

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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DOMINGO ARREGUIN GOMEZ, et al.)
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	Plaintiffs,)
)
v.) Civil Action No. 1:20-cv-01419
)
DONALD J. TRUMP, et al)
)
)
	Defendants.)
)
)
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UNOPPOSED MOTION FOR LEAVE TO FILE AMICUS BRIEF

**FILED BY THE SOCIETY FOR HUMAN RESOURCE MANAGEMENT
AND *AMICI CURIAE* IN SUPPORT OF PLAINTIFFS**

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The Society for Human Resource Management (“SHRM”) and *amici curiae* (“amici”) respectfully move to file an amicus brief in this matter. In compliance with LCvR 7(m), counsel conferred with the parties, and the Plaintiffs and Defendants have consented to filing of the amicus brief, therefore this motion is unopposed. In support of the motion, *SHRM* and amici state the following:

1) Nature of movant’s interest

Amici comprise an array of diverse organizations and companies in agreement that the President’s June 22 Proclamation suspending nonimmigrant visa issuance in certain J-1 “Exchange Visitor” categories for the remainder of calendar year 2020, with further extensions possible, is extremely damaging to our nation. Amici stand together in recognizing the importance of the nation’s exchange visitor programs. The suspension of J-1 nonimmigrant visa issuance has caused substantial harm and will continue to wreak substantial and unnecessary hardship on amici, their employees, the American people, and the U.S. economy.

2) The parties supported by amici

Amici agree with the Plaintiffs and request that the Court enjoin the June 22 nonimmigrant visa ban because the Proclamation’s stated reasons for issuance are completely divorced from the purpose and structure of J-1 exchange visitor programs.

3) Why an amicus brief is desirable

Amici possess unique insight into the impact of the June 22 nonimmigrant visa ban on J-1 exchange visitor programs. Amici lend a valuable perspective to refute the Proclamation’s proffered rationale, while also explaining how the Proclamation undermines public diplomacy priorities by erasing positive social and economic benefits that these programs contribute.

4) Why the movants position is not adequately represented by a party

The maze of U.S. immigration law has been described as labyrinthine in complexity. The nonimmigrant visa categories impacted by the June 22 Proclamation, including H-1B, H-2B, J, and L visas, vary widely. The Proclamation proposes a distinct rationale for the J visa ban. Amici thus provide a rebuttal from the J visa perspective to counter this and to illuminate generally how banning the enumerated subcategories of J visas is unsound.

5) Why the matters asserted are relevant to the disposition of the case

Amici proffer a large body of data and direct experiences providing compelling evidence to refute the asserted but unproven harm to U.S. workers supposedly caused by the J-1 visa programs and the purported economic bases proposed for the June 22 J visa suspension.

6) The position of each party as to the filing of an amicus brief

As noted, counsel for amici have conferred with counsel for all parties who have raised no objection to this motion.

For these reasons, SHRM and amici respectfully request leave to file the attached amicus brief.

Respectfully submitted,

Dated: August 11, 2020

/s/ Leon Rodriguez

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ORDER

Upon consideration of the Uncontested Motion for Leave to File Amicus Brief by movants it is hereby

ORDERED that the motion is GRANTED; and it is further

ORDERED the Court shall accept and file Movant’s Amici brief which is attached to the Motion for Leave, and shall take into consideration any or all information provided therein.

IT IS SO ORDERED.

Dated: _____

United States District Judge

CERTIFICATE OF FILING AND SERVICE

I, Leon Rodriguez, hereby certify that on August 11, 2020, the foregoing document was served on all parties or their counsel of record the CM/ECF system.

Respectfully submitted,

/s/ Leon Rodriguez

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**BRIEF OF THE SOCIETY FOR HUMAN RESOURCE MANAGEMENT
AND *AMICI CURIAE* IN SUPPORT OF PLAINTIFFS**

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LIST OF SIGNATORIES

Society for Human Resource Management	Alliance for International Exchange
National Ski Area Association	Alliance Abroad Group
American Immigration Council	American Work Experience
AquaSafe Pool Management, Inc.	Aspen Skiing Company
Camp Counselors USA, Inc.	Carousel Hotel Group
Center for International Career Development	CIEE International Exchange Program
Circus of the Kids	Cultural Homestay International (CHI)
Cultural Vistas	Dynamic Global Exchange
Educational Resource Development Trust	French-American Chamber of Commerce- NY
GeoVisions	Global Educational Concepts
Golden Arrow Lakeside Resort	Good Hart General Store

GreatAuPair, LLC

Greenheart International

Greenwich Country Club

Allison and Michael Burkhart
Host Family

Ameena Husain and Craig Erbach
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Andrew Paprocki
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Stace Reading
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Subra and Ligia Bernardo Yenamandra
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The Dudley Family
Host Family

The Field Family
Host Family

Tyler and Erika Haslet
Host Family

William Frank Peacock
Host Family

Hostelling International USA

HTP J-1 Visa Programs, Inc.

ICCE, Inc.

InterExchange, Inc.

International Educational Exchange, Inc.

International Exchange of North America

International Recruitment Exchange Services, Inc.

International Student Exchange, Inc.

International Teacher Exchange Services

J-1 Visa Exchanges

Jackson Hole Mountain Resort

Jessica Okugic

Koerner Law Firm

Loring Place

Main Street Market

Marin Blvd Enterprises, Inc.

Modus Hotels

Nephew Enterprises

Odyssey International Exchange

Pan Atlantic Exchanges

Sapia Hospitality, Inc.

Smaller Earth

Snow King Mountain Resort

Snowbasin Resort

Sonnenalp

Southwestern Advantage

Spirit Cultural Exchange

Teachers Council, Inc.

The Boardwalk Family of Restaurants

The Bonfire Restaurant

The Forum on Education Abroad

Tommy Bartlett, Inc.

True Friends

United Studies

Windham Mountain

Wintergreen Resort

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INTEREST OF AMICI CURIAE¹

Amici comprise an array of diverse organizations and companies in agreement that the President's June 22 Proclamation suspending nonimmigrant visa issuance in certain J-1 "Exchange Visitor" categories for the remainder of calendar year 2020, with further extensions possible, is extremely damaging to our nation.

The suspended J-1 program categories (for which there remain today significant numbers of interested and qualified American hosts and individual J-1 visa-seekers barred from entry with no or very limited access to an exception or waiver) include the Summer Work Travel, Intern, Trainee, Au Pair, Camp Counselor, and Teacher exchange visitor programs. Amici represent them as J-1 program sponsoring organizations or interested parties and bring to the Court's attention their concerns.

The exceptions described in the June 22 Proclamation and supplemental July 30 Department of State guidance offer scant solace or relief. They are wholly inapplicable to the Summer Work Travel program, provide an extremely limited exception for Interns and Trainees on U.S. government agency-sponsored programs, and may benefit perhaps only 9 to 10 percent of Host Families in the Au Pair classification who remain unsure whether they qualify for exceptions outlined in the July 30 State Department guidance.² Whether the limited Au Pair

¹ No counsel for a party authored this brief in whole or in part. No party, counsel for party, or any person other than amici and their counsel made a monetary contribution intended to fund the preparation or submission of the brief.

² The guidance also carves out a limited exception in the J-1 Teacher category for "specialized teachers" (those teachers that demonstrate the ability to make a specialized contribution to the education of students in the United States). Though amici signing onto this brief include programs that sponsor J-1 Teachers and Camp Counselors, *see* 22 C.F.R. § 62.24 and 22 C.F.R. § 62.2, respectively, this brief primarily examines the impact of the J-1 visa ban on the Summer Work Travel, Intern, Trainee, and Au Pair exchange visitor programs. However, amici note that the continuing availability of the J-1 Teacher and Camp Counselor programs likewise serves important public policy and public diplomacy goals, and the Teacher program in particular

exception will benefit them is unclear because State has offered no detailed guidance on how those exceptions will be administered or announced any process or standards for adjudicating and approving a request for exception.

Amici include private-sector firms duly designated by the State Department to run exchange visitor programs in suspended J-1 visa categories. These firms are severely harmed because they have vetted hosts and J-1 participants in the banned J-1 visa categories who are ready to proceed in utilizing their exchange programs; yet, the amici private-sector firms cannot as a practical matter access exceptions to the June 22 nonimmigrant visa ban because the exceptions are very narrow and rarely applicable.

Some amici are organizations that study or advocate for the role of public diplomacy. Amici also include interested associations and groups with members that rely on exchange programs in these banned J-1 visa categories. In addition, amici include U.S. businesses and individuals that host J-1 nonimmigrant visa holders during their temporary exchange visit to the United States.

Amici agree with the Plaintiffs and request that the Court enjoin the June 22 nonimmigrant visa ban because the Proclamation's stated reasons for issuance are completely divorced from the purpose and structure of J-1 exchange visitor programs. Amici also stand together in recognizing the importance of the nation's exchange visitor programs. The suspension of J-1 nonimmigrant visa issuance has caused substantial harm and will continue to wreak substantial and unnecessary hardship on amici, their employees, the American people, and

satisfies critical educational and economic needs, as schools endeavor to cope with phased reopening and adapting to online teaching during the COVID-19 pandemic.

the U.S. economy. Amici therefore come together to file their brief to urge this Court to enjoin the June 22 Presidential Proclamation.

I. PUBLIC DIPLOMACY PRIORITIES, RATHER THAN ECONOMIC FACTORS, CONTROL THE OPERATION OF J-1 EXCHANGE VISITOR PROGRAMS

Public diplomacy seeks to promote a country's national interests through understanding, informing and influencing foreign public opinion, and broadening dialogue between a country's own citizens, institutions, businesses, and communities and their counterparts abroad.³ Congress recognized soon after World War II the national importance of public diplomacy and in 1948 established what is now the U.S. Advisory Commission on Public Diplomacy,⁴ responsible to appraise all U.S. government efforts to understand, inform and influence "foreign publics" – generally defined as the global constituents with whom a country builds relationships through its public diplomacy efforts. The modern era of American public diplomacy began when President Eisenhower held a high-profile People to People Conference at the White House in 1956 to initiate a Sister Cities program, and remarked:

"If we are going to take advantage of the assumption that all people want peace, then the problem is for people to get together and to leap governments ... to work out not one method but thousands of methods by which people can gradually learn a little bit more of each other."⁵

³ See e.g., *About U.S. Public Diplomacy*, Public Diplomacy Association of America, https://pdaa.publicdiplomacy.org/?page_id=6 (last visited August 11, 2020); *What is Public Diplomacy?*, USC Center on Public Diplomacy, <https://www.uscpublicdiplomacy.org/page/what-is-pd> (last visited August 11, 2020); *Book Review of Bridging Disciplinary Perspectives of Country Image: Reputation, Brand, and Identity*, The Place Brand Observer (July 27, 2018), <https://placebrandobserver.com/bridging-disciplinary-perspectives-country-image-reputation-brand-identity/> (last visited August 11, 2020).

⁴ The U.S. Advisory Commission on Public Diplomacy (ACPD) is currently authorized pursuant to Public Law 114- 113, the Consolidated Appropriations Act, 2016, available at <https://www.state.gov/bureaus-offices/under-secretary-for-public-diplomacy-and-public-affairs/united-states-advisory-commission-on-public-diplomacy/> (last visited August 11, 2020).

⁵ Carol Bellamy & Adam Weinberg, *Educational and Cultural Exchanges to Restore America's Image*, 31 *The Washington Quarterly* 3, 55, 57 (2008), available at <https://csis-website->

Just a few years after President Eisenhower’s remarks (nearly 60 years before President Trump’s surprise summer announcement of a nonimmigrant visa ban that included J-1 exchange visitors), Congress adopted public diplomacy as a key element of the nation’s immigration laws – when it enacted the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. No. 87-256. This statute, commonly referred to as the Fulbright-Hays Act,⁶ is a comprehensive, Congressional charter for educational and cultural exchange as a feature of U.S. immigration law with exchange visitors to the United States to be sponsored in part by the U.S. government and in part by designated private sector programs in a U.S. government-private sector partnership. The Fulbright-Hays Act codified that exchange visitor programs utilize the J-1 nonimmigrant visa for admission to the U.S. of participating exchange visitors.⁷

As the Cold War era of exchange visitor programs took root, a related understanding of the term “public diplomacy” was adopted, launching the view that:

“Public diplomacy ... deals with the influence of public attitudes on the formation and execution of foreign policies. It encompasses dimensions of international relations beyond traditional diplomacy; the cultivation by governments of public opinion in other countries; the interaction of private groups and interests in one country with another; the reporting of foreign affairs and its impact on policy; communication between those whose job is communication, as diplomats and foreign correspondents; and the process of intercultural communications productivity.”⁸

prod.s3.amazonaws.com/s3fs-public/legacy_files/files/publication/twq08summerbellamy.pdf (Bellamy & Weinberg) (last visited August 11, 2020).

⁶ In addition to the inbound J-1 exchange visitor programs, there are also a number of outbound educational programs that continue to operate today under the authority of the Fulbright-Hays Act, supporting U.S. citizen students and educators as they research and travel abroad. The Fulbright-Hays Act of 1961 was introduced in the Senate by Senator J. William Fulbright of Arkansas and in the House by Representative Wayne Hays of Ohio.

⁷ See 8 U.S.C. § 1101(a)(15)(J) and 8 U.S.C. § 1182(e).

⁸ See Nicolas J. Cull, *Public Diplomacy Before Guillon*, in ROUTLEDGE HANDBOOK OF PUBLIC DIPLOMACY 19, 19 (Nancy Snow & Phillip M. Taylor eds., 2008) (quoting a Tufts University Fletcher School of Law and Diplomacy brochure from the mid-1960s for what was then the newly formed Morrow Center for Public Diplomacy, and attributing to Edmund Guillon, a career

In simple terms, public diplomacy encompasses efforts to foster bilateral exchange with other countries beyond the state level, but in the wake of the events of September 11 there has been an intensified awareness among government officials and policy makers as to the value to the United States of exchange programs for young people temporarily coming to the United States from around the world.⁹ This is because “to the extent that free access to the diversity of the U.S. is an inherent part of a particular exchange program the foreign participants will perceive how much we truly value freedom, openness, and our democratic institutions.”¹⁰

Even more so, borderless, nearly instantaneous flows of information have now heightened the value of public diplomacy since, as the international relations scholar, Joseph Nye, observed, “in the information age, it’s not just whose army wins but whose story wins.”¹¹ The “exercise of public diplomacy has changed in an environment where technology moves information quickly,”¹² because such democratization of information through new media and

ambassador, distinguished U.S. foreign service officer and long-time dean of the Fletcher School of Law and Diplomacy, the invention in 1965 of the term “public diplomacy,” as it is currently used).

⁹ For example, in the aftermath of the September 11 attacks, the Department of State initiated a new exchange visitor program, the Youth Exchange and Study (YES) program, aiming to build bridges of understanding between Americans and people in countries with either significant Muslim populations or strategic importance. *See generally* Geoffrey Cowan & Nicholas J. Cull, *Public Diplomacy in a Changing World* (2008), available at <https://journals.sagepub.com/doi/10.1177/0002716207312143> (last visited August 11, 2020).

¹⁰ Sherry Mueller, *Professional Exchanges, Citizen Diplomacy, and Credibility, in AMERICA’S DIALOGUE WITH THE WORLD* (William P. Kiehl, Public Diplomacy Council ed., 2006).

¹¹ *See* JOSEPH S. NYE, JR., *SOFT POWER: THE MEANS TO SUCCESS IN WORLD POLITICS* (Public Affairs, 2004) (Nye, Jr.).

¹² Bellamy & Weinberg, *supra*, at p. 56.

communication technology is its own force of storytelling that only in-person observation, experience, and conversation can counter, explore, deepen, validate, or fine-tune.¹³

About 300,000 foreign nationals each year, the vast majority of whom are young people, visit our country temporarily as J-1 nonimmigrants to satisfy these very important public diplomacy objectives recognized by Congress when it adopted, and has since modified and updated, the Fulbright-Hays Act.¹⁴ Educational and cultural exchanges have utilized the J-1 nonimmigrant visa continuously for almost 60 years, including some programs that include employment authorization while J-1 visa holders are in the United States, without regard to economic conditions and without any interruption by a presidential proclamation announcing a J-1 nonimmigrant visa ban. There have been other times since the 1961 adoption of the Fulbright-Hays Act when, as today, the U.S. economy has suffered high unemployment, and when youth unemployment was particularly high, such as 1980 to 1983 and 2009 to 2013, but there has never been an attempt to exercise presidential authority to restrict issuance of J-1 visas.

¹³ See, e.g. Fergus Hanson, *Baked In and Wired: eDiplomacy @ State* (Brookings Public Diplomacy, Oct. 25, 2012) (which includes a Part 3 discussion about how “technology-driven changes affecting public diplomacy have produced both risks and opportunities”), and *Making the Case for U.S. Public Diplomacy*, Advisory Board of the Center on Public Diplomacy at the University of Southern California (Sept. 2017) (“The marketplace of ideas ... [is] infused with rivers of material flowing through new information and communication technologies” which should necessitate an increased focus and funding of U.S. public diplomacy, especially academic, cultural, and scientific exchanges.). See generally *Rethinking Public Diplomacy in the 2020s*, in ROUTLEDGE HANDBOOK OF PUBLIC DIPLOMACY (Nancy Snow and Nicholas J. Cull, eds., 2d edition) (2020); *Can Public Diplomacy Survive the Internet?* (Shawn Powers and Markos Kounalakis eds., U.S. Advisory Commission on Public Diplomacy, 2017), available at <https://www.state.gov/wp-content/uploads/2019/05/2017-ACPD-Internet.pdf> (last visited August 11, 2020).

¹⁴ *J-1 Visa Exchange Visitor Fact Sheet*, U.S. Department of State, Bureau of Educational and Cultural Affairs, available at <https://j1visa.state.gov/basics/facts-and-figures/> (last visited August 11, 2020) (noting 86% of the approximately 300,000 annual J-1 exchange visitors are under age 30).

This is likely because of the lack of any demonstrated correlation between the short-term employment of J-1 visa holders and U.S. youth unemployment.

The Summer Work Travel program, one of the J-1 categories suspended by the June 22 Proclamation, illustrates the point. In 2019, there were roughly 300,000 J-1 visa holders admitted to the United States with just over 100,000 in the Summer Work Travel program¹⁵ – the category which represents about one-third of all J-1 exchange visitors every year from 2003 to the present.¹⁶ This Summer Work Travel category represents about two-thirds of the J-1 nonimmigrant visas banned by the June 22 Proclamation whose participants are not helped by the announced exceptions yet would be eligible to enter the U.S. if the Court, as requested, were to enjoin the Proclamation.¹⁷

A 2018 study of economic data showed that the higher the youth unemployment rate in a state, the *fewer* J-1 visa Summer Work Travel participants that state attracts.¹⁸ More

¹⁵ *The United States Department of State Exchange Visitor Program*, U.S. Department of State, Bureau of Educational and Cultural Affairs, available at <https://j1visa.state.gov/wp-content/uploads/2019/02/Exchange-Visitor-Program-Fact-Sheet.pdf> (last visited August 11, 2020); *Summer Work Travel Category*, U.S. Department of State, Bureau of Educational and Cultural Affairs, available at <https://j1visa.state.gov/wp-content/uploads/2020/02/Summer-Work-Travel-Flyer-2019.pdf> (last visited August 11, 2020).

¹⁶ *Mutual Benefits: The Exchange Visitor Program*, National Immigration Forum (Aug. 2018), available at <https://immigrationforum.org/article/mutual-benefits-the-exchange-visitor-program-j-1-visa/> (last visited August 11, 2020) (a study of the U.S. labor impacts of the J-1 Summer Work Travel program).

¹⁷ The suspended Summer Work Travel program accounts for about 100,000 annual J-1 nonimmigrant admissions. The Au Pair program includes about 21,000 annual participants, with Interns accounting for about 27,000 and Trainees about 10,500. Additionally, the suspended Teacher and Camp Counselor programs admit, respectively, about 3,400 and 26,000 J-1 exchange visitors annually. These six J-1 program categories are not helped by the announced exemptions to date but would be viable should the June 22 Proclamation be enjoined. For numbers of annual participants, see program specific flyers from the Department of State, <https://j1visa.state.gov/basics/> (last visited August 11, 2020).

¹⁸ National Immigration Forum, *supra*.

fundamentally, as a general matter it is difficult to connect any risk to youth employment from the Summer Work Travel exchange program because the number of Summer Work Travel participants is likely too small to exert a meaningful impact on youth employment opportunities. For every 1,000 individuals age 15 to 24 in a given state in the United States there are only *two* Summer Work Travel students who are working in the state.¹⁹ The approximately 100,000 J-1 exchange visitors on Summer Work Travel in the U.S. each year amount to less than one-half of one percent (under .005) of the total youth labor force in the United States.²⁰ Critically, because the distribution of J-1 visa holders in the Summer Work Travel category is so diffuse, this dispersion just accentuates the unlikelihood that the program either creates or exacerbates unemployment pressures for U.S. youth. In 2016, of the 388 metropolitan statistical areas in the United States 242 had J-1 Summer Work Travel students working.²¹ Half of these statistical areas had fewer than 22 J-1 Summer Work Travel participants and only nine had more than 1,000 J-1 Summer Work Travel students that year.²² Thus, there is no persuasive evidence that J-1 exchange visitors displace their American counterparts.²³

The paucity of evidence connecting J-1 exchange visitors to U.S. unemployment is likely a direct result of State Department regulation of the programs at issue here. In the Summer Work Travel, Intern, and Trainee programs, the designated program sponsors are required to take steps to ensure host companies *do not displace full- or part-time or temporary or permanent American workers or serve to fill a labor need*. J-1 participants in the U.S. on Summer Work Travel, by

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

law, are authorized to engage *solely in short-term seasonal employment* (and not permanent jobs being filled on a temporary basis). Likewise, the Trainee and Intern sponsors are required to ensure that the positions that trainees and interns fill *exist primarily to assist trainees and interns in achieving the objectives of their participation in training and internship programs.*²⁴ With regard to au pairs, no credible evidence exists that Americans are ready, willing, and available to provide live-in childcare, especially during a pandemic where social distancing must prevail; thus, despite the matching ages of participating J-1 au pairs and out-of-work American youth, there is no data showing that J-1 au pairs are displacing U.S. workers.²⁵

The U.S. labor market protections stated as the predicate in the June 22 nonimmigrant visa ban reflect no discernible connection to J-1 exchange visitor programs and do not, cannot, and should not, standing alone, vitiate the important public policy and public diplomacy mandates from Congress underlying the J-1 exchange visitor programs, which remain vital to provide necessary linkages between America's national self-interest and the international common good.²⁶

²⁴ See 22 C.F.R. §§ 62.22(f)(2)(v) (Interns and Trainees) and 62.32(n)(3)(ii) (Summer Work Travel).

²⁵ The June 22 Proclamation simply states the particularly high current rates of unemployment for 16-19 year olds and 20-24 year olds and then concludes, without citation to authority, that the entry of additional workers through certain J nonimmigrant visa programs “therefore presents a significant threat to employment opportunities for Americans affected by the extraordinary economic disruption caused by the COVID-19 outbreak.”

²⁶ Jian (Jay) Wang, Director of the Center on Public Diplomacy at the University of Southern California, *Public Diplomacy in the Age of Pandemics* (Mar. 18, 2020). See also *Public Diplomacy Critical at a Perilous Time* (June 1, 2020), available at <https://www.publicdiplomacycouncil.org/2020/06/08/scholar-deems-public-diplomacy-critical-at-a-perilous-time/> (last visited August 11, 2020).

II. J-1 EXCHANGE VISITOR PROGRAMS ARE SUCCESSFUL BY ALMOST ANY MEASURE, INCLUDING ECONOMIC CONTRIBUTION TO THE NATION

Joseph Nye, the iconic political scientist and former dean of the Harvard Kennedy School of Government, coined the term “soft power” in the late 1980s to refer to the ability of a country to persuade others to do what it wants without force or coercion. Nye spent his career advocating that successful states need both hard and soft power, the capability to coerce others but also the capacity and commitment to shape others’ long-term attitudes and preferences.²⁷ Today, soft power is the subject of an annual, data-driven report, *The Soft Power 30*, that attempts to identify and collect data on 75 characteristics across six sub-indices among 61 countries that serve as a representative sample of every geo-political region, publishing details on the top 30 ranking countries.²⁸

The United States, by a large margin, has retained the top spot in the global assessment of three of the six soft power sub-indices, on Digital, Education, and Culture, each of the five years 2015 to 2019 measured for *The Soft Power 30*.²⁹ In addition to the unparalleled excellence of American institutions of higher education, it is U.S. exchange visitor programs that drive the top

²⁷ In 2004, Nye reintroduced the soft power idea in a book and argued for its continued relevance. *See* NYE, JR., *supra*. Some believe that soft power is *more* relevant than ever before, as the then-Director of USC’s Center on Public Diplomacy opined in 2010: “In an era of asymmetric warfare and non-state actors, muscle alone is not enough to advance the national interest, and so we have seen the rising importance of ‘soft power’.” (*International Exchanges: A Soft Power Tool*, in A REVIEW AND ANALYSIS OF CURRENT PUBLIC DIPLOMACY IN THE NEWS (Center on Public Diplomacy, University of Southern California, Sept. 2010). *See also* Hady Amr & Steven W. Barnes, *How to Advance U.S. Public Diplomacy* (Sept. 3, 2007), available at <https://www.brookings.edu/opinions/how-to-advance-u-s-public-diplomacy/> (last visited August 11, 2020) (emphasizing that “For the U.S. to succeed in the global war of ideas, citizens who make up its fabric of diverse civil society of professional, non-profit, and volunteer groups ... need to engage directly with foreign counterparts when feasible.”).

²⁸ *The Soft Power 30: A Global Ranking of Soft Power 2019*, <https://softpower30.com/> (last visited August 11, 2020). The sub-indices are digital, enterprise, education, culture, engagement, government, and polling, of which the U.S. finished first in digital, education, and culture.

²⁹ *Id.* at Methodology of the Index, Section 2, and Results and Analysis, Section 3.

ranking of the United States in Education soft power. *The Soft Power 30* report explains that the ability of a country to facilitate exchanges is a powerful tool of public diplomacy that delivers returns well into the long-term, even where nations have a history of bilateral animosity, as shown by the empirical evidence of the positive effect on perceptions and ties when people return home.³⁰ Because international exchange programs can reach actors at all levels of government, media, business, and civil society, they are essential for a nation wanting to wield soft power. “Recognizing their power, the U.S. government has been funding and facilitating international exchange programs for decades.”³¹ The top ranking of the U.S. in the Education sphere of soft power is solidified by the fact that more than 300 current and former heads of state have participated in J-1 exchange programs, in addition to tens of thousands of individuals who have returned home after being a J-1 exchange visitor and become leaders in business, education, politics, and civil society in their home country.³²

Previously, experts concluded that educational and cultural exchanges “tend to be grossly underestimated in terms of the scalability of their impact”³³ but had little data at their disposal to prove the value and success of J-1 exchange visitor programs. Typical “assessments” were simply anecdotes. Now, there is overwhelming evidence that exchange programs are valuable to participants and also foreshadow a discernible and virtuous local community impact in the U.S. where the banned J-1 exchange visitors would otherwise live, work, and study.

³⁰ *Id.* at p. 27.

³¹ *Id.* at p. 106.

³² *Id.* at p. 107. *Cf. id.* at p. 71 (the Chinese efforts at exercising soft power have focused on infrastructure development projects instead of educational and cultural exchange and its so-called “Belt and Road Initiative” (BRI) has been associated with debt, waste, inefficiency, and cronyism and has done little to soften China’s harsh international image.)

³³ Bellamy & Weinberg, *supra*, at p. 56.

A. The June 22 Proclamation Disregards the Positive Economic and Social Benefits to the U.S. of the Suspended J-1 Visa Programs

While the ostensible goal of most exchange visitor programs is “mutual understanding,” primary emphasis is perhaps too often placed, rather myopically, on the international participant’s perception and attitude toward the U.S., and the value of imparting this upon returning to family, friends, colleagues, and others in the participant’s home country. Often overlooked, however, is the salutary impact in the U.S. on the local host community itself and the mutually beneficial exchange which hosting J-1 visitors fosters. The June 22 Proclamation epitomizes this oversight.

Local communities benefit from J-1 exchanges in innumerable ways. The Pew Research Center reported that “the most export-dependent counties in the U.S. tend to be smaller, less economically diversified, and in the South and Midwest,” rather than on the coasts.³⁴ For exporters in these areas, overcoming deficits in their understanding of the destination countries serves to reinforce and strengthen the bonds that facilitate the growth of the marketplace for U.S. exports. A study from USC’s Center on Public Diplomacy divided the impact on local communities into five categories of capital: Knowledge Capital, Cultural Capital, Social Capital, Civic Capital, and Economic Capital.³⁵ The study found that host communities benefit from cultural exchanges in several tangible and qualitative ways: (1) enhancing and improving quality of life while the host community learns more about the international visitor’s country and

³⁴ Drew Silver, *As trade disputes intensify, U.S. counties that rely most on exports tend to be small and in South, Midwest*, Pew Research Center (June 19, 2019), <https://www.pewresearch.org/fact-tank/2019/06/19/us-counties-that-rely-most-on-exports-tend-to-be-small-in-south-midwest/> (last visited August 11, 2020).

³⁵ Jian (Jay) Wang & Erik Nisbet, *Reimagining Exchange: The Local Impact of Cultural Exchanges*, Center on Public Diplomacy at the University of Southern California (June 25, 2018), <https://www.uscpublicdiplomacy.org/blog/reimagining-exchange-local-impact-cultural-exchanges> (last visited August 11, 2020).

culture, and gains a more nuanced and deeper understanding of U.S. foreign policy; (2) an expanded global outlook and enhanced cultural competencies; (3) the forming of enhanced social connections that provide opportunities for travel and business collaboration; (4) the fostering of civic engagement and volunteerism in supporting these exchange programs; and (5) the enabling and development of business connections that enhance the local workforce's professional qualifications (the ability to pursue international opportunities, interact with foreign clientele, and function locally in a multicultural environment).

The soft power impact that ineluctably flows from J-1 exchange programs has proven to yield a long-term beneficial impact that may not manifest for years – one which the June 22 Proclamation and J-1 ban wholly disregard. Participation in an exchange program plants a seed of fondness for a host community that may well pay dividends decades down the road.

The biographies of world leaders are replete with examples of formative experiences in the landscapes of Americana, rural and urban alike, which eventually blossomed into conscious decisions about how to conduct diplomacy by these participants when they came to hold the reins of power. Former head of the International Monetary Fund, Christine Lagarde, waxed almost lyrical about her J-1 experience when she looked back on her stay in the United States 40 years earlier, stating, “During that year, at Holton-Arms, with my host family and interning in Washington, *I learned more, and it mattered more to me, probably, than any year of my life.*”³⁶ Elsewhere, the Chinese President Xi Jinping famously holds dear the state of Iowa, where during

³⁶ Ian Shapira, *For IMF's Christine Lagarde and old friends, fond memories of year time at Holton-Arms School*, WASHINGTON POST, June 29, 2011, https://www.washingtonpost.com/local/christine-lagarde-stirs-wistful-memories-for-friends-in-holton-arms-class-of-74/2011/07/25/gIQAR8ldhI_story.html (last visited August 11, 2020) (emphasis added).

the incipient stage of his career he stayed with a local family in the town of Muscatine “in a room complete with football-themed wallpaper and ‘Star Trek’ action figures.”³⁷ Decades later in 2012 he chose to visit his “old friends” in Muscatine, including former Iowa Governor Terry Branstad, on his official state visit, and five years after that Brandstad was tapped as U.S. Ambassador to China due to his heartfelt, longstanding personal relationship with President Xi.³⁸ In addition, prominent J-1 exchange visitors who returned home and enacted policies favorable to U.S. interests, changing the course of history, include: F.W. de Klerk who, prompted by what he saw of race relations in America, ended apartheid in South Africa; Nobel Peace Prize winner Anwar Sadat who, as President of Egypt, made peace with Israel; and the “Iron Lady” Margaret Thatcher who stood as America’s staunchest ally during the denouement of the Cold War.³⁹

Exchange visitor J-1 programs thus help distinguish the American people from the U.S. government and promote feelings of warmth and connection that come about through sharing everyday lives with each other. It is not a far stretch to expect that from these feelings of warmth

³⁷ Christina Sterbenz, *Why China’s president loves Iowa*, (May 5, 2015) <https://www.businessinsider.com/a-rural-town-in-iowa-helped-chinas-president-xi-jinping-rise-to-power-2015-4> (last visited August 11, 2020).

³⁸ Moni Basu, *China’s Xi Jinping keeps Iowa close to his heart*, CNN.com (Dec. 7, 2016) <https://www.cnn.com/2016/12/07/asia/china-iowa-xi-jinping-branstad-trump/index.html> (last visited August 11, 2020); Brandstad reports, “I’ve been given access to more Chinese leaders in key positions, I think, than anybody...and I’m hopeful that by directly and frankly conveying the concerns of our country, that will have some impact.” Anthony Kuhn, *How The U.S. Ambassador to China May Have Xi Jinping’s Ear*, NPR.org (Feb. 18, 2018), <https://www.npr.org/sections/parallels/2018/02/18/586371119/how-the-u-s-ambassador-to-china-may-have-xi-jinpings-ear> (last visited August 11, 2020).

³⁹ Ilya Lozovsky, *Rolling Up the Welcome Mat*, ForeignPolicy.com (Mar. 10, 2015), <https://foreignpolicy.com/2015/03/10/rolling-up-the-welcome-mat-soft-power-public-diplomacy-democracy/> (last visited August 11, 2020); see also David Blair, *Margaret Thatcher: The 'Iron Lady's' pivotal role in ending the Cold War*, THE TELEGRAPH (Apr. 8, 2013) <https://www.telegraph.co.uk/news/politics/margaret-thatcher/9979977/Margaret-Thatcher-The-Iron-Ladys-pivotal-role-in-ending-the-Cold-War.html> (last visited August 11, 2020).

will someday emerge policies that benefit U.S. communities that have graciously hosted foreign exchange visitors.

The June 22 ban is bereft of any awareness or acknowledgement that these beneficial outcomes flow from the statutorily-created J-1 exchange visitor programs.

B. A Large Body of Data Refutes the Premise of the June 22 Suspension – the Asserted But Unproven Harm to U.S. Workers Supposedly Caused by J-1 Visa Programs

Abundant data highlight the benefits of the Summer Work Travel (SWT), Intern, Trainee, and Au Pair J-1 exchange programs on local communities. Viewed from an overarching perspective, these exchange programs, as noted, promote public diplomacy and enhance local communities in robust and manifold ways. According to data from the Department of State’s Bureau of Educational and Cultural Affairs, as synthesized by the Alliance for International Exchange, notable exchange alumni include 583 current or former heads of foreign governments, 84 Nobel Prize winners, 64 representatives to the United Nations, 31 heads of international organizations, and 97 current or former members of the U.S. Congress.⁴⁰

Additionally, 10 percent of female Nobel Prize winners since 1940 have been alumna of exchange programs as well as 105 Pulitzer Prize recipients.⁴¹ An evaluation of the Intern and Trainee exchange programs found a significant impact on participants’ perceptions of the U.S. with nearly all (95.7%) of participants describing their experience in the U.S. as “very good” or “good” and three quarters (75.6%) developing a “much more positive” or “more positive”

⁴⁰ *The Impact of International Exchange Programs*, https://www.alliance-exchange.org/wp-content/uploads/2020/03/Alliance_DataSheet_2020.pdf (last visited August 11, 2020) (statistics taken from Department of State’s Bureau of Educational and Cultural Affairs); *ECA Facts and Infographics*, <https://eca.state.gov/impact/facts-and-figures> (last visited August 11, 2020).

⁴¹ *ECA Facts and Infographics*, <https://eca.state.gov/impact/facts-and-figures> (last visited August 11, 2020).

opinion of the American people.⁴² In addition, exchange programs fostered the completion of over 1.6 million hours of community service by exchange participants and U.S. hosts.⁴³

Considering the economic data for a random sampling of urban and rural states in the South, Northeast, Midwest, and Western United States, amici submit that the salutary economic impact of exchange programs on local communities is evident for both urban and rural areas throughout the country.⁴⁴ For example, according to data gathered by EurekaFacts, in Alabama the economic impact of SWT participants was \$4 million and of Intern and Trainee participants was \$4.5 million.⁴⁵ In more urban Georgia the corresponding numbers were \$2 million and \$16.3 million.⁴⁶ In the Northeast, Maine enjoyed a \$16.4 million economic impact through the SWT program participation and \$1.8 million through Intern and Trainee program participation, whereas nearby Massachusetts reaped a \$34.9 million economic gain from the former, and \$19.8 million reward from the latter.⁴⁷ In the Midwest, Wisconsin realized a \$33.4 million benefit from the former, and \$7.5 million from the latter,⁴⁸ while neighboring Illinois' numbers were \$7 million

⁴² *Study of Intern and Trainee Exchange Program Indicates Significant Benefits for Participants and U.S. Economy*, <https://www.eurekafacts.com/2018/10/30/study-of-intern-and-trainee-exchange-program-indicates-significant-benefits-for-participants-and-u-s-economy/> (last visited August 11, 2020).

⁴³ *The Impact of International Exchange Programs*, https://www.alliance-exchange.org/wp-content/uploads/2020/03/Alliance_DataSheet_2020.pdf (last visited August 11, 2020).

⁴⁴ See, State Fact Sheets on the economic impact of J-1s, available at <https://www.alliance-exchange.org/3414-2/> (last visited August 11, 2020).

⁴⁵ *Alabama State Fact Sheet*, https://www.alliance-exchange.org/wp-content/uploads/2019/06/AlabamaEVP_FactSheet.pdf (last visited August 11, 2020).

⁴⁶ *Georgia State Fact Sheet*, https://www.alliance-exchange.org/wp-content/uploads/2019/06/GeorgiaEVP_FactSheet.pdf (last visited August 11, 2020).

⁴⁷ *Massachusetts State Fact Sheet*, https://www.alliance-exchange.org/wp-content/uploads/2019/06/MassachusettsEVP_FactSheet.pdf (last visited August 11, 2020).

⁴⁸ *Wisconsin State Fact Sheet*, https://www.alliance-exchange.org/wp-content/uploads/2019/06/WisconsinEVP_FactSheet.pdf (last visited August 11, 2020).

and \$16.4 million, respectively.⁴⁹ Finally, in the West, Utah saw a \$16 million and \$6.7 million⁵⁰ impact in these categories, while Washington's numbers were \$3.3 million and \$19.7 million,⁵¹ respectively. These states represent but a small sampling of the overall economic effect not considered in the June 22 Proclamation; yet, they illustrate that the economic benefit is evenly spread among small and large states, and derives from the full array of the banned J-1 exchange programs.

In perhaps no other category is the connection more personal than in the Au Pair program, where J-1 exchange visitors join a family in the U.S. to help nurture our country's most precious resource, our children. Parents reap the immense reward of this exchange, receiving reliable and responsible childcare support from individuals who become part of the family. Au pairs care for over 50,000 children across 50 states and the District of Columbia.⁵² A recent Executive Summary Report from EurekaFacts on the Au Pair program found that affinities for the American people grow during the program.⁵³

While Au Pair program participants typically already hold favorable views of Americans when entering the program (83%), survey data gathered by EurekaFacts showed that 66% of participants came away with a "more" or "much more" positive view of Americans. The host families in turn overwhelmingly report enjoying a great benefit to receiving the help of live-in

⁴⁹ *Illinois State Fact Sheet*, https://www.alliance-exchange.org/wp-content/uploads/2019/06/IllinoisEVP_FactSheet.pdf (last visited August 11, 2020).

⁵⁰ *Utah State Fact Sheet*, https://www.alliance-exchange.org/wp-content/uploads/2019/06/UtahEVP_FactSheet.pdf (last visited August 11, 2020).

⁵¹ *Washington State Fact Sheet*, https://www.alliance-exchange.org/wp-content/uploads/2019/06/WashingtonEVP_FactSheet.pdf (last visited August 11, 2020).

⁵² *EurekaFacts Studies Au Pairs and Host Families*, <https://www.eurekafacts.com/2020/07/15/au-pair-study/> (last visited August 11, 2020).

⁵³ *Id.*

childcare. Nine-in-ten (90%) host families feel they benefit from the additional help in caring for their children, fifty-five percent (55%) say they would suffer “a great deal” if the program were not available, two-thirds (67%) say they would likely not be able to find suitable care for their children, eighty-four percent (84%) say they would spend more money for childcare, and thirty-eight percent (38%) say they may not be able to continue their careers without the program.⁵⁴ In other words, the money that families save on childcare can be spent elsewhere and the J-1 au pair’s help with childcare paves the way for increased participation of other contributors in the labor force, all redounding to the benefit of the local and national economy. Moreover, the spending of the participants themselves benefits the local economy; au pairs spend in the aggregate approximately \$257 million per year on items such as food, entertainment, and travel, with each individual participant spending approximately \$5,336 per year in their local communities.⁵⁵

The SWT program is another exchange program that confers proven public policy and economic benefits. Findings from a EurekaFacts survey revealed that SWT participants at the end of their visit depart the U.S. with a higher regard and understanding of our nation and the American people, while making lasting friends and also facilitating the operational needs of small businesses.⁵⁶ The SWT is the largest public diplomacy program in the U.S., bringing more than 100,000 participants for up to a four-month stay during the J-1 visitor’s university summer

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Does the Summer Work Travel International Exchange Program Work?*, <https://www.eurekafacts.com/2017/08/28/summer-work-travel-program-works/> (last visited August 11, 2020).

break.⁵⁷ Evidence of the successful public diplomacy impact of the SWT program discloses that seventy-four percent (74.1%) of participants reported a positive change in how they view the American people based on their experience in the program, with nearly all (94.3%) reporting making friends with Americans.⁵⁸ Further, SWT participants help fill temporary and seasonal labor shortages and, critically, as the survey concluded, while not displacing local workers.⁵⁹ The EurekaFacts summary notes that summer work participation among American students has been declining since 1990, reflecting a trend in shifting priorities for American youth toward education and other summer activities, and as a result ninety-seven percent (97%) of employers report labor shortages during the summer months that the SWT participants fill.⁶⁰ SWT participants effectively prop up and sustain local businesses with fifty percent (50%) of participating employers stating the absence of SWT participants would negatively impact revenues, and twenty-five percent (25%) reporting they would likely not be able to stay open during the summer season without the SWT participants' labor.

J-1 Intern and Trainee exchange visitors, as a EurekaFacts comprehensive study of these two exchange programs confirms, participate in educational or occupational training with host organizations, while experiencing American culture, and then depart with enhanced experiences that offer lasting benefits to the United States.⁶¹ Comparable in its public diplomacy impact to

⁵⁷ *Summer Work Travel (SWT) Program Review*, <https://www.eurekafacts.com/wp-content/uploads/2018/10/SWT-Impact-Evaluation-Final-Report.pdf>, at 1 (last visited August 11, 2020).

⁵⁸ *Id.* at 5.

⁵⁹ *EurekaFacts Study: Impact of SWT Program*, https://www.alliance-exchange.org/wp-content/uploads/2018/01/Final_SWT_FactSheet_20170623.pdf (last visited August 11, 2020).

⁶⁰ *Id.*

⁶¹ *Study of Intern and Trainee Exchange Program Indicates Significant Benefits for Participants and U.S. Economy*, <https://www.eurekafacts.com/2018/10/30/study-of-intern-and-trainee->

the other exchange visitor categories, Interns and Trainees reported enhanced positive opinions regarding the U.S., its people, and the American way of doing business.⁶² Notably, just over three-fourths (75.6%) of participants developed a “much more positive” or “more positive” opinion of the American people.⁶³ In terms of economic impact, during their stay Interns and Trainees contribute an estimated \$662.6 million to the U.S. economy and individually spend approximately \$2,000 in their local communities on items such as housing, food, entertainment, and travel.⁶⁴ Further, eighty-five percent (85%) of host organizations consider the programs important to their business.⁶⁵ The host organizations also provided detail on the typical recruitment methods for American interns and trainees, with university career centers (55.0%), word-of-mouth referral (50.4%), job sites such as Indeed or Monster (50.0%), job fairs (31.9%), and internal recruitment (35.4%) receiving the most mention.⁶⁶ The analysis demonstrates that Intern and Trainee participants supplement the existing American workforce rather than compete with American workers for existing jobs.⁶⁷

[exchange-program-indicates-significant-benefits-for-participants-and-u-s-economy/](#) (last visited August 11, 2020).

⁶² *Internal and Trainee Program 2018 Review Report*, https://www.alliance-exchange.org/wp-content/uploads/2018/09/IT_Report_FINAL.pdf, at 1 (last visited August 11, 2020).

⁶³ *Id.*

⁶⁴ *EurekaFacts Study: Impact of Intern and Trainee Programs*, https://www.alliance-exchange.org/wp-content/uploads/2018/08/IT_FactSheet.pdf (last visited August 11, 2020).

⁶⁵ *Id.*

⁶⁶ *Internal and Trainee Program 2018 Review Report*, https://www.alliance-exchange.org/wp-content/uploads/2018/09/IT_Report_FINAL.pdf, at 71 (last visited August 11, 2020).

⁶⁷ *Study of Intern and Trainee Exchange Program Indicates Significant Benefits for Participants and U.S. Economy*, <https://www.eurekafacts.com/2018/10/30/study-of-intern-and-trainee-exchange-program-indicates-significant-benefits-for-participants-and-u-s-economy/> (last visited August 11, 2020).

C. Amici’s Direct Experiences Provide Compelling Evidence to Refute the Purported Economic Basis for the June 22 J-1 Suspension, and Instead Show Its Direct Harm to American Business, Resulting in a Loss of American Jobs and a Slower Economic Recovery.

Narratives from the stakeholders for the J-1 programs who are harmed by the Proclamation painfully attest to the devastating impact the loss of J-1 exchange visitors has already had in undermining public diplomacy objectives and wreaking economic harm on hosts, businesses, and program sponsors, their employees, and local economies.⁶⁸

Mr. Tom Areton, Executive Director at Cultural Homestay International, presents a particularly compelling narrative.⁶⁹ He observes that the Congress-approved “J” programs have always had a “work component,” but emphatically rejects the notion that they are “labor programs.” He notes that his organization offered the same internships to young Americans but there were “no takers.” Further, he addresses the economic impact of J-visa holders travelling around the U.S. spending close to \$1.3 billion “supporting American businesses, such as restaurants, stores, hotels, and transportation companies.” In addition, he points out J-visa holders do not cost the U.S. taxpayer “a single cent,” but instead pay taxes, and through fees support U.S. Department of State salaries, and do not undercut U.S. workers’ wages, all while enriching the lives of their newfound American friends. On that point he notes, “The J-visa programs keep on giving for many years after the participants have returned home, as they share their admiration for the United States with their families and friends, their schoolmates and on their social networks. They will be the next Presidents and legislators in their own countries.” He poses the question, “Don’t we want them on our side as friends?”

⁶⁸ The narratives quoted in the text reflect respondents’ answers to a recent online survey of amici. The results of the survey are on file with amici’s counsel.

⁶⁹ *Open Letter from Tom Areton, Director of CHI, to President Donald J. Trump Re June 22 Executive Order Stopping Non-Immigrant J Visas until December 31* (June 30, 2020).

Then, speaking of his organization, founded with his wife in 1983, he proudly notes that it has helped more than 300,000 students from 121 countries and about 2 million Americans enjoy cultural exchange visitor experiences; however, with anguish, he also notes:

I am sitting in my office, having just laid off 33 wonderful, hardworking employees – two couples, a few fathers, some single mothers with children, a handful of Millennials, Gen Z's just starting out, as well as two elderly and one lesser able person. Some wept and gave me a hug, some shook my hand, steeling themselves against their emotions. They are a cross-section of America – Republicans, Democrats, Libertarians – and some who do not care about politics at all. They all have one thing in common: their jobs ended when on June 22 you signed an Executive Order, stopping, until December 31, all non-immigrant working visas to protect American workers.⁷⁰

Echoing Mr. Areton, American hosts and program sponsors from among all of the categories – Au Pair, Intern and Trainee, Summer Work Travel, Teacher, and Camp Counselor – universally lament the negative effects of banning these programs.

Au Pair

The Au Pair narratives highlight how some of our most valorous citizens – military service members – rely on Au Pair programs and face dire consequences if they cannot host au pairs.

Michael Krulc, on behalf of the military-member Krulc family, reports the negative impact the lack of availability of an au pair will have, stating succinctly:⁷¹

⁷⁰ *Id.*

⁷¹ These narratives align with economic data from Goldman Sachs confirming that many parents may need to leave their jobs entirely if schools do not reopen and they are not able to obtain childcare. *See, Anneken Tappe, Many parents may have to stop working entirely if schools don't reopen, Goldman Sachs say, CNN Business (Aug. 4, 2020), available at <https://www.cnn.com/2020/08/04/economy/schools-reopening-economy-jobs/index.html> (last visited August 11, 2020) (finding the most vulnerable groups are single parents, parents with young children, and parents who cannot work from home and that since May approximately 7 million people per week have not worked because they lacked access to childcare, while further noting that childcare policies have historically had a disparate gender impact, with women more*

My wife is an Army engineer officer and is stationed away from our home. I work as well and without an au pair I will be challenged to continue working, especially if our son cannot attend school in person this fall due to COVID restrictions. An au pair is vital to providing the flexible childcare that we need. Please support military families!

Would-be au pair host Jeremy Minarik writes:

My wife and I are both working from home due to COVID-19. Beginning in March of this year, as a family of 3, 1 infant and 2 school age children, we were caught out of sorts, when schools went remote. We made it through to the end of the school year and found a baby sitter that agreed to quarantine over the summer. We were in search for an Au pair in April for the summer when the travel bans were expanded. Finally...we had matched with our Au pair of choice and expected her to arrive in early August. Her visa interview was scheduled for late July when she was informed from the State department that it was cancelled without a follow on interview scheduled. It was only a day later that we learned that the administration had suspended the J1 Visa program through Dec 31st, 2020. We were at a loss.... with no back up plan.

Military-member and Medical Doctor CPT Philip Van Arsdale of Texas writes:⁷²

I am a physician in the United States Army. The delayed arrival of our au pair has forced us to enroll our children in daycare exposing them and us to increased risk of contracting COVID. This negatively impacts my ability as a physician to mitigate risk and ensure that I am able to continue going to work. If I contract COVID because I had to have my children in daycare I will miss 2-3 weeks of work and increase strain on an already burdened healthcare system.

Intern and Trainee

The personal testimony of Program Sponsors and their representatives in the Intern and Trainee categories speaks to the numerous deleterious effects of suspending these J-1 categories, from public diplomacy negative ripple effects, to the highly concrete reduction of available workers. Spencer Jones President of Pan Atlantic Exchanges writes:

affected by men, and that though the U.S. workforce was roughly evenly split 50:50 between men and women prior to the pandemic, “COVID could tilt the scales back in favor of men”).

⁷² The Van Arsdale family may qualify for an exemption to the Au Pair visa ban based on their role provisioning medical care to individuals who have contracted COVID-19; however, the procedure to apply for such an exemption requires clarification, and delay in placement may still result from the Proclamation.

The majority of the host organizations that we work with around the country are understaffed, and as a result are not working at full capacity. They have tried to find US-based workers to fill the open positions, but have not found enough workers. Many US based workers are unwilling to move to new locations where the jobs are available. Many J-1 Interns and Trainees are willing to make the move. In addition, we have had to furlough 80% of the Pan Atlantic Exchanges staff that work on the Intern and Trainee programs. These are good paying jobs with benefits that Maine residents have lost.

Kelley Burris President of Ire Services writes:

I started my small business in 2005, and have been recruiting and placing International [J-1] candidates throughout the USA. I employed 5 workers, and have had to let them go due to no business during this time. This has negatively impacted my business, my family, and the families of those I employed.

Richard Baader CEO of Spirit Cultural Exchange writes:

As a J-1 sponsor we have seen a year of work destroyed by the June 22nd Presidential Proclamation which was implemented at the last minute, just before the busy summer season. We were forced to disappoint hundreds of employers in resort communities who were expecting thousands of international participants to help fill their seasonal staffing needs. We had to refund over \$3 million to international participants who had paid us for what was a year of preparation. This has resulted in the layoff of 80% of our staff and dramatic reductions in other spending.

Haldis Toppen Communications Director at Green Heart writes:

Prior to the pandemic and the resulting proclamation suspending issuance of several J-1 visa categories, Greenheart welcomed nearly 9,000 J-1 Exchange Visitors on various programs to the United States each year. However, with the suspension of several J-1 visa categories through the remainder of the 2020 calendar year, we anticipate a loss of revenue of 90-95% of our typical annual revenue for the impacted programs in 2020.

Summer Work Travel

Finally, many business owners that have relied on the SWT program to meet their seasonal needs speak of the complete collapse of their businesses through the termination of the SWT J-1 program. Ali Cohane owner of the Persephone Bakery in Jackson, Wyoming writes:

All of my visas were cancelled this year due to Covid so I was able to feel the effects of having no [J-1] workers. We are completely unable to staff our 3 locations in Jackson, WY, where labor is extremely limited and travel tourism

continues to increase. Typically 30% of my seasonal staff comes from [J-1] visas so we are very much struggling.

Daku Bujar, a business owner and restaurateur in New Jersey, writes:

I own multiple restaurants, six in total, at the New Jersey shore between Strathmere and Avalon... We have utilized every outlet to try and staff our locations but unfortunately we were unsuccessful. We have spent countless man hours interviewing, completing paperwork for sponsorships and completing any/all necessary requirements from the sponsorship organizations only to be told at the last minute that our efforts were for nothing.

CONCLUSION

As more than 40 former Ambassadors appointed by both Republican and Democratic presidents since 1980 confirm, “[the] power and reach of international exchange programs is widely recognized. As such, exchange programs should be exempt from the proclamation given their role in supporting our diplomatic and national security efforts, in addition to their economic benefits.”⁷³ Amici respectfully submit, therefore, that the motion for a preliminary injunction should be granted.

Respectfully submitted,

Dated: August 11, 2020

/s/ Leon Rodriguez

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⁷³ Letter from 44 former U.S. Ambassadors to Pres. D. Trump (July 20, 2020), https://www.alliance-exchange.org/wp-content/uploads/2020/07/AmbassadorLetter_20200720.pdf (last visited Aug. 10, 2020).