

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

The State of KANSAS, *et al.*,

Plaintiffs-Appellees,

v.

UNITED STATES, *et al.*,

Defendants-Appellants.

No. 24-3521

**MOTION OF CLAUDIA MOYA LOPEZ, HYUN KIM, DANIA
QUEZADA TORRES, AND CASA, INC. TO FILE AS *AMICI
CURIAE* IN SUPPORT OF A STAY PENDING APPEAL**

Pursuant to Federal Rule of Appellate Procedure 29(a)(3), Claudia Moya Lopez, Hyun Kim, Dania Quezada Torres, and CASA, Inc. (“Movants”) respectfully move for leave to file the accompanying brief as *amici curiae* in support of the stay motion, *see* 8th Cir. Dkt. No. 5466501, filed in this appeal by Defendants-Appellants the United States and the Centers for Medicare & Medicaid Services (“Defendants”).¹

Movants are three noncitizens who were granted deferred action through the Deferred Action for Childhood Arrivals (“DACA”) program,

¹ Pursuant to Fed. R. App. P. 26.1(a) and Eighth Circuit Rule 26.1A, CASA, Inc. hereby certifies that it is a non-profit organization, has no parent corporation, and no publicly held corporation owns ten percent or more of its stock.

and an immigrants-rights nonprofit organization whose members include many DACA recipients. Movants jointly moved to intervene below to defend a federal regulation (the “Final Rule”) that for the first time would allow DACA recipients to purchase affordable health insurance through marketplaces created by the Affordable Care Act (“ACA”).

As DACA recipients (and a representative of DACA recipients) who have been unlawfully denied access to the ACA marketplaces for more than a decade, Movants have a distinct perspective from Defendants on the statutes underlying the Final Rule. Movants therefore raised multiple unique arguments in the district court in defense of the Final Rule that Defendants omitted from their briefs. But the district court preliminarily enjoined and stayed the Final Rule in 19 States without deciding Movants’ motion to intervene, allowing Movants to participate, or considering any of Movants’ unique arguments. *See* R.Doc. 117, at 1-2 & nn.1-3.

Defendants are now pursuing in this Court a stay pending appeal of the district court’s order, *see generally* 8th Cir. Dkt. No. 5466501, on an expedited briefing schedule set by the Court, *id.*, Dkt. No. 5466719. Based on their filings below, Movants are uniquely positioned to assist

this Court in deciding that motion. And Movants have a distinct interest in doing so because, according to Defendants, the district court's order, if not stayed, will prevent Movants Lopez and Kim and numerous CASA members from being able to use the health insurance they purchased while the Final Rule was in effect. This Court should therefore grant Movants leave to participate as *amici*.

1. Claudia Moya Lopez was born in 1992 in El Salvador and currently lives in Chesterfield, Virginia. She arrived in the United States with her mother when she was eleven years old. In 2015, she was approved for DACA and work authorization, and her DACA status remains current. As a small-business owner who operates a roofing company, she does not have access to employer-based health insurance and without access to the ACA marketplace, could not afford to purchase insurance for herself.

Access to consistent and reliable healthcare is especially important to Lopez because she was diagnosed with acute promyelocytic leukemia ("ACP") in 2023 and requires ongoing monitoring because of the risk of ACP recurrence. Once the Final Rule went into effect, Lopez purchased health insurance through the marketplace and has paid her first

premium. If the district court's preliminary injunction and stay remain in effect for Virginia, Lopez will not be able to use this plan or afford regular blood tests, monitoring, and health visits to ensure her ACP does not recur.

Hyun Kim was born in 1996 in South Korea and currently lives in Annandale, Virginia. He arrived in the United States with his mother when he was three years old. In 2017, Kim was approved for DACA and work authorization, and his DACA status remains current. As a restaurant worker who has been saving up to attend college, Kim receives base pay and tips but no employer-sponsored health insurance. Because of his lack of access to health insurance, Kim has not had a physical in three years and has never seen a dentist. After the Final Rule went into effect, Kim enrolled in a health insurance plan through the marketplace and qualified for advance premium tax credits for his monthly premiums. If the district court's preliminary injunction and stay remain in effect for Virginia, Kim will not be able to use this plan or receive tax credits for his monthly premiums, placing him at risk of more serious medical issues and correspondingly higher medical costs in the future.

Dania Quezada Torres was born in 1997 in Mexico. She arrived in the United States with her mother and sisters when she was five years old. In 2013, she was approved for DACA and work authorization. As a third-year law student at the University of Washington, she currently receives extremely limited health coverage through her university, which she relies on to afford the medication she needs for her attention deficit hyperactivity disorder and obsessive-compulsive disorder. When Dania is unable to access her university health coverage, she has to ration her medication. After the Final Rule went into effect, Torres purchased health insurance through the marketplace and has paid her first premium. If the Final Rule is set aside as unlawful, she will not be able to use this plan. Accordingly, although Torres resides in Washington, which is not one of the states to which the district court's preliminary injunction and stay order applies, she has an interest in the ultimate merits of this lawsuit.

CASA is a nonprofit organization headquartered in Langley Park, Maryland with offices in Maryland, Virginia, Pennsylvania, and Georgia. Founded in 1985, CASA is the largest membership-based immigrant rights organization in the mid-Atlantic region, with more than 150,000

lifetime members from across the United States. CASA has over 2,700 members who are DACA recipients, including Movants Lopez and Kim. CASA conducts campaigns to inform members of immigrant communities of their rights and assists individuals in applying for a variety of government benefits. CASA also informs the public and assists its members in purchasing health insurance through ACA marketplaces. The district court's order has caused CASA to invest significant staff hours in educating members about the shifting legal landscape and helping DACA recipients to pursue other avenues for healthcare if the ACA marketplaces are now closed to them.

2. Movants seek leave to file an *amici curiae* brief because they believe that DACA recipients have a statutory right to access the ACA marketplaces and can provide an important perspective in considering both the lawfulness of the Final Rule and the harms arising from the district court's injunction and stay order. Moreover, Movants are well positioned to contribute meaningfully to the Court's consideration of Defendants' present stay motion as a result of their filings below.

Before the district court, Movants sought to intervene as defendants to defend the Final Rule, and they presented several

arguments not raised by Defendants, which are included in the present *amici curiae* brief:

First, Movants join Defendants in arguing that North Dakota lacks Article III standing and, accordingly, that venue is improper. But Movants’ briefs below—and their proposed *amicus* brief here—go further by providing a detailed statistical breakdown showing that North Dakota’s alleged injury from the Final Rule is entirely speculative.

Second, Movants defend the legality of the Final Rule on the merits by marshaling multiple rules of statutory interpretation and multiple statutory provisions that Defendants leave aside because they cut against the government’s institutional interests. Whereas Defendants have repeatedly argued that “the Final Rule’s definition of ‘lawfully present’ to include DACA recipients is *consistent* with” the ACA, R.Doc. 61, at 21 (emphasis added)—and thus a *permissible* alternative to the prior definition that excluded DACA recipients—Movants argue that a proper interpretation of the ACA *requires* access for all individuals granted deferred action, including DACA recipients. In support of that argument, Movants invoke statutory provisions that provide unambiguously that all “lawfully present” individuals “may enroll” in the

ACA marketplaces, 42 U.S.C. § 18032(d)(3), (f)(3), and indeed were *required* to do so under the ACA’s Individual Mandate, 26 U.S.C. § 5000A(a), (d). *See Proposed Amicus Br. 7-9.* Defendants cite none of these provisions.

Movants also argue that longstanding Attorney General and Department of Homeland Security regulations construing the term “lawful presence” not only *inform* the meaning of that term in the ACA, as Defendants argue, Mot. 14, 16, but *compel* an interpretation of that term that includes DACA recipients, *see Proposed Amicus Br. 9-11.* In support of that argument, Movants invoke two rules of interpretation that Defendants do not: (1) the rule that “respect to Executive Branch interpretations” is “especially warranted” when an interpretation “was issued roughly contemporaneously with enactment of the statute and remained consistent over time,” *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2257-58 (2024); and (2) the rule that when a term “ha[s] acquired a settled ... administrative interpretation,” courts must “accept the already settled meaning” when construing the phrase, *Comm’r v. Keystone Consol. Indus., Inc.*, 508 U.S. 152, 159 (1993).

Third, Movants explain through their own experiences the

significant harm that the district court's order will impose on individual DACA recipients and immigrant-rights organizations that outweigh any speculative increase in costs to Plaintiffs.

The district court's failure to consider these arguments is part of the reason its order is unlikely to survive on appeal and that order should be stayed pending appeal. Movants' proposed *amicus* brief would thus assist the Court in ensuring it evaluates all aspects of these issues.

3. Allowing Movants to participate as *amici* is especially warranted given the posture of this appeal. When the district court entered its order preliminarily enjoining and staying the Final Rule without deciding Movants' motion to intervene or permitting Movants to participate, Defendants and Movants both appealed, and Defendants filed a motion to stay the district court's order. Movants support a stay of the district court's order, but are choosing at this stage to participate only as *amici*—rather than intervening in this appeal or filing a separate stay motion in their own appeal—to avoid complicating the expedited timeline entered by this Court. While *amicus* participation is no substitute for intervention—and Movants intend to move to intervene at the appropriate time—accepting Movants' *amicus* brief will at least give

Movants an opportunity to be heard on the critical issues raised by Defendants' stay motion.

CONCLUSION

This Court should grant leave to file the *amici curiae* brief in support of Defendants motion to stay the district court's order pending appeal.

Dated: December 19, 2024

Respectfully submitted,

By: /s/ Matthew S. Rozen

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CERTIFICATE OF COMPLIANCE

I certify that this document complies with the type-volume limitation set forth in FRAP 26(d)(2). This document contains 1,720 words, excluding the parts exempted by FRAP 27(a)(2)(B) and FRAP 32(f). This document complies with the typeface requirements of FRAP 32(a)(5) and the type-style requirements of FRAP 32(a)(6). It has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point New Century Schoolbook font.

/s/ Matthew S. Rozen

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CERTIFICATE OF SERVICE

I hereby certify that on December 19, 2024, I filed the foregoing motion using the Court's CM/ECF system, which will send a notice of the filing to counsel for all parties.

/s/ Matthew S. Rozen _____

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No. 24-3521

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On Appeal from the United States District Court
for the District of North Dakota, No. 1:24-CV-00150-DMT-CRH
Hon. Daniel M. Traynor

**BRIEF OF AMICI CURIAE CLAUDIA MOYA LOPEZ, HYUN KIM,
DANIA QUEZADA TORRES, AND CASA, INC. IN SUPPORT OF
APPELLANTS' MOTION FOR A STAY PENDING APPEAL**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1(a) and Eighth Circuit Rule 26.1A, CASA, Inc. hereby certifies that it is a non-profit organization, has no parent corporation, and no publicly held corporation owns ten percent or more of its stock.

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INTRODUCTION AND INTERESTS OF AMICI CURIAE

Amici are three noncitizens and an immigrants-rights nonprofit organization that moved to intervene in the district court to defend the final rule at issue in this litigation. The district court preliminarily enjoined and stayed the final rule in 19 states without deciding *amici*'s motion to intervene or permitting *amici* to participate. Defendants and *amici* both appealed, and Defendants moved to stay the district court's order. *Amici* support a stay of that order, but are choosing at this stage to participate only as *amici*—rather than intervening in Defendants' appeal or filing a separate stay motion in their own appeal—to avoid complicating the expedited timeline entered by this Court.

Amici Claudia Moya Lopez, Hyun Kim, and Dania Quezada Torres are noncitizens who came to the United States as children, have lived most of their lives here, and were granted deferred action through the Deferred Action for Childhood Arrivals (“DACA”) program. Earlier this year, Defendant the Centers for Medicare and Medicaid Services (“CMS”) issued a rule that permits DACA recipients to purchase affordable health insurance through the marketplaces established by the Affordable Care Act (“ACA”). 89 Fed. Reg. 39,392 (May 8, 2024) (“Final Rule”). After

waiting for more than a decade for access to affordable healthcare, *amici* have each now purchased health insurance through the ACA marketplaces and have already paid their first premiums or received advanced premium tax credits through their plan.

Amicus CASA, Inc. is the largest membership-based immigrant rights organization in the mid-Atlantic region, with more than 100,000 members. Its members include *amici* Lopez and Kim, and more than 2,700 other DACA recipients who gained access to the ACA marketplaces under the Final Rule. CASA's core mission includes supporting its members in improving their physical and mental health and social stability.

Amici each have a direct interest in Defendants' stay motion. By preliminarily enjoining and staying the Final Rule in 19 states—including Virginia, where *Amici* Lopez and Kim and many CASA members purchased their health plans—the district court effectively cancelled their recently acquired health-insurance plans. *See, e.g.*, Lopez Decl. ¶¶ 17-18; Kim Decl. ¶¶ 13, 15. The order will thus delay their access to important health insurance and medical care, forcing them to choose between foregoing medical treatment and assuming crushing medical debt. Further, if the order stands, CASA will need to expend funds to educate DACA

recipients about the change to their ACA eligibility and help them attempt to secure alternative healthcare options. While the district court's preliminary injunction and stay do not apply in Washington, where *amicus* Torres resides, she too has an interest ensuring that the Final Rule is ultimately upheld in this litigation.¹

ARGUMENT

I. Venue Is Improper Because North Dakota Lacks Standing

Defendants correctly challenge the district court's conclusion that North Dakota has standing and that venue is therefore proper in the District of North Dakota. But North Dakota's evidence for standing is even weaker than Defendants acknowledge.

As Defendants explain, North Dakota's sole asserted basis for standing is its strained speculation that some unknown number of the 126 DACA recipients that reside in that State, *see* R.Doc. 103, at 2 n.2, would suddenly have left the country if the U.S. government had continued to deny them access to the ACA marketplaces, as it has done since

¹ Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), *amici* state that no counsel for any party authored this brief in whole or in part and that no entity or person, aside from *amici*, their members, and their counsel, made any monetary contribution toward the preparation or submission of this brief.

those marketplaces were created. According to North Dakota, the Final Rule will cause some number of these individuals to remain in North Dakota, imposing indirect financial costs on the State. *See* R.Doc. 27, at 10 (¶¶ 52-56).

Defendants correctly explain that such “indirect effects on state revenues and state spending” are not cognizable as a foundation for Article III standing. *United States v. Texas*, 599 U.S. 670, 680 n.3 (2023). And even if they were cognizable, North Dakota failed to carry its burden of establishing that any DACA recipients would have left the State absent the Final Rule and that alleged expenditures on driver’s licenses and education are not outweighed by reductions in emergency-healthcare costs. *See* Mot.8-11.

But the issue is not just North Dakota’s legal error and failure of proof. Instead, the evidence actively *undercuts* North Dakota’s theory of standing by illustrating just how implausible it is that the Final Rule would impose costs on the State given the vanishingly small size of its population of DACA recipients.

First, as of December 11, 2024, only *one* DACA recipient in North Dakota had obtained insurance through its ACA marketplace as a result

of the Rule. R.Doc. 119-1, at 7. While there is still time for others to enroll absent a stay, only a fraction of North Dakota’s 126 DACA recipient residents are even eligible. The Final Rule estimates that 27% of DACA recipients nationally are uninsured, and only “70 percent of this group will opt to enroll in the Exchanges.” 89 Fed. Reg. at 39,425/2, 39,428/1. That works out to just 19% of DACA recipients nationally—or fewer than 24 enrollees in North Dakota. And that is assuming enrollment in North Dakota tracks CMS’s predictions nationwide. So far, it has fallen short, and North Dakota offers no evidence that will change.

Second, there is no evidence that any North Dakota enrollee would have left North Dakota without the Final Rule. Plaintiffs’ own evidence suggests they would not. A study linked in the Amended Complaint asserts that 15.5 million of what the study disparagingly calls “illegal alien[s]” were present in the United States as of 2022. *See* R.Doc. 50-1, at 13-14; *see also* R.Doc. 27, at 12 (FAC ¶ 67). Of those 15.5 million, a declaration submitted in support of Plaintiffs’ preliminary injunction motion asserts that from 2010 to 2018, just 305,000—or less than 2%—left the country voluntarily. R.Doc. 35-1, at 4. Even assuming that the same departure rate applies to DACA recipients, that would amount to

approximately *two* departures by a DACA recipient from North Dakota *per decade*. In reality, the departure rate is likely lower for DACA recipients given their deep ties to this country and the fact that DACA is only available to individuals who remained in the country continuously since 2007.

The district court failed to engage with any of this evidence. Instead, it found it sufficient that “[a]t least one” DACA recipient “eligible to enroll in a QHP will reside in North Dakota” and that healthcare benefits provide a “powerful incentive” to remain. R.Doc. 117 (“Op.”) 8-9. But whatever added incentive access to the ACA marketplace may create to remain in the United States is irrelevant if only a handful of individuals in North Dakota actually enroll, those individuals were never planning to leave, and none of them imposes any cost on the state.

II. The District Court’s Order Rests On Erroneous Statutory Interpretation

Defendants also correctly argue that they are likely to succeed on the merits of their appeal because the district court erred in its interpretation of the Final Rule, ACA, and Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (“PRWORA”). *See* Mot.12-18. Once

again, however, there are additional reasons to reject the district court’s reasoning beyond those offered by Defendants.

First, the ACA expressly extends access to the ACA marketplaces to *all* individuals that qualify as “lawfully present,” 42 U.S.C. § 18032(f)(3)—not just those that meet PRWORA’s narrower definition of “qualified aliens,” 8 U.S.C. § 1611(a), as the district court found, Op.11-14. The ACA uses a distinct, third term—“qualified individuals”—to define eligibility and says unambiguously that anyone who meets that definition “*may enroll* in any qualified health plan.” 42 U.S.C. § 18032(d)(3) (emphasis added). The definition of “qualified individual,” in turn, includes all state residents that “seek to enroll in a qualified health plan” unless they are incarcerated or “not ... lawfully present.” *Id.* § 18032(f)(1), (3).

The ACA’s express statement that “lawfully present” individuals “may enroll,” 42 U.S.C. § 18032(d)(3), (f)(3), is irreconcilable with the narrower limits on eligibility that the district court reads into PRWORA. And Defendants are correct that the ACA’s “later” and “more specific” grant of eligibility controls in the event of a conflict. Mot.16-17.

Were there any doubt, however, Congress eliminated it by *requiring* all lawfully present individuals—whether “qualified aliens” or not—to enroll in the ACA marketplaces. When the ACA was first enacted, all such individuals were subject to the Individual Mandate and faced a potentially steep tax penalty if they failed to obtain health insurance. *California v. Texas*, 593 U.S. 659, 665 (2021). The Individual Mandate applied to anyone who met the definition of “applicable individual,” 26 U.S.C. § 5000A(a), which includes any “individual” in the United States—where a citizen or not—unless one of three exceptions applies, *id.* § 5000A(d)(1). The only exception relevant here exempted anyone who “is not a citizen or national of the United States or an alien lawfully present in the United States.” *Id.* § 5000A(d)(3). No exception exempted lawfully present individuals who are not “qualified aliens.”

It is inconceivable that Congress meant to prohibit lawfully present individuals from doing what the federal statute required. Courts do not tolerate interpretations that “engende[r] absurd consequences,” *Ashley, Drew & N. Ry. Co. v. United Transp. Union*, 625 F.2d 1357, 1365 (8th Cir. 1980), and reading a statute to require “compliance with a regulatory regime” when compliance is “an impossibility” is as “absurd” as it gets,

United States v. Fontaine, 697 F.3d 221, 230 (3rd Cir. 2012). Congress therefore must have intended for ACA eligibility to extend at least as broadly as the original Individual Mandate and thus to encompass all individuals “lawfully present” in the United States, as the term is used in the ACA.

Second, *all* deferred action recipients necessarily meet the ACA’s definition of “lawfully present” because that is how the term was defined immediately before and immediately after the ACA was enacted.

Since 1996, federal regulations promulgated by the Attorney General and the Department of Homeland Security defined “lawfully present” for purposes of other federal benefits statutes to include recipients of “deferred action,” 8 C.F.R. § 103.12(a)(4)(vi) (1997); 8 C.F.R. § 1.3(a)(4)(vi). Whatever the merit of that regulation as an interpretation of those other statutes, it is dispositive as to that term’s meaning in the later-enacted ACA. “When a statutory term is ‘obviously transplanted from another legal source,’ it ‘brings the old soil with it.’” *Taggart v. Lorenzen*, 587 U.S. 554, 560 (2019). Accordingly, it is not just, as Defendants recognize, that “Congress is aware of existing law when it passes legislation.” Mot.15. Instead, established canons of interpretation go

further, mandating that when a term “ha[s] acquired a settled ... administrative interpretation,” courts must “accept the already settled meaning” when construing the phrase. *Comm’r v. Keystone Consol. Indus., Inc.*, 508 U.S. 152, 159 (1993).

Further, ever since CMS first implemented the ACA marketplaces in 2010, it has defined “lawfully present” for purposes of marketplace access to include individuals with “deferred action.” 45 C.F.R. § 152.2(4)(vi) (2010). Although CMS initially carved DACA recipients out of this definition for political reasons, it never offered a statutory basis for doing so and never wavered in its view that other deferred action recipients are lawfully present.

CMS’s longstanding view that deferred action is a form of lawful presence is thus entitled to substantial weight, even after *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024). Although *Loper Bright* eliminated judicial “deference” to agency interpretations, it nonetheless reaffirmed the centuries-old principle that “respect to Executive Branch interpretations” is “especially warranted” when the interpretation “was issued roughly contemporaneously with enactment of the statute and remained consistent over time.” 144 S. Ct. at 2257-58. CMS’s

“longstanding,” “contemporaneou[s],” and “consistent” interpretation that deferred action is a form of lawful presence for ACA purposes thus warrants “great respect,” *id.*, and, here, should be dispositive as to whether DACA recipients are entitled to purchase healthcare on the ACA marketplaces.

III. The District Court’s Injunction And Stay Order Will Cause Irreparable Harm To “Lawfully Present” Individuals

CMS rightly emphasizes that the district court’s injunction “will profoundly harm thousands of individuals who have already acted in good-faith reliance on the rule.” Mot.18. *Amici* Lopez and Kim are two such examples. Lopez completed treatment for acute promyelocytic leukemia in November 2023, but since then has needed to receive regular blood tests to monitor for a potential recurrence. Lopez Decl. ¶¶ 10-13. In reliance on the Final Rule, Lopez signed up for health insurance through Virginia’s insurance marketplace on December 9, 2024, and paid her first premium that same day. *Id.* ¶ 17. She anticipated that her insurance coverage would defray the costs of her blood tests and oncologist visits in 2025. *Id.* If the district court’s order is not stayed, however, then Lopez will need to seek out alternative health insurance or, most likely, find a way to fund her upcoming medical appointments without

insurance. *Id.* ¶ 18. Such a breakdown and uncertainty in her healthcare coverage will cause her severe anxiety and may result in significant financial hardship. *Id.* ¶¶ 18-19.

Similarly, the Final Rule provided Kim his first access to affordable healthcare. Kim Decl. ¶¶ 11-13. As a restaurant worker who has been saving to attend college, he receives base pay and tips but no employer-sponsored health insurance. *Id.* ¶ 4. Because of his lack of access to health insurance, Kim has not had a physical in three years and has never seen a dentist. *Id.* ¶ 8. Under the Final Rule, he is eligible for tax credits and discounts in buying health insurance on the marketplace, which will allow him to access consistent preventative care for the first time in his life. *Id.* ¶¶ 12-13. In reliance on the Final Rule, Kim signed up for health insurance through the Virginia Insurance Marketplace and qualified for advance premium tax credits through his plan on December 18, 2024. *Id.* ¶ 13. If the district court's injunction and stay are left in place, however, Kim will be unable to afford such preventative care, placing him at risk of more serious medical issues and correspondingly higher medical costs in the future.

The harms caused by the district court's order do not stop with

DACA recipients. *Amicus* CASA has had to divert its resources to education and legal support to assist individuals both with DACA and with temporary protected status or who are otherwise lawfully present to understand their eligibility in light of the recent rulings. Escobar Decl. ¶¶ 16-17. As a result, through the end of the Open Enrollment Period, CASA expects to divert significant staff time to prepare additional educational materials, host a series of Know Your Rights educational workshops, and conduct comprehensive eligibility screenings to help impacted individuals understand the district court’s ruling. *Id.* ¶ 16. CASA will also invest significant resources assuring those “lawfully present” individuals to whom to order does not apply—whether because they are not in the 19 States or because their status is not based on DACA—that they can apply for, purchase, and receive health coverage and tax credits in ACA marketplaces. *Id.*

CONCLUSION

The Defendants-Appellants’ motion to stay should be granted.

Date: December 19, 2024

Respectfully submitted,

/s/ Matthew S. Rozen

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CERTIFICATE OF COMPLIANCE

I certify that this document complies with the type-volume limitation set forth in FRAP 29(a)(5) and 32(a)(7)(B)(i). This document contains 2,558 words, excluding the parts exempted by FRAP 32(f). This document complies with the typeface requirements of FRAP 32(a)(5) and the type-style requirements of FRAP 32(a)(6). It has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point New Century Schoolbook font.

/s/ Matthew S. Rozen

Matthew S. Rozen

CERTIFICATE OF SERVICE

I hereby certify that on December 19, 2024, I filed the foregoing brief using the Court's CM/ECF system, which will send a notice of the filing to counsel for all parties.

/s/ Matthew S. Rozen _____

Matthew S. Rozen

**DECLARATION OF GEORGE ESCOBAR, CHIEF OF PROGRAMS AND SERVICES
FOR CASA, INC.**

I, George Escobar, upon my personal knowledge, hereby submit this declaration pursuant to 28 U.S.C. § 1746 and declare as follows:

1. I am the Chief of Programs and Services of CASA, Inc. (CASA). I have worked at CASA for fourteen years.

2. CASA is a non-profit membership organization headquartered in Langley Park, Maryland with offices in Maryland, Virginia, Pennsylvania, and Georgia.

3. Founded in 1985, CASA is the largest membership-based immigrant rights organization in the mid-Atlantic region, with more than 150,000 lifetime members from across the United States. CASA's members are predominantly noncitizens with a variety of immigration statuses.

4. CASA's mission is to create a more just society by building power and improving the quality of life in working-class Black, Latino/a/e, Afro-descendent, Indigenous, and immigrant communities. From our beginnings in a church basement, at CASA we have envisioned a future with diverse and thriving communities living free from discrimination and fear, working together with mutual respect to achieve human rights for all.

5. In furtherance of this mission, CASA offers a wide variety of social, health, job training, employment, and legal services to immigrant communities in Maryland, Washington, D.C., Virginia, Pennsylvania, and Georgia. CASA also conducts campaigns to inform members of immigrant communities of their rights and assists individuals in applying for a variety of immigration benefits before the U.S. Citizenship and Immigration Services (USCIS) and other government benefits, including accessing health insurance through the Affordable Care Act

(ACA) marketplace.

6. In my role as Chief of Programs and Services, I oversee CASA's portfolio of community-facing direct services, including its health, legal, and educational services; employment and workforce development programs; financial literacy and tax programs; and parent engagement programs. An important part of my role is to understand the needs and experiences of our members so that I can work with my staff to design appropriate interventions to address those needs. I therefore speak frequently with community members and receive feedback from my staff regarding CASA members' fears, concerns, and decisions.

7. DACA recipients are a significant portion of our membership. CASA is the number one organization in Maryland assisting DACA recipient filings. Our membership includes at least 2,745 DACA recipients.

8. CASA operates a public benefits outreach and enrollment program that assists community members to understand and enroll in various government assistance and health insurance programs. CASA also offers a multilingual hotline to answer member questions and questions from the public.

9. We also help to facilitate access to medical services. For example, in Virginia, we partner with medical providers like Kaiser and Advanced Ophthalmology to offer free medical services, host vaccine clinics, work closely with local food pantries, and provide clothing vouchers of clothing for eligible members through Goodwill's Good Samaritan program.

10. ACA enrollment is of great interest to our members in light of the financial and health security it would bring them. The number one advocacy and service provision priority for our members has always been access to healthcare. Our multilingual healthcare hotline receives about 3-4,000 calls per month, and 30-40% are regarding ACA enrollment. In the last fiscal year

(July 2023 through June 2024), we provided assistance to 2,354 individuals navigating enrolling in an ACA Qualified Health Plan, Medicaid, or CHIP coverage option.

11. We routinely hear from our members when they experience issues accessing health care, so we have long been aware of the gap in access to affordable health insurance for DACA recipients who would otherwise qualify for Qualified Health Plans in the ACA marketplace. A common scenario we see is our DACA members achieving a modest increase in income, and then suddenly losing access to healthcare coverage under programs for low-income individuals like Kaiser Permanente’s Community Health Access Program (CHAP), even though they still do not earn enough to afford private commercial insurance. This gap in coverage leads to financial instability, which is particularly harmful to DACA recipients who are finding financial and educational success and looking to improve their health and build a future. Access to the ACA marketplaces would enable these members to receive essential health services such as primary and preventative care and support their ability to lead stable and productive lives.

12. On May 8, 2024, the Centers for Medicare and Medicaid (“CMS”) issued a Final Rule which clarified that the term “lawfully present” included DACA recipients as individuals with deferred action and work authorization, which would make them eligible to access ACA marketplaces. That rule went into effect on November 1, 2024, in time for Open Enrollment.

13. The Final Rule benefits all our members who are DACA recipients because they would be able to purchase insurance through the ACA marketplaces.

14. CASA members have spent extensive time, outside of their work and family obligations, to understand their financial, health, and long-term goals and determine if they qualify for and how to enroll in ACA marketplace plans. Because the Final Rule allows for stability of health insurance without needing to rely on employer-based care, CASA members

have made financial and personal decisions based on their well-researched and well-informed expectations to enroll in affordable coverage.

15. CASA, as an organization, also invested significant resources in preparation for the implementation of the Final Rule. We were excited that the Final Rule would improve CASA members' access to healthcare. Knowing the importance of the Final Rule to our community, CASA's staff already expended significant resources to educate our community and prepare to assist them applying for coverage: explaining the complex regulatory framework to our community, counseling members to help them decide whether and how to access plans in the ACA marketplaces. We created educational materials, drafted plans to expansively enroll members, and trained and prepared staff to help enroll members. The efforts CASA undertook earlier this year to inform and prepare our community have taken extensive staff time from two staff who help members sign up for care ("navigators") – about 15% of their Full Time Equivalent (FTE) – as well as from six of our organizers.

16. Legal challenges to the implementation of the Final Rule and subsequent court rulings on the validity of those claims in the midst of the ACA Open Enrollment period this past November and December have caused significant confusion and disruption for CASA and members of the immigrant community seeking to purchase health coverage, beyond individuals with DACA in the 19 impacted states. CASA has observed that news about the preliminary injunction effectively halted implementation of the Final Rule in the 19 impacted states, including Virginia, and has had a chilling effect that discourages otherwise qualified DACA applicants in the 31 non-plaintiff states from enrolling in the ACA marketplace. CASA has additionally observed that this ruling has further discouraged other lawfully present applicants, such as those with TPS and who are otherwise eligible, to apply through the ACA marketplaces.

As a result, CASA has had to divert additional resources to education, navigation, and legal support to assist individuals with DACA, as well as those with TPS and other lawfully present individuals, to understand their eligibility in light of the recent rulings. As a result, through the end of the Open Enrollment Period, CASA expects to divert an additional 25% of a CASA attorney's staff time, in addition to the equivalent of another Full Time Navigator's staff time, to prepare additional educational materials, conduct more complicated series of Know Your Rights educational workshops, assist in conducting comprehensive eligibility screenings to both help impacted individuals understand these court rulings, and reassure those applicants to whom the ruling does not apply to apply for health coverage, if eligible.

17. To allocate sufficient resources to re-educating our population and assisting our members in seeking alternative health coverage or financial resources, CASA has to shift resources from some of our core programming—all at the expense of our overall mission and other efforts. We estimate that, over a period of four to six months, in addition to the above expenditures, CASA may now need to assign two of our Health Navigators to devote approximately 33% of their time to helping eligible DACA recipients to secure alternative healthcare options due to the uncertainty in the implementation of the Final Rule during the Open Enrollment Period that this litigation has caused. In addition, we anticipate a comparable impact to our Organizing team—during this same 4-6 month time period, we estimate that two organizers would have to devote nearly 33% of their time to educating and counseling DACA recipients and community advocates about the legal changes. Together, this equates to at least \$33,000 in staff salaries that CASA will need to spend to address the delay of the Final Rule. Time spent on this issue also places a greater burden on performing and complying with deliverables we have on other grants, which also significantly threatens our funding sources.

18. Similarly, CASA members who have made personal and financial decisions in reliance on the rule may now have to change their personal and health goals, potentially delay needed care, and experience renewed anxiety about their health, financial stability, and future. CASA members would be immediately and irreparably harmed by foregoing the benefits of the Final Rule.

19. Named Intervenors Claudia Moya Lopez and Hyun Kim are but two examples of CASA's many members who, prior to the preliminary injunction order, qualified under the Final Rule for Qualified Health Plans in the ACA marketplaces, such as Virginia's Insurance Marketplace, and who intended to apply and purchase affordable coverage. Both have significant health care needs, and for both, affordable coverage would mean financial stability to work and invest in their respective futures. Ms. Lopez was able to apply, enroll, purchase, and pay the first monthly premium for an affordable insurance plan on Virginia's Insurance Marketplace. But, as a result of the ruling on the preliminary injunction, she is concerned she will not be able to effectively use it for her regular blood tests and medical check-ups to ensure her leukemia diagnosis has not recurred. Mr. Kim, on the other hand, planned to apply, enroll, and purchase a plan on Virginia's Insurance Marketplace, but was not able to do so before the preliminary injunction issued; he was only able to enroll on December 18, 2024, after a temporary administrative stay of the preliminary injunction was entered by the Eighth Circuit Court of Appeals on December 16, 2024. His continued access to advanced premium tax credits in the health coverage plan that he enrolled in, allowing him to schedule regular health visits, also hangs in the balance with uncertainty here. These are two specific CASA members who have suffered harm because they are blocked from effectively utilizing affordable health coverage plans they enrolled in on Virginia's Insurance Marketplace due to the district court's ruling.

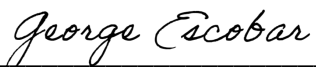
Although CASA has learned that the Eighth Circuit has temporarily stayed the court order enjoining enforcement of the Final Rule in 19 states, this temporary relief does not alleviate the confusion that the district court's order created nor does it promise lasting access for our members to affordable healthcare.

20. For CASA's members, the Final Rule represents bridging of a troubling gap in health care coverage that had kept DACA members from realizing their educational or employment dreams. Without the Final Rule, CASA's members who have DACA but who do not have coverage through an employer, for example those who own small businesses, experience direct financial injury and harm to their ability to access healthcare. If a formal stay of the preliminary injunction is entered, the appeals court reverses the district court's preliminary injunction decision or otherwise remands to the district court to transfer or dismiss the case, CASA's members would not be arbitrarily excluded from the ACA marketplace as they are now in Virginia, and CASA members who remain eligible in other states would not be chilled from enrolling, allowing them to live healthy, financially stable lives, and thrive.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Dated: December 18, 2024

Respectfully submitted,



George Escobar

DECLARATION OF HYUN KIM

I, Hyun Kim, upon my personal knowledge, hereby submit this declaration pursuant to 28 U.S.C. § 1746 and declare as follows:

1. I was born in 1996 in South Korea and currently live in Annandale, Virginia.
2. My father came to the United States legally in 1998 on a work visa. In 1999, at the age of three, my mother brought me to the United States. We initially came on tourist visas and then stayed in the United States to be with my father.
3. I grew up in Virginia from the age of three. My parents worked to support us, and I went to school in Virginia. The United States is the only place I have ever called home, and in fact, I did not even know that I was undocumented until I was applying for jobs in high school. I have no memory of my first years in South Korea, do not speak Korean well, and could not imagine starting over in South Korea.
4. I graduated high school in 2014. I want to attend college one day and am currently working full-time as a server to support myself and save up money for school. Like most restaurant jobs, it pays base pay and tips, but provides no benefits like health insurance. I work about 45 hours a week, which allows me to rent a room, make car payments, and pay for food and bills. I have filed taxes every year that I have been eligible, and I intend to do so this year and in future years.
5. In my spare time, I am active in my community. I volunteer with Hamkae Center, a grassroots non-profit organization that provides community services, youth leadership opportunities, and advocacy on behalf of Asian Americans in Virginia. My volunteering has included everything from participation in city litter cleanups to canvassing and phone banks. I am also a member of CASA, Inc.

6. I applied and was approved for DACA and work authorization from U.S. Citizenship and Immigration Services (USCIS) on or about 2017. My DACA status remains current and has never lapsed.

7. With my DACA status, I hope to continue to live a happy and productive life in this country, the only home I have ever known. I hope to one day get my college education, start a family, and own my own home. I once worked in marketing, so I would like to seek a degree in marketing.

8. I have a lot of anxiety about not having affordable access to medical care. Without healthcare, if I go to a doctor, I have to pay out-of-pocket, which costs approximately \$150-\$200 per appointment. Because of that I have not had a physical in three years and have never been able to see a dentist because these are luxuries I cannot afford. Even though I have a family history of diabetes, I have not been able to get myself tested. I am concerned that I could develop diabetes and not even know because I've not seen the doctor for so long. If I were to develop diabetes or another medical condition, I worry that I would not be able to afford treatment.

9. I am afraid to call 911 because of the cost of medical care. Even if I had a medical emergency, I would only seek treatment if it was really serious because of the cost of care. If something were to happen to me tomorrow and I became seriously ill or injured, I don't know if my savings would be able to cover it. Especially if I couldn't work as a server, I don't know how I would pay for it.

10. I have looked previously at options for health insurance, but an individual policy through a commercial insurer is totally outside my budget.

11. I first heard about the Final Rule on September 4, 2024. As a DACA recipient, I was very excited because, to me, access to health insurance and health care would mean that I could finally afford to start taking care of my health.

12. Based on my current income, I would be eligible to enroll in the ACA marketplace and Virginia's Insurance Marketplace health plans under the Final Rule. I do not have any dependents, and my Adjusted Gross Income was approximately \$31,500 in 2022 and \$29,700 in 2023. I expect to make a similar amount in 2024 and 2025.

13. With the help from the Hamkae Center, I enrolled on a qualified health insurance plan through the ACA and Virginia's Insurance Marketplace on December 18, 2024, because the Eighth Circuit entered a temporary stay of the district court's injunction on December 16, 2024. My first premium payment was \$0 because I qualified for Price Tax Credits on the Virginia Insurance Marketplace. I tried to enroll in the ACA marketplace and Virginia's Insurance Marketplace health plans earlier this month. I had previously scheduled an appointment with the Hamkae Center to go over my options on December 11, 2024. However, prior to the appointment, staff from Hamkae Center duly informed me that a court had entered an order that would prohibit DACA recipients like me from enrolling in the Virginia Insurance Marketplace after December 9, 2024, so I could not enroll on December 11, 2024.

14. I am relying on this coverage to see a doctor after so many years. If my plan is cancelled, I would not be able to start seeking routine medical care, like annual physician and dentist visits, to hopefully prevent medical problems, including diabetes, to the extent I may be at risk, in the future. I would also live in constant fear that I will not be able to afford medical treatment when I need it, or that I will have to use my college savings to pay for medical

treatment. Stability of health care expenses directly impacts my financial planning, including my goals to go to college, own my own home, and start a family.

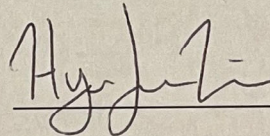
15. If the implementation of the Final Rule is blocked and my enrollment is cancelled, I will be directly harmed because my access to important health insurance and healthcare will be delayed. Every day that I am unable to afford insurance, I delay seeking routine medical care, increase my risk of needing to make an expensive treatment to the emergency room, and experience anxiety about my health and future.

16. Even without the Final Rule and access to the ACA and Virginia's Insurance Marketplace, I plan to continue living in Virginia because I have made Virginia my home for three decades. But if I had access to insurance through the ACA and Virginia's Insurance Marketplace, I could live a more happy, healthy, financially stable, and productive life and hopefully get my college degree.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Dated: December 18, 2024

Respectfully submitted,



Hyun Kim

DECLARATION OF CLAUDIA MOYA LOPEZ

I, Claudia Moya Lopez, upon my personal knowledge, hereby submit this declaration pursuant to 28 U.S.C. § 1746 and declare as follows:

1. I was born in 1992 in Ahuachapan, El Salvador and currently live in Chesterfield, Virginia.

2. In 2003, at the age of 11, my mother brought me to the United States because she was being threatened. I was too young at the time to understand why she brought me to this country or why I could not go back to see my grandmother and other family back in El Salvador.

3. But I grew up in Virginia and soon began to think of Virginia as my home. My mom supported us, and I went to school. I only learned that I was undocumented when I was selected to go on a school trip abroad when I was 14. My mother explained that I could not travel due to my status. I was crushed, as I'd always dreamed of seeing the world, but that seemed impossible because of my status.

4. After high school, I could not afford to go to college but wanted to better educate myself and improve my circumstances. I initially completed a medical assistant program but found that I could be more successful as a small business owner.

5. Today, I continue to make my home in Virginia and own a roofing company here. I have filed taxes every year that I have been eligible, and I intend to do so this year and in future years. In my spare time, I volunteer at my church by teaching bible programs and helping to clean.

6. I am also married and have two wonderful children who were born here in Virginia. My mom and siblings, all of whom are permanent residents or US citizens today, also continue to live in Virginia.

7. I am a member of CASA Virginia.

8. I applied for Deferred Action for Childhood Arrivals (“DACA”) with U.S. Citizenship and Immigration Services (USCIS) in 2015, was approved and received work authorization right away, as USCIS found me to be deserving of deferred action. My DACA status and work authorization are current and have never lapsed.

9. As a small businessowner, I do not have access to employer-based health insurance and cannot currently afford to purchase coverage for myself. When I started my own roofing company, I could not cover my expenses due to the cost of starting the business. I am more established now, but private insurance is still out of reach because of its extreme cost.

10. Access to health care is especially important to me because, last year, I was diagnosed with leukemia. I was not feeling well, so I reached out to an organization that provides safety net care for uninsured or underinsured people. I was told I was lucky to get an appointment, as they were very busy. I had a check-up screening, and the doctor who saw me drew my blood and the next morning told me to go to my nearest emergency room. At the hospital, I was diagnosed with a rare form of leukemia - acute promyelocytic leukemia (APL). I was shocked. I had to follow-up at another hospital with many specialists and ultimately had to be hospitalized for 5 weeks to get the treatments I needed, immediately.

11. Throughout this time, I was very anxious about not only my health, but my ability to pay. My emergency room stay was covered by emergency Medicaid, but my cancer treatment was not. The hospital staff looked into options based on my income, but I was not eligible for many programs because my savings were too high to qualify for low-income care. Because I owned my own business, the medical stay limited my ability to work and build up my savings.

12. In the end, I was very fortunate that the hospital decided to cover the cost of my

cancer treatment itself. However, cost remains a concern. There is still a debt listed on my bill that is larger than my income and nearly half of my savings.

13. I finished treatment in November 2023. My biopsy thankfully came back clear, so I am now cancer-free. But I need regular blood tests to monitor for potential recurrence. I am very grateful that the hospital offered to provide me with one year of free check-ups for 2024, but I still don't know how I will afford the medical care I need after that.

14. My lack of access to health insurance has been a source of constant worry. When I was going through treatment for my leukemia, I felt like I was at the mercy of whoever would help me. My husband was willing to do anything to help me get access to treatment, even selling the house that my family lives in. We were lucky that we did not have to do that this time, but I always worry about the next medical incident.

15. Having access to affordable care would give me and my family so much more stability. It is very difficult to prepare for possible medical expenses out-of-pocket, especially as a small business owner. I dream of going to college, saving for my children's college education, taking my children to visit my home country, and maybe even purchasing a house in my home country. But instead of putting money towards my future and my family, I am always saving up for health expenses and unexpected medical emergencies. If my cancer returns, I am not sure how I would be able to afford treatment, especially if I am too ill to operate my business.

16. When I heard about the Final Rule, I was so relieved. I have been waiting for it to come into effect so that I can immediately apply. Based on my current income, I would qualify for the ACA marketplace health plans in Virginia's Insurance Marketplace under the Final Rule. My Adjusted Net Income was \$45,000 in 2023. I expect to make \$55,000-\$60,000 in 2024.

17. I worked with a CASA navigator to explore my options, and I enrolled on a

qualified health insurance plan through the ACA and Virginia's Insurance Marketplace on December 9, 2024. On the same day, I made my first premium payment of \$84.49. For me, this enrollment is life changing. I am relying on this coverage for the blood tests I will need over the next several years to monitor that my cancer stays in remission. In 2025, I will need blood tests and oncologist visits to make sure my cancer isn't back. In addition, doctors always tell me that if I notice any bruises or fatigue, I need to rush to see them. I would be able to live without constant fear of needing medical treatment I can't afford or needing to take on significant debt if my cancer returns or the doctors find any other health issues. I am also relying on this coverage for primary care visits to ensure I am in good overall health.

18. I learned about this lawsuit challenging the rule, and I wanted to share my experience and the injury not having access to enroll in the ACA and Virginia's Insurance Marketplace causes in my life. If the final rule is blocked and my enrollment is cancelled, I will be directly harmed as I am relying on my enrollment to keep my cancer in remission and go to any doctor's appointments I may need. Over the years that I have been unable to afford insurance, I have been concerned about how I will pay for the medical care I need to stay alive and be around for my kids. If the Final Rule is blocked, and my enrollment is cancelled, it will cause me significant anxiety about my health and my family's future.

19. Even without the Final Rule and access to the ACA and Virginia's Insurance Marketplace, I plan to continue living in Virginia because this is the only home that I know. Everything I know is here—my husband, children, mom, siblings, home, and business. But if I had access to insurance through the ACA and Virginia's Insurance Marketplace, I could live a more happy, healthy, financially stable, and productive life, saving for my future career goals and my children's education.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Dated: December 17, 2024

Respectfully submitted,



Claudia Moya Lopez