

No. 22-179

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IN THE  
**Supreme Court of the United States**

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UNITED STATES OF AMERICA,  
*Petitioner,*

*v.*

HELAMAN HANSEN,  
*Respondent.*

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ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE NINTH CIRCUIT

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BRIEF OF ASIAN AMERICANS ADVANCING  
JUSTICE | AAJC AND 45 COMMUNITY-BASED,  
ADVOCACY, AND SOCIAL SERVICES  
ORGANIZATIONS AS *AMICI CURIAE* IN  
SUPPORT OF RESPONDENT

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**STATEMENT OF INTEREST OF *AMICI*  
*CURIAE***

*Amici curiae* are community-based, advocacy, and social services organizations that work with and on behalf of the U.S. immigrant community. The constitutional questions addressed in this appeal directly impact *amici* and the communities they serve. *Amici* respectfully submit this brief to demonstrate the wide scope and significance of the particular speech and conduct that 8 U.S.C. § 1324(a)(1)(A)(iv) (“Subsection (iv)”) will chill, and to provide concrete examples of the legitimate work that Subsection (iv) jeopardizes due to the statute’s vagueness and overbreadth.

Asian American Advancing Justice | AAJC (“Advancing Justice | AAJC”) is a national nonprofit organization based in Washington, D.C., and founded in 1991. Advancing Justice | AAJC works to advance and protect civil and human rights for Asian Americans and to promote an equitable society for all. Advancing Justice | AAJC is a leading expert on issues of importance to the Asian American community, including immigration and immigrants’ rights. Advancing Justice | AAJC works to promote justice and bring national and local constituencies together through community outreach, advocacy, and

litigation. Additional amici curiae are listed in the Appendix of this brief.<sup>1</sup>

### SUMMARY OF ARGUMENT

*Amici* submit this brief to provide specific examples of protected speech that are swept into the scope of the encouragement provision of Subsection (iv) and the advocacy and outreach efforts targeting the U.S. immigrant community that the statute threatens to chill. The wide reach of “encourage and induce” gives the government the authority to prosecute expression guaranteed by the Constitution. The vague statute also allows the government wide discretion to enforce the criminal prohibition in an arbitrary and discriminatory fashion against individuals and organizations providing aid and advocacy for undocumented individuals. The overbreadth and vagueness problems each warrant invalidating Subsection (iv).

The government attempts to skirt the overbreadth defect by assuring that Subsection (iv) is not meant to criminalize “abstract or generalized advocacy of illegality . . . .” Pet’r Br. at 32. But downplaying potential prosecution (despite its own position that Subsection (iv) can be used to prosecute immigration attorneys who give legal advice to their clients, *United States v. Henderson*, 857 F. Supp. 2d 191, 203-4 (D. Mass. 2012), fails to alleviate the

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<sup>1</sup> *Amici* state that this brief was not authored, in whole or in part, by counsel to a party, and that no monetary contribution to the preparation or submission of this brief was made by any person or entity other than *amici* and their counsel.

statute's overbreadth, as illustrated by the examples presented here.

The dangers Subsection (iv) poses to protected speech and legitimate work are real and present, not just to advocates and service organizations, but to the communities they serve. The routine work and activities referenced here—in the form of Know Your Rights materials, the providing of community resources and advocacy, and policy advocacy—come from organizations willing to identify themselves based on the understanding that their service and advocacy are protected. Each offers an illustration of legitimate speech and work that may be curtailed if Subsection (iv) is not invalidated. The fear of prosecution under Subsection (iv) will chill and paralyze systems that offer help to the most vulnerable members of our communities.

## ARGUMENT

### I. Subsection (IV) Could Criminalize Lawful Conduct.

Subsection (iv) permits felony prosecution of any individual who “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.” 8 U.S.C. § 1324(a)(1)(A)(iv). Subsection (iv) provides no reliable way to determine what speech or conduct is punishable as “encouragement or inducement.” See *United States v. Williams*, 553 U.S. 285, 306 (2008) (“What renders a statute vague is not the possibility that it will sometimes be difficult to determine whether the incriminating fact it establishes has been

proved; but rather the indeterminacy of precisely what that fact is.”). Nothing in Subsection (iv) serves to narrow the broad, ordinary meanings of “encourage and induce.” See *United States v. Sineneng-Smith*, 910 F.3d 461, 474-75 (9th Cir. 2018), *vacated and remanded sub nom United States v. Sineneng-Smith*, 206 L. Ed. 2d 866 (2020).

Yet the government urges that “encourage[]” and “induce[]” cannot be divorced from facilitation or solicitation of a criminal act, and thus any risk that Subsection (iv) could criminalize lawful speech is hypothetical. Pet’r Br. at 26. But as the government has previously recognized, it is not a crime for an undocumented person to remain in the United States. *United States v. Costello*, 666 F.3d 1040, 1047 (7th Cir. 2012); Brief for the United States at 32, *Arizona v. United States*, No. 11–182 (S.Ct. Mar. 2012) (citations omitted). And no such “facilitation or solicitation of criminal conduct” limit exists in the statute’s plain text. The Government’s other arguments further blur its claimed limits on Subsection (iv). Though the Government likens “encourage” and “induce” to “aid” and “abet”, it later argues that even encouraging or inducing even civil infractions is sanctionable under Subsection (iv). Compare Pet’r Br. at 21 with Pet’r Br. at 42-44.

Take *Henderson*. The government admits that, in that case, its own prosecutor suggested an immigration lawyer’s legal advice to a client could violate Subsection (iv), but nonetheless argues that *Henderson*’s facts did not concern a lawyer’s advice to a client and thus does not demonstrate a realistic danger of prosecution. Pet’r Br. at 46. But the

government's framing of *Henderson* is misleading. There, a Department of Homeland Security ("DHS") official advised her housekeeper "to remain in the United States while her status was disputed." 857 F. Supp. 2d at 208. There is no distinction in *Henderson* between a lawyer's advice and the DHS official's, which is why, at the government's urging, the court found that "an unadorned plain meaning reading of the words 'encourages or induces' ... could support the conclusion that" analogous legal advice is within Subsection (vi)'s scope. *Id.* at 209.

*Henderson* also shows that charities and churches are not immune from Subsection (iv). There, the government explained that the violation was a government official's employment of a housekeeper, which presented an undocumented person with a prospective economic benefit, which caused her to stay when she otherwise might not have. *Id.* at 208. As Justice Kavanaugh recognized during oral argument in *United States v. Sineneng-Smith*, the same could be said for charitable causes providing food to undocumented people, let alone shelter or referral to legal services. Transcript of Oral Argument at 7:24-9:7, 206 L.Ed.2d 866 (2020) (No. 19-67), [https://www.supremecourt.gov/oral\\_arguments/argument\\_transcripts/2019/19-67\\_k53m.pdf](https://www.supremecourt.gov/oral_arguments/argument_transcripts/2019/19-67_k53m.pdf); *see, e.g., infra* II.B.1 & 3 (ASIA, RAICES, MinKwon).

Customs and Border Protection's ("CBP") practices provide another example of Subsection (iv)'s impermissible sweep. Two years ago, the CBP was caught compiling information on lawyers, journalists, activists, and clergy with alleged connections to an expected migrant caravan that included photos, full

names, dates of birth. *See* Tom Jones, Mari Payton, & Bill Feather, Source: Leaked Documents Show the U.S. Government Tracking Journalists and Immigration Advocates Through a Secret Database, NBC 7 (Mar. 6, 2019, updated Jan. 10, 2020), <https://www.nbcsandiego.com/news/local/Source-Leaked-Documents-Show-the-US-Government-Tracking-Journalists-and-Advocates-Through-a-Secret-Database-506783231.html>. When its “watchlist” leaked, CBP explained it “was ... investigating possible violations under 8 U.S. Code § 1324, which pertains to any person who encourages or induces an alien to enter the United States, knowing or in reckless disregard that they are doing so in violation of law.” *Id.*

Or consider the Executive Branch’s Deferred Action for Early Childhood Arrivals (“DACA”) program, which this Court will no doubt again scrutinize upon resolution of *United States v. Texas*, No. 22-58. Subsection (iv) will likely chill protected speech aimed at DACA-protected individuals if their collective status does not remain protected, simply because their status may become unlawful. For example, if DACA is struck down or otherwise limited, community organizations that assist any formerly-protected high school students with college applications may be at risk of prosecution under Subsection (iv) if they tell these young people to remain in the United States while a legislative solution is sought. Just like the housekeeper’s employment in *Henderson*, such assistance would arguably “encourage” students to continue their education in the United States, which would require

continued residence in the United States in violation of law.

Additionally, the government has not identified conduct it can prosecute by limiting Subsection (iv) to facilitation or solicitation of criminal acts that it cannot already prosecute under other statutes. As in this case, where Appellee was charged under the mail fraud statute, the government can already punish any wrongdoing under Sections 1 through 3, under 18 U.S.C. § 1546 (the document fraud statute), or under 18 U.S.C. §§ 1341 and 1343 (the mail and wire fraud statutes). Similarly, the government has not explained how its narrowed interpretation would uniquely deter wrongdoing.

## **II. Subsection (IV) Threatens the Legitimate Work of Community-Based, Advocacy and Social Services Organizations.**

The dangers of Subsection (iv)'s overbreadth are not hypothetical. The work of organizations like *amici* appeals broadly to individuals, regardless of immigration status, and serves naturalized citizens, Lawful Permanent Residents (i.e., “green card” holders), visa holders, and undocumented individuals. *Amicis'* work falls into three relevant categories: (A) distribution of Know Your Rights (“KYR”) materials, (B) community and individualized outreach to unauthorized immigrants, and (C) policy advocacy impacting and on behalf of unauthorized immigrants. All of these activities directly benefit undocumented individuals and could be deemed to “encourage” their continued presence in the United States.

### **A. “Know Your Rights” Materials**

A key component of many organizations’ efforts is disseminating KYR materials. These materials are shared through workshops, attorneys, leaflets, or social media and are often offered in audiences’ first languages. KYR materials provide essential information for immigrants to effectively assert their rights and protect their families when confronted by immigration enforcement. KYR workshop leaders also help communities stay informed by discussing developments in immigration policies.

For example, Advancing Justice-Atlanta, Advancing Justice-Chicago, MinKwon Center, and OneAmerica conduct KYR workshops teaching participants how to identify U.S. Immigration and Customs Enforcement (“ICE”) agents, how to tell the difference between an ICE warrant and a judicial warrant, and what to do or not to do if they encounter ICE at home, in a car, at work, or in public. Similarly, RAICES has conducted KYR seminars to curb the impact of detentions and to provide information regarding the post-release process. To prepare for the possibility of detention, RAICES has also conducted workshops for families outlining the documents that must be collected if a loved one is detained. RAICES also hosts legal clinics and “immigration 101” sessions for students, including DACA recipients and other undocumented youth.

Because these materials help families in their efforts to remain in the United States, this activity and speech may fall under the broad sweep of Subsection (iv)’s encouragement provision, putting community-based, advocacy, and social services



organizations at risk of prosecution for distributing these KYR materials, which are protected speech.

## **B. Community Resources and Advocacy**

Many community-based, advocacy and social services organizations serve immigrant communities in ways that touch the lives of individual undocumented immigrants, which can be unconstrued as “encouraging” an undocumented immigrant to remain in the country. The following descriptions of organizations and their work provide a glimpse into the vast array of activities that Subsection (iv) could sweep up.

### **1. ASIA**

ASIA is the largest health and social services agency in Ohio focused on empowering Asian Americans and Pacific Islanders, immigrants, and refugees. ASIA helps newly-arrived, low-income, Asian American families access crucial health and social services in their primary language, and ASIA’s International Community Health Center provides quality healthcare to individuals in Cleveland and Akron regardless of the patient’s ability to pay.

Subsection (iv) has already had a chilling effect on the health care services offered by ASIA. A family went to ASIA’s School Based Health Clinic seeking the vaccinations necessary for their undocumented child to enroll in public school. *See Plyler v. Doe*, 475 U.S. 202 (1982) (holding that states cannot deny access to a free public education on the basis of immigration status). However, a medical provider at the clinic was concerned about their exposure under Subsection (iv)

because of the family's immigration status. Acknowledging that legal culpability would be the greater detriment to ASIA's ability to serve the community, ASIA referred the family to a private pharmacy that administered the vaccines without discount. Fortunately, the family was spared this cost by the donation of an anonymous good Samaritan, whose generosity may have now exposed them to prosecution under Subsection (iv).

ASIA also provides free legal representation and support to survivors of domestic violence and sexual assault through their Domestic Violence/Sexual Assault Program. The program offers safety planning, housing assistance, counseling, and support groups in addition to legal services, such as filing for protective orders and U-visas. Many clients come from mixed-status families. For example, one client recently asked ASIA what would happen to her U.S.-citizen children if she were deported. U.S.-citizen children of deportees often end up in foster care, so one of ASIA's legal services attorneys helped the client prepare a power of attorney, allowing her to designate a guardian for her children in the event of detention or deportation. The guardian would then arrange to have the children reunited with their mother in the country to which she was deported. The attorney expressed concern that helping the client prepare such a contingency plan could be "encouraging" the client to remain in the United States under Subsection (iv).

The Domestic Violence/Sexual Assault Program serves all individuals regardless of status, but providing appropriate service often requires

knowing the legal status of a client—something staff fear will be construed as “knowing” that the client’s continued residence will be unlawful. Knowing pertinent facts about their clients’ cases puts these attorneys at risk of prosecution, despite their ethical and professional obligations to inform clients of the advantages and consequences of certain strategic decisions. This catch-22 exemplifies the type of ethical bind that has already led to a chilling of ASIA’s legal services.

## 2. CPC

CPC is the largest Asian American social services organization in the nation, serving over 80,000 individuals at sites throughout New York City. CPC offers over fifty programs to advance and empower the Asian American community, including after-school programs, adult education, literacy initiatives, family support, and senior services.

Unless assisting with immigration issues, such as naturalization applications, CPC does not inquire about any program participant’s immigration status. Instead, they post flyers notifying community members that CPC’s program sites are safe spaces where immigration enforcement officers are not invited. CPC is aware that many of the individuals that rely on their services are likely undocumented. If CPC has reason to suspect an individual’s residence is unlawful, CPC could be deemed to be providing encouragement with reckless disregard for the status of those they help.

Several of CPC’s programs are financially supported via city and state funding, such that this

funding could be construed as a financial benefit under 8 U.S.C. § 1324(a)(1)(B)(i), which CPC receives for engaging in activities within the sweep of Subsection (iv). The programs that are supported by or directly contracted through New York City or state are contingent upon requirements that certain programs incorporate civics education and that CPC connect its participants to other services, such as immigration legal services. CPC fulfills its obligations to the city and state by integrating constitutional rights into its curriculum, providing translated KYR materials, and holding workshops on eligibility and access to health, family, housing, immigration, and other support services. CPC also provides wallet-sized KYR cards and pamphlets as part of its contract deliverables and makes them widely available so individuals can obtain them discretely if they fear being identified as undocumented. Similarly, CPC's state-funded Office for New Americans ("ONA") programs have requirements to provide community education workshops, covering topics such as financial empowerment and literacy and provide information on available pathways to lawful or protected status (e.g., the Violence Against Women's Act ("VAWA") petitions, U-visas, and DACA). This same ONA program also requires CPC to post visible signage, designating each ONA site as a place to ask for services that are available to immigrants and New Americans. As a state-designated ONA Opportunity Center, CPC is often contacted by elected officials to facilitate public KYR trainings. CPC also has a policy arm, advocating for essential benefits for New York's immigrant community, regardless of immigration status.

Through its programs, CPC identifies emerging issues and ways to support the community, including those who lack status. For example, CPC recently assisted local high school students with their college applications. During the application process, some parents disclosed to CPC that their children did not have lawful status. Many of the students were not even aware that they lacked legal documentation. In response, CPC brought on additional staff and made referrals to organizations that could provide legal aid and social services to these students that were suddenly in need. CPC was also recently awarded a new youth services contract which proposed engaging young people in non-partisan advocacy and civic engagement activities that build civic literacy and participation. By design, these programs are youth-driven, and many students have expressed an interest in advocating for immigrant rights, language access, and preserving cultural heritage.

### **3. RAICES**

RAICES is a nonprofit organization headquartered in San Antonio, Texas that provides free and low-cost legal services to underserved immigrants, asylum seekers, and refugees, including children and families. With legal services, social programs, bond and financial assistance, and an advocacy team focused on changing the narrative around immigration in this country, RAICES is operating on the national frontlines of the fight to defend the rights of immigrants and refugees and to advocate for liberty and justice.

RAICES' projects provide support to immigrants, many of whom are undocumented, and

this support could easily be construed as “encouraging” an undocumented immigrant to remain in the U.S. For example, RAICES’s Detained Children’s Program provides legal services to unaccompanied minors in 13 short-term and long-term shelters, as well as select emergency facilities, operated by the Office of Refugee Resettlement throughout Texas and advocates for their release. RAICES also provides free legal services to detained asylum seekers and other detained noncitizens through its Pre-Removal and Removal Services Programs and attempts to obtain affirmative relief for many of its clients through its Affirmative Services Unit. Regardless of the status of a client’s legal case, RAICES advocates for policy changes to reduce detentions and end the use of the expedited removal process.

Similarly, one of the key issues RAICES addresses is the post-release transition and resettlement process, which again, may “encourage” unauthorized immigrants to remain in the United States by providing a fundamental human need. RAICES’s Social Program provides Case Management services which assist clients by referring them to community resources, providing them with education materials, and assigning them a Case Manager who collaborates with the client to create a service plan outlining the client’s needs and potential solutions. Case Management also provides limited emergency financial assistance to ensure basic client needs—including housing, transportation, and food security—are met. The end goal is to provide direct services to the client while connecting them to local community resources for a successful relocation in the U.S. To

that end, the Program in the past has also provided a national hotline (called the Canopy hotline), which people in the community can call if they would like to be connected to local community resources in their area. The majority of callers are either undocumented or awaiting a decision on their immigration case. RAICES is considering restarting the hotline in the coming year.

For those still in detention, RAICES pays bonds to support detainees and their families. Since 2018, RAICES has secured the release of over 1900 individuals through bond payments totaling over \$19.2 million. After their release, RAICES remains in contact with these individuals and their families to ensure continued access to necessary resources and services. In practice, detention is used as a purported deterrent against immigrants coming to and staying in the United States. As such, by providing bonds and services, RAICES' actions could be construed as "encourag[ing]" those who seek to build a life here, regardless of status.

#### **4. Farmworker Justice**

Farmworker Justice is a nonprofit organization that empowers migrant and seasonal farmworkers by improving living and working conditions, assisting with the immigration process, and ensuring health and occupational safety. Today there are an estimated 2.4 million farmworkers in the United States, the vast majority of whom are immigrants. Of that majority, 44% lack authorized immigration status under current U.S. law, though many believe the figure is higher. See U.S. Department of Labor, *Findings from the National Agricultural Workers Survey (NAWS) 2019-2020*,

published January 2022, available at <https://www.dol.gov/sites/dolgov/files/ETA/news/pdfs/NAWS%20Research%20Report%2016.pdf>. Farmworker Justice works with immigrant farmworker communities to provide the tools and knowledge necessary to improve working conditions, wages, and healthcare.

As part of their broad efforts to raise awareness of public resources, Farmworker Justice places special emphasis on health care, sharing information about health insurance, occupational health and safety, and health education so that farmworkers and their families have access to critical information, such as how to prevent and manage diabetes or protect themselves from pesticide exposure. Because nearly half of the farmworkers are unauthorized, Farmworker Justice's work necessarily involves providing advice and information to such individuals.

Farmworker Justice is also consistently called on by farmworker organizations to explain the current state of immigration law, including the rights of undocumented farmworkers under state and federal law. Providing such information could easily be considered "aiding and abetting" the continued presence of undocumented farmworkers.

## **5. Advancing Justice- Chicago and Advancing Justice- Atlanta**

Advancing Justice-Chicago and Advancing Justice-Atlanta are both community-based organizations that work with and advocate for the immigrant community. Advancing Justice-Chicago's



mission is to build power through collective advocacy and organizing to achieve racial equality. Advancing Justice-Atlanta's mission is to protect and promote the civil and human rights of Asian Americans, Native Hawaiians, and Pacific Islanders in Georgia and the Southeast through policy advocacy, legal services, organizing, civic engagement, and impact litigation.

Advancing Justice-Chicago empowers immigrant communities through grassroots efforts. When ICE raids were announced in July 2019, Advancing Justice-Chicago mobilized staff and volunteers to canvass in Asian American neighborhoods to raise awareness. Canvassers compiled relevant KYR materials and worked with a partner organization to translate the materials before going door-to-door to distribute resources to impacted individuals. Advancing Justice-Chicago also held a press conference outside of the local U.S. Citizenship and Immigration Services office, responded to media requests, and held a rally to protest the raids. The group's organizing has now evolved to focus on issue campaigns and legislative advocacy for immigrant and refugee rights and services at the local, state, and federal levels, including the fight for citizenship for all as well as immigrant services in the state of Illinois.

Similarly, Advancing Justice-Atlanta mobilizes community members, advocates, and allies to educate communities about the impacts of immigration enforcement, not only on undocumented immigrants, but also on their families and the community as a whole. Advancing Justice-Atlanta provides services to undocumented individuals and ensures that their offices are safe zones where ICE enforcement agents

are not invited, so that these individuals and their families can obtain services. By creating a safe and welcoming environment, Advancing Justice – Atlanta works to reduce the stigma associated with being undocumented so that immigrants regardless of their status can participate more fully in their communities and come together to build a strong base of advocates.

## 6. MN8

MN8's mission is to keep Southeast Asian communities together through community organizing, advocacy, direct support, and leadership development. MN8 was born out of eight families' fight to stay together. These families were Cambodian children born in a refugee camp in Thailand. After serving their time, they recommitted their lives to the community and had full time jobs and careers. But, in August of 2016, when they went for a biannual check-in with Immigration and Customs Enforcement, they were detained.

This group of refugees became known as the Minnesota 8 ("MN8"). When the MN8 received word that the government sought to deport them, families put their work on hold and devoted all of their energy to form the #ReleaseMN8 campaign to fight for their release.

Families of the MN8 spent their time mobilizing the local Cambodian community, organizing rallies, spreading awareness online, and urging anyone to call their Senators and plead for their intervention. The families also started a petition for their release, and the group connected with attorneys and organizations that assist with

deportation proceedings and immigrants' rights advocacy. All of these activities, otherwise protected by the First Amendment, could be deemed to "encourage" the MN8 to remain in the United States unlawfully.

Today, MN8 fights for the rights of immigrants—regardless of status—who are trying to remain in the United States. MN8 provides a detailed toolkit that outlines how families of detainees can engage in activism and fight in court to keep their families together. MN8 still works with families to connect them with legal aid, provides instructions on strong letters of support, and meets with legislators to advocate for change as well as cases of individuals—all activities that would be swept into Subsection (iv).

## 7. AAI

AAI provides resources to over 200 Arab American community-based organizations, service providers, and professional organizations across the country. AAI shares updates on issues affecting the Arab American community, such as immigration policies. Partner organizations rely on the accuracy of AAI's information and resources to provide informed advice to the individuals and communities they serve. AAI also issues alerts of suspected ICE raids, translates KYR and alert verifications into Arabic, and encourages broad dissemination of the materials for the greatest possible effect.

While AAI does not legally represent undocumented individuals, the chilling effect of Subsection (iv) will have a sweeping, destabilizing effect on the resource network that serves these

individuals. Many organizations that provide direct resources to immigrant communities look to AAI for legal compliance information. To properly advise partner organizations, AAI must be able to understand and communicate the impact that laws and policies may have on organizations and communities. The overbreadth and vagueness of Subsection (iv) frustrates this goal.

For example, many of AAI's partner organizations work with TPS holders from Yemen, Syria, and other countries. While TPS provides authorized status to remain in the United States, the authorization periods for Yemen and Syria are set to expire in 2024. U.S. Citizenship & Immigration Servs., *Temporary Protected Status Designated Country: Yemen*, <https://www.uscis.gov/humanitarian/temporary-protected-status/yemen/temporary-protected-status-designated-country-yemen> (last visited Feb. 18, 2023); U.S. Citizenship & Immigration Servs., *Temporary Protected Status Designated Country: Syria*, <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-syria> (last visited Feb. 18, 2023). If TPS is not extended, many service organizations will look to AAI for an accurate assessment of the law as well as the risks and safety concerns TPS holders will face if deported, compared to the risk of remaining in the United States unlawfully. Under the vague and overbroad language of Subsection (iv), sharing information to allow individuals to make informed decisions could be considered "encouraging or inducing" TPS holders to remain here. AAI's role as a trusted voice will be compromised, and the resources

made available to immigrants and their communities will wither.

## 8. OneAmerica

OneAmerica is the largest immigrant and refugee advocacy organization in Washington State. OneAmerica works to build broad-based movements grounded in grassroots community organizing to advocate for immigrant rights, education, economic justice, voting rights, and immigrant inclusion.

In addition to policy work, highlighted, *infra* § II.C, OneAmerica's organizers work with local high schools and community colleges, offering KYR seminars tailored to meet the needs of students, many of whom are DACA recipients or TPS holders. For those outside the education system, OneAmerica's English Innovations program provides English literacy instruction and addresses useful topics like job applications, civic engagement, and parenting at school and at home. OneAmerica also holds leadership trainings that are open to all community members regardless of their immigration status and brings people together to identify local or state-wide issues.

## 9. NAKASEC

Founded in 1994, NAKASEC strives to organize Korean and Asian Americans to achieve social, economic, and racial justice. The group leads grassroots efforts to advocate for the expansion of benefits to Asian American immigrant communities, including those who are undocumented. NAKASEC also operates an immigration hotline in English and Korean, which is open 24 hours a day.

In anticipation of this Court's hearing of oral arguments in *DHS v. Regents of the University of California*, Case No. 18-587, NAKASEC helped lead an eighteen-day, 230-mile march from the Statue of Liberty to Washington, D.C. *Home Is Here*, <https://www.homeisheremarch.org/> (last visited Jan. 20, 2020). The march was a show of support for immigrants currently protected under DACA, and those with TPS, as well as a call for a path to citizenship for all immigrants. Demonstrators walked from morning to sundown and spread awareness using the hashtags #HomeIsHere and #HereToStay. Many demonstrators were undocumented immigrants. During certain stretches of the march, law enforcement made a concerted effort to find reasons to arrest demonstrators, asking construction workers and others along the march route whether any demonstrators had caused disruptions. At one point, marchers were asked probing questions about their immigration status by a suspected ICE agent. To carry on unperturbed, NAKASEC arranged for legal observers to join the march, organized trained police liaisons to volunteer along the route, and held KYR workshops to prepare individual marchers who might be asked about their status.

## 10. MinKwon Center

Founded in 1984, MinKwon Center offers programs that help low-income, limited-English-proficient Asian Americans, and other immigrant populations living in New York City. MinKwon Center's community initiatives are designed to galvanize and empower DACA recipients and other young undocumented immigrants to become engaged

in immigration reform advocacy and action even under the threat of deportation.

In addition to their KYR workshops and materials, which have been translated into Mandarin and Korean, *see supra* § II.B, and their grassroots policy advocacy efforts, *see infra* § II.C, MinKwon Center's DREAMer Group offers a safe space for undocumented youths to organize. As a trusted voice in the community, MinKwon Center has processed the applications of over 7 percent of all Korean DACA recipients in the country since 2012. Additionally, in 2022, MinKwon Center provided assistance to undocumented Asian Americans impacted by Hurricane Ida and aided some who were recipients of anti-Asian violence in New York City. As Justice Kavanaugh noted at argument in *Sineneng-Smith*, and as the government conceded, such activities, if targeted toward undocumented individuals, are punishable under Subsection (vi). Transcript of Oral Argument at 7:24-9:7, 206 L.Ed.2d 866 (2020) (No. 19-67).

## 11. NMAFC

NMAFC was founded in 2006 to provide services for domestic violence survivors with an emphasis on culturally sensitive programs for the Pan-Asian community. In addition to counseling, case management services, and peer support groups, NMAFC provides community education and language services.

NMAFC serves clients whose immigration statuses are in flux. Some client's paths to lawful residence are jeopardized by spouses or partners who

withdraw support for legal status or destroy immigration documentation to prevent the clients from leaving dangerous domestic environments. See Giselle Aguilar Hass et al., *Battered Immigrants and U.S. Citizen Spouses, Legal Momentum*, at 2 (Apr. 24, 2006), [http://niwaplibrary.wcl.american.edu/wp-content/uploads/2015/BB\\_RSRCH\\_ImmVictims\\_Battered\\_Imm.pdf](http://niwaplibrary.wcl.american.edu/wp-content/uploads/2015/BB_RSRCH_ImmVictims_Battered_Imm.pdf). Clients often arrive lawfully, but must change the type of visa for which they apply after separating from abusive partners. During this time, the client is an unlawful resident.

For example, one client came to the United States on a fiancé visa. After her arrival, her partner became increasingly abusive. Her visa lapsed. At the height of the abuse, her partner locked her in their garage. She escaped to a friend who took her to NMAFC, where she was connected with a lawyer and received assistance in applying for a T-visa as a victim of human trafficking. Throughout the three-year process, during which the client remained without lawful status, NMAFC helped the client file police reports, interpreted communications with her lawyer, and helped her find health care and housing. Eventually, the client was approved for a T-visa, and she was recently allowed to file for a permanent green card. The case is now closed, and she continues to be a hard-working and law-abiding U.S. resident.

## 12. APANO

APANO, founded in 1996, is an Asian and Pacific Islander advocacy organization focusing on the key areas of community organizing, policy advocacy, civic engagement, community development, and cultural work.



When the government implemented its plan to transfer asylum seekers and other undocumented immigrants to federal prisons, about 100 asylum seekers and undocumented individuals were sent to the federal prison in Sheridan, Oregon. Detainees were initially denied access to lawyers and religious accommodations. *Detained Oregon Asylum Seekers Accuse Government of Violating Religious Freedom*, Oregon Live The Oregonian (Jan. 29, 2019), <https://www.oregonlive.com/pacific-northwest-news/2018/11/detained-oregon-asylum-seekers.html>. APANO organized a rapid-response campaign and called on members and allies to “stand with immigrants and demand justice for separated families.” Asian Pac. Am. Network of Or., *Apano Call to Action: 123 Immigrants Detained on Sheridan, OR* (June 18, 2018), <https://apano.org/apano-call-to-action-123-immigrants-detained-in-sheridan-or/>. The campaign reached out to public officials to advocate for the release of the detainees, organized vigils outside of the detention center, and raised funds to place in the detainees’ individual commissary accounts.

As detainees were released, APANO and other community organizers formed the Post-Detention Respite Network to host, shelter, and provide meals—acts to “encourage” them to remain in the United States. APANO also facilitated a workshop to raise public awareness about conditions and practices at the detention center with a letter-writing component aimed at showing the asylees and other detainees that they are welcome, wanted, and valued members of the community. Again, because such activities specifically target undocumented individuals, the government’s

broad reading of Subsection (vi) could open APANO to criminal punishment. Transcript of Oral Argument at 7:24-9:7, *Sineneng-Smith*, 206 L.Ed.2d 866 (2020) (No. 19-67).

### C. Policy Advocacy

*Amici* and other organizations engage in policy advocacy at all levels on immigration issues that directly affect the communities they serve. The result of these efforts, as well as the conversations with unauthorized immigrants each time policy efforts are explained to them, may be construed as “encouraging” individuals under Subsection (iv). Organizations also raise awareness and engage immigrant communities, including those who do not have authorized status, to join the efforts through door-to-door canvassing, rallies, and social media posts. Asian Am. Advancing Justice-Atlanta, *Ice Out of Gwinnett*, <https://static1.squarespace.com/static/5f0cc12a064e9716d52e6052/t/5f81003a70b2512cca8a83ee/1602289724859/Ice+out+of+Gwinnett+-+Facesheet.doc> (last visited Feb. 23, 2023); Arab Am. Inst. (@AAIUSA), TWITTER (Aug. 8, 2019, 9:27 AM), <https://twitter.com/AAIUSA/status/1159501271348469760>; RAICES (@RAICESTEXAS), TWITTER (Sept. 22, 2019, 7:55 PM), <https://twitter.com/RAICESTEXAS/status/1175966834551599106?s=20>. Surely, knowledge of the community’s support in pushing for policies that enable them to remain—such as the ability to obtain a driver’s license or creating a pathway for lawful residency despite a currently “unlawful” residency—would “encourage” at least some unauthorized immigrants to remain.

Specific policy initiatives that could have the effect of “encouraging” an unauthorized immigrant to stay are highlighted below.

**Drivers Licenses for All.** Advancing Justice-Atlanta recently partnered with other organizations and legislators to introduce a bill in Georgia to make driver’s licenses available to all capable drivers, regardless of immigration status. Advancing Justice-Atlanta helped coordinate a messaging campaign and highlighted the importance of driver’s licenses to the undocumented community, calling on legislators and constituents to help families secure their livelihoods and participate more meaningfully in their local communities. Similarly, MinKwon Center and CPC were two key voices that helped pass Greenlight NY, New York State’s driver’s-licenses-for-all bill, while NAKASEC continues to advocate for similar policies in Virginia and Pennsylvania.

**Interactions with Local Police.** In 2017 Advancing Justice-Chicago and a coalition partner successfully helped pass the Illinois TRUST Act, which prevents local law enforcement from collaborating with ICE to detain immigrants without a judicial warrant. The TRUST Act now protects half a million Illinois residents, who risk deportation as a result of an interaction with police as simple as a traffic violation. Advancing Justice-Chicago also advocated for the VOICES Act, which requires Illinois law enforcement to provide prompt, certified documentation to survivors of domestic violence and sexual assault so that they can timely apply for a U-visa or T-visa.

**Housing for Unauthorized Immigrants.**

Advancing Justice-Chicago pressed legislators to enact laws prohibiting landlords from evicting or threatening tenants based on immigration status.

**Pathways to Residency for Undocumented Workers.** Farmworker Justice is a consistent supporter of the Farm Workforce Modernization Act. The bill would provide a path to lawful permanent residency for undocumented farmworkers and their family members, who live in fear of arrest, deportation and family separation. Farmworker Justice worked with legislators and advocates to negotiate the terms of the bill to alleviate this fear and improve wages and working conditions for undocumented farmworker.

**Restricting Inquiries or Conditioning of State Services Based on Immigration Status.** One of OneAmerica's signature efforts involved community advocacy for the Keep Washington Working Act, which prohibits state agencies from inquiring into or conditioning services on an individual's place of birth, immigration, or citizenship status, unless expressly required by law.

**Legislative Efforts to Defer Deportations.**

After the death of Jimmy Aldaoud, a Detroit-area Iraqi deportee with diabetes and severe mental illness, AAI helped raise awareness of H.R. 2537, the Deferred Removal for Iraqi Nationals Including Minorities Act of 2019. Arab Am. Inst. (@AAIUSA), TWITTER (Aug. 8, 2019, 9:26 AM), <https://twitter.com/AAIUSA/status/1159501268794191872>. Jimmy was born in Greece to Iraqi parents and had never been to Iraq, did not speak Arabic, and did

not know anyone in Iraq when he was deported. Without the ability to communicate and no support network, Jimmy was unable to access the insulin he required and died. Mariel Padilla, *Body of Michigan Man Deported to Iraq is Returned to the U.S.*, N.Y. Times (Aug. 31, 2019), <https://nyti.ms/373cK0i>. To prevent more needless deaths, AAI continues to support H.R. 2537 to defer deportations that endanger the lives of immigrants.

\* \* \*

Without reasonable guidance, *amici* and other organizations may be discouraged from providing crucial, lawful assistance to the U.S. immigrant community. As a consequence, millions of people—including citizens, noncitizens, refugees, and asylees—will be harmed by Subsection (iv). The statute is unconstitutional on its face and must be invalidated.

### **III. The Government’s Assurances Do Not Save The Statute**

Subsection (iv) reaches into all of the routine advocacy and services these organizations perform. Because the statute fails to define what is and what is not allowed, these organizations’ missions are threatened under a specter of potentially criminal “encouragement or inducement,” particularly in the current climate of aggressive immigration enforcement.

The government urges the Court to look past these constitutional problems. It contends that Respondent and the court of appeals have failed to

identify a “substantial number” of unconstitutional applications or show a “realistic danger” of prosecution. Pet’r Br. at 18-19, 45. But “[w]hether the government would ever . . . [prosecute] is a separate question from whether it can. Subsection (iv) can be read to permit the government to do so.” *Henderson*, 857 F. Supp. 2d at 203. The government asserts that to the extent that the statute ever is applied to protected speech, any constitutional concerns could be addressed through “as-applied challenge[s].” Pet’r Br. at 49. But the reason for invalidating overbroad laws is not to prevent prosecution of those who may later prevail on the merits, but “out of concern that the threat of enforcement of an overbroad law may deter or ‘chill’ constitutionally protected speech—especially when the overbroad statute imposes criminal sanctions.” *Virginia v. Hicks*, 539 U.S. 113, 119 (2003); accord *Gooding v. Wilson*, 405 U.S. 518, 521 (1972) (reasoning that the value of protected expression necessitates striking down overbroad statutes because “persons whose expression is constitutionally protected may well refrain from exercising their rights for fear of criminal sanctions provided by a statute susceptible of application to protected expression” (citations omitted)). Here, the chilling effect of Subsection (iv) will harm immigrants, their families, and their communities. *See id.*

As-applied challenges are also insufficient bulwarks against free speech infringement because they permit the government to arbitrarily move the goalposts for conviction. Hansen’s case is an example. As the government admits, Hansen sought jury instructions that would have required the jury to find he “substantially” encouraged or induced

undocumented people to reside in the United States. J.A. 99-100. The government opposed that request. J.A.-101. Yet in the *Sineneng-Smith* oral argument, when asked what “encourage” means under Subsection (iv), the government adopted a standard similar to Hansen’s: “we think it means that you have to *substantially* participate in the activity as something that the defendant wishes to bring about or to succeed.” Transcript of Oral Argument at 21:11-16, 206 L.Ed.2d 866 (2020) (No. 19-67). (emphasis added). At other points in oral argument, the Government suggested that the Court could interpret Subsection (vi) to require speech plus conduct. *Id.* at 24:11-18. Yet the Government also admits that speech alone is sufficient to violate Subsection (vi). *Id.* at 20:13-24; *id.* at 24:7-10 (noting “there are occasions in the criminal law where words can constitute aiding and abetting, and ... the same is true under this statute”). And in its brief here, the government cites the Third Circuit’s construction of Subsection (iv), which requires “substantial[]” encouragement or inducement, to argue that “facilitation and solicitation have traditionally required more than [] abstract or de minimis encouragements” to violate a criminal statute. Pet’r Br. at 33 (citing and quoting *DelRio-Mocci v. Connolly Props. Inc.*, 672 F.3d 241, 249 (3d Cir. 2012)). The First Amendment’s protections against facially overbroad statutes stymie such arbitrary applications of the law.

#### **IV. The Impact on the U.S. Immigrant Community Could Be Far-Reaching**

Because community-based, advocacy, and social services organizations, U.S. citizens, and

noncitizens work together to strengthen their communities, the overreach of Subsection (iv) and its chilling effect on protected speech have a pervasive impact on a population far broader than what the government believes is targeted by the statute. Out of solidarity and familiarity, immigrants often live in the same communities. These tightly-knit communities assist each other in finding housing, employment, child care, and other resources. Advocates and service providers, like *amici*, help unauthorized immigrants access health care, English-language education, legal aid, and release from detention, in addition to policy reform germane to their work.

Many immigrant families include unauthorized, authorized, and naturalized relatives. Recent surveys show that approximately 16.7 million people in the United States have at least one unauthorized family member. Silva Mathema, *Keeping Families Together*, Ctr. for Am. Progress (Mar. 16, 2017, 5:00 AM), <https://ampr.gs/37vH03s>. About half of those 16.7 million people are citizens or naturalized citizens. *Id.* The immigrant population is woven tightly into the fabric of American society, and efforts to crack down on immigration using statutes like Subsection (iv) have a drastic and detrimental impact on citizens and immigrants with lawful status just as with immigrants with unauthorized or pending status.

The group most vulnerable to the chilling effects of Subsection (iv) is the children of immigrants. As of 2018, the American Immigration Council found that 4.4 million U.S.-citizen children under 18 lived with at least one unauthorized immigrant parent.



American Immigration Council, *U.S. Citizen Children Impacted by Immigration Enforcement* (June 24, 2021),

<https://www.americanimmigrationcouncil.org/research/us-citizen-children-impacted-immigration-enforcement>; see also Randy Capps *et al.*, *A Profile of U.S. Children with Unauthorized Immigrant Parents*, Migration Policy Inst. (Jan. 2016), <https://www.migrationpolicy.org/research/profile-us-children-unauthorized-immigrant-parents>.

Subsection (iv) thus threatens the stability of families.

Today, thousands of American children are in foster care because one or both parents were detained or deported. Joanna Dreby, *How Today's Immigration Enforcement Policies Impact Children, Families, and Communities*, Ctr. for Am. Progress (Aug. 20, 2012), <https://www.americanprogress.org/issues/immigration/reports/2012/08/20/27082/how-todays-immigration-enforcement-policies-impact-children-families-and-communities>. 5,100 children of immigrants were in the foster system in 2012, with an expected increase of 15,000 more in the five years to come. *Id.* On average, it costs state and federal governments close to \$26,000 per year to foster a single child. *Id.* Organizations like ASIA assist immigrant families with reunification plans in case a parent is detained or deported. See *supra* § II.B.1. This assistance works in tandem with efforts to help parents navigate the immigration system, staying in the United States, and keeping their families—including U.S. citizens—together.

While costs of fostering children stand to increase, spikes in ICE enforcement decrease the

trust that immigrant communities vest in their local authorities. Fear of detention, deportation, and family separation can prevent many immigrants from seeking important resources like health care, driver's licenses, and education. *See* Claudia Boyd-Barrett, *Fear Pushes More Immigrants to Avoid Seeking Medical Care*, Cal. Health Rep. (Feb. 5, 2018), <https://www.calhealthreport.org/2018/02/05/fear-pushes-immigrants-avoid-seeking-medical-care/>; *see also* Health Coverage and Care of Immigrants, Kaiser Family Foundation (Dec. 20, 2022), <https://www.kff.org/racial-equity-and-health-policy/fact-sheet/health-coverage-and-care-of-immigrants/>; Kimberly Cataudella et al., *Undocumented immigrants can get licenses. ICE can get their data.*, Center for Public Integrity (July 13, 2021), <https://publicintegrity.org/inequality-poverty-opportunity/immigration/undocumented-immigrants-licenses-ice-data/>; Emma Tynan, *Caught in an Educational Dragnet: How the School-to-Deportation Pipeline Harms Immigrant Youth and Youth of Color*, National Immigration Law Center (May 19, 2022) <https://www.nilc.org/2022/05/19/caught-in-an-educational-dragnet-how-the-school-to-deportation-pipeline-harms-immigrant-youth-and-youth-of-color-the-torch/>; *see also* Moriah Balingit, *'Your Child is Safe': Schools Address Deportation Fears Among Immigrant Families*, The Washington Post, (Mar. 19, 2017), <https://wapo.st/2R0AX1F>. Populations of mixed-status families are less likely to report crimes like domestic violence or present as witnesses. *Freezing Out Justice: How Immigration Arrests at Courthouses Are Undermining the Justice System*, Am. Civil Liberties Union, at 1-2 (2018), <https://www.aclu.org/report/freezing-out-justice>.

While *amici* organizations work to protect immigrants, Subsection (iv)'s unconstitutional scope threatens to undermine the safety of communities that include citizens and noncitizens alike.

As written, the statute criminalizes legitimate and necessary services provided to immigrants by service organizations, depriving them of access to important and lawful services as well as basic dignities that every resident of the United States should be afforded. Accordingly, the statute is overbroad, and deficient as a matter of due process.

### **CONCLUSION**

*Amici* respectfully request the Court to affirm the court of appeals' judgment.

Dated: February 24, 2023

Respectfully submitted,

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*Counsel of Record*

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Americans Advancing Justice

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Advancing Justice-Atlanta;  
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Initiative; Chinese  
Community Center;  
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Comunidades Sin Fronteras;  
CORE: Community  
Organizing for Radical  
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Closure (D4CC); Florence  
Immigrant & Refugee Rights  
Project; Freedom Network  
USA; Good Shepherd Center;  
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Immigrant Defenders Law  
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Americas Immigrant  
Advocacy Center; Maryland  
Vietnamese Mutual  
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MinKwon Center for  
Community Action;  
Montgomery County  
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Network (MoCoPAAN);  
Mountain State Justice;  
National Employment Law  
Project (NELP); National  
Korean American Service &  
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Lawyers Guild San Francisco  
Bay Area Chapter; New  
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Nonprofit Association of  
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**Arab American Institute**

**Asian Americans Advancing Justice - Asian Law  
Caucus**

**Asian Americans Advancing Justice | Chicago**

**Asian Americans Advancing Justice Southern  
California**

**Asian Americans Advancing Justice-Atlanta**

**Asian Counseling and Referral Service**

**Asian Pacific American Labor Alliance**

**Asian Services in Action (ASIA)**

**Bridges Faith Initiative**

**Chinese Community Center**

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**Comunidades Sin Fronteras**

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**Hispanic Federation**

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**Japanese American Citizens League**

**Keep Tucson Together**

**Khmer Maine**

**Las Americas Immigrant Advocacy Center**

**Maryland Vietnamese Mutual Association (MVMA)**

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**MinKwon Center for Community Action**

**Montgomery County Progressive Asian  
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**Tahirih Justice Center**

**The Advocates for Human Rights**

**VAYLA New Orleans**