children* (June 15, 2009), <https://goo.gl/SHaCVZ>.

In view of that long history, it is not surprising that the Supreme Court itself has recognized the “regular practice” of “deferred action.” *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 483-85 (1999). Most importantly, Congress has enacted statutes expressly recognizing the legal authority to grant deferred action by expressly extending deferred action to certain categories of individuals and by authorizing States to issue driver’s licenses to immigrants with “approved deferred action status.” 49 U.S.C. § 30301 note.<sup>62</sup>

Permitting deferred action recipients to obtain work authorization has a similarly lengthy pedigree.

A regulation promulgated in the 1980s provides that individuals who receive deferred action are eligible to apply for work authorization. *See* 8 C.F.R. § 274a.12(c)(14). That regulation codified the already-

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<sup>62</sup> *See also* Violence Against Women Act of 2000, Pub. L. No. 106-386, div. B, § 1503(d)(2), 114 Stat. 1464, 1491 (codified at 8 U.S.C. § 1154(a)(1)(D)(i)) (specifying deferred action for certain VAWA self-petitioners); USA PATRIOT Act of 2001, Pub. L. No. 107-56, § 423(b), 115 Stat. 272, 361 (same, for family members of lawful permanent residents killed by terrorism); National Defense Authorization Act for Fiscal Year 2004, Pub. L. No. 108-136, § 1703(c)–(d), 117 Stat. 1392, 1694–95 (same, for relatives of noncitizens killed in combat and posthumously granted citizenship).

existing practice and procedure of granting employment authorization to such individuals. *See Proposed Rules for Employment Authorization for Certain Aliens*, 44 Fed. Reg. 43,480 (July 25, 1979). And in the almost forty years since, Congress has declined to limit this practice in any way.

To the contrary, in the face of a challenge to the Attorney General's authority to grant work authorizations to individuals who have been granted deferred action (see *Employment Authorization*, 51 Fed. Reg. 39,385 (Oct. 28, 1986)), Congress ratified the Attorney General's authority, enacting a law prohibiting employers from hiring unauthorized aliens, but expressly excluded from that category individuals "authorized to be so employed by . . . the Attorney General." 8 U.S.C. § 1324a(h)(3).

In sum, the broad discretionary authority conferred on DHS in the immigration context, the long history of administrative grants of both deferred action and work authorization, and Congress's express recognition of that practice establish that DACA falls within the legal authority available to the DHS.

2. *The District Court erred in holding that DACA exceeds DHS's authority.*

The District Court held this long line of authority inapplicable for two basic reasons, neither of which provide grounds for invalidating DACA.

*First*, the District Court erred by concluding that this Court's decision holding invalid a different deferred action program—Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA)—requires the conclusion that DACA is unlawful. *Texas v. United States*, 2021 WL 3025857, at \*38 (S.D. Tex. July 16, 2021) (citing *Texas v. United States*, 809 F.3d 134 (5th Cir. 2015), *aff'd by equally divided Court*, 136 S. Ct. 2271 (2016)). This Court's reasoning focused entirely on characteristics of the DAPA program that are not present in DACA.

Thus, the Court held, in the context of DAPA, that DHS exceeded its authority because the immigration laws already “prescribe[] how parents may derive an immigration classification on the basis of their child's status” and, the Court determined, the DAPA program overrode the specific limitations enacted by Congress. *Texas v. United States*, 809 F.3d at 186. As the Ninth Circuit explained in analyzing this Court's decision, “there is no analogous provision in the INA defining how



immigration status may be derived by undocumented persons who arrived in the United States as children. One of the major problems the Fifth Circuit identified with DAPA is therefore not present here.” *Regents of the Univ. of Cal. v. U.S. Dep’t of Homeland Security*, 908 F.3d 476, 508 (9th Cir. 2018), *aff’d on other grounds*, 140 S. Ct. 1891 (2020).<sup>63</sup>

Second, the District Court concluded that upholding DACA would extend DHS’s authority beyond what Congress permitted when it recognized deferred action and work authorization. For example, the District Court stated, that DACA “is not country-or-area-specific and was not implemented in response to any natural disasters or other similar crisis,” and that DACA is not “interstitial to a statutory legalization scheme.” *Texas*, 2021 WL 3025857, at \*35.

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<sup>63</sup> This Court also pointed out that DAPA stated that it conferred “lawful presence” on DAPA recipients, which it described as a specific immigration status. 809 F.3d at 186. The memorandum creating DACA does not use the term “lawful presence.” DHS’s 2021 Notice of Proposed Rulemaking does refer to “lawful presence;” it clarifies that “[l]awful presence’ is a ‘distinct concept’ from the much broader concept of ‘lawful status,’ which refers to an immigration status granted pursuant to a provision of the INA.” *See* 86 Fed. Reg. at 53,761. In addition, “lawfully present” is “a specialized term of art that does not in any way confer authorization to remain in the United States.” *Id.* at 53,740.

But nothing in Congress’s repeated recognition of deferred action indicates any intent to circumscribe the Department’s authority. The Reagan/Bush “Family Fairness” program did not fill statutory gaps but rather—like DACA—identified a group that was a very low priority for enforcement action. *Regents of the Univ. of Cal.*, 908 F.3d at 489 (citing the Family Fairness program as “[a]nother salient example” of DHS’s broad authority to put deferred action programs into practice). The group identified for that program, moreover, included approximately the same number of individuals as the total number of people eligible for the DACA program. *Texas*, 2021 WL 3025857, at \*35.<sup>64</sup>

In view of the long history of grants of deferred action and work authorization, and the lack of any basis for distinguishing the DACA program, this Court should reverse the District Court’s determination and uphold the validity of the DACA program.

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<sup>64</sup> And DACA encompasses only a small percentage of the number of people who would have been eligible under the DAPA program invalidated by this Court. *Texas*, 2021 WL 3025857, at \*38.

## CONCLUSION

The judgment of the District Court should be reversed.

Dated: December 15, 2021

Respectfully submitted,

*/s/ Andrew Pincus*

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**APPENDIX**  
**LIST OF *AMICI CURIAE***

1. Amazon.com, Inc.
2. Apple Inc.
3. Asana, Inc.
4. Aspen Skiing Company, LLC
5. Azavea Inc.
6. Berry Appleman & Leiden LLP
7. Best Buy Co., Inc.
8. Block, Inc.
9. Box, Inc.
10. Braze, Inc.
11. BSA | The Software Alliance
12. Chegg, Inc.
13. Cisco Systems Inc.
14. Consumer Technology Association
15. Dropbox, Inc.
16. eBay Inc.
17. Ernst & Young LLP
18. Meta Platforms, Inc.
19. Gateway X
20. Google Inc.

21. Graham Holdings Company
22. HP Inc.
23. IBM Corporation
24. Intel Corporation
25. Levi Strauss & Co.
26. Medidata Solutions, Inc.
27. Microsoft Corporation
28. Momentive, Inc.'s
29. The National Association of Manufacturers (NAM)
30. National Retail Federation
31. Niskanen Center
32. North Texas Commission
33. OpenAI, Inc.
34. Partnership for a New American Economy Action Fund
35. Retail Industry Leaders Association
36. Spokeo, Inc.
37. Target
38. TechNet
39. TESOL International Association
40. TexTESOL III
41. The Nielsen Company, LLC
42. TNTP, Inc.

43. Vail Valley Partnership
44. Workday, Inc.
45. Yelp Inc.

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the above document was filed and served on December 15, 2021, via ECF upon counsel of record for the parties.

*/s/ Andrew Pincus*  
Andrew Pincus

**CERTIFICATIONS UNDER ECF FILING STANDARDS**

Pursuant to paragraph A(6) of this Court's ECF Filing Standards, I hereby certify that (1) required privacy redactions have been made, 5th Cir. R. 25.2.13; (2) the electronic submission is an exact copy of the paper document, 5th Cir. R. 25.2.1; and (3) the document has been scanned for viruses with the most recent version of a commercial virus scanning program and is free of viruses.

*/s/ Andrew Pincus* \_\_\_\_\_  
Andrew Pincus



## CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitations of Federal Rule of Appellate Procedure 29(a)(5) because this brief contains 5,608 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in 14-point Century Schoolbook font.

Dated: December 15, 2021

*/s/ Andrew Pincus*

Andrew Pincus