

ORAL ARGUMENT NOT YET SCHEDULED
No. 25-5473

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND
ASSOCIATION OF AMERICAN UNIVERSITIES,
Plaintiffs-Appellants,

v.

UNITED STATES DEPARTMENT OF HOMELAND SECURITY et al.,
Defendants-Appellees.

On Appeal from the United States District Court
For the District of Columbia, No. 1:25-cv-03675-BAH
Hon. Beryl A. Howell, J.

**BRIEF OF AMICI CURIAE NEW JERSEY, ARIZONA, CALIFORNIA,
COLORADO, CONNECTICUT, DELAWARE, HAWAI'I, ILLINOIS,
MAINE, MARYLAND, MASSACHUSETTS, MICHIGAN, MINNESOTA,
NEVADA, NEW MEXICO, NEW YORK, NORTH CAROLINA, OREGON,
RHODE ISLAND, VERMONT, WASHINGTON, AND THE DISTRICT OF
COLUMBIA IN SUPPORT OF PLAINTIFFS-APPELLANTS FOR
REVERSAL**

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to this Court's Rule 28(a)(1), I hereby certify that:

A. Parties and Amici

Except for the States of New Jersey, Arizona, California, Colorado, Connecticut, Delaware, Hawai‘i, Illinois, Maine, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York, North Carolina, Oregon, Rhode Island, Vermont, and Washington, the Commonwealth of Massachusetts, and the District of Columbia, all parties, intervenors, and amici appearing before the district court and in this Court are listed in the Brief for Appellants.

B. Rulings Under Review

References to the rulings at issue appear in the Brief for Appellants.

C. Related Cases

This case has not previously been before this Court, and counsel is not aware of any related cases within the meaning of this Court's Rule 28(a)(1)(C).

January 16, 2026

/s/ Shankar Duraiswamy

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INTEREST OF AMICI AND SUMMARY OF ARGUMENT

Amici States¹ have a sovereign interest in explaining the significant damage that the Administration’s exorbitant and unlawful new H-1B petition fee will inflict on the public interest, including their economies and their healthcare and education systems. The H-1B program has been a lifeline for hospitals, public schools, and universities in Amici States. For years, skilled workers from around the world have come to the United States on H-1B visas to address critical unmet labor needs that most heavily impact underserved rural and low-income communities. Far from displacing American workers, the H-1B program has been used to strengthen Amici States’ economies and to address acute gaps in the workforce that would otherwise limit residents’ access to basic human services.

Recognizing H-1B workers’ contributions to these functions, Congress chose to exempt nonprofit research and higher education employers from the otherwise strict annual numerical cap on H-1B visas to ensure they can participate in hiring through the program. And Congress exercised its fee-setting authority to sustainably fund adjudication of H-1B petitions rather than deter their use. President Trump’s recent proclamation subjecting H-1B petitions to an unprecedented \$100,000 fee—and the Administration’s piecemeal guidance that followed—threaten to shut down employers’ access to international talent, with dire consequences for the public.

¹ “Amici States” include the States of New Jersey, Arizona, California, Colorado, Connecticut, Delaware, Hawai‘i, Illinois, Maine, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York, North Carolina, Oregon, Rhode Island, Vermont, and Washington, the Commonwealth of Massachusetts, and the District of Columbia.

If the fee is allowed to remain in effect, Amici States and their residents will suffer. Medical treatment will be more frequently delayed or forgone altogether. Groundbreaking research will go unfinished. Classrooms will grow increasingly understaffed and course offerings will be reduced, as K-12 school districts struggle to find qualified teachers. International faculty will take their talent, knowledge, and inventions elsewhere, undermining higher education institutions' ability to compete in academia, educate their students, and spearhead research and development.

And on top of all that, without reversal, Amici States face the risk that the President will be empowered to wield fee-setting authority that belongs to Congress to effectuate his immigration policy preferences outside of Congress's immigration framework.

Amici States understand firsthand the likely impacts of the Administration's new fee, and they would have raised these serious concerns had the Administration sought input through statutorily required notice and comment. But it did not, and so these issues must now be ventilated before this Court, including in this amicus brief. And because the public interest will be severely harmed unless the Court intervenes, this Court should reverse the judgment below and it should remand with instructions to enter a permanent injunction in Appellants' favor.

BACKGROUND

On September 19, 2025, President Trump issued a proclamation restricting the adjudication of H-1B petitions and H-1B employees' entry into the United States

unless the petitions were accompanied by an unprecedented \$100,000 fee.² In the month that followed, the Administration issued piecemeal guidance to implement that restriction (the “Policy”).³

As justification for the Proclamation, the President asserted that the H-1B program—which “was created to bring temporary workers into the United States to perform additive, high-skilled functions”—has been exploited to “replace” American employees “with lower-paid, lower-skilled labor,” suppressing wages and undermining “economic and national security.”⁴ Relying on unsupported assertions about the harms caused by firms that rely on foreign STEM workers, the Policy expressly states that its purpose is to “impose higher costs on companies seeking to use the H-1B program.”⁵ Nothing in the Proclamation or the implementing guidance acknowledges the tens of thousands of H-1B workers hired by public and non-profit healthcare and education institutions. Yet the Policy sweeps broadly, presumptively imposing the new fee on all H-1B petitions, regardless of employer or industry.

The sudden imposition of a prohibitive H-1B fee is just one of the Federal Government’s recent efforts to exclude international talent from the United States.

² See generally Proclamation No. 10973, *Restriction on Entry of Certain Nonimmigrant Workers*, 90 Fed. Reg. 46,027 (Sept. 19, 2025), <https://tinyurl.com/3utk437s>.

³ See U.S. Citizenship and Immigration Services, *Proclamation, Restriction on Entry of Certain Nonimmigrant Workers, H-1B* (Sept. 20, 2025), <https://tinyurl.com/bd6rhyrp>; USCIS, *H-1B FAQ* (Sept. 21, 2025), <https://tinyurl.com/355vwdd9>; USCIS, *H-1B Specialty Occupations*, <https://tinyurl.com/h5vj62es> (last updated Dec. 23, 2025).

⁴ See Proclamation No. 10973, *supra* n.2.

⁵ *Id.*

Last month, the Department of Homeland Security (“DHS”) issued a final rule to reform the process for selection of H-1B petitions subject to the numerical annual cap, which will prioritize higher educational attainment and higher wages—to the detriment of public and nonprofit employers who lack the financial means to offer high compensation but who offer critical services to the public.⁶

The Federal Government has also targeted international students—many of whom will need an H-1B visa to remain in the United States after completing their studies and training.⁷ For example, last spring, the Federal Government terminated thousands of international students’ Student Exchange Visitor Information System (“SEVIS”) records without notice, placing their ability to continue their studies in the United States at imminent risk.⁸ And in August, DHS initiated a rulemaking to terminate the longstanding “duration of status” rule, which allows international

⁶ *Weighted Selection Process for Registrants and Petitioners Seeking To File Cap-Subject H-1B Petitions*, 90 Fed. Reg. 60,864 (Dec. 23, 2025) (to be codified at 8 C.F.R. pt. 214), <https://tinyurl.com/2zesh35c>.

⁷ See, e.g., *NFAP Policy Brief: H-1B Petitions and Denial Rates in FY 2025* at 1 (Nov. 2025), <https://tinyurl.com/45zxf7cx> (“H-1B visas are important because they typically represent the only practical way for a high-skilled foreign national, including an international student, to work long term in the United States....”); *Characteristics of H-1B Specialty Occupation Workers*, USCIS Fiscal Year 2024 Annual Report to Congress at 17–18 (Apr. 29, 2025), <https://tinyurl.com/ku2uy2uy> (majority of approved petitions for change of nonimmigrant status were from students); *Characteristics of H-1B Specialty Occupation Workers*, USCIS Fiscal Year 2023 Annual Report to Congress at 20 (Mar. 6, 2024), <https://tinyurl.com/y77jw75d> (same).

⁸ See, e.g., Kimmy Yam & Chloe Atkins, *Trump administration reveals how it targeted thousands of international students on visas*, NBC News (Apr. 30, 2025), <https://tinyurl.com/42uvtsrc>.

students to remain in the United States as long as they maintain their student status.⁹

DHS's proposed rule would instead limit their period of admission to a fixed term, even if their academic course of study lasts longer than such fixed term.¹⁰

The Federal Government's objective is clear: deter—and perhaps even bar—highly-skilled foreign nationals from investing their talents in the United States, leaving Amici States and localities, healthcare providers, K-12 school systems, colleges, research institutions, businesses, taxpayers, and other employers who call Amici States their homes to bear the consequences.

ARGUMENT

I. THE PUBLIC INTEREST FAVORS ENJOINING THE \$100,000 FEE TO PREVENT HARM IN THE AMICI STATES.

In evaluating a request for a permanent injunction, courts consider whether the injunction serves the public interest. *eBay Inc. v. MercExchange, LLC*, 547 U.S. 388, 391 (2006). Injury to interested parties, like Amici States and their residents, is integral to the analysis. *See, e.g., League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016). Here, the impacts to Amici States' economies, healthcare systems, and education systems also conclusively show that the public interest calls for an injunction of the unprecedented and extraordinary fee.

⁹ *Establishing a Fixed Time Period of Admission and an Extension of Stay Procedure for Nonimmigrant Academic Students, Exchange Visitors, and Representatives of Foreign Information Media*, 90 Fed. Reg. 42,070 (proposed Aug. 28, 2025), <https://tinyurl.com/ycmfw9uw>.

¹⁰ *See id.*

A. By Undermining The H-1B Program, The New \$100,000 Fee Will Broadly Harm Amici States' Economies.

Congress created the modern H-1B visa program to address the need “for highly skilled, specially trained personnel to fill increasingly sophisticated jobs for which domestic personnel cannot be found and the need for other workers to meet specific labor shortages”¹¹ without displacing American labor. This design paid off: The H-1B program has proven massively beneficial to the Nation and Amici States, particularly in industries providing core public services like education and healthcare, while fortifying national and state economies more broadly.

There is substantial evidence that the American public broadly benefits from specialized H-1B workers’ impact on the economy. Research shows the presence of H-1B workers is associated with a range of positive economic indicators for the country, including lower unemployment rates and faster earnings growth among college graduates,¹² higher wages,¹³ higher job growth,¹⁴ and firm value creation.¹⁵ Indeed, one study found that H-1B visa holders were responsible for 30 to 50 percent

¹¹ H.R. Rep. No. 101-723 (1990), reprinted in 1990 U.S.C.C.A.N. 6710, 6721, 1990 WL 200418.

¹² See Madeline Zavodny, *NFAP Policy Brief: The Impact of H-1B Visa Holders on the U.S. Workforce*, Nat'l Found. for Am. Policy at 1 (May 2020), <https://tinyurl.com/5n6j9nv3>.

¹³ *Id.*

¹⁴ See Sari Pekkala Kerr et al., *Skilled Immigration and the Employment Structures of US Firms*, 33 J. Lab. Econ. S147, S183 (2015), <https://tinyurl.com/yk2yrwr9>.

¹⁵ Hiao Jiang et al., *Undervaluing Immigrants*, SSRN at 1 (Nov. 21, 2025), <https://tinyurl.com/snav389>.

of all productivity growth in the U.S. economy between 1990 and 2010.¹⁶ In total, H-1B workers contribute \$86 billion annually to the Nation’s economy and pay more than \$35 billion per year in federal, state, and local taxes.¹⁷

Moreover, studies repeatedly find that the H-1B program does not simply operate as a zero-sum game for domestic workers.¹⁸ For one, domestic workers share in the benefits of productivity gains driven by the H-1B program, which “cause[] more higher-paying jobs for native workers, both with and without a college education, across all sectors.”¹⁹ Further, there is evidence that *restrictions* on H-1B visas actually harm domestic workers—for example by “induc[ing] more American companies to hire workers overseas.”²⁰ And in any event, many employers use H-

¹⁶ Giovanni Peri et al., *STEM Workers, H-1B Visas, and Productivity in US Cities*, 33 J. Lab. Econ. S225, S227 (2015), <https://tinyurl.com/u5ary523>.

¹⁷ Andrew Moriarity, *The H-1B Visa Program*, fwd.us. (Jan. 27, 2025), <https://tinyurl.com/2rjn7x38>.

¹⁸ A Senate report on H-1B legislation directly addressed this misguided critique: “Many of the concerns about H-1B visas revolve around the fear that individuals entering on H-1B visas will ‘take’ a job from an American worker. This fear arises from the premise that there is a fixed number of jobs for which competition is a zero-sum game. But this premise is plainly flawed.” S. Rep. 106-260 at 11–12 (Apr. 11, 2000).

¹⁹ Michael A. Clemens, *New US curb on high-skill immigrant workers ignores evidence of its likely harms*, Peterson Inst. Int’l Econ. (Sept. 22, 2025), <https://tinyurl.com/5cxzmcpn>; see also Giovanni Peri & Chad Sparber, *Presidential Executive Actions Halting High Skilled Immigration Hurt the US Economy*, U.C. Davis Global Migration Ctr. (July 2020), <https://tinyurl.com/bsubr3tc>.

²⁰ Liya Palagashvili & Patrick O’Connor, *Unintended Consequences of Restrictions on H-1B Visas*, Mercatus Ctr.–George Mason Univ. (Jan. 28, 2021), <https://tinyurl.com/bddwj9d3>.

1B visas to address acute labor shortages that they cannot fill with domestic workers, particularly in areas like education and healthcare.

If the United States cannot attract and retain top talent from around the world, it will lose a longstanding and key competitive advantage.²¹ That is precisely what the \$100,000 fee will do, harming Amici States, their economies, and their domestic workforce.

B. The New \$100,000 Fee Will Exacerbate Healthcare Worker Shortages, Impairing Access To Medical Care In Amici States.

The H-1B program is crucial to ameliorating significant healthcare provider shortages nationwide.²² Without the availability of nurses, physicians, surgeons, and other medical staff through the H-1B program, patient care—particularly in rural and low-income communities—will suffer across the United States.²³

Qualified healthcare workers are in short supply in the United States. The American Medical Association (“AMA”) and 50 other medical organizations recently projected a shortfall of 86,000 physicians by 2036.²⁴ And that may be

²¹ Peri & Sparber, *supra* n.19 (“The world competes for global talent. Lost technological and productivity growth in the US could mean increased growth elsewhere.”).

²² See Fran Smith, *The Health Divide: Trump’s new H-1B visa fee could worsen America’s doctor shortage*, USC Annenberg Ctr. for Health Journalism (Oct. 13, 2025), <https://tinyurl.com/32ja6j5d>.

²³ See *id.*; Omar Abughanimeh & Mouhanna Abu Ghanimeh, *H-1B Visa Program and Implications for Health Care*, JAMA (Oct. 29, 2025), <https://tinyurl.com/yksw5jpy>; David Ovalle, *Rural America relies on foreign doctors. Trump’s visa fee shuts them out*, Wash. Post (Dec. 8, 2025), <https://tinyurl.com/5ceys47a/>.

²⁴ Letter to Kristi Noem from National Medical Societies and State Medical Associations (Sept. 25, 2025), <https://tinyurl.com/4zc525ba>.

conservative as other sources estimate a larger gap—over 187,000 vacancies by 2037.²⁵ The aging physician population is a major factor driving this projected shortfall, with two in five active physicians reaching age 65 or over within the decade.²⁶ The United States also faces a deficit of trained nurses, with a projected national shortage of over 108,000 registered nurses by 2038.²⁷ Indeed, millions of people currently live in federally designated Health Professional Shortage Areas (“HPSAs”)²⁸ or Medically Underserved Areas (“MUAs”),²⁹ labels that apply to communities affected by shortages of particular types of medical providers. As an example, 75 million people live in a primary care HPSA, 58 million in a dental health HPSA, and 122 million in a mental health HPSA.³⁰ Such inadequate medical staffing reduces the quality of care that those residents receive: they are exposed to increased provider errors, wait times, and mortality rates.³¹

²⁵ *State of the U.S. Health Care Workforce*, 2024, Nat'l Ctr. for Health Workforce Analysis (Nov. 2024), <https://tinyurl.com/mr4aeukr>.

²⁶ See *AAMC Report Reinforces Mounting Physician Shortage*, AAMC (June 11, 2021), <https://tinyurl.com/bp6shv73>.

²⁷ *Nurse Workforce Projections, 2022–2038*, Nat'l Ctr. for Health Workforce Analysis (Dec. 2025), <https://tinyurl.com/4pzpa6hj>.

²⁸ HPSAs “can be geographic areas, populations, or facilities. These areas have a shortage of primary, dental, or mental health care providers.” *What is a Shortage Designation*, Health Res. & Servs. Admin. (June 2023), <https://tinyurl.com/3xjbrky8>.

²⁹ MUAs “have a shortage of primary health services within geographic areas.” *Id.*

³⁰ *State of the U.S. Health Care Workforce*, *supra* n.25 at 2.

³¹ See generally Hoag Levins, *How Inadequate Hospital Staffing Continues to Burn Out Nurses and Threaten Patients*, Penn LDI (Jan. 9, 2023), <https://tinyurl.com/2e8e4jte>.

Amici States are no strangers to this phenomenon. Take New Jersey, which has roughly 17 primary care doctors per 100,000 people—one of the lowest ratios in the country.³² Arizona similarly faces a critical doctor shortage and will reportedly need 493 additional primary care physicians by 2035 to fill the gap.³³ In Rhode Island, only 700 primary care providers serve a population of 1.1 million,³⁴ and at least 300 additional physicians are needed.³⁵ In Minnesota, as of March 2024, 29.9% of physicians are within retirement range, and there is a projected shortfall of 2,260 doctors by 2030, of which 1,187 will be in primary care.³⁶ The panorama is similar when it comes to nursing shortages. For instance, New Jersey is expected to have 12% fewer nurses than it needs by 2035,³⁷ California faces a projected shortage of 84,750 registered nurses by 2038,³⁸ and New York's deficit is expected to be almost 40,000 nurses by 2030.³⁹

³² See Christopher Cheney, *New Jersey Primary Care Report Has National Implications*, N.J. Health Care Quality Inst. (Feb. 21, 2024), <https://tinyurl.com/3xj428eb>.

³³ *Arizona Medically Underserved Areas—Biennial Report*, Ariz. Dep't of Health Servs. at 21–22 (Oct. 2024), <https://tinyurl.com/sszhrts7>.

³⁴ Alexandra Leslie, *Hundreds more physicians needed to address RI primary care shortage, experts say*, WPRI (Feb. 19, 2025), <https://tinyurl.com/2vssf3a>.

³⁵ *Id.*

³⁶ *Minnesota Physician Shortage Facts*, Cicero Inst. (Mar. 5, 2024), <https://tinyurl.com/4r3zf4sm>.

³⁷ *Fact Sheet: Nursing Shortage*, Am. Assoc. of Colls. of Nursing (May 2024), <https://tinyurl.com/5bn7358f>.

³⁸ See *Nurse Workforce Projections, 2023–2038*, *supra* n.27.

³⁹ *New York State Department of Health Honors 350,000 Nurses in Observance of National Nurses Week, May 6-12*, N.Y. State Dep't of Health (May 10, 2023), <https://tinyurl.com/4xpssp8tj>.

H-1B medical professionals “play a critical role in filling this void,”⁴⁰ often working directly for Amici States or their agencies and subdivisions. Approximately 8,492 H-1B visas for initial employment went to workers in medicine and health occupations in fiscal year (“FY”) 2024,⁴¹ thousands of whom provide care to Amici States’ residents. In New Jersey, for example, USCIS approved 4,854 H-1B petitions between 2009–2025 in the “Healthcare and Social Assistance” category, with 342 approved in 2025 alone.⁴²

H-1B medical workers are essential in rural and low-income communities that desperately need doctors. While 20% of the U.S. population lives in rural areas, only about 11% of physicians practice there,⁴³ a disparity that is reflected by Amici States’ experiences. In California, rural access to specialists and primary care providers is already extremely limited and is projected to worsen as physicians retire and communities struggle to attract doctors.⁴⁴ About 11.4 million Californians—roughly one quarter of the State’s population—live in federally designated Primary

⁴⁰ *Letter to Kristi Noem*, *supra* n.24; see also Tony Payan et al., *Reduce Health Care Labor Shortages by Recruiting Skilled Immigrants*, Baker Inst. (Nov. 6, 2024), <https://tinyurl.com/zk7a8uby>.

⁴¹ *Characteristics of H-1B Specialty Occupation Workers* (FY 2024), *supra* n.7 at 45.

⁴² See USCIS, *H-1B Employer Data Hub*, <https://tinyurl.com/579wcd9v> (measuring total beneficiaries, which includes new employment approvals, continuation approvals, change with same employer approval, new concurrent approvals, change of employer approvals, and amended approvals).

⁴³ See Breno Braga et al., *Migration Policy and the Supply of Foreign Physicians: Evidence from the Conrad 30 Waiver Program*, Nat’l Bureau of Econ. Research Working Paper No. 32005 at 2 (Dec. 2023), <https://tinyurl.com/4mebj4z>.

⁴⁴ *New Survey Highlights Worsening Shortage of Physicians in Rural California*, Cal. Health Care Found. (June 26, 2025), <https://tinyurl.com/ys9zx6hn>.

Care HPSAs.⁴⁵ And in Minnesota, rural areas have less than one-tenth the number of family medicine physicians and less than one-hundredth the number of internal medicine practitioners for every 100,000 residents as the State's metropolitan areas. There are similarly striking disparities across other critical specialties such as pediatrics, psychiatry, general surgery, and obstetrics and gynecology.⁴⁶ And of Minnesota's relatively few rural physicians, almost one in four plan to leave the workforce within the next five years.⁴⁷ Likewise, in New York's 16 rural counties, there are four primary care physicians for every 10,000 people.⁴⁸

H-1B healthcare workers have played an outsized role in addressing these disparities and improving access to care in rural and low-income communities. Between 2001 and 2024, almost 23,000 H-1B physicians worked in underserved areas,⁴⁹ with 64% of foreign-trained physicians reportedly practicing in MUAs or HPSAs.⁵⁰ A recent study found that "foreign healthcare workers fill critical gaps in health systems such as primary care and rural health, and millions of Americans depend on them to receive timely and high-quality care."⁵¹

⁴⁵ *Id.*

⁴⁶ *Rural Health Care in Minnesota: Data Highlights*, Minn. Dep't of Health at 23 (Nov. 2025), <https://tinyurl.com/msuahcu4>.

⁴⁷ *Id.* at 25.

⁴⁸ See Thomas P. DiNapoli, *The Doctor Is...Out: Shortages of Health Professionals in Rural Areas* (Aug. 2025), <https://tinyurl.com/mrxu8cf2>.

⁴⁹ *Letter to Kristi Noem*, *supra* n.24.

⁵⁰ *Id.* For an explanation of the HPSA and MUA designations, *see supra* n.28.

⁵¹ *Study Shows Increase of H-1B Visa Fees Will Most Impact Rural and High Poverty Communities*, Mass. General Brigham (Oct. 30 2025), <https://tinyurl.com/sxd597ve>.

Importantly, recent studies show that less restrictive visa policies for foreign-born doctors do not “crowd out” U.S. born physicians, instead increasing the overall pool of physicians and filling essential gaps in coverage.⁵² For many medical positions across the country, and particularly in underserved communities, “health care systems are not choosing between eager lines of US applicants and an [international medical graduate] with an H-1B; they are choosing between filling a slot that serves patients and leaving it empty.”⁵³

The new H-1B fee will make it almost impossible to hire new healthcare workers on H-1B visas, exacerbating already severe medical staffing shortages, dangerously degrading patient care, and harming Amici States’ residents. Hospitals and other healthcare facilities that hire foreign-trained physicians are generally public or non-profit entities that cannot afford the fee under the Policy. As the President of the AMA explained, “[i]f a hospital needs 50 foreign residents, and it’s \$100,000 each for each one, that’s \$5 million, and that’s not going to happen There will be shortages.”⁵⁴ As a result, “spots at hospitals will not be filled. Wait times will go up, and people will wait even longer at emergency departments.”⁵⁵ At

⁵² Braga et al., *supra* n.43 at 3, 13.

⁵³ Abughanimeh & Ghanimeh, *supra* n.23.

⁵⁴ Roni Caryn Rabin, *Medical Groups Warn Against Visa Fees for Foreign Doctors*, N.Y. Times (Sept. 26, 2025), <https://tinyurl.com/8bt7srs2>. For example, Frederick Health in Maryland had been planning to sponsor up to 45 nurses on H-1B visas, but those plans are on hold as they “cannot afford that [\$100,000 fee] for even one individual.” Natalie Brand, *Hospitals hope for exemption from Trump administration’s new \$100,000 H-1B visa fee: “We cannot afford that,”* CBS News (Oct. 29, 2025), <https://tinyurl.com/wuuyjr4a>.

⁵⁵ Rabin, *supra* n.54.

a time when many hospitals are already facing serious financial stress from cuts in health insurance subsidies and reduced Medicaid payments, paying a \$100,000 fee for each H-1B healthcare worker is not feasible.⁵⁶ The \$100,000 fee will also “predictably fall hardest on institutions least able to absorb it, likely rural health care systems that are already wrestling with staffing vacancies and financial issues.”⁵⁷ Consequently, the Policy will disproportionately harm the communities that are in most dire need of healthcare workers.⁵⁸

The \$100,000 fee will also harm public and private hospitals that rely on the H-1B program to hire researchers to staff critical medical research projects.⁵⁹ A shortage of qualified researchers will force hospitals to eliminate projects aimed at developing new medications and therapies, severely limit the availability of clinical trials to assess the safety and efficacy of new treatments, and stymie hospitals’ ability to remain on the forefront of medical innovation that brings life-saving and other necessary treatment to Amici States’ residents.

C. The New Fee Will Undermine American Education, Worsening The K-12 Teacher Shortage And Weakening Higher Education.

H-1B workers also serve crucial roles as educators in K-12 school districts and higher education alike. As of 2024, nearly 30,000 approved H-1B petitions—approximately 7% of approved petitions—were from the educational services sector,

⁵⁶ *Id.*

⁵⁷ Abughanimeh & Ghanimeh, *supra* n.23.

⁵⁸ *See id.*

⁵⁹ For example, one study found that “80% of nephrology fellowship programs, which provide specialty training after residency, had J-1 or H-1B visa holders among their clinical or research fellows.” Smith, *supra* n.22.

making it the fifth-largest industry by number of H-1B workers employed.⁶⁰ Given ongoing K-12 teacher shortages, those approvals mean manageable class sizes, a greater range of course offerings, and higher quality instruction. And for higher education, the approvals mean innovation, cutting-edge research, and best-in-class training and scholarship. If allowed to stand, the Administration's draconian fee will make it exceedingly difficult for educational institutions to hire international staff, leaving American students and the public to bear the consequences.

K-12 Schools. The United States faces a severe K-12 teacher shortage. Year over year, the Bureau of Labor Statistics estimates 103,800 openings for kindergarten and elementary school teachers, 40,500 openings for middle school teachers, and 66,200 openings for high school teachers.⁶¹ But last year, a staggering 74% of school districts reported having trouble filling vacancies, mostly due to a lack of qualified candidates and too few applications.⁶² The problem is even more acute in rural and other underserved areas.⁶³ To fill these gaps, hundreds of school

⁶⁰ *Characteristics of H-1B Specialty Occupation Workers* (FY 2024), *supra* n.7 at 16, 57.

⁶¹ U.S. Bureau of Labor Statistics, *Occupational Outlook Handbook: Kindergarten and Elementary School Teachers*, <https://tinyurl.com/4ye3p8hz>; U.S. Bureau of Labor Statistics, *Occupational Outlook Handbook: Middle School Teachers*, <https://tinyurl.com/y2rktv2j>; U.S. Bureau of Labor Statistics, *Occupational Outlook Handbook: High School Teachers*, <https://tinyurl.com/4tum5zz6>.

⁶² See *Most U.S. public elementary and secondary schools faced hiring challenges for the start of the 2024–25 academic year*, Nat'l Ctr. for Educ. Statistics (Oct. 17, 2024), <https://tinyurl.com/4ux3j3ar>.

⁶³ See Richard M. Ingersoll & Henry Tran, *Teacher Shortages and Turnover in Rural Schools in the US: An Organizational Analysis*, 59 Educ. Admin. Quarterly 396, 421 (Apr. 2023), <https://tinyurl.com/56b7sswh>; Zeke Perez Jr., *Recruiting*

districts have turned to H-1B educators.⁶⁴ In FY 2025, for example, 500 K-12 public school districts employed more than 2,300 H-1B visa holders nationwide.⁶⁵

Amici States' experiences confirm this trend. New Jersey, for example, has faced a years-long teacher shortage, resulting in increased class sizes, overburdened teachers, and scaled-back curricula.⁶⁶ This shortage is only expected to worsen, with teachers' permanent exits from the profession outpacing provisional teacher certifications.⁶⁷ Like in other Amici States, New Jersey schools have turned to H-1B workers to fill the gap. For example, in 2022, the Camden County School District resorted to the H-1B program to fill months-long vacancies, with a focus on foreign language positions and on supporting non-native English speakers.⁶⁸ Camden

Teachers in Areas of Critical Need, Educ. Comm'n of the States (Nov. 19, 2025), <https://tinyurl.com/56wkndns>.

⁶⁴ See NEA Data Brief: *H-1B Visas in Public School Districts*, Nat'l Educ. Ass'n (Oct. 8, 2025), <https://tinyurl.com/4cy98ksj>; Madeleine Ngo, *Trump's H-1B Visa Fee Could Strain Universities and Schools*, N.Y. Times (Oct. 8, 2025), <https://tinyurl.com/4y6f9h3n>; Sequoia Carrillo, *Many rural schools rely on international teachers. Trump's visa changes threaten that*, NPR (Oct. 15, 2025), <https://tinyurl.com/5dtz8uku>.

⁶⁵ NEA Data Brief: *H-1B Visas in Public School Districts*, *supra* n.64.

⁶⁶ Nikita Biryukov, *New Jersey school districts still face teacher shortages as new school year begins*, N.J. Monitor (Sept. 3, 2024), <https://tinyurl.com/3dv6855u>.

⁶⁷ Daniel Douglas et al., *New Jersey's Teacher Workforce Landscape: 2024 Annual Report*, Heldrich Ctr. for Workforce Dev. at Rutgers Univ. at 24 (Feb. 2024), <https://tinyurl.com/3dewcwpb>.

⁶⁸ See Norris McLaughlin P.A., *New Jersey School District Votes to Utilize H-1B Program for Teaching Vacancies*, The Nat'l L. Rev. (Mar. 3, 2022), <https://tinyurl.com/38sfvtfn>.

County is just one of approximately 20 New Jersey school districts that petitioned to add H-1B educators to their workforce in 2025.⁶⁹

Other Amici States have also turned to the H-1B program to find K-12 educators. To address the “extensive shortage of qualified educators in the state,” California school districts received 287 H-1B visas for teachers for the 2023–2024 school year—a six-year high.⁷⁰ Arizona has also relied on international educators to address its persistent teacher shortage—over 1,000 unexpected vacancies were reported at the start of the 2025–2026 school year, and approximately 4,242 teaching positions are reportedly being filled through long-term substitutes, contracted personnel, classified staff, and student teachers.⁷¹ For example, some districts report that 10% of certified staff, and 26% of teachers, are foreign nationals,⁷² and Arizona public schools reportedly filed 130 H-1B petitions in 2025.⁷³ A superintendent affirmed that he does not “even have candidates to speak with and interview....[Their] only choice is hiring international teachers.”⁷⁴ In Illinois, 3,864

⁶⁹ This count includes charter and private schools. *See USCIS, H-1B Employer Data Hub, supra* n.42.

⁷⁰ *Report to the Legislature: Teacher Credentialing: Teacher Preparation Outside of the United States and H-1B Work Visas*, Cal. Dep’t of Educ. at 1, 3, 5–7 (Nov. 2024), <https://tinyurl.com/2f9d75rt>.

⁷¹ *See Arizona Teacher Shortage Impact Fall 2025 Report*, Ariz. Dep’t of Educ. (2025), <https://tinyurl.com/4skzw2mv>.

⁷² Erica Little, *Short on teachers, Pinal districts increasingly turn to international educators*, PinalCentral (Aug. 21, 2025), <https://tinyurl.com/zzvmtlds>.

⁷³ *NEA Data Brief: H-1B Visas in Public School Districts, supra* n.64.

⁷⁴ Little, *supra* n.72.

teaching positions went unfilled in the 2023–2024 school year.⁷⁵ Some districts, such as Chicago Public Schools (“CPS”), successfully recruited international teachers to fill vacancies for a range of difficult-to-staff positions including bilingual teachers; speech-language pathologists; and special education, math, and computer science teachers. CPS employs 82 H-1B workers. Similarly, Maryland faces persistent K-12 teacher shortages, with over 1,600 vacancies across its public school systems at the start of the 2024–2025 school year.⁷⁶ Retention challenges exacerbate the issue, with 10% of Maryland’s public-school teachers not returning each year.⁷⁷ Several Maryland school districts—including public schools in Baltimore, Prince George’s County, and Montgomery County—have therefore relied heavily on H-1B teachers to fill critical positions in hard-to-staff schools.⁷⁸ Baltimore City Public Schools, for example, currently sponsors 80 H-1B visa holders, including 78 teachers.

As with healthcare providers, H-1B educators are not displacing domestic workers but are addressing unmet employer demand. As one school superintendent explained the need for H-1B teachers: “we quite simply didn’t have other applicants

⁷⁵ Ill. State Bd. of Educ. et al., *Educator Shortage Report: Academic Year 2024–2025* at 2, 5 (2025), <https://tinyurl.com/5t3a7rpk>.

⁷⁶ See Rachel Hise & Alex Reese, *Teacher Recruitment, Development, and Retention*, Md. State Dep’t of Educ. (Jan. 28, 2025), <https://tinyurl.com/2zpf6cm>.

⁷⁷ See Carey M. Wright, State Superintendent of Schools, *Educator Workforce Data Update*, Md. State Dep’t of Educ. at 6 (Feb. 25, 2025), <https://tinyurl.com/yc6y9fjn>.

⁷⁸ See USCIS, *H-1B Employer Data Hub*, *supra* n.42.

for those positions.” They are “certainly not taking jobs from Americans,” but instead are “filling jobs that otherwise just simply we would not get filled.”⁷⁹

The new fee will prove dispositive. In a profession where median salaries are well under \$100,000,⁸⁰ many schools will lack the resources to pay a \$100,000 fee for a K-12 teacher on top of a competitive salary, filing fees, and legal costs. As school administrators have lamented, “to pay that fee on top of a salary is just gonna kill the H-1B for education.”⁸¹ As a result, thousands of schools in Amici States will be forced to make difficult choices: leave classrooms empty or siphon funds from other needs to cover H-1B sponsorship fees. Either choice harms American students.

Higher Education. The Policy will also harm American colleges and universities that use the H-1B program to recruit faculty capable of meeting the needs of world-class universities.

As of last June 30, at least 930 U.S. colleges and universities collectively employed over 16,000 H-1B workers for academic, research, and other positions.⁸² These workers “educate domestic students in areas of national need, such as [the]

⁷⁹ See Sarah Raza, *Trump’s \$100,000 H-1B visa fee threatens rural schools and hospitals reliant on immigrant workers*, PBS (Oct. 8, 2025), <https://tinyurl.com/mtsuywkz>.

⁸⁰ See U.S. Bureau of Labor Statistics, *Occupational Outlook Handbook: Kindergarten and Elementary School Teachers*, *supra* n.61 (2024 median pay \$62,310 per year); U.S. Bureau of Labor Statistics, *Occupational Outlook Handbook: Middle School Teachers*, *supra* n.61 (2024 median pay \$62,970 per year); U.S. Bureau of Labor Statistics, *Occupational Outlook Handbook: High School Teachers*, *supra* n.61 (2024 median pay \$64,580 per year).

⁸¹ Carrillo, *supra* n.64.

⁸² See Katherine Knott, *Higher ed’s H-1B visas in 4 charts*, Inside Higher Ed (Sept. 29, 2025), <https://tinyurl.com/yzhb2wbp>.

health care, engineering, and education fields”⁸³ and “often play an outsized role in advancing innovation and academic research.”⁸⁴ Indeed, nearly half of the approved higher-education H-1B visas are for 50 institutions, 48 of which are classified as R1 research institutions⁸⁵ and over half of which are public four-year universities.⁸⁶ Amici States operate several top institutions that rely on H-1B workers. The University of California, the world’s largest public academic research system, has over 1,700 individuals on H-1B visas: 24% are faculty; 30% are researchers; 19% are postdoctoral scholars, medical interns or residents; and 30% are other academics like librarians. For its part, the State University of New York (“SUNY”) employs 396 faculty members with H-1B visas, including 110 health sciences and clinical faculty, and 90 H-1B medical residents. And Maryland’s public university system sponsors more than 530 H-1B faculty, staff, and researchers, while the University of Massachusetts sponsors more than 340. These States are just a few among many employing H-1B visa holders in higher education: Public universities in Illinois,

⁸³ Ted Mitchell, *American Council on Education Letter to Secretary Kristi Noem* (Oct. 23, 2025), <https://tinyurl.com/mr35db8n>.

⁸⁴ Nicolas Morales, *Economic Brief: Understanding the Potential Impact of H-1B Visa Program Changes*, Fed. Reserve Bank of Richmond (Oct. 2025), <https://tinyurl.com/yc4f4v62>.

⁸⁵ Universities categorized as “Research 1” or “R1” institutions spend “at least \$50 million on research [and] development and award at least 70 research doctorates” on average each year. *See 2025 Research Activity Designations*, Carnegie Classification of Institutions of Higher Education, <https://tinyurl.com/3fbpeayk>.

⁸⁶ *See* Knott, *supra* n.82.

New Jersey, Washington, Oregon, Hawai‘i, and Rhode Island collectively employ more than 1,000 H-1B workers, including as faculty and researchers.

As in the K-12 sector, higher education experts predict that many colleges will be unable to afford the new \$100,000 fee, especially as institutions with the most H-1B visas are reeling from federal funding cuts.⁸⁷ At a major research university, the total expense could surpass \$10 million a year if the university continued to hire similar numbers of H-1B workers as in years past.⁸⁸ But universities almost certainly will not, compromising their ability to excel in research and academia and to attract faculty, coveted research funding, and student enrollment.⁸⁹

If allowed to stand, the Policy will also have long-lasting impacts beyond higher education. To start, when Congress exempted institutions of higher education from the H-1B numerical cap, it did so to prioritize providing all students with high quality instruction to achieve an American workforce better prepared to enter specialized positions.⁹⁰ Now unable to hire many qualified candidates, universities

⁸⁷ See *id.*; Josh Moody, *How Trump Forced Cuts at Wealthy Universities*, Inside Higher Ed (Aug. 7, 2025), <https://tinyurl.com/4s8y3b8c>.

⁸⁸ See Michael T. Nietzel, *Universities May Face Huge Costs From Trump’s \$100,000 H-1B Visa Fee*, Forbes (Sept. 26, 2025), <https://tinyurl.com/ypcrkf92>.

⁸⁹ See *Statement on the Trump Administration’s Recent Proclamation of a Raise in New H-1B Visa Fees*, Nat’l Postdoctoral Assoc. (Sept. 22, 2025) (explaining that the fee will “create an enormous barrier for employers seeking to attract top talent from around the world”), <https://tinyurl.com/y5xnaek2>.

⁹⁰ S. Rep. 106-260, *supra* n.18 at 21–22 (“[B]y virtue of what they are doing, people working in universities are necessarily immediately contributing to educating Americans. The more highly qualified educators in specialty occupations we have in this country, the more Americans we will have ready to take positions in these fields upon competition of their education.”).

may leave American students under-educated and unprepared. And international academics, the “lifeblood of advanced research,” will be unable to bring their talents to American universities, where they would otherwise develop cutting-edge technologies and spark economically productive innovation.⁹¹

II. AMICI STATES WERE DENIED THE OPPORTUNITY TO COMMENT ON THE FEE’S HARMFUL EFFECTS.

The harms to Amici States outlined above underscore the importance of the notice-and-comment requirements for promulgating such a consequential and far-reaching policy. The statutorily required procedure “gives affected parties fair warning of potential changes in the law and an opportunity to be heard on those changes” while “afford[ing] the agency a chance to avoid errors and make a more informed decision.” *Azar v. Allina Health Servs.*, 587 U.S. 566, 582 (2019). Said differently, notice-and-comment mitigates the risk of arbitrary and capricious rulemaking, helping to ensure that any rule is “reasonable and reasonably explained,” and that the agency did not “simply ignore an important aspect of the problem,” such as the effect of a regulation on impacted parties. *Ohio v. EPA*, 603 U.S. 279, 292–93 (2024) (citation modified); *E. Bay Sanctuary Covenant v. Garland*, 994 F.3d 962, 980 (9th Cir. 2020) (finding asylum rule arbitrary and capricious for DHS’s failure to consider its effects on impacted immigrant populations).

⁹¹ See Alex Shaw, *H-1B Fee Hike Threatens Innovation and Talent*, Global Bus. & Econ. J. (Sept. 29, 2025) (describing a Northwestern University postdoctoral researcher, whose “fundamental research [in neuroscience] . . . underpins future medical breakthroughs,” and the Proclamation’s impact on his continued ability to work in the United States), <https://tinyurl.com/7ffvxxfa>.

By failing to solicit views on the new H-1B fee, much less consider the impact on Amici States and other affected parties, the Administration has undoubtedly overlooked “important aspect[s] of the problem,” *Ohio*, 603 U.S. at 293, including profound harms to the healthcare and education sectors. The devastating result is a half-baked and harmful Policy that will be bad for patients, students, workers, the broader public—and Amici States.

III. THE PRESIDENT’S USURPATION OF CONGRESSIONAL FEE-SETTING AUTHORITY PUTS AMICI STATES AT RISK.

Finally, upholding the President’s authority to levy an exorbitant \$100,000 fee on employers—a power reserved to Congress—would set a dangerous precedent, exposing Amici States to further risk of unlawful Executive revenue-raising action disguised as immigration restrictions under the INA. The Constitution grants Congress, not the President, exclusive authority to impose fees on regulated parties, absent an explicit delegation of authority to the Executive. *See, e.g., Nat'l Cable Television Ass'n, Inc. v. United States*, 415 U.S. 336, 340 (1974) (“Congress … is the sole organ for levying taxes.”); *Skinner v. Mid-Am. Pipeline Co.*, 490 U.S. 212, 224 (1989) (Congress “must indicate clearly its intention” to delegate taxation authority to the Executive, “whether [such exactions are] characterized as ‘fees’ or ‘taxes.’”). Implying such a delegation without a clear statement of Congressional intent infringes on the separation of powers, permitting the President to hijack Congress’s purse strings to further ill-conceived or unlawful policy goals.

The Policy is just one example of how the President could use unfettered fees to harm Amici States under the guise of setting immigration policy. For instance, the

President could impose a fee so prohibitively excessive that he would price the H-1B program out of existence—a result obviously harmful to Amici States and to the scheme Congress set up. The President may even feel emboldened to impose higher fees on industries or employers disproportionately headquartered in Amici States or on petitions for workers disproportionately located in Amici States. And he could weaponize fees to remake all visa programs on which Amici States and other employers rely, such as the H-2A program for seasonal farm workers that is critical to maintain the food supply chain or the O-1 visa program that brings workers of extraordinary ability to our Nation. The President’s impermissible invocation of Congressional authority only compounds the dangers of proceeding without the requisite procedural safeguards of notice-and-comment rulemaking. In short, the opportunities for abuse are endless and underscore why the Court’s intervention is needed to prevent the immediate harms and long-term dangers of the Policy.

CONCLUSION

This Court should reverse the District Court’s grant of summary judgment in Defendants’ favor and remand with instructions to enter a permanent injunction for Appellants.

Dated: January 16, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), I hereby certify that this brief:

- (i) complies with the type-volume limitation of Rule 29(a)(5) because it contains 6,259 words, excluding the parts exempted by Rule 32(f); and
- (ii) complies with the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 14-point Times New Roman font.

Dated: January 16, 2026

/s/ Shankar Duraiswamy

CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2026, I electronically filed the foregoing motion with the Clerk of this Court using the CM/ECF system, and counsel for all parties will be served by the CM/ECF system.

Dated: January 16, 2026

/s/ Shankar Duraiswamy