

No. 19-67

IN THE
Supreme Court of the United States

UNITED STATES OF AMERICA,
Petitioner,

v.

EVELYN SINENENG-SMITH,
Respondent.

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

BRIEF OF ASIAN AMERICANS ADVANCING
JUSTICE | AAJC AND 33 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.¹ 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

¹ In accordance with Supreme Court Rule 37.6, *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. All parties have consented to the filing of this brief *amici curiae*.

together through community outreach, advocacy, and litigation.

Other community-based, advocacy, and social services organizations who join this brief are: Adhikaar, The African Bureau of Immigrant and Social Affairs (“ABISA”), American Citizens for Justice/Asian American Center for Justice (“AJC/AACJ”), Arab American Institute (“AAI”), Arab Community Center for Economic and Social Services (“ACCESS”), Asian Americans Advancing Justice – Asian Law Caucus (“Advancing Justice-ALC”), Asian Americans Advancing Justice-Atlanta (“Advancing Justice-Atlanta”), Asian Americans Advancing Justice-Chicago (“Advancing Justice-Chicago”), Asian Americans Advancing Justice-Los Angeles (“Advancing Justice-LA”), Asian American Federation of Florida (“AAFF”) Asian Counseling and Referral Service (“ACRS”), Asian Pacific American Network of Oregon Communities United Fund (“APANO”), Asian Pacific Community in Action (“APCA”), Asia Pacific Cultural Center (“APCC”), Asian Services in Action, Inc. (“ASIA”), Central American Resource Center of California (“CARECEN”), Chinese-American Planning Council (“CPC”), Colorado Immigrant Rights Coalition (“CIRC”), East Coast Asian American Student Union (“ECAASU”), Farmworker Justice, Florida Asian Services, Make the Road New York, MinKwon Center for Community Action (“MinKwon Center”), National Korean American Service and Education Consortium (“NAKASEC”), New Mexico Asian Family Center (“NMAFC”), OCA-Greater Houston, OCA-South Florida Chapter, Ohio Progressive Asian Women’s Leadership (“OPAWL”), OneAmerica,

Refugee and Immigrant Center for Education and Legal Services (“RAICES”), ReleaseMN8, Self-Help for the Elderly, and Services, Immigrant Rights & Education Network (“SIREN”).

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 by its unconstitutional overbreadth and vagueness. The plain meaning of “encourage and induce” implicates both speech and conduct. This wide reach 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 34. 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 statute’s overbreadth, as illustrated by the examples of the community activities that fall under its

breadth. As the Court has recognized, “[t]he Government’s assurance that it will apply . . . [a broadly worded statute] far more restrictively than its language provides is pertinent only as an implicit acknowledgment of the potential constitutional problems with a more natural reading.” *United States v. Stevens*, 559 U.S. 460, 480 (2010).

Amici submit that 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 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) IS UNCONSTITUTIONALLY OVERBROAD AND VAGUE AND WILL CHILL LEGITIMATE ADVOCACY AND SOCIAL SERVICES

Subsection (iv) threatens organizations working on behalf of U.S. immigrant communities and is contrary to the First Amendment and Due Process Clause as overbroad and vague, respectively. First, the statute runs afoul of the First Amendment for overbreadth because its legitimate sweep is

minimal compared to its broad applicability to protected speech. Second, the statute violates the Due Process Clause by failing to provide meaningful notice of what is and what is not criminal, and further allowing arbitrary and discriminatory enforcement under the vague terms “encourage and induce.”

Amici respectfully request that the Court affirm the court of appeals’ judgment to safeguard the work of *amici* and others that do similar work.

A. The Statute Is Unconstitutionally Overbroad

Under the First Amendment, a law is invalid as overbroad where “a substantial number of its applications are unconstitutional, judged in relation to the statute’s plainly legitimate sweep.” *Stevens*, 559 U.S. at 473. The overbreadth doctrine “gives significant protection from overbroad laws that chill speech within the First Amendment’s vast and privileged sphere.” *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 244 (2002). Here, Subsection (iv) will suppress protected expression, rendering the statute facially unconstitutional.

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). The court of appeals properly construed “encourage or induce” according to their plain meanings. *United States v. Sineneng-Smith*, 910 F.3d 461, 473-75 (9th

Cir. 2018). This broad construction “can mean speech, or conduct, or both.” *Id.* at 475. And “there is no way to get around the fact that the terms [‘encourage’ and ‘induce’] also plainly refer to First Amendment-protected expression.” *Id.* (recognizing that Subsection (iv) permits prosecution of an individual that stated, “I encourage you to overstay your visa . . .”).

This broad sweep warrants a constitutional challenge given the “realistic danger” that Subsection (iv) will “significantly compromise recognized First Amendment protections of parties not before the Court” *Members of City Council v. Taxpayers for Vincent*, 466 U.S. 789, 801 (1984) (citation omitted). The real-life examples below illustrate the protected speech of organizations to which Subsection (iv) applies and will chill. 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.

But the line between lawful and unlawful status is not always clear. Subsection (iv) criminalizes “encourage[ing]” unlawful residence and residence that “is or *will be* in violation of law.” 8 U.S.C. § 132(a)(1)(A)(iv) (emphasis added). Consider Deferred Action for Childhood Arrivals (“DACA”) recipients, who are lawfully present in the United States today. DACA is currently under review by this Court. Subsection (iv) could 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 repealed, community organizations that assist any formerly-protected high school students with college applications may be at risk of prosecution under Subsection (iv). Such assistance would “encourage” such students to continue their education in the United States, which would require the students’ continued residence in the United States in violation of law.

Additionally, the government suggests that 8 U.S.C. § 1324(a)(1)(B)(i), requiring a defendant’s receipt of some financial benefit, acts as a limit on Subsection (iv). *See* Pet’r Br. 36, 39-41. This is unavailing. Subsection (iv) criminalizes “encourage[ment] and induce[ment]” independent of the sentencing enhancement of § 1324(a)(1)(B)(i). Further, as described below, impacted organizations can be funded to conduct the very activity that Subsection (iv) criminalizes. *See, e.g., infra* § I.C.2.b (Chinese-American Planning Council).

The statute is overbroad, will chill protected expression, and should be struck down.

B. The Statute Is Invalid as Vague

Subsection (iv) is also invalid as vague for (1) the failure “to give ordinary people fair warning about what the law demands of them,” *United States v. Davis*, 139 S. Ct. 2319, 2323 (2019) (J. Gorsuch), and (2) because the statute provides no “standard of conduct,” *Coates v. Cincinnati*, 402 U.S. 611, 614 (1971). Vague laws run afoul of due process. *Davis*, 139 S. Ct. at 2323; *see Johnson v. United States*, 135 S. Ct. 2551, 2557-58 (2015) (holding that a law was

vague because it left uncertainty about “how to estimate the risk posed by a crime” and created “more unpredictability and arbitrariness than the Due Process Clause tolerates”); *Sessions v. Dimaya*, 132 S. Ct. 1204, 1223 (2018) (Gorsuch, J., concurring) (holding that a law was vague, necessitated guesswork, “invited arbitrary enforcement, and failed to provide fair notice”).

Subsection (iv) provides no reliable way to determine what speech or conduct is punishable “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 *Sineneng-Smith*, 910 F.3d at 474-75. Vague laws, such as this, fail to give people “of common intelligence”—and here, the *amici* organizations—“fair notice of what the law demands of them.” *Davis*, 139 S. Ct. at 2325 (citation omitted); see *Papachristou v. Jacksonville*, 405 U.S. 156, 162 (1972) (holding that a vagrancy ordinance was unconstitutionally vague).

Moreover, as argued by Respondent, the statute is lacking in any “standard of conduct,” as its violation depends upon the subjective reaction of the unauthorized immigrant, who is the recipient of whatever speech or services are provided by the ostensible violator of the statute. See Resp’t Br. at 48-49. The organizations highlighted in this brief

broadly serve the U.S. immigrant community. Whether any provided service “encourages or induces” any particular unauthorized immigrant to remain in the United States is not determined by the nature of the organizations’ activities but by the immigrant. As such, the statute enables arbitrary enforcement and could be used to target disfavored groups.

In sum, Subsection (iv) is unconstitutionally vague.

C. Subsection (iv) Applies to the Legitimate Work of Community-Based, Advocacy, and Social Services Organizations

The work performed by the various community-based, advocacy, and social services organizations highlighted here falls into three relevant categories: (1) distribution of Know Your Rights (“KYR”) materials, (2) community and individualized outreach to unauthorized immigrants, and (3) policy advocacy impacting and on behalf of unauthorized immigrants. All of these activities directly benefit undocumented individuals and may “encourage” their continued presence in the United States.

1. “Know Your Rights” Materials

A key component of many organizations’ efforts to protect immigrant families and communities 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 such as DACA and Temporary Protected Status ("TPS").

For example, Advancing Justice-Atlanta, Advancing Justice-Chicago, MinKwon Center, and OneAmerica all 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, the RAICES conducts KYR seminars to help curb the impact of detentions. To prepare for the possibility of detention, RAICES' workshops help families prepare safety plans, and outline which documents must be collected if a loved one is detained. RAICES also hosts monthly 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 falls under the broad sweep of Subsection (iv)'s encouragement provision. Subsection (iv) puts community-based, advocacy, and social services organizations at risk of prosecution for distributing these KYR materials, which are protected speech.

2. Community Resources and Advocacy

Many community-based, advocacy, and social services organizations serve immigrant communities throughout the country in ways that touch the lives of individual undocumented immigrants. These services presumably, and at the very least are likely to, “encourage” an undocumented immigrant to remain in the United States. The following descriptions of organizations and their relevant work provide a glimpse into the vast scope and array of activities that Subsection (iv) sweeps up in its breadth.

a. 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 regardless of the patient’s ability to pay.

Subsection (iv) has already had a chilling effect on the health care services offered by ASIA. Recently, 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 their immigration status). A medical provider at the Clinic was concerned about their exposure under Subsection (iv). 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. 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 conflict that has already led to a chilling of ASIA's legal services as a consequence of this vague and overbroad statute.

b. CPC

CPC is the largest Asian American social services organization in the nation, serving over 60,000 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 documentation, CPC does not inquire about an individual's immigration status. Instead they post flyers notifying everyone that CPC's program sites are safe spaces where immigration enforcement officers are not invited. CPC is aware that many of the community members that rely on their services are likely undocumented. If CPC has reason to suspect a particular individual's residence in the United States is unlawful, CPC risks prosecution by 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 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, including financial empowerment and literacy, and information on available pathways to lawful or protected status (e.g., the Violence Against Women's Act ("VAWA") petitions, U-visas, and DACA). As a state-designated ONA Opportunity Center, CPC is often contacted by elected officials to facilitate public KYR trainings.

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.

c. RAICES

RAICES is a nonprofit agency based in San Antonio, Texas that defends the rights of immigrants and refugees, empowers individuals, families and communities, and advocates for liberty and justice. With legal services, social programs, bond assistance, and an advocacy team focused on changing the narrative around immigration in this country, RAICES is an advocate for immigrants' rights on social media and within the immigrant community.

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 United States. For example, in 2018, RAICES started the Bus Station Project at the Greyhound station and Migrant Resource Center in San Antonio, where families and individuals arrive after release from Customs and Border Protection custody and ICE detention centers. Once the immigrants get off the bus, RAICES staff and volunteers orient new arrivals on what they can expect and need to accomplish in the coming days. Orientation may cover everything from how to register children for school and prepare for their ICE check-in to navigating public transportation and finding shelter. The Bus Station Project also works to ensure released immigrants have continued access to support through a hotline, which connects callers to local service providers or referrals.

Similarly, one of the key issues RAICES addresses is housing, which again, may “encourage” unauthorized immigrants to remain in the United States by providing a fundamental human need. RAICES has organized a temporary housing program for immigrants who are released from detention and are traveling toward a final destination. In the summer of 2019, RAICES helped a group of immigrants find temporary housing, which offered shelter and stability as they transitioned into everyday life in America. While this housing was not permanent, RAICES is actively searching for a location to establish a regular shelter program, and intends to offer programs similar to those offered at the Bus Station Project to those staying at the shelter.

For those still in detention, RAICES raises bond funds to support detainees in Texas or those whose destination is Texas. Since 2018, RAICES has raised money to secure the release of over 800 individuals. After their release, RAICES remains in contact with these individuals and their families to ensure continued access to necessary resources and services. As detention is a deterrent against immigrants’ coming to and staying in the United States, by providing bonds and services, RAICES’ actions could be construed as “encourag[ing]” those who seek to build a life here, regardless of status.

d. 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.² Of that majority, nearly half lack authorized immigration status under current U.S. law,³ though many believe the figure is higher. 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—regardless of legal status—have access to critical information, such as how to prevent and manage diabetes or protect themselves from pesticide exposure.

Farmworker Justice also provides legal advice to organizations and individuals about the H-2A temporary foreign agricultural worker program under 8 U.S.C. § 1101(a)(15)(H)(ii)(A), 1188; 8 C.F.R. § 214.2(h)(5)(vi)(B)(1)(i)-(iii); (vii) and (viii). When an

² See Farmworker Justice, *Who We Serve*, <https://www.farmworkerjustice.org/about/who-we-serve> (last visited Jan. 7, 2020).

³ See JBS Int'l, *Findings From the National Agricultural Workers Survey (NAWS) 2015-2016: A Demographic and Employment Profile of United States Farmworkers* (Jan. 2018), https://www.doleta.gov/naws/research/docs/NAWS_Research_Report_13.pdf.

H-2A worker's job ends, his or her right to remain in the United States terminates, and continued residence in the United States may be unlawful. When a worker is unlawfully terminated from H-2A employment, however, there may be a right to seek reinstatement at the job and reinstatement of the lawful temporary stay in the United States. Subsection (iv) puts Farmworker Justice and others at risk of prosecution for encouraging persons in such situations to remain in the country unlawfully while seeking pathways to authorized status.

**e. 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.

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. As part of an ongoing effort, Advancing Justice-Atlanta hosts community meetings to discuss goals and strategies and engages community members with citizenship or lawful status to stand in solidarity with those who are undocumented. 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.

f. ReleaseMN8

ReleaseMN8's mission is to provide direct support to Southeast Asian families impacted by detention and deportation. ReleaseMN8 was born out of a family's fight to stay together. Ched Nin arrived in the United States at age six as a Cambodian refugee born in a refugee camp in Thailand. In 2010, Ched was convicted of second-degree assault, which made him eligible for deportation. After serving his time, he recommitted himself to his community and his twenty-year career as a carpenter. On August 26,

2016, after Ched went for a check-in, which he expected would reduce his supervision with ICE, he did not return home. Instead, his wife Jenny received a call from a friend, informing her that Ched had been detained.

When Jenny arrived at the ICE office, she found Ched detained with several other Cambodian refugees from the area. This group of refugees became known as the Minnesota 8 (“MN8”). When Ched received a notice of deportation, Jenny put her work on hold and devoted all of her energy to his release.

Jenny spent her time mobilizing the local Cambodian community, organizing rallies, spreading awareness online, and urging anyone to call their Senators and plead for their intervention. Jenny and the families of MN8 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” Ched and others to remain in the United States unlawfully.

Quickly, the #ReleaseMN8 campaign was born. Jenny’s activism gained traction in the media, first locally, then nationally. Eventually, she and other MN8 family representatives were granted an audience with Minnesota Governor Mark Drayton’s chief policy advisor. They also met with Senator Amy

Klobuchar and Representative Keith Ellison.⁴ Ched was eventually released when the immigration court determined that his deportation would cause undue hardship to Jenny and their children.

Today, ReleaseMN8 fights for the rights of immigrants—regardless of status—who are trying to remain in the United States. The group’s website provides a detailed toolkit that outlines how families of detainees can engage in activism and fight in court to keep their families together. Jenny 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).

g. 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.

⁴ Mila Koumpilova, *Deportations to Cambodia Stoke Fear in Twin Cities Hmong Community*, Star Tribune (Oct. 18, 2016), <http://strib.mn/35YHi1P>.

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 2021.⁵ If TPS is not extended for these countries, many service organizations will look to AAI for an accurate assessment of the law as it affects these immigrants 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

⁵ U.S. Citizenship & Immigration Servs., *Temporary Protected Status Designated Country: Yemen*, <https://bit.ly/3ahglK5> (last visited Jan. 16, 2020); U.S. Citizenship & Immigration Servs., *Temporary Protected Status Designated Country: Syria*, , <https://bit.ly/30pI3ji> (last visited Jan. 16, 2020).

to remain in the United States. AAI's role as a trusted voice will be compromised, and the resources made available to immigrants and their communities will wither.

h. OneAmerica

OneAmerica is the largest immigrant and refugee advocacy organization in Washington State. Through mainly grassroots organizing, OneAmerica's work spans movements from education, immigration rights, and assistance with integration, to voting rights, economic reform, and environmental justice.

In addition to policy work, highlighted, *infra* § I.C.3, 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.

i. 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 Asian American immigrant communities, including those who are undocumented.

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 Statute of Liberty to Washington, D.C.⁶ 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. Demonstrators endured over a week of marching and risked confrontation with law enforcement to show the importance of family unity, and to stand in solidarity with undocumented and mixed-status families.

j. MinKwon Center

Founded in 1984, MinKwon Center offers programs that help low income, limited-English-

⁶ *Home Is Here*, <https://www.homeisheremarch.org/> (last visited Jan. 20, 2020).

proficient Asian Americans and immigrant populations living in New York City. MinKwon Center's community initiatives are designed to galvanize and empower undocumented immigrants—especially young immigrants—who call the United States home even under the threat of deportation.

In addition to their KYR workshops and materials translated into Korean, *see supra* § I.C.1, and their grassroots policy advocacy efforts, *see infra* § I.C.3, MinKwon Center works to foster a welcoming and safe community for all immigrants. MinKwon Center's DREAMer Group offers a safe space for undocumented youths to organize. Since 2012, MinKwon Center has helped process more than 1,200 DACA applications for New York's Asian American community. Additionally, MinKwon Center organized the kickoff rally in New York City for the #HomeisHere campaign leading up to oral arguments in *DHS v. Regents of the University of California*.

k. 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.⁷ 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 and ran 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.

1. 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.

⁷ 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.

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.⁸ APANO organized a rapid-response campaign and called on members and allies to “stand with immigrants and demand justice for separated families.”⁹ 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.

⁸ *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.

⁹ Asian Pac. Am. Network of Or., *Apano Call to Action: 123 Immigrants Detained on Sheridan, OR* (June 18, 2018), <https://www.apano.org/blog/2018/06/18/apano-call-to-action-123-immigrants-detained-in-sheridan-or/>.

3. Policy Advocacy

Amici and other organizations also engage in policy advocacy at all levels on immigration issues that directly affect the communities they serve and their ability to thrive. 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.¹⁰ 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.

¹⁰Asian Am. Advancing Justice-Atlanta, *Ice Out of Gwinnett*, <https://www.iceoutofgwinnett.org/learn-more> (last visited Jan. 16, 2020); 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>.

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 to promote the bill 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 NAKASEC were two key voices that recently helped pass Greenlight NY, New York State's driver's-licenses-for-all bill.

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. Recently, Farmworker Justice and other advocacy partners successfully advocated for the passage of H.R. 5038, The Farm Workforce Modernization Act. The bill provides a path to lawful permanent residency for undocumented farmworkers and their family members.¹¹ This achievement represents positive change for the migrant farmworker community, as many are reluctant to speak out against illegal or unfair treatment in their workplaces.

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 2019.¹² Jimmy was born in Greece to Iraqi parents and had never been to Iraq, did not

¹¹ See Farmworker Justice, *The Farm Workforce Modernization Act* (Oct. 2019), <https://bit.ly/2FzCEwv>.

¹² Arab Am. Inst. (@AAIUSA), TWITTER (Aug. 8, 2019, 9:26 AM), <https://twitter.com/AAIUSA/status/1159501268794191872>.

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.¹³ 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.

D. The Government’s Assurances Do Not Save the Statute

Subsection (iv) reaches into all of the routine advocacy and services these organizations perform. And 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.

¹³ 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>.

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 33-34. 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’s assurances do not make Subsection (iv) viable. This Court “would not uphold an unconstitutional statute merely because the Government promised to use it responsibly.” *Stevens*, 559 U.S. at 480.

The government asserts that “to the extent that the statute could be or ever is, applied to protected speech,” any constitutional concerns could be addressed through “as-applied challenge[s].” Pet’r Br. at 15, 37. 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)).

As this Court has observed, “[m]any persons, rather than undertake the considerable burden (and sometimes risk) of vindicating their rights through case-by-case litigation, will choose simply to abstain from protected speech . . . harming not only themselves but society as a whole” *Hicks*, 539 U.S. at 119 (citation omitted). Here, the chilling effect of Subsection (iv) will harm immigrants, their families, and their communities. *See id.*

II. 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 all 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, authorized and unauthorized immigrants often live in the same communities.¹⁴ These families and communities,

¹⁴ Approximately 7.6 million immigrants are from Mexico or Central America, constituting about 67% of the unauthorized immigrants in the United States, while 1.8 million immigrants, constituting roughly 16% of the total population of unauthorized immigrants, are from Asian countries. Jie Zong *et al.*, *Frequently Requested Statistics on Immigrants and Immigration in the United States*, Migration Policy Inst. (Mar. 14, 2019), <https://bit.ly/2FdrWLI>. While the number of unauthorized immigrants coming to the United States has fallen in recent years, the proportion of immigrants arriving from Asian countries has increased, outnumbering Hispanic (Continued...)

tightly-knit regardless of status, 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.¹⁵ About half of those 16.7 million people are citizens or naturalized citizens.¹⁶ These studies show that 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. In a 2016 survey, the Migration Policy

immigrant arrivals in the past decade. Jynnah Radford, *Key Findings about U.S. Immigrants*, PEW Research Center (June 17, 2019), <https://www.pewresearch.org/fact-tank/2019/06/17/key-findings-about-u-s-immigrants/>. Asian immigrants are on track to become the largest immigrant group in the United States by 2055. *Id.*

¹⁵ Silva Mathema, *Keeping Families Together*, Ctr. for Am. Progress (Mar. 16, 2017, 5:00 AM), <https://ampr.gs/37vH03s>.

¹⁶ *Id.*

Institute found that 5.1 million U.S. children of minority age live with at least one unauthorized immigrant parent.¹⁷ But nearly 80 percent of those children are U.S. citizens.¹⁸ 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.¹⁹ On average, it costs state and federal governments close to \$26,000 per year to foster a single child.²⁰ Organizations like ASIA assist immigrant families with reunification plans in case a parent is detained or deported. *See supra* § I.C.2.a. 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

¹⁷ Randy Capps *et al.*, *A Profile of U.S. Children with Unauthorized Immigrant Parents*, Migration Policy Inst. (Jan. 2016), <https://bit.ly/2tmvvN6>.

¹⁸ *Id.*

¹⁹ 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.*

²⁰ *Id.*

family separation can prevent many immigrants from seeking important resources like health care,²¹ driver's licenses,²² and education.²³ Populations of mixed-status families are less likely to report crimes like domestic violence or present as witnesses.²⁴ 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.

²¹ Claudia Boyd-Barrett, *Fear Pushes More Immigrants to Avoid Seeking Medical Care*, Cal. Health Rep. (Feb. 5, 2018), <https://bit.ly/2QZ71mn>.

²² John Dillon, *For Undocumented Immigrants, Getting A Driver's License Could Spell Trouble With ICE*, Nat'l Public Radio (Jan. 1, 2019, 5:34 AM), <https://n.pr/372bFpc>.

²³ Moriah Balingit, *'Your Child is Safe': Schools Address Deportation Fears Among Immigrant Families*, The Washington Post, (Mar. 19, 2017), <https://wapo.st/2R0AX1F>.

²⁴ *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>.

CONCLUSION

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

Respectfully submitted,

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