No. 23-40653

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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; Troy Miller, Senior Official Performing the Duties of the Commissioner, U.S. Customs and Border Protection; Patrick J. Lechleitner, Acting Director of U.S. Immigration and Customs Enforcement; Ur M. Jaddou, Director of U.S. Citizenship and Immigration Services; Jason D. Owens, Chief of the U.S. Border Patrol,

Defendants-Appellants

Maria Rocha; Jose Magana-Salgado; Nanci J. Palacios Godinez; Elly Marisol Estrada; Karina Ruiz de Diaz; Carlos Aguilar Gonzalez; Luis A. Rafael; Darwin Velasquez; Jin Park; Oscar Alvarez; Denise Romero; Jung Woo Kim; Angel Silva; Hyo-Won Jeon; Elizabeth Diaz; Blanca Gonzalez; Moses Kamau Chege; Maria Diaz,

Intervenor Defendants-Appellants

State of New Jersey,

Intervenor-Appellant

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

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

Andrew Pincus
MAYER BROWN LLP
1999 K Street NW
Washington, DC 20006
(202) 263-3000
apincus@mayerbrown.com
Counsel for Amici Curiae

CORPORATE DISCLOSURE STATEMENT AND SUPPLEMENTAL STATEMENT OF INTERESTED PARTIES

Case No. 23-40653, *Texas v. United States*

The undersigned counsel of record certifies that, in addition to the persons and entities identified in the parties' briefs, 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.

Adobe Inc.

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

Amazon.com, Inc.

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

American Hotel & Lodging Association

> American Hotel & Lodging Association 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.

Berry Appleman & Leiden LLP

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

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.

DoorDash, Inc.

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

Driscoll's Inc.

Driscoll's Inc. 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.

Engine Advocacy

Engine Advocacy 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.

The Gap, Inc.

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

Google Inc.

Google Inc. is a subsidiary of XXVI Holdings Inc., which is a subsidiary of Alphabet Inc., a publicly traded company; no publicly traded company holds more than 10% of Alphabet Inc.'s stock.

The Greater San Antonio Chamber of Commerce

The Greater San Antonio Chamber of Commerce is a nonprofit organization that has no parent and issues no stock.

Graham Holdings Company

Graham Holdings Company has no parent corporation and BlackRock, Inc. owns 12.1% of the outstanding Class B stock of Graham Holdings Company.

Hewlett Packard Enterprise

Hewlett Packard Enterprise 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.

IKEA North American Services, LLC

IKEA North American Services, LLC is a wholly-owned subsidiary of IKEA US RETAIL LLC, which is a wholly-owned subsidiary of IKEA Property, Inc., which is a wholly-owned subsidiary of IKEA Holding US, Inc., which is a wholly-owned subsidiary of INGKA Holding Overseas B.V., which is a wholly-owned subsidiary of INGKA Holding B.V. No publicly held corporation owns more than 10% of INGKA Holding B.V.'s stock.

Intel Corporation

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

Intuit, Inc.

Intuit, Inc. 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.

LinkedIn Corporation

LinkedIn Corporation is a wholly owned subsidiary of Microsoft Corporation, which is the only corporation that owns 10% or more of LinkedIn's stock.

Meta Platforms, Inc.

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

Microsoft Corporation

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

The National Association of Manufacturers (NAM)

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.

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.

Red Ventures Holdco, LP

Red Ventures Holdco, LP 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.

Schweitzer Engineering Laboratories, Inc.

Schweitzer Engineering Laboratories, Inc. 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.

Starbucks Corporation

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

State Business Executives

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

SurveyMonkey Inc.

SurveyMonkey Inc.'s parent corporation is SurveyMonkey Global Inc. and no publicly held corporation owns 10% or more of its stock.

SV Angel

SV Angel 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.

The Texas Business Leadership Council

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

The Texas Nursery & Landscape Association

The Texas Nursery & Landscape Association has no parent corporation and no publicly held corporation owns 10% or more of its stock.

The Texas Restaurant Association

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

The Texas Retailers Association

The Texas Retailers Association has no parent corporation and no publicly held corporation owns 10% or more of its stock.

The Nielsen Company (US), LLC

The Nielsen Company (US), LLC is the operating company in the United States and no publicly held corporation owns 10% or more of its stock.

Uber Technologies, Inc.

Uber Technologies, Inc. is a publicly held corporation and not a subsidiary of any entity. Based solely on SEC filings regarding beneficial ownership of the stock of Uber, Uber is unaware of any shareholder who beneficially owns more than 10% of Uber's outstanding stock.

Vail Valley Partnership

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

Verizon Services Corp.

Verizon Services Corp. is a Delaware corporation. Verizon Services Corp. is wholly owned by Verizon Communications Inc. ("Verizon"). Verizon, a publicly traded company, has its principal place of business at 1095 Avenue of the Americas, New York, New York. No publicly held corporation owns 10% or more of Verizon's stock.

Wise U.S. Inc.

Wise U.S. Inc. is a Delaware corporation and a wholly owned subsidiary of Wise Payments Limited.

Workday, Inc.

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

Y Combinator

Y Combinator is wholly owned by YCX, LLC and no publicly held corporation owns 10% or more of its stock

Yelp Inc.

Yelp Inc. has no parent corporation and the following publicly held corporations own 10% or more of its stock: BlackRock, Inc. and The Vanguard Group, Inc.

Andrew J. Pincus of Mayer Brown LLP and Mayer Brown LLP.

/s/ Andrew Pincus
Andrew Pincus
MAYER BROWN LLP
1999 K Street NW
Washington, DC 20006
(202) 263-3000
apincus@mayerbrown.com

Counsel for Amici Curiae

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INTEREST OF *AMICI CURIAE*

Amici are 56 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.[1]

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

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[1] 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 835,000[2] young adults who "were brought to this country as children and know only this country as home."[3] 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, medical professionals, and neighbors.

But DACA has not just transformed the lives of these young people; it has also benefited American companies, our Nation's economy, and all

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[2] This is the estimate of the total number of individuals who have participated in the program. *See* U.S. Citizenship and Immigration Services, *Number of Form I 821D, Consideration of Deferred Action for Childhood Arrivals - Requests by Intake and Case Status, by Fiscal Year August 15, 2012 - June 30, 2023*, https://bit.ly/3SD4hLo (last accessed Jan. 25, 2024).

[3] Mem. from Janet Napolitano to David V. Aguilar Regarding Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children (June 15, 2012), https://bit.ly/3SH3CZa.

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 played a particularly important role as front-line workers responding to the COVID-19 pandemic. Today, with unemployment at low levels and worker shortages plaguing many sectors of the economy, 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 for the next two years—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. DACA falls within the Department of Homeland Security'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[4]; they have created businesses—including many Fortune 500 companies—that generate over $775 billion in sales and create thousands of jobs for others[5]; and they pay over $300 billion in yearly state, local, and federal taxes.[6]

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[4] Matthew Denhart, George W. Bush Institute, *America's Advantage: A Handbook on Immigration and Economic Growth* 70, 76 (3d ed., Sept. 2017), https://bit.ly/3SEErGG.

[5] P'ship for a New Am. Econ., *Open for Business: How Immigrants Are Driving Business Creation in the United States* 12, 14 (Aug. 2012), https://bit.ly/3SGs2ST.

[6] Dan Kosten, Nat'l Immigration Forum, *Immigrants as Economic Contributors: Immigrant Tax Contributions and Spending Power* (Sept. 6, 2018), https://bit.ly/3UjcTIp.

Although DACA is relatively new, DACA recipients are contributing to the American economy in important ways. The program has enabled more than 835,000 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. Today, with unemployment at low levels and millions of jobs going unfilled, Dreamers continue to play a vital role in the growth of the American economy.

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.

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 when millions of jobs already are going unfilled due to lack of workers.*

Dreamers contribute directly to the success of U.S. companies, including many *amici*. Over 80% of DACA recipients are employed and they benefit virtually every sector of the economy.[7] More than 75% of the top 25 Fortune 500 companies have employed DACA recipients—including Walmart, Apple, IBM, Microsoft, Amazon, and JPMorgan Chase, among others.[8]

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[7] Tom K. Wong et al., *Results from Tom K. Wong et al., 2022 National DACA Study* 2 (2022), https://ampr.gs/3UqW4v1.

Congressional Rsch. Serv., *Deferred Action for Childhood Arrivals (DACA): By the Numbers* (Apr. 14, 2021), https://bit.ly/3uj79Un; Nicole Prchal Svajlenka, Ctr. for Am. Progress, *What We Know About DACA Recipients, by Metropolitan Area: Spring 2020 Edition* (Apr. 30, 2020), https://ampr.gs/3UlIOru.

[8] Kevin Gray, Nat'l Ass'n of Colleges and Employers, *Supporting Dreamers During Their Career Exploration, Job Search* (Feb. 19, 2021), https://bit.ly/48ViiK9.

In addition, Dreamers helped to keep the American economy running by serving as essential front-line workers during the pandemic.[9] 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.[10] That is more than twice the 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.[11]

Moreover, in the current post-pandemic period of low unemployment and unprecedented labor shortages, Dreamers are

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[9] Claudia Flores and Nicole Prchal Svajlenka, Ctr. for Am. Progress, *Why DACA Matters* (Apr. 29, 2021), https://ampr.gs/3SpxN63.

[10] 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://ampr.gs/3HHCFOY (estimating that 343,000 DACA recipients are working in essential occupations); FWD. us, *Undocumented Immigrant Essential Workers: 5 Things to Know* (Feb. 22, 2021), https://bit.ly/3SFk6RC; *see also* Ctr. for Am. Progress, *A Demographic Profile of DACA Recipients on the Frontlines of the Coronavirus Response* (Apr. 6, 2020), https://ampr.gs/3SD5baL ("Nearly 203,000 DACA recipients are working in occupations at the forefront of the COVID-19 response in health care, education, and food services.").

[11] Svajlenka and Truong, *supra* n.10.

helping to fill the gap. Over 300,000 DACA recipients work in industries with labor shortages, including healthcare, business services, and education.[12]

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.[13]

Health care 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.[14] Invalidating DACA would cost small business employers an estimated $6

[12] Fwd.us, *DACA 11 Years Later* (June 12, 2023), https://bit.ly/3UlTW7I.

[13] 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* (June 18, 2020), https://bit.ly/3SJodfO.

[14] Nydia M. Velazquez, Democrats of the Comm. on Small Bus., *Economic Impact of DACA: Spotlight on Small Business* (Feb. 2018), https://bit.ly/3SI7RnD.

billion in turnover costs.[15] 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.[16]

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.[17]

Moreover, studies repeatedly show that a diverse workforce is more innovative. People with different backgrounds naturally offer new

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[15] David Bier, Cato Institute, *Ending DACA Will Impose Billions in Employer Compliance Costs* (Sep. 1, 2017), https://bit.ly/49eBi5T.

[16] Heather Boushey & Sarah Jane Glynn, Ctr. for Am. Progress, *There Are Significant Business Costs to Replacing Employees* (Nov. 16, 2012), https://ampr.gs/48XaAPt.

[17] *See* Bob Davis, *The Thorny Economics of Illegal Immigration*, Wall St. J. (Feb. 9, 2016), https://on.wsj.com/49hNVgQ; *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://bit.ly/42kJijE (finding that employment rates of U.S. men dropped post-LAWA).

perspectives when confronted with problems, and these novel perspectives identify new possibilities.[18] 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 share increases patents per capita by 9-18 percent."[19] 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

[18] Katherine W. Phillips, *How Diversity Makes Us Smarter*, Scientific American, Oct. 1, 2014, https://bit.ly/3SkFlHc; *see also* Deloitte, *Waiter, Is That Inclusion in My Soup? A New Recipe to Improve Business Performance* 8 (2013), https://bit.ly/3SkopjV.

[19] 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.[20] That is nearly twice the rate of the American public as a whole.[21]

DACA recipients' businesses employ nearly 86,000 people.[22] 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.[23] Indeed, small businesses run by Dreamers have helped to revitalize declining neighborhoods and reverse declining population trends.[24] Revived

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[20] Wong et al., *supra* n.7, at 2; 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://ampr.gs/42p26hW; *see also* Justice for Immigrants, *The Financial Contributions of Dreamers: What the U.S. Economy Stands to Lose* (June 18, 2020), https://bit.ly/4bl4lGT (In 2017, 5 percent of DACA-eligible immigrants owned their own businesses.).

[21] John Suh, *Ending DACA Doesn't Just Hurt Immigrants – Businesses Across the U.S. Will Feel the Impact*, Entrepreneur (Aug. 9, 2018), https://bit.ly/48YaJlS.

[22] Flores and Svajlenka, *supra* n.9.

[23] New American Economy, *DACA-Eligible Entrepreneurs Earned More Than $658.7 Million in Total Business Income in 2015* (Jan. 31, 2018), https://bit.ly/4bllbpe.

[24] David Dyssegaard Kallick, Americas Soc'y/Council of the Americas, *Bringing Vitality to Main Street: How Immigrant Small Businesses Help Local Economies Grow* 12 (Jan. 2015), https://bit.ly/3SoTd30.

communities range from Philadelphia to Lexington, Nebraska to Minneapolis-St. Paul to Nashville.[25]

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.[26] Thus, DACA recipients and their households

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[25] *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.

[26] Wong et al., *supra* n.7 (finding that study respondents reported wage increases of average hourly wage more than doubled from $11.22 to $28.27 per hour—a gain of 151.9%—after they received work authorization under DACA); *see also* Milady Nazir, Univ. of Tex. at San Antonio, *UTSA Study: DACA Protection Leads to Sizable Economic Gains*, UTSA Today (Oct. 1, 2021), https://bit.ly/3SDzQVq (A new study

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

A 2022 survey found that 65% of DACA recipients became financially independent as a result of work authorization, with 51% of respondents reporting that they bought their first car after receiving DACA status and approximately 18% reporting that they bought their first house.[29] DACA recipients own 68,000 homes, pay $760 million in mortgages and $2.5 billion in rental payments each year.[30]

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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.").

[27] 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://ampr.gs/3uioYD6.

[28] Velazquez, *supra* n.14.

[29] Wong et al., *supra* n.7.

[30] Svajlenka and Truong, *supra* n.10.

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.[31] In 19 metropolitan areas around the country, Dreamers contribute more than $25 million in tax revenue.[32] Since the program began, DACA recipients have paid a total of more than $33 billion in taxes.[33] One recent study found that DACA recipients contribute nearly $2.1 billion to Social Security and Medicare annually, even though they are not eligible to receive benefits under these programs.[34]

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[31] *Id.*

[32] *Id.*

[33] Fwd.us, *supra* n.12.

[34] Trinh Q. Truong and Silva Mathema, *DACA Recipients Bolster Social Security and Medicare* (Jan. 25, 2024), https://bit.ly/3SDA7aU.

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 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.[35] Rather, job creation stimulates the economy as a whole, which in turn creates more

[35] Paul Krugman, *Opinion, Lumps of Labor*, N.Y. Times (Oct. 7, 2003), https://nyti.ms/47WHoXF.

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."[36] That increased demand, in turn, creates additional jobs.

A number of recent studies confirm this phenomenon and demonstrate that enabling immigrants to find gainful employment in turn creates more job opportunities.[37] 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.[38]

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[36] Buttonwood, *Keep on Trucking*, The Economist (Feb. 11, 2012), https://econ.st/3Uje0b3.

[37] *See, e.g.*, Adi Gaskell, *Immigrants Create More Jobs Than They Take*, Forbes (Nov. 11, 2020), https://bit.ly/49gmbcf.

[38] *See* Jacqueline Varas, Am. Action Forum, *How Immigration Helps U.S. Workers and the Economy* (Mar. 20, 2017), https://bit.ly/47TVdGd; U.S. Chamber of Commerce, *Immigration Myths and Facts* (Apr. 14, 2016), https://bit.ly/47YvDji.

Similarly, DACA has not had any significant effect on the wages of U.S. workers.[39] 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-income jobs.[40] 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.[41]

2. *Dreamers fill critical labor shortages.*

Studies repeatedly show that immigrants complement, rather than compete with, U.S. workers in the workforce.[42] That is particularly true of DACA recipients.

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[39] Francesc Ortega *et al.*, *The Economic Effects of Providing Legal Status to DREAMers* 18, IZA Discussion Paper No. 11281 (Jan. 2018), https://bit.ly/48X3aMd.

[40] Ike Brannon, *Extending DACA's Protection Creates Jobs and Tax Revenue for the U.S. Economy*, Forbes (Jul. 31, 2021), https://bit.ly/3vVYJTk.

[41] The National Academies of Sciences Engineering Medicine, *The Economic and Fiscal Consequences of Immigration* (2017), https://bit.ly/4bgP0qX.

[42] Denhart, *supra* n.4, at 118; Gretchen Frazee, *4 Myths About How Immigrants Affect the U.S. Economy*, PBS NewsHour (Nov. 2, 2018),

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.[43] 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."[44]

The U.S. Chamber of Commerce recently stated that it

> "hear[s] every day from our member companies—of every size and industry, across nearly every state—they're facing unprecedented challenges trying to find enough workers to fill open jobs. Right now, the latest data shows that we have 9.5

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https://to.pbs.org/4bho7Dc; Maria E. Enchautegui, *Immigrant and Native Workers Compete for Different Low-Skilled Jobs*, The Urban Institute: Urban Wire (Oct. 13, 2015), https://urbn.is/49kVraJ; U.S. Chamber of Commerce, *supra* n.38.

[43] *See, e.g.*, News Release, U.S. Dep't of Labor, Bureau of Labor Statistics, *The Employment Situation – December 2023* (Jan. 5, 2024), https://bit.ly/4bbVA1M; 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 Jan. 22, 2024), https://bit.ly/3Se4O4Q.

[44] Nat'l Fed'n of Indep. Bus., *Small Business Optimism Index* (Nov. 2021), https://bit.ly/3SG1jWq.

> million job openings in the U.S., but only 6.5 million unemployed workers.
>
> "We have a lot of jobs, but not enough workers to fill them. If every unemployed person in the country found a job, we would still have over 2 million open jobs."[45]

Dreamers have helped to fill these critical worker shortages. As DHS recently explained, 18,263 new workers could enter the U.S. labor force in the first year after promulgating its rule codifying DACA.[46]

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."[47] But DACA beneficiaries are able to "pursue and accept jobs for which their skills are well-

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[45] Stephanie Ferguson, U.S. Chamber of Commerce, *Understanding America's Labor Shortage* (Jan. 9, 2024), https://bit.ly/3un3tkj.

[46] Deferred Action for Childhood Arrivals, 87 Fed. Reg. 53,152, 53,286 (Aug. 30, 2022).

[47] Cecilia Rouse, et al., Council of Economic Advisors, *The Economic Benefits of Extending Permanent Legal Status to Unauthorized Immigrants* (Sep. 17, 2021), https://bit.ly/3uipd0Y ("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.").

suited."[48] Indeed, a recent survey found that over 40% of DACA recipients were able to move to a job that better fit their education and training after obtaining work authorization.[49]

Qualifying for deferred action also has encouraged recipients to obtain additional education and training, which has better prepared them for skilled labor jobs.[50] 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."[51]

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[48] *Id.*

[49] Wong, et al., *supra* n.7.

[50] *Id.*

[51] Roberto G. Gonzales, et al., Immigration Initiative at Harvard, *The Long-Term Impact of DACA: Forging Futures Despite DACA's Uncertainty* 9 (2019), https://bit.ly/3HHdL1R (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).

More than 25% of DACA beneficiaries are currently in school.[52] Many pursue 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.[53] 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.[54] 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."[55]

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

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[52] Wong, et al., *supra* n.7.

[53] The UndocuScholars Project, *In the Shadows of the Ivory Tower: Undocumented Undergraduates and the Liminal State of Immigration Reform* 8 (2015), https://bit.ly/3HGPjh7.

[54] Brannon, *supra* n.40.

[55] *Id.*

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.[56] 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.[57]

II. DACA IS LAWFUL

Amici recognize that this Court in *Texas v. United States*, 50 F.4th 498 (5th Cir. 2022), held that DHS lacked authority to adopt the DACA program. Respectfully, *amici* disagree with that determination for the reasons stated in the *amicus* brief for U.S. companies and business associations filed in connection with that appeal. *See* Br. for U.S. Cos. and Bus. Ass'ns. at 23-31 (5th Cir. filed Dec. 15, 2021), Doc. # 99.

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[56] Tom K. Wong, et al., Ctr. for Am. Progress, *DACA Recipients' Economic and Educational Gains Continue to Grow* (Aug. 28, 2017), https://ampr.gs/3w8aHZW; *see also* Garry Davis, Davis & Associates, *The Economic Benefits of the DACA Program* (Apr. 1, 2021), https://bit.ly/48WevvZ.

[57] Brannon, *supra* n.40.

As that brief explains, for nearly 70 years, Presidents have exercised authority to defer enforcement action under the immigration laws with respect to classes of individuals—which is generally termed "deferral of removal" or "deferred action." And, pursuant to a regulation adopted during the Reagan Administration, deferred action recipients have been permitted to apply for, and obtain work authorization. *See* 8 C.F.R. § 274a.12(c)(14).

Because *amici* recognize that the panel is bound by the Court's prior 2022 ruling, we do not repeat those arguments here but rather preserve them for further review. *Amici* observe in addition that the government and intervenors have raised a number of other arguments that could result in reversal of the district court's judgment.

CONCLUSION

The judgment of the District Court should be reversed.

Dated: February 1, 2024

Respectfully submitted,

/s/Andrew Pincus

Andrew Pincus
MAYER BROWN LLP
1999 K Street, NW
Washington, DC 20006
(202) 263-3000
apincus@mayerbrown.com
Counsel for Amici Curiae

APPENDIX
LIST OF *AMICI CURIAE*

1. Adobe Inc.
2. Amazon.com, Inc.
3. American Hotel & Lodging Association
4. Apple Inc.
5. Berry Appleman & Leiden LLP
6. Box, Inc.
7. Braze, Inc.
8. BSA | The Software Alliance
9. Chegg, Inc.
10. Cisco Systems Inc.
11. Consumer Technology Association
12. DoorDash, Inc.
13. Driscoll's Inc.
14. Dropbox, Inc.
15. eBay Inc.
16. Engine Advocacy
17. Ernst & Young LLP
18. The Gap, Inc.

19. Google LLC
20. Greater San Antonio Chamber of Commerce
21. Graham Holdings Company
22. Hewlett Packard Enterprise
23. HP Inc.
24. IBM Corporation
25. IKEA North American Services, LLC
26. Intel Corporation
27. Intuit, Inc.
28. Levi Strauss & Co.
29. LinkedIn Corporation
30. Meta Platforms, Inc.
31. Microsoft Corporation
32. National Association of Manufacturers
33. National Retail Federation
34. North Texas Commission
35. Red Ventures
36. Retail Industry Leaders Association
37. Schweitzer Engineering Laboratories, Inc.

38. Spokeo, Inc.

39. Starbucks Corporation d/b/a Starbucks Coffee Company

40. State Business Executives

41. SurveyMonkey Inc.

42. SV Angel

43. TechNet

44. TESOL International Association

45. Texas Business Leadership Council

46. Texas Nursery & Landscape Association

47. Texas Restaurant Association

48. Texas Retailers Association

49. The Nielsen Company (US), LLC

50. Uber Technologies, Inc.

51. Vail Valley Partnership

52. Verizon Services Corp.

53. Wise U.S. Inc.

54. Workday, Inc.

55. Y Combinator Management, LLC

56. Yelp Inc.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above document was filed and served on February 1, 2024, 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 4284 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: February 1, 2024

/s/ Andrew Pincus
Andrew Pincus