
ORAL ARGUMENT NOT YET SCHEDULED

No. 21-5028

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

WASHINGTON ALLIANCE OF TECHNOLOGY WORKERS,
Appellant,

v.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY, *et al.*,
Appellees.

On Appeal from the U.S. District Court for the District of Columbia
(No. 1:16-cv-1170) (Hon. Reggie B. Walton, District Judge)

**Brief Amicus Curiae of the Presidents' Alliance on Higher Education and
Immigration In Support of Appellees and Intervenors**

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June 21, 2021

**CERTIFICATE AS TO PARTIES, RULINGS,
AND RELATED CASES**

Pursuant to Circuit Rule 28(a)(1), undersigned counsel for *amicus curiae* certifies as follows:

A. Parties and Amici. The Presidents’ Alliance on Higher Education and Immigration (“Presidents’ Alliance” or “Alliance”) files this brief on its own behalf and with the support of the following member-institutions¹ of higher education:

Agnes Scott College	Boston University
American University	Bowdoin College
Amherst College	Brandeis University
Arizona State University	Brooklyn Law School
Augustana College	Brown University
Avila University	Bryn Mawr College
Babson College	Bucknell University
Bard College	Butler University
Bates College	California Institute of Technology
Beloit College	California Institute of the Arts
Bentley University	California State University
Boston Architectural College	Carnegie Mellon University
Boston Graduate School of Psychoanalysis	Case Western Reserve University
	Christian Brothers University

¹ The 151 nonprofit colleges and universities listed include large and small, public and private, research and teaching universities, liberal arts colleges, community colleges, faith-based institutions and special focus institutions. These institutions of higher education are located across 32 states and the District of Columbia, and they serve urban and rural populations that span the political spectrum.

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Columbia College	Manhattanville College
Converse College	Massachusetts Institute of Technology
Cornell University	Metropolitan State University of Denver
Dartmouth College	Mount Holyoke College
DePaul University	New Jersey City University
DePauw University	New Jersey Institute of Technology
Dominican University	New York University
Duke University	Northampton Community College
Eastern Connecticut State University	Northeastern University
Eastern Michigan University	Northern Illinois University
Elon University	Oakland University
Emory University	Oberlin College
Fairleigh Dickinson University	Oregon State University
Franklin & Marshall College	Pace University
Georgetown University	Palo Alto University
Goucher College	Pomona College
Greenfield Community College	Portland State University
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Rice University	The University of Texas System
Ringling College of Art and Design	Toyota Technological Institute at Chicago
Rochester Institute of Technology	Trinity University
Roosevelt University	Trinity Washington University
Rutgers University-Newark	UCLA
Salt Lake Community College	University of Arkansas, Fayetteville
Salve Regina University	University of California, Berkeley
Santa Clara University	University of California, Davis
Sarah Lawrence College	University of California, Irvine (UCI)
Saybrook University	University of California, San Diego
Scripps College	University of California, San Francisco (UCSF)
Smith College	University of California, Santa Barbara
Soka University of America	University of California, Santa Cruz
Southern New Hampshire University	University of California System
St. John's University	University of California, Riverside
St. Olaf College	University of Colorado System
Stanford University	University of Dayton
Stevens Institute of Technology	University of Denver
Stony Brook University	University of Illinois
Suffolk University	University of Miami
Swarthmore College	University of Michigan
Texas State University System	
Texas Tech University System	
The New School	

University of New Hampshire	Virginia Wesleyan University
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University of Pennsylvania	Washington and Lee University
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University of San Francisco	Wellesley College
University of the People	Wheaton College (Massachusetts)
University of Utah	Whitman College
University of Washington	Williams College
Utah State University	Yale University

To counsel's knowledge, all other parties, intervenors and *amici* appearing before this Court and the district court are listed in the Brief for the Appellees.

B. Rulings Under Review. An accurate reference to the order at issue in this appeal appears in the Brief for the Appellees.

C. Related Cases. An accurate statement about related cases appears in the Brief for the Appellees.

June 21, 2021

/s/ Ishan K. Bhabha

Ishan K. Bhabha

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STATEMENT REGARDING CONSENT TO FILE AND SEPARATE BRIEFING

Appellees and Intervenors have consented to the filing of this brief. Appellant consented only to the filing of a single *amicus* brief by all prospective *amici*. In light of the other *amicus* briefs being filed in support of Appellees and Intervenors, Appellant did not consent to the filing of this brief.

Counsel for Presidents' Alliance has conferred with counsel for American Immigration Council regarding the scope of the *amicus* brief noticed on June 4, 2021. Counsel have confirmed that the proposed briefs are not duplicative.

Pursuant to Circuit Rule 29(d), Presidents' Alliance certifies that a separate brief is necessary to provide the perspective of the institutions of higher education that comprise its membership. These member-institutions are directly impacted by the availability of the regulatory program at issue in this appeal.

COPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1 and D.C. Cir. Rules 27(a)(4) and 28(a)(1)(A), Presidents' Alliance submits the following corporate disclosure statement:

Presidents' Alliance is a non-profit organization. It has no parent corporation and does not issue stock.

Dated: June 21, 2021

/s/ Ishan K. Bhabha

Ishan K. Bhabha

GLOSSARY

GDP	Gross Domestic Product
MBA	Master of Business Administration
MIT	Massachusetts Institute of Technology
OPT	Optional Practical Training
STEM	Science/Technology/Engineering/Mathematics
WashTech	Washington Alliance of Technology Workers

STATUTES AND REGULATIONS

Applicable materials are contained in the Brief for Appellant.

INTEREST OF AMICUS²

Optional Practical Training (OPT) is a longstanding government program that permits international students to continue, and deepen, their education by applying the skills and knowledge they learn in the classroom to a professional setting. OPT provides untold benefits for these international students. At the same time, and just as critical, the opportunities OPT facilitates for international students provide American institutions of higher education an edge in an increasingly competitive global education marketplace. Without OPT, the education that international students will receive in the United States will be less robust, and the ability of American colleges and universities to attract and educate the best and brightest from around the world will diminish. The consequences of ending OPT for students, schools, and the economy at large will be severe. For these reasons, *amicus* Presidents' Alliance on Higher Education and Immigration submits this brief on behalf of its more than 500 members in strong support of Appellees and Intervenors.

SUMMARY OF ARGUMENT

American institutions of higher education offer educational and research

² No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the *amicus curiae* made a monetary contribution to the preparation or submission of this brief.

opportunities that attract the very best students, researchers, and professors from around the world. These individuals make valuable contributions to our classrooms, campuses, and communities. And these contributions play a critical role in making American higher education—in the words of former President Barack Obama—“the crown jewel of our economy as well as our civilization.”³

American colleges and universities occupy this exalted position in part because of the OPT program. This brief describes the scope and importance of OPT to American colleges and universities. It places OPT within its proper historical context as but one example of experiential learning that has always been understood as integral to academic study in the United States. It details the benefits OPT brings to its participants, their host institutions, and the economy at large. And, finally, it describes the substantial costs these stakeholders will bear if WashTech prevails in this appeal.

ARGUMENT

I. The Reach And Scope Of OPT Is Vast.

Higher education is widely recognized as one of the United States’ most crucial exports. For the past several decades, the United States has been the leading

³ Office of Press Sec’y, President Barack Obama, *Remarks by the President on the 150th Anniversary of the National Academy of Sciences* (Apr. 29, 2013), <https://obamawhitehouse.archives.gov/the-press-office/2013/04/29/remarks-president-150th-anniversary-national-academy-sciences>.

destination for international students.⁴ As reported by Immigration and Customs Enforcement, international students—hailing from 226 countries and every inhabited continent—pursued 1,121,981 degrees at U.S. institutions of higher education in the 2020 calendar year.⁵ Many of these international students came to the United States through F-1 visas⁶ that allow international students to enter the United States as full-time students at an accredited college, university, or other academic institution.⁷ The F-1 student population increased by 104% between 2008 and 2016.⁸

After having studied for at least one academic year, F-1 students are eligible

⁴ See, e.g., Press Release, Inst. of Int’l Educ., *Number of International Students in the United States Reaches New High of 1.09 Million* (Nov. 13, 2018), <https://www.iie.org/Why-IIE/Announcements/2018/11/2018-11-13-Number-of-International-Students-Reaches-New-High/>.

⁵ Student and Exchange Visitor Program, U.S. Immigr. & Customs Enforcement, *SEVIS by the Numbers: Annual Report on International Student Trends 4*, <https://www.ice.gov/doclib/sevis/pdf/sevisBTN2020.pdf>.

⁶ U.S. State Dep’t, *Table XV(B): Nonimmigrant Visas Issued by Classification (Including Border Crossing Cards), Fiscal Years 2016-2020*, <https://bit.ly/2Ugn8QR>.

⁷ U.S. Citizenship & Immigr. Servs., *Students and Employment*, <https://www.uscis.gov/working-united-states/students-and-exchange-visitors/students-and-employment/> (last updated Apr. 13, 2020).

⁸ Neil G. Ruiz & Abby Budiman, *Number of Foreign College Students Staying and Working in U.S. After Graduation Surges*, Pew Research Center (May 10, 2018), <https://www.pewresearch.org/global/2018/05/10/number-of-foreign-college-students-staying-and-working-in-u-s-after-graduation-surges/#fn-40543-1>.

to seek employment opportunities through OPT.⁹ OPT allows students to gain up to 12 months of real-world work experience in their field of study, either during their academic coursework (pre-completion OPT) or after receiving their degrees (post-completion OPT).¹⁰ Between 2004 and 2016, nearly 1.5 million international students and graduates participated in OPT.¹¹ Over half of them pursued employment related to STEM fields.¹² Those individuals were thus eligible for the STEM OPT extension, which was originally introduced in 2008 and, following a subsequent rulemaking, currently provides a 24-month extension of post-completion OPT.¹³ The number of international students in STEM fields who have participated in OPT increased by 400% between 2008 and 2016.¹⁴

The substantial growth of the OPT program in its early years has yielded a large population of talented international students eager to work in the United States, notwithstanding consternation among current and potential international students

⁹ U.S. Citizenship & Immigr. Servs., *Students and Employment*, *supra* note 7.

¹⁰ U.S. Dep't of Homeland Security, *Study in the States: F-1 Optional Practical Training*, <https://studyinthestates.dhs.gov/sevis-help-hub/student-records/fm-student-employment/f-1-optional-practical-training-opt> (last updated Sept. 29, 2020).

¹¹ Ruiz & Budiman, *supra* note 8.

¹² *Id.*

¹³ U.S. Dep't of Homeland Security, *Study in the States: F-1 Optional Practical Training*, *supra* note 10.

¹⁴ Ruiz & Budiman, *supra* note 8.

regarding an increasingly hostile climate toward them over the last four years.¹⁵ For example, during the 2019-2020 academic year, 223,539 international students—or 21 percent of the total international student population in the U.S.—utilized the OPT program to put into practice the skills they learned at American colleges and universities.¹⁶ Despite an understandable decline in OPT participation during the COVID-19 pandemic,¹⁷ the program has remained attractive. In 2020 more than 250,000 students sought and were authorized to participate in OPT, and more than 125,000 students were authorized to participate in STEM OPT.¹⁸

Given these numbers, it should come as no surprise that many American colleges and universities had over one thousand students and graduates participating in OPT in 2020—among them *amicus*'s members Columbia University, Northeastern University, Arizona State University, Illinois Institute of Technology,

¹⁵ See Sophia Tareen, *Foreign Students Show Less Zeal for US Since Trump Took Over*, Associated Press (Oct. 25, 2020), <https://apnews.com/article/race-and-ethnicity-donald-trump-technology-travel-virus-outbreak-d78eb3f2fc961a848fcbba0ae01218fa>.

¹⁶ *Optional Practical Training (OPT): A Key Driver to Study in the U.S.*, Presidents' Alliance on Higher Education and Immigration (Mar. 3, 2020), <https://www.higheredimmigrationportal.org/wp-content/uploads/2021/02/OPT-A-Key-Driver-to-Study-in-the-U.S..pdf>.

¹⁷ Student and Exchange Visitor Program, *SEVIS by the Numbers*, *supra* note 5, at 2-3.

¹⁸ U.S. Immigr. & Customs Enforcement, *2020 Total Number of SEVIS Records with Authorizations to Participate in CPT, OPT or STEM OPT*, https://www.ice.gov/doclib/sevis/pdf/data-OPT-STEM-OPT-CPT_2020.pdf.

and Duke University.¹⁹ Moreover, many institutions of higher education themselves consistently rank among the top *employers* of OPT participants, both for pre- and post-completion work.²⁰ For example, in 2019 Massachusetts Institute of Technology employed 145 students through OPT and 228 students through STEM OPT.²¹ Arizona State University and Columbia University each employed over 200 participants that year as well.²² OPT participants thus not only constitute a substantial number of students and recent graduates at many American colleges and universities, but also form a critical segment of their workforces as instructors, researchers, and more.

II. OPT Provides Experiential Learning That Is Now, And Has Long Been, A Crucial Component Of Education In This Country.

American institutions of higher education have long recognized the importance of experiential learning. In the 1940s, Harvard University convened a Committee on the Objectives of a General Education in a Free Society. The

¹⁹ U.S. Immigr. & Customs Enforcement, *Top 100 School Campuses with OPT (Pre- + Post-) Authorizations by Active SEVIS Records Calendar Year 2020*, https://www.ice.gov/doclib/sevis/pdf/data_Top100_PrePostCompletion_OPT_20.pdf.

²⁰ U.S. Immigr. & Customs Enforcement, *2003 – 2019 Top 200 Employers for Pre- and Post-Completion OPT Students*, https://www.ice.gov/doclib/sevis/pdf/data_Top200_EmployersPrePostCompletion_OPT_Students2003_2019.pdf.

²¹ U.S. Immigr. & Customs Enforcement, *2019 Top 200 Employers for OPT and STEM OPT Students*, https://www.ice.gov/doclib/sevis/pdf/data_Top200_EmployersSTEM_OPT_Students2019.pdf.

²² *Id.*

committee's report explained the unification of academic and vocational learning within American education: "[T]he aim of education should be to prepare an individual to become an expert both in some particular vocation or art and in the general art of the free man and the citizen. Thus the two kinds of education once given separately to different social classes must be given together to all alike."²³ The report also recognized the needs of students to translate their classroom learning to the workplace: "Beyond the knowledge of future work, the student needs an experience in actual work. Clearly the school itself cannot be expected to provide this experience in any formal way. Yet it is beneficial for all"²⁴

History shows this theory borne out in practice. Employers have grown to expect capable graduates with practical skills, and American colleges and universities have responded to these evolving economic demands. Institutions of higher education have broadened the educational experience, preparing students to be educated citizens as well as desirable and effective participants in the American workforce.²⁵ They have accomplished these twin aims by placing new focus on

²³ James Bryan Conant, *General Education in a Free Society: Report of the Harvard Committee* 54 (1955), <https://archive.org/details/generaleducation013127mbp/page/n77>.

²⁴ *Id.* at 175, <https://archive.org/details/generaleducation013127mbp/page/n197>.

²⁵ Claudia Goldin & Lawrence F. Katz, *The Shaping of Higher Education: The Formative Years in the United States, 1890 to 1940*, 13 J. Econ. Persps. 37, 38-40 (1999).

applied learning and technical expertise, all the while remaining true to the benefits of providing students with liberal arts foundations.²⁶ These efforts have received strong support from the federal government, which has built bridges between the academy and the workforce “to explore effective ways for higher education to be a more active partner with private and public sector employees in the development of a comprehensive, coordinated system of education that prepares all students for the competitive workplace of the twenty-first century.”²⁷

Today, American colleges and universities offer a host of experiential learning opportunities. The value of these experiential learning opportunities is well-documented.²⁸ As the Director of Exploration and Experiential Learning at *amicus*'s member Wellesley College explained:

[E]xperiential learning contextualizes the learning done in the classroom, facilitating students' ability to apply their education to the professional world in meaningful, informed ways and supports their own development as professionals prepared to contribute to the workforce as effective employees and leaders. Most of all, it allows students to draw deep and lasting connections between the content encountered in the classroom - theoretical

²⁶ *Id.* at 45-47.

²⁷ See, e.g., Polly Hutcheson, *Educating a Globally Productive Citizenry: The Role of Higher Education in the Integration of Learning and Work. A Monograph for College Leaders*, Nat'l Comm'n for Coop. Educ. 1 (1999), <https://files.eric.ed.gov/fulltext/ED428609.pdf>.

²⁸ See, e.g., Eleanor Townsley et al., *The Impact of Undergraduate Internships on Post-Graduate Outcomes for the Liberal Arts*, NACE Center (2017), <https://www.naceweb.org/job-market/internships/the-impact-of-undergraduate-internships-on-post-graduate-outcomes-for-the-liberal-arts/>.

and practical - and the complexity of the real world.²⁹

This marriage of theory and practice sets U.S. graduates apart and equips them to tackle the greatest challenges of our time with creativity and common sense. As emphasized by higher education leaders across New Jersey, including Princeton University's President Christopher Eisgruber, OPT "allows students to supplement their education with valuable experiential learning and on-the-job-training as they start their careers."³⁰ The Vice Dean for Faculty and Graduate Affairs at Georgetown University put it this way: "Even our best students can only learn so much from the classroom; they must then test and further these lessons in the real world. The opportunity to undertake internships, employment, or research is critical to their development as future leaders in a more globalized world community for generations forward."

Graduates of *amicus*'s members attest³¹ to the important ways OPT advanced

²⁹ Except where otherwise noted, all statements contained in this brief are on file with undersigned counsel.

³⁰ See *Letter from President Eisgruber and Other Leaders of New Jersey Colleges and Universities to New Jersey Congressional Delegation Regarding Immigration*, Princeton Univ. (May 2, 2019), <https://president.princeton.edu/blogs/letter-president-eisgruber-and-other-leaders-new-jersey-colleges-and-universities-new-jersey>.

³¹ As Judge Walton recognized in his Memorandum Opinion below, court consideration of anonymous and attributed anecdotal statements proffered in an *amicus* brief is both proper and routine. See *Wash. All. of Tech. Workers v. U.S. Dep't of Homeland Security*, No. 16-cv-1170, 2021 WL 329847, at *1 n.2 (D.D.C.

their education:

- “Looking back, I can confidently say that the OPT gave me the opportunity to complete my Georgetown education because it allowed me to get a taste of what it meant to work ‘for real’, and in DC. . . . I truly hope other students have the same opportunities I did. Based on my own experience, and that of my peers, I know it would be for the best of the US and the students’ home country.” –*Former OPT participant, graduate of Georgetown University*
- “My current work allows me to not only utilize the learnings I received in school, but also challenges me to take into account the practical and business challenges that can only arise in real-life settings. I would not have received this type of learning in classrooms alone. This system has enriched my academic experience by equipping me with knowledge (from my classroom learnings), and skills to apply that knowledge in real life.” –*OPT participant, graduate of Wellesley College*
- “The OPT stint supercharged my learning of theoretical concepts and shed light about what I had learnt in university as it applies to the real business world. It wasn’t until the OPT that the practical implementations of some of the theories, formula and their importance became clear.” –*Former OPT participant, graduate of University of Texas at Dallas*
- “OPT was instrumental for me to continue my research . . . [and] opened doors for me [to] have additional training in mentoring students, writing and preparing manuscripts for publication in peer-reviewed journals, conducting research, and presenting scientific posters in professional meetings, among others, which is vital for my personal and professional growth.” –*OPT*

Jan. 28, 2021); *see also* Br. of American Veterans All., et al. as Amici Curiae in Supp. of Pls.-Appellees at 8–21, 23–25, *Doe 2 v. Shanahan*, 755 F. Appx 19 (D.C. Cir. 2019) (No. 1:17-cv-01597) (amicus brief containing several quoted statements from anonymous veterans and service members); Br. of Immigrant Rights Advoc. as Amici Curiae Supp. Pls.-Appellees at 12–14, *Jane Doe v. Azar*, 925 F.3d 1291 (D.C. Cir. 2019) (No. 18-5093) (amicus brief recounting experiences of individuals affected by the challenged Office of Refugee Resettlement policy precluding unaccompanied alien minors from obtaining an abortion).

participant, graduate of University of Arkansas

- “OPT provided me the practical technical skills to write code at scale in industry and understand and implement solutions for the real-world software engineering problems. These skills were learnt in classroom, however, implementing these solutions and writing code in the real world gave me a better practical understanding of what I learnt in my courses, labs and in thesis.” –*OPT participant, graduate of Arizona State University*

For many OPT participants, the combination of academic and practical learning in this country positions them to succeed upon return to their home countries:

- “OPT is highly important for international students as it provides a unique opportunity to gain technical skills in a variety of fields that the U.S. leads globally. It trains people in top-notch institutions to close the gaps with international standards and good practices when they go back to their countries, and allows them to transfer that knowledge to other individuals in their field of expertise.” –*OPT participant, graduate of Arizona State University*
- “Recently on a recruitment trip to Honduras, a classroom full of prospective students and parents asked specifically about the OPT program. Their stated goal is to earn a degree in the United States, learn how engineering and industrial companies operate, and then take that knowledge to their home country to help build the infrastructure and industry to strengthen the people and the economy. The future international leaders see education and OPT opportunities in the United States as an important step in their journey of bolstering their home.” –*Undergraduate Admissions Office at Worcester Polytechnic Institute*

III. OPT Benefits Higher Education And The U.S. Economy.

The entire academic community benefits from international students who participate in OPT. These students enhance campus diversity and its well-recognized contributions to the educational experience; sustain American excellence

in research and instruction, particularly in critical STEM fields; give back to the campuses and communities that welcome them here; and yield measurable benefits to the economy at large.

A. International Students Contribute To Campus Diversity, A Key Component Of The Educational Experience.

The Supreme Court has time and again noted the myriad benefits that a diverse student body yields for institutions of higher education. *First*, the Court has recognized “the educational benefits that flow from student body diversity,” *Fisher v. Univ. of Tex. at Austin (Fisher I)*, 570 U.S. 297, 310 (2013) (quoting *Grutter v. Bollinger*, 539 U.S. 306, 330 (2003))—namely, the deeper understanding students and professors achieve when an issue or problem is analyzed by individuals who bring differing perspectives and backgrounds to the question. *Second*, “enrolling a diverse student body ‘promotes cross-racial understanding, helps to break down racial stereotypes, and enables students to better understand persons of different races.’” *Fisher v. Univ. of Tex. at Austin (Fisher II)*, 136 S. Ct. 2198, 2210 (2016) (quoting *Grutter*, 539 U.S. at 328, 330). While this obviously has a direct benefit to students, it also is a key component in creating a dynamic and integrated campus environment. *Third*, and “[e]qually important, student body diversity promotes learning outcomes, and better prepares students for an increasingly diverse workforce and society.” *Id.* (internal quotation marks omitted).

The Supreme Court’s observations in this respect apply with equal force to

international students and scholars. As the then-president of Harvard University wrote in the wake of the Trump Administration’s 2017 travel ban, “[o]ur robust commitment to internationalism is not an incidental or dispensable accessory. It is integral to all that we do, in the laboratory, in the classroom, in the conference hall, in the world.”³² Other institutions agree. For instance, Duke University’s institutional statement of its commitment to diversity and inclusion explains that “collective success depends on the robust exchange of ideas—an exchange that is best when the rich diversity of our perspectives, backgrounds, and experiences flourishes” and when “all members of the community feel secure and welcome.”³³ And Rutgers University-Newark includes in its strategic plan the goal that “[d]iversity must be ‘unpacked’ as a nuanced construct of modern life and social experience, and then its multi-faceted impact recognized as an enormous asset to scholarship, pedagogy, civic life, and community well-being.”³⁴ These are three examples among many.

International students play a significant role in fostering the inclusive and

³² Drew Gilpin Faust, *We Are All Harvard*, Harv. Univ. (Jan. 29, 2017), <https://www.harvard.edu/president/news/2017/we-are-all-harvard/>.

³³ Duke Univ., *Diversity and Inclusion*, <https://inclusive.duke.edu/> (last visited June 15, 2021).

³⁴ Rutgers Univ., *Rutgers University-Newark: Where Opportunity Meets Excellence* 32 (2014), http://www.newark.rutgers.edu/sites/default/files/run_strategic_plan_final.pdf.

diverse atmosphere *amicus*'s members strive to create on their campuses nationwide. Their incredible diversity of backgrounds and ethnicities “fuels innovation and creativity”³⁵ and improves the educational experience for every student, foreign and domestic. Not only do “international students put a human face on the world beyond our borders,” but their diversity of background and experience also offers tangible benefits to their peers.³⁶ Cross-cultural engagement allows students “to shed stereotypes, explore new perspectives, and gain intercultural skills” in real, quantifiable ways.³⁷ This commonsense observation finds support in the academic literature: a 2013 study found that “substantial international interaction was positively correlated with U.S. students’ perceived skill development in a wide range of areas,” including language skills, acquisition of new knowledge, formulation of creative ideas, synthesis of information, and the use of technology.³⁸

OPT facilitates exactly these cross-cultural interactions by attracting the best

³⁵ NAFSA, *Restoring U.S. Competitiveness for International Students and Scholars* 3 (2006), https://www.nafsa.org/sites/default/files/ektron/uploadedFiles/NAFSA_Home/Resource_Library_Assets/Public_Policy/restoring_u.s.pdf.

³⁶ Marjorie Zatz, *International Students Creating an American Legacy*, *Diverse* (Oct. 23, 2018), <https://diverseeducation.com/article/130127/>.

³⁷ Kavita Pandit, *International Students and Diversity: Challenges and Opportunities for Campus Internationalization*, in *International Students and Scholars in the United States* 131, 131 (Heike C. Alberts et al. eds., 2013).

³⁸ Jiali Luo & David Jamieson-Drake, *Examining the Educational Benefits of Interacting with International Students*, 3 *J. Int’l Students* 85, 91, 96 (2013), <https://files.eric.ed.gov/fulltext/EJ1056457.pdf>.

and the brightest international students to the United States and extending their stays in the country. For the more than 90% of American students who do not themselves study abroad, “having international classmates, lab partners, or roommates may be their only opportunity to connect with other cultures.”³⁹ As an administrator from Brandeis University explained, “Our international students form a vital and highly valued segment of our student community, bringing diverse perspectives and linguistic and cultural backgrounds that enrich and enhance our student population, courses, and curriculum – and hence our degree program as a whole.” Importantly, too, those international classmates often return to their home countries after OPT, and they carry with them a greater understanding of American culture and values rooted in the enduring relationships established with peers.

B. International Students And Scholars Are Critical To America’s Research Excellence And Undergraduate Instruction, Especially In STEM Fields.

International students and scholars have helped America’s colleges and universities become world leaders in essential fields of research that drive innovation and growth. Indeed, according to the National Foundation for American Policy, thirty-six of the ninety-five Americans who received Nobel Prizes in chemistry,

³⁹ Rebecca Prinster, *International Students Provide Colleges a Mutually Beneficial Relationship*, Insight Into Diversity (June 28, 2016), <http://www.insightintodiversity.com/international-students-provide-colleges-a-mutually-beneficial-relationship/>.

medicine, and physics between 2000 and 2019—nearly 40%—have been immigrants to this country.⁴⁰

International student attendance also allows American colleges and universities to expand their academic offerings, broadening the educational opportunities available to everyone. This dynamic is particularly evident in the STEM fields, where graduate-level enrollment by domestic students is especially low.⁴¹ Nine in ten undergraduate computer science students are Americans,⁴² for example, but computer science graduate programs have not enrolled a majority of their students domestically since 1995.⁴³ Given these postgraduate enrollment numbers, at some schools “there are not enough domestic students alone in certain fields” to support a full range of advanced research and professorships.⁴⁴ In this

⁴⁰ Stuart Anderson, *Immigrant Nobel Prize Winners Keep Leading the Way for America*, Forbes (Oct. 14, 2019), <https://www.forbes.com/sites/stuartanderson/2019/10/14/immigrant-nobel-prize-winners-keep-leading-the-way-for-america/?sh=3c69635d4d4b>.

⁴¹ Nick Wingfield, *The Disappearing American Grad Student*, N.Y. Times (Nov. 3, 2017), <https://www.nytimes.com/2017/11/03/education/edlife/american-graduate-student-stem.html>.

⁴² *Id.*

⁴³ Nat’l Found. for Am. Pol’y, *The Importance of International Students to American Science and Engineering* 4 tbl.2 (2017), <https://nfap.com/wp-content/uploads/2017/10/The-Importance-of-International-Students.NFAP-Policy-Brief.October-20171.pdf>.

⁴⁴ *Id.* at 2.

context, teaching positions at the graduate-student and junior-instructor levels are frequently filled by international students.⁴⁵

In such situations, international graduate students are an important component of a program's or department's research efforts, and they contribute significantly to the education of undergraduate students. This "high level of international students allows U.S. universities to attract and retain faculty," particularly in STEM fields.⁴⁶ Much of the research in these fields is directed by professors but conducted by graduate students, and if U.S. colleges and universities cannot get the best graduate students, they will not attract the best faculty. Institutions and their students will suffer as a result. "Science is international, and scientific talent is today a global resource."⁴⁷ Thus, in order for a university to pursue "any competitiveness strategy[, it] must include measures to attract and retain foreign talent in science and engineering."⁴⁸ Just as international students' "enrollment in under-enrolled science

⁴⁵ See Wingfield, *supra* note 41.

⁴⁶ Nat'l Found. for Am. Pol'y, *The Importance of International Students*, *supra* note 43, at 2.

⁴⁷ NAFSA, *An International Education Policy for U.S. Leadership, Competitiveness, and Security* 3 (2006), <https://www.nafsa.org/sites/default/files/media/document/NIEP2006.pdf>.

⁴⁸ *Id.*

courses often makes the difference for a school's ability to offer those courses,"⁴⁹ "in many cases, it is foreign scientists who teach the courses that we want American students to take."⁵⁰ As a STEM faculty member at Brandeis University summarized, "This is BEYOND critical for us."

C. OPT Participants Give Back To Their Campuses And Communities.

American institutions of higher education have realized remarkable benefits from international students who participate in OPT. These smart, driven, entrepreneurial members of our communities contribute meaningfully to campuses, classrooms, and communities.

Guilford College provides one illustrative example. Former President Jane Fernandes identified multiple recent graduates who enriched campus life immeasurably before, during, and after their participation in OPT. She described one such graduate as "a strategic, game-changing individual who served our academic community well." That graduate has pursued a passion in computer technology "to break down the barriers preventing women from becoming part of a male-dominated, globally critical field." Another graduate found his "calling to

⁴⁹ NAFSA, *In America's Interest: Welcoming International Students: Report of the Strategic Task Force on International Student Access* 6 (2003), <https://www.nafsa.org/policy-and-advocacy/policy-resources/americas-interest-welcoming-international-students>.

⁵⁰ NAFSA, *An International Education Policy*, *supra* note 47, at 3.

become a history teacher” while at Guilford, and OPT “led to his first teaching job in Guilford County,” where he is now a beloved and award-winning educator.

Similarly, Massachusetts Institute of Technology shared multiple examples of graduates who used OPT to continue and advance cutting-edge and award-winning scientific research at MIT. One recent graduate from The University of Pennsylvania’s Wharton School used OPT to work part-time at Wharton “in the fast growing and worthwhile field of impact investing.” This individual now manages the Wharton Impact Venture Associates program, guiding a team in its work to build a best-in-class impact investing vehicle. These examples underscore the myriad ways OPT participants give back, as campus leaders, researchers, and public servants, to the same communities that welcomed them as students.

D. International Students Add Tremendous Value To The U.S. Economy.

Higher education is not the only sector that benefits from international students. NAFSA: Association of International Educators estimates that international students contributed \$38.7 billion to the U.S. economy during the 2019-2020 academic year.⁵¹ That same study found that the economic activity generated by international students supported more than 415,000 American jobs across a

⁵¹ NAFSA, *NAFSA International Student Economic Value Tool*, <https://www.nafsa.org/policy-and-advocacy/policy-resources/nafsa-international-student-economic-value-tool-v2> (last visited June 15, 2021).

number of economic sectors, including accommodation, dining, retail, communication, transportation, and health insurance.⁵² According to another study, the work of foreign graduate students demonstrably increases patent applications and grants.⁵³ International students also continue to contribute to the U.S. economy beyond their periods of enrollment. For example, in a study of American startup companies valued at \$1 billion or more, nearly one-quarter of such businesses had a founder who first came to the United States as an international student.⁵⁴ Those founders generated, on average, more than 1,200 jobs per company.⁵⁵

“The economic benefits from immigration are enhanced when looking specifically at OPT,” since the program is available to those “perfectly positioned to contribute to economic growth.”⁵⁶ One notable example is Michelle Zatlyn, co-founder of Cloudflare, a web performance and security company. Cloudflare had over a thousand employees and a multi-billion dollar valuation at the time of its

⁵² *Id.*

⁵³ See Gnanaraj Chellaraj et al., *The Contributions of International Graduate Students to US Innovation*, 16 Rev. Int’l Econ. 444, 454 (2008).

⁵⁴ Stuart Anderson, Nat’l Found. for Am. Pol’y, *Immigrants and Billion-Dollar Companies 2* (2018), <https://nfap.com/wp-content/uploads/2018/10/2018-BILLION-DOLLAR-STARTUPS.NFAP-Policy-Brief.2018.pdf>.

⁵⁵ *Id.* at 1.

⁵⁶ Business Roundtable, *The Economic Impact of Curbing the Optional Practical Training Program* 4 (Dec. 2018), https://s3.amazonaws.com/brt.org/BRT-OPTProgramReport_1.pdf (hereinafter “Business Roundtable Report”).

initial public offering in 2019.⁵⁷ Zatlyn has credited OPT for the company's existence and success. After attending college in Canada, she enrolled at Harvard Business School, where she met the individuals with whom she would later found the company. They worked on the concept during business school. After Zatlyn graduated, she obtained work authorization through OPT. "The best thing the U.S. government has done on immigration is OPT to allow international students a chance to stay and work for a time after graduation," Zatlyn said.⁵⁸ In Zatlyn's case, it gave her the opportunity to refine "the business plan that helped create the company."⁵⁹

Zatlyn is not alone. For example, Ashifi Gogo used OPT after he graduated from Dartmouth College's Thayer School of Engineering to found and grow his company, Sproxil, which uses authentication technology to combat counterfeit pharmaceuticals in Africa. Gogo explained: "Since graduating, Sproxil has grown into a multi-million dollar enterprise, secured American venture backing, created dozens of jobs for Americans and helped protect over 20 million people worldwide from suspicious and counterfeit medicines and consumer products." Former

⁵⁷ Connie Loizos, *Cloudflare Co-founder Michelle Zatlyn on the Company's IPO Today, Its Unique Dual Class Structure, and What's Next*, Tech Crunch (Sept. 13, 2019), <https://techcrunch.com/2019/09/13/cloudflare-cofounder-michelle-zatlyn-on-the-companys-successful-ipo-and-whats-next/>.

⁵⁸ Anderson, *Immigrants and Billion-Dollar Companies*, *supra* note 54, at 18.

⁵⁹ *Id.*

President Bill Clinton has called Gogo's company "a remarkable achievement," and the Obama Administration recognized Gogo as an "Immigrant Innovator" and "Champion for Change."⁶⁰ Gogo views OPT as "invaluable to kickstarting [his] entrepreneurial career."

IV. Any Reduction Of OPT Would Harm Higher Education And The Economy.

A victory for WashTech in this lawsuit would greatly impair *amicus's* member-institutions' competitive position in the global market for higher education, because OPT enables U.S colleges and universities to attract the world's best and brightest students. Eliminating or reducing OPT would have consequences not just for international students and the institutions that host them. The U.S. economy would forfeit positive externalities associated with bringing international students here, chief among them technology and innovation, two major drivers of economic success.

A. Any Reduction Of OPT Would Compromise American Higher Education Institutions' Ability To Compete For International Students.

Any rollback in OPT would harm the competitive position of the United States in the international market for higher education. The preeminence of American colleges and universities is due in no small part to their determination to attract the

⁶⁰ *40 Under 40: Ashifi Gogo*, Fortune (Sept. 24, 2015), <https://engineering.dartmouth.edu/news/40-under-40-ashifi-gogo>.

brightest and most committed students and scholars, wherever they may be found. “[O]penness to people and ideas from around the world is a longstanding strength of the American environment for innovation,” and this very openness helped make the United States the global leader in higher education.⁶¹ In the 2021 *Times Higher Education* ranking of international universities, sixteen of the top twenty-five (and twenty-five of the top fifty) schools were American.⁶² Though many countries have world-class flagship institutions, the United States “still dominate[s]” any list of academic powerhouses.⁶³ With more than 4,300 degree-granting post-secondary institutions, students coming to the United States have options unmatched by any other destination.⁶⁴ Further, the presence of international students and scholars on campus is a key component of such global rankings of institutions, thus enabling U.S. institutions to maintain top spots because of the large numbers of international students that they attract.

⁶¹ Nat’l Acad. of Scis. et al., *Rising Above the Gathering Storm: Energizing and Employing America for a Brighter Economic Future* 467 (2007).

⁶² *World University Rankings 2021*, Times Higher Educ., <https://bit.ly/3cLvwy1> (last visited June 15, 2021).

⁶³ Susan Adams, *An Expert List of the World’s Best Universities*, Forbes (Sept. 26, 2018), <https://www.forbes.com/sites/susanadams/2018/09/26/an-expert-list-of-the-worlds-best-universities/>.

⁶⁴ See *Digest of Education Statistics*, Nat’l Cent. Educ. Stat., tbl. 317.20, https://nces.ed.gov/programs/digest/d17/tables/dt17_317.20.asp (last visited Sept. 29, 2019).

But American institutions of higher education face ever fiercer competition.⁶⁵ Foreign students “have choices,” and “in this very sophisticated, very competitive market for the first time, we have real competition.”⁶⁶ Today international students continue to make this country the global leader in higher education, but the gap is closing. The United States’ “market share has dropped from 23% in 2000 to 16% in 2012,” with China, Canada, Britain, and Russia all vying for the same pool of talent.⁶⁷ Even more worrying, in recent years and “[f]or the first time in decades, foreign student numbers in the country are not only *not growing* substantially, they have actually *declined*.”⁶⁸ The extraordinary environment that has long drawn students from around the world is “now at risk,”⁶⁹ along with tuition revenue on

⁶⁵ See, e.g., British Council, *The Shape of Global Higher Education: International Comparisons with Europe* 14 (2019), https://www.britishcouncil.org/sites/default/files/k006_02_the_shape_of_global_higher_education_in_europe_final_v5_web.pdf (“[T]he global education context is a hugely competitive market.”).

⁶⁶ Nick Anderson & Susan Svrluga, *What’s the Trump Effect on International Enrollment? Report Finds New Foreign Students Are Dwindling*, Wash. Post (Nov. 13, 2018) (quoting Allan E. Goodman, Pres. & CEO, Inst. of Int’l Educ.), <https://wapo.st/2FIU2Yd?/>.

⁶⁷ Jason E. Lane, *US Losing Its Dominance in Global Higher Education Market*, Conversation (Oct. 14, 2015), <http://theconversation.com/us-losing-its-dominance-in-global-higher-education-market-46721/>.

⁶⁸ *US Student Visa Data the Latest Indicator of International Enrolment Trends*, ICEF Monitor (May 23, 2018), <http://monitor.icef.com/2018/05/us-student-visa-data-the-latest-indicator-of-international-enrolment-trends/> (emphasis in original).

⁶⁹ NAFSA, *An International Education Policy*, *supra* note 47.

which many universities and colleges have come to depend.⁷⁰

The availability of OPT is essential to *amicus*'s members' competitiveness on the global stage. Studies show that among students considering a degree abroad, 39% responded that it was very important to them to have access to the same internship opportunities as local students, and 62% reported that being able to work in-country after completing a degree was critical.⁷¹ When it comes to attracting international masters students, OPT is paramount. For that demographic, "career prospects are the most important factor . . . when considering where to apply and enroll."⁷² OPT improves career prospects by providing opportunities for experiential learning with employers in the students' field of study. As the Vice President for Global Engagement at Georgetown University explained: "In an increasingly competitive global higher education landscape, OPT is a signature strength of the United States. The opportunity to combine formal education with work experience

⁷⁰ Elizabeth Redden, *For International Students, Shifting Choices of Where to Study*, Inside Higher Ed (Aug. 24, 2018), <https://www.insidehighered.com/news/2018/08/24/international-enrollments-slowng-or-declining-some-top-destination-countries-look>.

⁷¹ Carmen Neghina, *International Students' Changing Perceptions of the U.S.*, Study Portals, <https://www.studyportals.com/blog/one-year-later-international-students-changing-perceptions-of-the-u-s/> (last visited June 15, 2021).

⁷² Zhengrong Lu & Paul Schulmann, *How Masters' Students Choose Institutions: Research on International Student Segmentation* v (World Educ. Servs. 2015), <https://wenr.wes.org/2015/10/how-masters-students-choose-institutions-research-on-international-student-segmentation>.

is a magnet for talented students from abroad.”

The reality of life on *amicus*'s members' campuses is proof positive of OPT's importance:

- “OPT has played a tremendous role in my decision to apply and ultimately attend a US-based university (Duke University) for my MBA. I had the option of choosing between the US and Europe (Spain, UK, France) for my Master's degree. . . . I decided to only apply in the US in great part because of the opportunity of having practical training in the US after graduation.” –*OPT participant, graduate of Duke University's Fuqua School of Business*
- “[M]y participation in OPT has not only provided a well-rounded American educational and work experience but has also become critical to further immersion into the American culture. . . . OPT was pivotal to my decision to pursue my education in the United States.” –*OPT participant, graduate of University of Arkansas*
- “I chose to pursue an undergraduate degree at Oberlin, Ohio, because of its proximity to Cleveland and The Cleveland Orchestra, where I am completing my OPT. . . . [H]ands-on OPT experience in the US workforce, albeit brief, is paramount to my decision to pursue a degree in the US - to find a vision for the future of a growing arts industry in my home country. There would be little reason to travel this far otherwise.” –*OPT participant, graduate of Oberlin College*

Another graduate from the University of Arkansas who used OPT framed the issue in stark terms: “I am certain that the US would not be the top destination for potential international students if OPT would be eliminated.” Without the program, he explained, “international students may choose comparable countries such as Australia, Canada, England, or Germany.”

Research supports this commonsense intuition. “[T]ightening regulations for post-study work offers or cutting these down have had a negative impact on

international student numbers in the years immediately following the change.”⁷³ For example, when the United Kingdom closed its route to post-study work for international students, over a third of students who considered but ultimately declined to pursue their education in the United Kingdom pointed to poor post-study work opportunities as the principal reason.⁷⁴

Of course, with any rollback of OPT, international students themselves would also suffer. Those who continue to come here for study will find their degree programs less rich and less valuable without the experiential components that are paramount for a complete and balanced education.⁷⁵ They would miss out on curricular offerings and internships that match students with public and private sector employers to complement and hone classroom learning. And they would face greater uncertainty about the value proposition of an American degree, particularly when their opportunities to defray the substantial cost of education through subsequent employment in this country could be severely diminished.

B. Lost Talent From Any OPT Reduction Would Also Harm The U.S. Economy.

Given all that institutions of higher education invest to attract, educate, and

⁷³ Paulina Trevena, *Post Study Work Visa Options: An International Comparative Review* 14 (Aug. 2019), <https://dera.ioe.ac.uk/33953/1/post-study-work-visa-options-international-comparative-review.pdf>.

⁷⁴ *Id.*

⁷⁵ *See supra* § II.

develop international students from around the world, it makes little sense to prohibit willing international students from contributing to the United States economy. But this is precisely what WashTech’s requested relief would do. International students would lack a clear path to apply their skills in the U.S. after graduation, and other nations would capture the return on America’s investment. As one OPT participant from Rhodes College recognized, OPT “helps the US economy to retain talents from around the world.”

Economists have studied the consequences of limiting OPT and predict dire results. For example, in late 2018 the Business Roundtable modeled the effect of a 60% decline in OPT participation by 2020.⁷⁶ The model showed detrimental effects on gross domestic product and labor market: “[r]eal U.S. GDP would decline by about a quarter of a percentage point by 2028,” and the “labor market would lose 443,000 jobs—including 255,000 jobs held by native-born workers.”⁷⁷ Unsurprisingly, the industry that would suffer most is education, to the tune of 131,000 jobs lost by 2028.⁷⁸ The Business Roundtable’s model “reinforces the findings of myriad studies that show that foreign-born workers actually create jobs

⁷⁶ Business Roundtable Report, *supra* note 56, at 1.

⁷⁷ *Id.*

⁷⁸ *Id.* at 9.

for native-born workers on aggregate, rather than displace them.”⁷⁹ By the same token, policies that make it harder for international students to work here also reduce innovation, the hallmark of a healthy economy.⁸⁰

* * *

The American higher education system is the world’s leading destination for international students. These students benefit immeasurably from an American education and then use what they have learned for the good of the country and the world. The OPT program has been integral in attracting this extraordinary international talent and then allowing the United States to reap the benefits of this highly motivated, creative, and industrious group of young people. OPT is critical to thousands of other institutions of higher learning throughout the country, just as it is critical to millions of international students and the national economy. WashTech’s challenge to OPT puts all these benefits, built up over decades, in jeopardy.

⁷⁹ *Id.* at 1.

⁸⁰ *Id.* at 3-4.

CONCLUSION

Amicus respectfully urges the Court to affirm the district court's orders denying Appellant's Motion for Summary Judgment and granting Appellees' Cross-Motions, thereby upholding this vital program.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitations of Fed. R. App. P. 29(a)(5) and 32(a)(7)(B) because this brief contains 6,412 words, excluding the parts of the document exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(6)-(7) because this brief has been prepared using Microsoft Office Word and is set in Times New Roman 14 point font.

Dated: June 21, 2021

/s/ Ishan K. Bhabha

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing brief was filed electronically on June 21, 2021 and will therefore be served electronically on all counsel.

Dated: June 21, 2021

/s/ Ishan K. Bhabha

Ishan K. Bhabha