

1 THEODORE B. OLSON, SBN 38137
tolson@gibsondunn.com
2 STUART F. DELERY*
sdelery@gibsondunn.com
3 DAVID A. SCHNITZER*
dschnitzer@gibsondunn.com
4 GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
5 Washington, DC 20036-5306
Telephone: 202.955.8500
6 Facsimile: 202.467.0539
*pro hac vice application forthcoming
7

8 ETHAN D. DETTMER, SBN 196046
edettmer@gibsondunn.com
9 JONATHAN N. SOLEIMANI, SBN 295673
jsoleimani@gibsondunn.com
10 GIBSON, DUNN & CRUTCHER LLP
555 Mission Street, Suite 3000
11 San Francisco, CA 94105-0921
Telephone: 415.393.8200
12 Facsimile: 415.393.8306

13 *Attorneys for Amici Curiae*

14 **UNITED STATES DISTRICT COURT**
15 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

16 NATIONAL ASSOCIATION OF
17 MANUFACTURERS, CHAMBER OF
18 COMMERCE OF THE UNITED STATES OF
19 AMERICA, NATIONAL RETAIL FEDERATION,
TECHNET, and INTRAX, INC.,

20 Plaintiffs,

21 v.

22 UNITED STATES DEPARTMENT OF
23 HOMELAND SECURITY, UNITED STATES
24 DEPARTMENT OF STATE; CHAD F. WOLF, in
his official capacity as Acting Secretary of
Homeland Security; and, MICHAEL R. POMPEO,
in his official capacity as Secretary of State,

25 Defendants.
26
27
28

CASE NO. 4:20-cv-04887-JSW

**AMICUS BRIEF OF LEADING
COMPANIES AND BUSINESS
ORGANIZATIONS IN SUPPORT
OF PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

Date: September 11, 2020
Time: 9:00 a.m.
Courtroom: 5, 2nd Floor
Judge: Hon. Jeffrey S. White

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SUMMARY OF ARGUMENT

On June 22, 2020, invoking 8 U.S.C. § 1182(f), the President signed a proclamation that suspends—through 2020 and as long thereafter “as necessary”—a host of the country’s decades-old nonimmigrant visa programs, including H-1B visas for high-skill specialty occupations, H-2B visas for nonagricultural workers, and L-1 visas for intracompany transfers. The purported ground for the suspension is “to protect unemployed Americans from the threat of competition for scarce jobs” amidst “economic disruptions caused by the COVID-19 outbreak.” The law requires the President to make “*find[ings]*” that his actions will *further* “the interests of the United States.” 8 U.S.C. § 1182(f) (emphasis added); *see also Doe #1 v. Trump*, 957 F.3d 1050, 1067 (9th Cir. 2020) (finding it “unlikely that the government will succeed in its broad reliance on § 1182(f)” in issuing proclamation “with virtually no factual findings, minimal reasoning, and an extremely limited window for public comment”).

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Amici respectfully submit that the June Proclamation fails Section 1182(f)’s findings requirement because the indiscriminate suspension of these crucial nonimmigrant visa programs does not further the interests of the United States. Indeed, the overwhelming weight of evidence and the experience of *amici*—leading corporations, trade associations, and other business-oriented organizations—make clear that the suspension of these vital nonimmigrant visa programs will stifle innovation, hinder growth, and ultimately harm U.S. workers, businesses, and the economy more broadly in irreparable ways.

1 **I. IDENTITY AND INTEREST OF *AMICI CURIAE***

2 *Amici* are corporations, trade associations, and other organizations focused on the business
3 community. They represent a broad range of sectors of the U.S. economy. Collectively, they have
4 hundreds of thousands of employees and members across the country and represent hundreds of
5 billions of dollars in annual economic activity. *Amici* have extensive experience with employment-
6 based visas, including the H-1B, H-2B, and L-1 programs recently suspended by the President; they
7 include some of the greatest beneficiaries of those programs. They have experienced firsthand the
8 benefits of these programs for their companies, their employees, and the U.S. economy more
9 broadly.¹ Based on that experience and knowledge, they submit this brief to highlight the serious
10 economic impact of suspending these programs and the ongoing and irreparable harms that result
11 from doing so.²

12 **II. INTRODUCTION**

13 For decades, U.S. businesses have welcomed thousands of highly-skilled and motivated
14 workers from abroad to work temporarily in the United States through nonimmigrant visa programs
15 established by Congress. These initiatives, including the H-1B, H-2B, and L-1 visa programs, help
16 drive American growth and innovation by attracting the world’s best talent—including engineers,
17 doctors, bankers, biomedical researchers, software developers, and tech executives—at a time when the
18 global contest to attract skilled workers is increasingly competitive. The programs have been an
19 unequivocal success, earning praise from presidents of both political parties. They are widely
20 understood as benefitting not only U.S. companies and the foreign workers they employ, but also
21 domestic wage earners, families, communities, and the American economy more broadly.

22 On June 22, 2020, President Trump signed Proclamation 10052 (the “Proclamation”), which
23 suspends—through the end of the year and as long thereafter as he deems “necessary”—issuance of
24 new nonimmigrant visas throughout the legal immigration system, including the H-1B, H-2B, and L-1

25 _____
26 ¹ A full list of *amici* is set forth in the attached Appendix.

27 ² No party to the above-captioned action or any of their counsel authored this brief in whole or in
28 part or contributed money that was intended to fund preparing or submitting this brief. No third
party—other than the *amici curiae*, their members, or their counsel—contributed money that was
intended to fund preparing or submitting this brief.

1 programs. The stated ground for the indefinite suspension is that entry of nonimmigrant workers at this
2 time is “detrimental to the interests of the United States” given “economic disruptions caused by the
3 COVID-19 outbreak” and a purported lack of “alternative means to protect unemployed Americans
4 from the threat of competition for scarce jobs.” According to the Administration’s own estimates, the
5 President’s actions will prevent more than half a million work-authorized individuals from coming to
6 the United States by year’s end. And experts estimate the Proclamation will prevent roughly 20,000
7 employers from filling positions during that same period.

8 These policies were undertaken as a purported exercise of the President’s authority under
9 8 U.S.C. § 1182(f), which requires, at the threshold, a “find[ing]” that his actions serve “the interests of
10 the United States.” While Section 1182(f) affords great deference to the President ““in the context of
11 international affairs and national security,” “his power is more circumscribed when he addresses a
12 purely domestic economic issue.” *Doe #1 v. Trump*, 957 F.3d 1050, 1067 (9th Cir. 2020) (quoting
13 *Trump v. Hawaii*, 138 S. Ct. 2392, 2409 (2018)). As the Ninth Circuit recently explained in a related
14 context, the provision does not provide “limitless power to deny visas to immigrants.” *Id.* at 1065.

15 *Amici* submit that the Proclamation’s indiscriminate and sudden suspension of nonimmigrant
16 visa programs, including the H-1B program for highly-skilled individuals and L-1 program for
17 intracompany transfers, fundamentally disservices the interests of the United States by stifling the ability
18 of U.S. businesses to attract the world’s best talent, drive innovation, and further American economic
19 prosperity. The Proclamation essentially nullifies a carefully balanced and congressionally approved
20 framework for legal immigration, “raising serious questions as to whether the President has effectively
21 rewritten provisions of the INA.” *Doe #1*, 957 F.3d at 1067. And because it “was issued with virtually
22 no factual findings,” with “minimal reasoning,” *id.*, and against the weight of authority demonstrating
23 the benefits of these programs, it cannot support a “find[ing]” that the suspension serves “the interests
24 of the United States.” 8 U.S.C. § 1182(f).

25 Already global competitors in Canada, China, and India, among others, are pouncing at the
26 opportunity to attract well-trained, innovative individuals. And American businesses are scrambling to
27 adjust, hiring needed talent to work in locations outside our nation’s borders. The Proclamation did not
28 consider these costs. And it was based on the false assumption that the suspension would protect

1 domestic workers. In fact, *amici* and American businesses more broadly will continue to be irreparably
 2 damaged by the Proclamation, to the detriment of their workers and customers, the broader economy,
 3 and the future of American innovation and leadership.

4 III. ARGUMENT

5 A. The Suspended Visa Programs Have A Well-Established And Documented Track 6 Record Of Benefiting The U.S. Economy.

7 Congress enacted and refined the H-1B, H-2B, and L-1 visa programs, recognizing that they
 8 would benefit the U.S. economy. Study after study and expert after expert have confirmed as much:
 9 these programs have driven innovation, increased employment, and fueled economic growth, with
 10 scant evidence of detrimental effects on domestic employees. And *amici*'s real-world experiences
 11 reinforce the conclusions of these many academic and governmental analyses.³

12 1. The H-1B program for specialty occupations boosts the U.S. economy.

13 The H-1B program provides temporary visas and employment authorization for "specialty"
 14 occupations, conditioned on Department of Labor certification of a Labor Condition Application. *See*
 15 8 C.F.R. § 214.2(h). Since its establishment in 1952, the H-1 visa classification has allowed U.S.
 16 employers to hire professionals born outside the country. Since 1990, this category has been subject
 17 to numerical limits and a labor condition application and has been designated the "H-1B visa."
 18 Today it is most commonly associated with the science, technology, engineering, and mathematics
 19 (STEM) disciplines. The modern economy increasingly depends on complex information technology
 20 and management of vast troves of data. Accordingly, American companies across many sectors and
 21 areas of the country employ H-1B visa holders in many capacities, including as operation research
 22 analysts, software engineers, database architects, system analysts, and scientists directly engaged in
 23 research and development of all types.⁴ These individuals are central to the daily operation and
 24 continued growth of American businesses across industries. And research overwhelmingly shows

25 ³ *See, e.g.*, Letter from 324 Employers and Trade, Industry, and Higher Education Associations and
 26 Groups Across the American Economy Focused on the High-skilled Workforce to President
 Donald J. Trump, Secretary of State Michael Pompeo, Secretary of Labor Eugene Scalia, and
 Acting Secretary of Homeland Security Chad Wolf (May 21, 2020), <https://bit.ly/3fuKvLd>.

27 ⁴ *See, e.g.*, American Immigration Council, *The H-1B Visa Program: A Primer on the Program*
 28 *and Its Impact on Jobs, Wages, and the Economy* (Apr. 2020), <https://bit.ly/2EViDmZ> at 6
 (noting diversity of occupations and geographic areas).

1 that these “H-1B visa holders do not adversely affect U.S. workers” but rather benefit them, as the
 2 H-1B program “*increases* innovation, productivity and profits at H-1B employers and boosts total
 3 productivity and innovation in the United States,” as well as “employment among other workers in an
 4 occupation.”⁵

5 That is to say, “[a]rguments that [these] highly skilled, temporary foreign workers are freezing
 6 out [U.S.-born] workers are rebutted by the best available empirical evidence.”⁶ Contrary to the
 7 Proclamation’s premise, unemployment rates are very low for jobs that use large numbers of H-1B
 8 visas—like STEM occupations—signaling that labor demands for these positions already exceeds the
 9 supply.⁷ The data further reveal that “H-1B workers complement U.S. workers, fill employment gaps
 10 in many STEM occupations, and expand job opportunities for all.”⁸ Modeling of a modest expansion
 11 of the program projected the creation of more than 1 million new jobs over 25 years,⁹ while modeling
 12 of its elimination projected a marked reduction in GDP.¹⁰ Further, “[o]verwhelming evidence shows
 13 that H-1B workers do not drive down wages of [U.S.-born] workers”—and indeed may lead to
 14 *increased* wages for employees in the United States.¹¹

15 **2. The H-2B program for nonagricultural workers also serves an essential role in**
 16 **the economy.**

17 The H-2B program covers temporary nonagricultural workers, and is often used in the
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20 ⁵ Madeline Zavodny, *The Impact of H-1B Visa Holders On The U.S. Workforce*, National
 21 Foundation for American Policy, NFAP Policy Brief (May 2020), <https://bit.ly/3gyJkf0> at 1–2
 (citing and summarizing studies).

22 ⁶ American Immigration Council, *supra* note 4, at 4 (surveying studies).

23 ⁷ National Foundation for American Policy, *Analysis of Employment Data for Computer*
 24 *Occupations*, NFAP Policy Brief (May 2020), <https://bit.ly/2PugvEA>.

25 ⁸ American Immigration Council, *supra* note 4 (citing studies); *see also* May 21, 2020 Letter by
 26 324 Signatories, *supra* note 3 at app. 2-4 (citing studies).

27 ⁹ Frederick R. Treyz, Corey Stottlemeyer, & Rod Motamedi, *Key Components of Immigration*
 28 *Reform: An Analysis of the Economic Effects of Creating a Pathway to Legal Status, Expanding*
High-Skilled Visas, and Reforming Lesser-Skilled Visas, Regional Economic Models, Inc. (2013),
<https://bit.ly/31myL8C> at 1.

¹⁰ Michael E. Waugh, *Firm Dynamics and Immigration: The Case of High-Skilled Immigration*,
 Nat’l Bureau of Econ. Research (Working Paper No. 23387, 2017), <https://bit.ly/3fAXURY> at 29.

¹¹ American Immigration Council, *supra* note 4, at 3.

1 landscaping, hospitality, forestry, and food processing industries to meet seasonal demand.¹² By law,
 2 an H-2B visa can be issued *only* when the United States Department of Labor determines that
 3 “qualified workers in the United States are not available and that the alien’s employment will not
 4 adversely affect wages and working conditions of similarly employed United States workers.”
 5 8 C.F.R. § 214.2(h)(6)(iv)(A); *see also* 8 U.S.C. § 1101(a)(15)(H)(ii)(b) (limiting such visas to when
 6 “unemployed persons capable of performing such service or labor cannot be found in this country”).

7 Like the H-1B program, the H-2B program is linked to increased employment for domestic
 8 workers and increased economic activity. One study found that “100 H-2B workers results in an
 9 additional 464 jobs” for US workers.¹³ An April 2020 study by the Government Accountability
 10 Office (GAO) similarly found a positive correlation between H-2B workers and economic activity.
 11 According to the GAO, “employers reported shutting down operations in the absence of H-2B
 12 workers,” explaining that “barriers to finding U.S. workers [for the same positions] included remote
 13 location and seasonality of the work.”¹⁴ “Most” of the interviewed employers said their business
 14 planning was negatively affected by uncertainty about the availability of H-2B visas, a consideration
 15 of relevance to the current executive action; 12 of 14 employers studied who were unable to obtain
 16 requested visas saw decreased revenues; and companies supplying those employers similarly saw
 17 their own sales decrease when H-2B workers were unavailable.¹⁵ The GAO analyses also revealed
 18 that “counties with H-2B employers generally had lower unemployment rates and higher weekly
 19 wages than those without H-2B employers.”¹⁶

20 The Executive Branch itself recently recognized the importance of the H-2B program in
 21 responding to the COVID-19 pandemic. On May 14, 2020, the Department of Homeland Security

22 _____
 23 ¹² United States Government Accountability Office (GAO), *H-2B VISAS: Additional Steps Needed*
 24 *to Meet Employers’ Hiring Needs and Protect U.S. Workers* (Apr. 2020), <https://bit.ly/3i94y3y> at
 25 11–12.

26 ¹³ Madeline Zavodny, *Immigration and American Jobs*, American Enterprise Institute for Public
 27 Policy Research & Partnership For a New American Economy (Dec. 2011), <https://bit.ly/3a3xaZ9>
 28 at 11; *see also* Madeline Zavodny & Tamar Jacoby, *The Economic Impact of H-2B Workers*, U.S.
 Chamber of Commerce & ImmigrationWorks USA (2010), <https://bit.ly/39YlkQ4>.

¹⁴ GAO, *supra* note 12 at 2.

¹⁵ *Id.*

¹⁶ *Id.* at 13–14.

1 issued a temporary final rule to allow *more* flexibility in hiring or extending the employment of H-2B
 2 visa holders already in the country. 85 Fed. Reg. 28843 (May 14, 2020). Although the change was
 3 directed only at the food supply chain, DHS acknowledged that other roles filled by H-2B workers
 4 were “nonetheless critical to public health and safety, or the economic and national security and
 5 resilience of the nation’s critical infrastructure.” *Id.* at n.11. Similarly, prior to the Proclamation, the
 6 Department of State announced that it would continue to process H-2 applications at consular posts as
 7 a “national security priority,” notwithstanding the suspension of “routine” visa services as a result of
 8 COVID-19.¹⁷ As the Department of State explained, this was because “the H-2 program is essential
 9 to the economy and food security of the United States and is a national security priority.”¹⁸

10 **3. The L-1 visa program for intracompany transfers keeps jobs in the U.S. and**
 11 **boosts the competitiveness of U.S. companies.**

12 The L-1 program allows multinational companies to temporarily transfer existing employees
 13 to the United States to perform “managerial” or “executive” functions, or functions requiring
 14 “specialized knowledge” of the company’s products, processes, or procedures. 8 U.S.C.
 15 § 1184(c)(2)(D). Congress enacted this program 50 years ago to remove restrictions on “the
 16 exchange and development of managerial personnel from other nations vital to American companies
 17 competing in modern-day world trade.” H.R. Rep. No. 91-815, at 5 (1970), 1970 U.S.C.C.A.N. (84
 18 Stat. 116) 2750, 2754. The L-1 category was visionary in allowing a firm to transfer *existing*
 19 employees to where they are needed to maximize business growth; it is a workforce relocation tool
 20 for a global economy. Or in the words of USCIS, the program ended prohibitions that “unduly
 21 restricted the transfer and development of foreign personnel vital to the interests of U.S.
 22 businesses.”¹⁹ “Congress has determined that the ability to transfer company personnel with
 23 specialized knowledge is important in fostering the growth and competitiveness of U.S. businesses.
 24 Companies should be able to transfer their specialized knowledge employees to do business in an

25
 26 ¹⁷ United States Department of State, *Important Announcement on H2 Visas*, Bureau of Consular
 Affairs (Mar. 26, 2020), <https://bit.ly/2C0nyll>.

27 ¹⁸ *Id.*

28 ¹⁹ Memorandum from USCIS on L-1B Adjudications Policy, PM-602-0111, (Aug. 17, 2015),
<https://bit.ly/2PscUXI> at 2.

1 increasingly global marketplace.”²⁰

2 Congress’s expectation and goal have been borne out. As one study explains, “[f]ar from
3 displacing U.S. workers on net, allowing multinationals to bring employees into the United States
4 from abroad prevents them from moving their entire operations abroad.”²¹ To the same end, on May
5 21, 2020 (well into the COVID-19 pandemic), 324 employers and organizations who rely on high-
6 skilled workforces wrote to the Administration to explain that the program “plays a direct role in
7 supporting job creation and job retention in the United States, as well as expanding U.S. advanced
8 manufacturing, continuing U.S.-centered research and development, increasing exports from the U.S.,
9 and encouraging foreign direct investment into the U.S.”²²

10 **B. Unless It Is Enjoined, The Proclamation Will Continue To Impose Irreparable Harm**
11 **On Businesses And The Nation’s Economy.**

12 The Proclamation jeopardizes the benefits of nonimmigrant visa programs. Absent an
13 injunction, roughly 20,000 U.S. employers seeking to hire foreign workers will be impacted by year’s
14 end.²³ And while the Administration suggests its actions have “clear[ed] the American job market of
15 competition,”²⁴ no evidence supports this. In reality, based on numerous studies and the experience of
16 *amici*, the impact on American workers, businesses, and the economy more broadly will be adverse,
17 enduring, and irreparable.

18 **1. Many leading businesses have recognized that the indefinite suspension of**
19 **nonimmigrant visas threatens U.S. competitiveness, ingenuity, and growth.**

20 After the President announced the Proclamation, many of America’s leading companies,
21 including many *amici*, denounced the policy as harmful to innovation and growth, particularly in light
22 of the COVID-19 pandemic. Amazon stated that “[p]reventing high skilled professionals from entering
23 the country and contributing to America’s economic recovery puts America’s global competitiveness at

24 ²⁰ *Id.* at 15.

25 ²¹ David J. Bier, *The Facts About the L-1 Visa Program*, Cato at Liberty (June 10, 2020),
<https://bit.ly/2EWvrtl>.

26 ²² May 21, 2020 Letter by 324 Signatories, *supra* note 3.

27 ²³ David J. Bier, *About 20,000 U.S. Employers Are Affected by Trump’s Travel Bans This Year*,
Cato at Liberty (July 16, 2020), <https://bit.ly/3i9NxGw>.

28 ²⁴ See Ken Cuccinelli (@HomelandKen), Twitter (June 22, 2020), <https://twitter.com/HomelandKen/status/1275201179920760839>.

1 risk.”²⁵ Facebook recognized that “[h]ighly-skilled visa holders play a critical role in driving
 2 innovation,” which is “something we should encourage, not restrict.”²⁶ Uber unequivocally stated the
 3 suspension “will hurt American businesses.”²⁷ Apple CEO Tim Cook said he was “[d]eeply
 4 disappointed by [the] proclamation,” adding: “[T]his nation of immigrants has always found strength in
 5 our diversity, and hope in the enduring promise of the American Dream. There is no new prosperity
 6 without both.”²⁸ Microsoft President Brad Smith observed “[n]ow is not the time to cut our nation off
 7 from the world’s talent or create uncertainty and anxiety.”²⁹ Google CEO Sundar Pichai, a first-
 8 generation immigrant, was similarly “[d]isappointed,” recognizing that “[i]mmigration has contributed
 9 immensely to America’s economic success” and “ma[de] it a global leader in tech.”³⁰ And PayPal
 10 CEO Dan Schulman warned that the suspension “will slow our progress as a nation” by blocking
 11 “current employees [who are] looking to bring their talents to the U.S.” and depriving American
 12 businesses of “talented individuals who are filling roles that would otherwise remain vacant.”³¹

13 *Amici* and many other leading businesses and organizations, particularly those with substantial
 14 R&D needs, share these views. They are rooted in a common understanding, informed by experience
 15 and backed by empirical research: That nonimmigrant visa programs help drive American innovation,
 16 competitiveness, and growth, and their suspension—for any amount of time—irreparably harms
 17 American workers, businesses, and the economy.

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 19
 20
 21
 22 ²⁵ Jason Henry, *The Visas and The Fury*, New York Times (June 23, 2020), <https://nyti.ms/2XvR6yG>.

23 ²⁶ *Id.*

24 ²⁷ Steven Musil, *Trump Executive Order Suspending H-1B Visas Takes Heat From Tech Giants*,
 CNET (June 23, 2020), <https://cnet.co/3fDtnTO>.

25 ²⁸ See Tim Cook (@tim_cook), Twitter (June 23, 2020), https://twitter.com/tim_cook/status/1275407136256712707.

26 ²⁹ See Brad Smith (@BradSmi), Twitter (June 22, 2020), <https://twitter.com/BradSmi/status/1275232627453288450>.

27 ³⁰ See Sundar Pichai (@sundarpichai), Twitter (June 22, 2020), <https://twitter.com/sundarpichai/status/1275192075214966784>.

28 ³¹ See Dan Schulman, LinkedIn (June 22, 2020), <https://bit.ly/2PuvYol>.

1 **2. The Proclamation is likely to drive talent abroad to the detriment of the U.S.**
 2 **economy and the benefit of its global competitors.**

3 Rather than “free[ing] up” positions for domestic workers,³² the suspension forces many
 4 companies to create jobs outside the U.S., particularly for highly-specialized positions like those for
 5 which H-1B visa holders qualify. The vast majority of H-1B visa holders work in computer
 6 occupations.³³ The U.S. labor market for these highly-specialized positions is very tight, and the
 7 COVID-19 pandemic only compounds this reality by increasing the public’s reliance upon technology
 8 and employers’ need to fill tech-related positions.

9 The Proclamation cites increased unemployment in (unspecified) “industries where employers
 10 are currently requesting H-1B and L workers to fill positions,”³⁴ and suggests that entry of additional
 11 nonimmigrant visa workers “presents a significant threat to employment opportunities for Americans
 12 affected by the extraordinary economic disruptions caused by the COVID-19 outbreak.”³⁵ But the
 13 unemployment rate in the U.S. for individuals in computer occupations *declined* from 3% in January of
 14 this year to 2.8% in April, and further still to 2.5% in May, while the jobless rate for all other
 15 occupations more than tripled from 4.1% to 13.5%.³⁶

16 The indefinite suspension of nonimmigrant visas, many of which would help fill positions in an
 17 increasingly tight high-skill labor market, will drive the search for applicants abroad. One recent and
 18 widely-cited empirical study, for example, concluded that “increasingly stringent restrictions on H-1B
 19 visas,” like the 2004 drop in the H-1B visa cap, “direct[ly]” led to increased employment at *foreign*
 20 affiliates of U.S. multinationals.³⁷ Such restrictions drove firms to open new foreign affiliates and to

21 ³² See Transcript of White House Background Press Call Concerning the June 22 Presidential
 22 Proclamation Suspending Entry of Certain Nonimmigrants (June 22, 2020),
<https://perma.cc/Z9YU-MUZK> (quoting an individual who the White House described as a
 “senior administration official”).

23 ³³ Stuart Anderson, *New Trump H-1B Visa Restrictions Will Harm Companies*, Forbes (June 23,
 2020), <https://bit.ly/2Dhf3TQ>.

24 ³⁴ Proclamation 10052 of June 22, 2020, Suspension of Entry of Immigrants and Nonimmigrants
 25 Who Present a Risk to the United States Labor Market During the Economic Recovery Following
 the 2019 Novel Coronavirus Outbreak, 85 Fed. Reg. 38263 (June 25, 2020),
<https://bit.ly/2PrxbN1>.

26 ³⁵ *Id.*

27 ³⁶ Anderson, *supra* note 33.

28 ³⁷ Britta Glennon, *How Do Restrictions on High-Skilled Immigration Affect Offshoring? Evidence*
from the H-JB Program, University of Pennsylvania, Wharton School (Paper No. 3547655, Feb.

1 increase employment at existing foreign locations, with the strongest effect “among R&D-intensive
 2 firms.”³⁸ Crucially, in response to prior curbs on nonimmigrant visas, U.S. multinationals not only
 3 increased the absolute *levels* but also the *share* of their total foreign employment, primarily to three
 4 countries: Canada, with its close proximity and more flexible high-skilled immigration policies, as well
 5 as India and China, which are rich in high-skilled human capital.³⁹ As the study cautions, any policies
 6 ostensibly seeking to mitigate unemployment among Americans should consider that policies aimed at
 7 reducing immigration have the unintended consequence of encouraging firms to move jobs abroad.⁴⁰
 8 Of course, that hardly “protect[s] unemployed Americans from the threat of competition for scarce
 9 jobs,” as the Proclamation professes to do.⁴¹

10 This is straightforward: Diverting skilled workers overseas deprives the U.S. of critical talent
 11 needed to sustain growth and drive innovation. And the need for these skills is all the more acute due to
 12 the COVID-19 pandemic. If these highly specialized workers cannot come to the United States,
 13 employers will be forced to employ them overseas—often along with other supporting employees and
 14 resources—or else give up that function altogether, harming their business.

15 One especially problematic spillover is the disruption of U.S.-based R&D activities across the
 16 manufacturing, biomedical, semiconductor, and many other sectors. The United States performs one-
 17 quarter of global STEM R&D, the largest percentage for any nation, and the share of R&D performed
 18 in the U.S. has been on the rise in the past decade.⁴² 73% of all development research in the U.S. is
 19 performed by private-sector businesses, with 80% of that research performed by U.S. *multinational*
 20 firms well-situated to send high-skilled jobs abroad to triage ongoing harms that the H- and L-visa
 21
 22

23 21 2020), <https://bit.ly/39XDscO> at 24; *see also* William W. Olney & Dario Pozzoli, *The Impact*
 24 *of Immigration on Firm-Level Offshoring*, Dept. of Economics, Williams College (June 13,
 2019), <https://bit.ly/3a36loa>.

25 ³⁸ Glennon, *supra* note 37, at 25.

26 ³⁹ *Id.*

27 ⁴⁰ *Id.* at 24–26.

28 ⁴¹ Proclamation 10052, *supra* note 34.

⁴² Mark Boroush, *Research and Development: U.S. Trends and International Comparisons*,
 National Science Foundation (Jan. 15, 2020), <https://bit.ly/2Puq8mK>.

1 suspensions are causing.⁴³ “From a nationalistic perspective, this is problematic; if skilled foreign-born
2 workers are at a U.S. firm’s foreign affiliate instead of in the U.S., the innovative spillovers that they
3 generate will go to another country instead.”⁴⁴ And as other leading economists have observed, “[I]ost
4 technological and productivity growth in the US could mean increased growth elsewhere.”⁴⁵

5 Predictably, other countries are poised to benefit from the U.S.’s wholesale suspension of
6 nonimmigrant visas. As Box, Inc. CEO Aaron Levie warned, when “you restrict immigration, the jobs
7 still get created, just somewhere else.”⁴⁶ One Fortune 100 CEO put a finer point on it, suggesting the
8 Proclamation “may be a Canadian Jobs Creation Act. You can go to Toronto and hire people there and
9 work quite effectively.”⁴⁷ Indeed, Twitter’s Canadian chairman, Patrick Pichette, offered his own
10 message to H-1B seekers: “[J]ust look to the North, where we welcome you (and your family) with
11 open arms.”⁴⁸ And the CEO of a major Ottawa-based ecommerce platform similarly urged individuals
12 affected by the suspension to “consider coming to Canada instead.”⁴⁹

13 The diversion of top talent is already happening. The CEO of a leading consulting firm
14 explained that instead of rescinding offers to those affected by the new H-1B and L-1 visa rules, the
15 firm will “by necessity . . . move them to other countries, probably Canada.”⁵⁰ Similarly, one Berlin-
16 based online realtor had “raised a total of \$15 million in venture capital funding” to “hire up to 50
17 American workers in its New Jersey and California offices.”⁵¹ But due to the Proclamation, it is
18

19 ⁴³ *Id.* at 7–8, 16, 33–38.

20 ⁴⁴ Glennon, *supra* note 37, at 25.

21 ⁴⁵ Giovanni Peri & Chad Sparber, *Presidential Executive Actions Halting High Skilled Immigration*
22 *Hurt the US Economy*, U.C. Davis Global Migration Center (July 2020), <https://bit.ly/2DAAS0q>.

23 ⁴⁶ See Aaron Levie (@levie), Twitter (June 22, 2020), <https://twitter.com/levie/status/1275194199822856192>.

24 ⁴⁷ Andrew Edgecliffe-Johnson, *U.S. Companies Say Visa Rules Are Jobs Boon for Canada*,
25 *Financial Times* (June 26, 2020), <https://perma.cc/MP7G-ZSKB>.

26 ⁴⁸ See Patrick Pichette (@pichette), Twitter (June 22, 2020), <https://twitter.com/pichette/status/1275257776835608576>.

27 ⁴⁹ See Tobi Lutke (@tobi), Twitter (June 23, 2020), <https://twitter.com/tobi/status/1275406372411146245>.

28 ⁵⁰ Edgecliffe-Johnson, *supra* note 47.

⁵¹ Shelly Banjo, *Trump’s Visa Ban Is Already Hurting Some Tech Job Growth*, Bloomberg (July 6,
2020), <https://bloom.bg/3ibD7pJ>.

1 considering moving their “North American headquarters to Toronto.”⁵²

2 At the same time, global competitors are aggressively updating their immigration systems to
3 attract skilled workers. For example, the UK fast-tracks visas for scientists and “plans to overhaul its
4 immigration system to lower barriers for skilled workers.”⁵³ Australia launched a Global Talent
5 program that recruits highly-skilled workers worldwide.⁵⁴ France has introduced the French Tech Visa,
6 “a simplified, fast-track scheme for non-EU startup employees, founders and investors to obtain a
7 [French] residence permit.”⁵⁵ These countries realize, as one of China’s leading venture capitalists put
8 it, that “while the US is driving talent away, it is the perfect time for us to race to bring them back.”⁵⁶

9 **3. The sudden suspension of nonimmigrant visas is harming U.S. businesses and
10 workers in ways that will have lasting impacts.**

11 The Proclamation is based on the assumption that nonimmigrant visa programs “pose an
12 unusual threat to the employment of American workers.”⁵⁷ That is simply wrong.

13 One prominent economic analysis found that between 1990 and 2010, a 1 percentage point
14 increase in the “foreign STEM share of a city’s total employment”—“made possible by the H-1B visa
15 program”—increased the wage growth of U.S.-born college-educated labor by 7–8 percentage points
16 and the wage growth of non-college-educated U.S.-born workers by 3–4 percentage points.⁵⁸ A key
17 reason for this result is the skillset complementarity between domestic and foreign-born workers.⁵⁹ On
18 the flip side, the notion that *curbing* H-1B inflows somehow helps domestic workers finds little
19 support. When polled in 2017, not a *single* member of the University of Chicago’s IGM Economic
20 Experts Panel—which includes over 40 leading economists from Harvard, Yale, Princeton, MIT,

21 _____
⁵² *Id.*

22 ⁵³ Zachary Arnold & Tina Huang, *The US Is Turning Away the World’s Best Minds—And This
23 Time, They May Not Come Back*, MIT Technology Review (July 14, 2020),
<https://bit.ly/33vmLEw>.

24 ⁵⁴ *Id.*

25 ⁵⁵ French Tech Visa, <https://bit.ly/30ti6Ro>.

26 ⁵⁶ Arnold & Huang, *supra* note 53.

27 ⁵⁷ Proclamation 10052, *supra* note 34.

28 ⁵⁸ Giovanni Peri, Kevin Shih, & Chad Sparber, *STEM Workers, H1B Visas, and Productivity in US
Cities*, 33 J. Labor Econ. S225, S252 (2015), <https://bit.ly/3abRAQ1>.

⁵⁹ *See id.* at S245, S247–48.

1 Stanford, and Berkeley—agreed with the following proposition: “If the U.S. significantly lowers the
 2 number of H-1B visas now, employment for American workers will rise materially over the next four
 3 years.”⁶⁰ And yet the Proclamation adopts this false assumption as its core premise. Indeed, it goes a
 4 step further, suggesting that, aside from the suspension, little “alternative means” exist to avoid a
 5 “potentially protracted economic recovery with persistently high unemployment.”⁶¹ In reality—and
 6 contrary to the Proclamation’s stated goal of “protect[ing] unemployed Americans from the threat of
 7 competition” purportedly posed by would-be visa holders⁶²—research suggests curbing H-1B visas
 8 *depresses* domestic wages, with “low-skilled workers [harmed] in particular.”⁶³

9 Specifically, an economic study modeling the “complete elimination” of the H-1B visa program
 10 found “essentially zero” change to wages for high-skilled Americans in year one and a relatively
 11 “sharp[er]” near-term drop for low-skilled wages.⁶⁴ The model also found a corresponding drop in GDP,
 12 beginning with a 0.13% drop in year one and culminating in a 3.7% decrease over time if the policy
 13 were to stand.⁶⁵ Restricting high-skilled immigration is likely to have many such “unintended[ly]
 14 negative consequences”⁶⁶ and will do nothing to shield Americans from “displac[ement] and
 15 disadvantage . . . during the current recovery,” as the Proclamation aims to do.⁶⁷

16 It would be a mistake to view the Proclamation’s impact as limited to the duration of the
 17 COVID-19 crisis. While the suspension forces companies to make decisions in the short-term—such
 18 as the diversion of employment to foreign affiliates—these decisions will have irreversible long-term
 19 effects. Again, new H-1B hires or intracompany L-1 transfers that would have driven growth in the
 20 United States will instead go elsewhere, and once those decisions are made—and the corresponding

21 _____
 22 ⁶⁰ 81% percent of the participants disagreed with the proposition and the remaining 19% were
 23 uncertain. See IMG Forum, *High-Skilled Immigrant Visas*, University of Chicago Booth (Feb. 14,
 24 2017), <https://bit.ly/3gxUIYI>.

25 ⁶¹ Proclamation 10052, *supra* note 34.

26 ⁶² *Id.*

27 ⁶³ Waugh, *supra* note 10, at 3, 31.

28 ⁶⁴ *Id.* at 14, 27–29.

⁶⁵ *Id.* at 29.

⁶⁶ *Id.*

⁶⁷ Proclamation 10052, *supra* note 34.

1 hires, training, team building, and business plans are implemented in another country—there is often no
 2 turning back. The U.S. economy, and U.S. workers and employers, will suffer permanent harm, even if
 3 the President does not seek to extend the suspension beyond this year.

4 In a June 2020 survey of the aforementioned IGM Economic Experts Panel, a full 98% of
 5 leading economists either “agreed” or “strongly agreed” that, “[e]ven if it is temporary, the ban on visas
 6 for skilled workers, including researchers, will weaken US leadership in STEM and R&D.”⁶⁸ And 93%
 7 of those same economists felt that “[s]ignificantly fewer top foreign students will be attracted to US
 8 universities as a result of increased restrictions on visas for skilled workers.”⁶⁹ Again, research
 9 confirms this.⁷⁰ By shrinking the number of foreign students who would otherwise seek to build a life
 10 in the U.S., America deprives itself of a wealth of future entrepreneurs and innovators.⁷¹

11 The immediate impact of the Proclamation is evident among the *amici*. Signatories play key
 12 roles in the information and communications technology sectors, and their inability to reliably secure
 13 H-1B and L-1 visas disrupts new product roll-outs, upgrades, and production efforts. These programs
 14 are all key to meeting surge capacity or R&D deadlines tied to telemedicine, work-from-home, and
 15 distance learning, all vital to the U.S. response to the COVID-19 pandemic. One signatory runs a
 16 leading business relying on a highly integrated global supply chain, where shortages in one region
 17 cannot readily be mitigated by production in other regions. This requires bringing expert engineers
 18 from its offices in other regions of the world or having its suppliers do so. But without access to L-1B
 19 visas, deadlines will be missed and equipment repairs delayed. This affects not only the company but
 20 the nation, because the company’s technology supports healthcare, hospital systems, virtual learning,
 21 remote working, data centers, cloud services, critical manufacturing, and service industries.

22 Other signatories facilitate short-term U.S.-based work for managers as L-1A visa holders or
 23

24 ⁶⁸ IMG Forum, *New Visa Ban*, University of Chicago Booth (June 26, 2020), <https://bit.ly/33w8Aig>.

25 ⁶⁹ *Id.*

26 ⁷⁰ See, e.g., Takao Kato & Chad Sparber, *Quotas and Quality, The Effect of H-1B Visa Restrictions*
 27 *on the Pool of Prospective Undergraduate Students from Abroad* (May 2010),
<https://bit.ly/3kozGhF> at 2 (“Since foreign-student interest in a US degree is partly driven by the
 hope that it will improve access to the US labor market, policies reducing H-1B visas are likely to
 deter foreign students from pursuing tertiary American education.”).

28 ⁷¹ See *id.*

1 specialized knowledge L-1B professionals. One might need dozens of L-1B engineers on U.S.
2 assignment for a four- to six-week period carefully timed with American colleagues to complete joint
3 troubleshooting on a new product. Another might need L-1A visa holders to manage functions over a
4 years-long period key to clinical testing of a new food product or developing proprietary trading or
5 financial services. All these carefully laid plans have been thrown into tumult in ways that will inflict
6 harm for years to come.

7 **IV. CONCLUSION**

8 The President’s suspension of nonimmigrant visa programs, supposedly to “protect” American
9 workers, actually harms those workers, their employers, and the economy. Rather than shielding
10 domestic workers from the threat of foreign competition, the Proclamation all but ensures that firms
11 will need to hire abroad to fill highly-skilled positions, for which the domestic demand far exceeds the
12 available supply of workers. Extensive economic research confirms that *more*, not less, nonimmigrant
13 visas drives positive economic outcomes for U.S. workers, businesses, and the national economy.

14 But beyond the overwhelming data undermining the Proclamation’s purported rationale, the
15 Administration’s actions send a fundamentally un-American message to those abroad who might
16 otherwise have brought their skills and ingenuity to the United States. For many decades, this country
17 has been a magnet to these talented people, who have—along with U.S.-born workers and innovators—
18 made our economy the most dynamic in the world. The Proclamation prevents U.S. companies from
19 attracting the world’s best and brightest, and deprives those innovative, highly-skilled individuals of
20 opportunities to further America’s short-term recovery and long-term economic growth.

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Respectfully submitted,

Dated: August 10, 2020

GIBSON, DUNN & CRUTCHER LLP

By: /s/ Ethan D. Dettmer
 ETHAN D. DETTMER

Theodore B. Olson
Stuart F. Delery*
David A. Schnitzer*
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306
**pro hac vice application forthcoming*

Ethan D. Dettmer
Jonathan N. Soleimani
GIBSON, DUNN & CRUTCHER LLP
555 Mission Street, Suite 3000
San Francisco, CA 94105-0921

Attorneys for Amici Curiae

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APPENDIX: LIST OF *AMICI*

- 1
- 2 1. Adobe Inc.
- 3 2. Alliance of Business Immigration Lawyers
- 4 3. Amazon.com, Inc.
- 5 4. Apple Inc.
- 6 5. Atlassian, Inc.
- 7 6. Autodesk, Inc.
- 8 7. Bates White, LLC
- 9 8. Box, Inc.
- 10 9. BSA Business Software Alliance, Inc. d/b/a BSA | The Software Alliance
- 11 10. Consumer Technology Association
- 12 11. Denver Metro Chamber of Commerce
- 13 12. Dropbox, Inc.
- 14 13. Facebook, Inc.
- 15 14. FWD.us Education Fund
- 16 15. GitHub, Inc.
- 17 16. Hewlett Packard Enterprise Company
- 18 17. HP Inc.
- 19 18. HR Policy Association
- 20 19. Information Technology Industry Council
- 21 20. Institute of International Bankers
- 22 21. Intel Corp.
- 23 22. Internet Association
- 24 23. Juniper Networks, Inc.
- 25 24. LinkedIn Corporation
- 26 25. Metro Atlanta Chamber
- 27 26. Microsoft Corporation
- 28 27. Netflix, Inc.

- 1 28. New Imagitas, Inc.
- 2 29. North Texas Commission
- 3 30. Partnership for a New American Economy Research Fund
- 4 31. PayPal, Inc.
- 5 32. Plaid Inc.
- 6 33. Postmates Inc.
- 7 34. Reddit, Inc.
- 8 35. salesforce.com, inc.
- 9 36. SAP SE
- 10 37. Semiconductor Industry Association (SIA)
- 11 38. ServiceNow, Inc.
- 12 39. Shutterstock, Inc.
- 13 40. Silicon Valley Bank
- 14 41. Society for Human Resource Management (SHRM)
- 15 42. Splunk Inc.
- 16 43. Square, Inc.
- 17 44. SurveyMonkey Inc.
- 18 45. Twitter, Inc.
- 19 46. Uber Technologies, Inc.
- 20 47. Upwork Inc.
- 21 48. Vail Valley Partnership
- 22 49. VMware, Inc.
- 23 50. Workday, Inc.
- 24 51. Xylem Inc.
- 25 52. Zillow Group, Inc.
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