UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA
WESTERN DIVISION

The State of KANSAS, the State of NORTH DAKOTA, the State of ALABAMA, the State of ARKANSAS, the State of FLORIDA , the State of IDAHO, the State of INDIANA, the State of IOWA, the Commonwealth of KENTUCKY, the State of MISSOURI, the State of MONTANA, the State of NEBRASKA, the State of NEW HAMPSHIRE, the State of OHIO, the State of SOUTH CAROLINA, the State of SOUTH DAKOTA, the State of TENNESSEE, the State of TEXAS, and the Commonwealth of VIRGINIA, **Plaintiffs,** **v.** **UNITED STATES OF AMERICA and the CENTERS FOR MEDICARE & MEDICAID SERVICES,** **Defendants.**	**CIVIL ACTION NO. 1:24-cv-00150-DMT-CRH**

DEFENDANT-INTERVENORS' MOTION TO INTERVENE

CLAUDIA MOYA LOPEZ, an individual residing in Virginia, HYUN KIM, an individual residing in Virginia, DANIA QUEZADA TORRES, an individual residing in Washington State, and CASA, INC., a non-profit membership organization headquartered in Maryland, hereby move the Court for an order granting leave to intervene as of right, as defendants in this action as it relates to the lawfulness of 89 Fed. Reg. 39,392 (May 8, 2024), announced by the Centers for Medicare & Medicaid Services (CMS) in May 2024.

This motion is based upon the declarations of Claudia Moya Lopez, Hyun Kim, Dania Quezada Torres, and George Escobar, Chief of Programs and Services at CASA, Inc., and the memorandum of law, all of which are submitted with this motion to intervene.

The movants respectfully request oral argument on this motion if it is opposed.

Date: September 20, 2024

Respectfully submitted,

/s/ Matthew S. Rozen

Matthew S. Rozen (VA Bar No. 85871)
John Matthew Butler (D.C. Bar No. 1721350)
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.,
Washington, D.C. 20036
mrozen@gibsondunn.com
mbutler@gibsondunn.com
Telephone: 202.955.8500
Facsimile: 202.467.0539

Betty X. Yang (TX Bar No. 24088690)
byang@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
2001 Ross Avenue Suite 2100
Dallas, Texas 75201
Telephone: 214.698.3100
Facsimile: 214.571.2900

Nicholas Espiritu*
espiritu@nilc.org
Gabrielle Lessard*
Lessard@nilc.org
Tanya Broder*
broder@nilc.org
NATIONAL IMMIGRATION LAW CENTER
3450 Wilshire Blvd.
Suite 108 – 62
Los Angeles, CA 90010
Telephone: 213.639.3900
Facsimile: 213.639.3911

Joanna E. Cuevas Ingram*
cuevasingram@nilc.org
Hilda Bonilla*
bonilla@nilc.org
NATIONAL IMMIGRATION LAW CENTER
P.O. Box 34573
Washington, DC 20043
Telephone: 202.216.0261
Facsimile: 202.216.0266

**Pro hac vice* forthcoming

Attorneys for Proposed Intervenors

CERTIFICATE OF SERVICE

I hereby certify that on September 20, 2024, I filed the foregoing motion using the Court's CM/ECF system, which will send a notice of the filing to counsel for all parties.

/s/ *Matthew S. Rozen*
Matthew S. Rozen

UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA
WESTERN DIVISION

The State of KANSAS, et al., **Plaintiffs,** **v.** **UNITED STATES OF AMERICA and the CENTERS FOR MEDICARE & MEDICAID SERVICES,** **Defendants.**	**CIVIL ACTION NO. 1:24-cv-00150-DMT-CRH**

PROPOSED INTERVENORS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION TO INTERVENE AS DEFENDANTS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Page(s)

Statutes

Page(s)

Other Authorities

Rules

Regulations

STATEMENT OF INTEREST

Claudia Moya Lopez, Dania Quezada Torres, and Hyun Kim, ("Proposed Individual Intervenors") and CASA, Inc. ("CASA") (together, "Proposed Intervenors") seek to intervene in this matter to defend a regulation that would help thousands of individuals purchase affordable health insurance.[1] Proposed Individual Intervenors and CASA's members are noncitizens who came to the United States as children, have lived most of their lives here, and were granted deferred action through the Deferred Action for Childhood Arrivals ("DACA") program.[2] Although DACA recipients grew up in this country, they lived under the constant threat of removal and lacked work authorization before DACA. As a result, many lacked health insurance and could not afford basic medical services. When the Department of Homeland Security ("DHS") created DACA, DACA recipients obtained protection from deportation and employment authorization, allowing them to fulfill their potential and continue contributing to their communities. But for many DACA recipients, health insurance remained unattainable because of an arbitrary policy excluding them from purchasing health insurance through the marketplaces established under the Affordable Care Act ("ACA").

The ACA grants marketplace access to noncitizens who are "lawfully present." Since 1996, DHS and its predecessors have interpreted this phrase in other, similar statutes to include deferred-action recipients. When the ACA was enacted in 2010, the Centers for Medicare and Medicaid Services ("CMS") applied the same interpretation to the ACA, allowing deferred-action recipients to access the marketplaces. But in 2012, when DACA was adopted, CMS amended its

[1] Declarations from each of the Proposed Individual Intervenors appear as Exhibits A-C hereto (respectively, the "Kim Decl.," "Torres Decl.," and the "Moya Lopez Decl."). A declaration from CASA's Chief of Programs and Services, George Escobar, appears as Ex. D hereto (the "Escobar Decl.").

[2] *See* Kim Decl. ¶¶ 1-7; Torres Decl. ¶¶ 1-8; Moya Lopez Decl. ¶¶ 1-8.

regulation to arbitrarily exclude DACA recipients—but no other deferred action recipients—from the definition of "lawfully present," and thus from the ACA marketplaces, even while other agencies continued to treat DACA recipients as "lawfully present" for other purposes.

In April 2023, CMS issued a notice of proposed rulemaking to eliminate the exception that excluded DACA recipients from the marketplaces. CASA urged CMS to finalize the rule promptly before open enrollment in November 2023. But CMS waited more than a year to issue a Final Rule eliminating the exception.

Proposed Intervenors welcome CMS's decision to eliminate the arbitrary exception that has long excluded DACA recipients from the marketplaces. But those affected have waited too long for access to basic healthcare to rely on the government to pursue their interests. They wish to purchase health insurance on the marketplaces as soon as possible so they can access medical care and have financial security. The government, on the other hand, has its own policy and institutional interests that have delayed this policy change and may prevent the government from fully protecting Proposed Intervenors' interests in prompt relief.

Proposed Intervenors thus seek to intervene in this case to oppose the preliminary injunction sought by Plaintiffs and ensure the Final Rule goes into effect on November 1, 2024. Because Proposed Intervenors have standing and meet the requirements for both intervention as of right and permissive intervention, the Court should grant the motion to intervene.

BACKGROUND

I. CASA's Members And The Proposed Individual Intervenors Are DACA Recipients Who Wish To Purchase Health Insurance

Proposed Intervenor CASA is a nonprofit organization headquartered in Maryland, with offices in Maryland, Virginia, and Pennsylvania. CASA is the largest membership-based immigrant rights organization in the mid-Atlantic region, with more than 100,000 members. CASA's

members include individuals like Proposed Individual Intervenors Claudia Moya Lopez and Hyun Kim. Moya Lopez Decl. ¶ 7; Kim Decl. ¶ 5. Claudia arrived from El Salvador when she was 11 years old, and she currently lives in Virginia. Moya Lopez Decl. ¶¶ 2-3. She is a small-business owner who operates a roofing company. *Id.* ¶¶ 4-5. As a small-business owner, she does not have access to employer-based health insurance and cannot afford to purchase insurance for herself. *Id.* ¶ 9. Last year, Claudia was diagnosed with leukemia and was hospitalized for five weeks. *Id.* ¶ 10. In that instance, Claudia was fortunate the hospital covered the cost of her treatment itself, yet cost remains a concern, as there is still a debt listed on her bill that is larger than her income and over half of her savings. *Id.* ¶¶ 11-12. Claudia also requires ongoing monitoring because of the risk of leukemia recurrence and has no reliable access to healthcare going forward. *Id.* ¶¶ 13-15.

Hyun Kim arrived in the United States with his mother when he was three years old. Kim Decl. ¶ 2. As a restaurant worker who has been saving up to attend college, he receives base pay and tips but no benefits like health insurance. *Id.* ¶ 4. Because of his lack of access to health insurance, Hyun has not had a physical in three years and has never seen a dentist. *Id.* ¶ 9. Under the Final Rule, he is eligible for credits and discounts in buying health insurance on the market-place, which will allow him to access consistent preventative care for the first time in his life. *Id.* ¶¶ 11-14, 16.

Dania Quezada Torres is a third-year law student at the University of Washington. Torres Decl. ¶ 7. She has lived in the United States since 2003. *Id.* ¶¶ 1-2. She currently receives ex-tremely limited health benefits through her university, which she relies on to afford the medication she needs for her attention deficit hyperactivity disorder and obsessive-compulsive disorder. *Id.* ¶¶ 9-11. When Dania is unable to access her university health benefits, she has to ration her

medication. *Id.* ¶ 13. Dania intends to purchase health insurance through Cascade Care (available through the Washington state health marketplace) and needs the insurance affordability credits that would be available only through the Final Rule to make coverage affordable on her student budget. *Id.* ¶ 17.

Each Proposed Intervenor has a direct interest in the implementation of the Final Rule and would be directly harmed by a preliminary injunction to stay the Final Rule, which would delay their access to important health insurance and care and lead to fear that they will have to choose between foregoing medical treatment and assuming crushing medical debt. *See* Moya Lopez Decl. ¶¶ 14-15, 17-18; Torres Decl. ¶¶ 13-17; Kim Decl. ¶¶ 14-15.

II. The Affordable Care Act Increases Access to Health Insurance

Congress passed the ACA in 2010 with a goal of providing broad access to health insurance. *See* Pub. L. No. 111-148, 124 Stat. 119 (2010) (codified as 42 U.S.C. § 18001 *et seq.*). One of the most important ways the ACA did this was by establishing online health insurance marketplaces, where consumers can compare and buy approved health insurance plans. 42 U.S.C. §§ 18031, 18041. Marketplace plans provide access to preventative medicine, which allows insureds to save money on future health expenses, make prescription drugs more affordable, and help pay for medical expenses and emergency services. *See* 42 U.S.C. § 18022.

Importantly, the ACA facilitated this broad access by permitting any noncitizen who is "lawfully present" in the United States to purchase and enroll in a marketplace plan. 42 U.S.C. § 18032(f)(3). The ACA does not define "lawfully present," aside from noting that individuals should be "reasonably expected to be [lawfully present] for the entire period of enrollment." 42 U.S.C. § 18071(e)(2); *accord* 42 U.S.C. § 18032(f)(3). But before the ACA was adopted, DHS and its predecessors had interpreted the same phrase, in other statutes, *e.g.*, 8 U.S.C. § 1611(b)(2), to include all persons granted "deferred action," 8 C.F.R. § 1.3(a)(4)(vi) (2011) (originally at 8

C.F.R. § 103.12 (1996)). From the outset of the ACA's implementation, CMS interpreted the phrase consistently with prior usage and thus provided by regulation that all persons granted "deferred action" were eligible to purchase health insurance through these marketplaces. 45 C.F.R. § 152.2(4)(vi) (2010). That included persons with pending applications for classification as Special Immigrant Juveniles, along with persons granted humanitarian parole, and many others whose removal has been withheld. 45 C.F.R. § 152.2. Although DACA had not been established as a policy when Congress enacted and CMS began to implement the ACA, all persons granted deferred action were considered lawfully present at that time.

III. DHS Adopts DACA, But CMS Excludes DACA Recipients From Marketplaces

In 2012, DHS announced DACA, which was intended to allow immigration enforcement forbearance identical to other deferred action. U.S. Citizenship and Immigration Services, *Frequently Asked Questions*, tinyurl.com/265wfp94 (last visited Sept. 16, 2024). Because DACA recipients were granted "deferred action," they were treated as "lawfully present" under other regulations using that term. *See*, *e.g.*, 8 C.F.R. § 1.3(a)(4)(vi). Then-existing ACA regulations likewise would have treated them as "lawfully present" and thus eligible to purchase health insurance on the marketplaces. But CMS arbitrary amended the ACA regulations to exclude DACA recipients from their definition of "lawfully present." 77 Fed. Reg. 52614 (Aug. 30, 2012) (codified at 45 C.F.R. pt. 152). CMS's departure from its prior definition "was not based on health policy"—"rather, it relied on a desire not to interfere with 'immigration policymaking'" and to avoid appearing too lenient on immigration issues. Medha D. Makhlouf, *Interagency Dynamics in Matters of Health and Immigration*, 103 B.U. L. Rev. 1095, 1126-27 (2023). DACA recipients, unlike others granted deferred action, were thus denied the chance to purchase plans on the marketplaces.

DACA recipients' inability to purchase health insurance coverage on the marketplaces has undermined the ACA's goal of providing broad access to healthcare and DACA's goal of

providing stability for recipients. A recent survey of DACA recipients found that 20 percent of those surveyed were not covered by any kind of health insurance or healthcare plan, which is triple the national average of 7.7 percent. National Immigration Law Center ("NILC"), *DACA Recipients' Access to Health Care: 2024 Report* 1 (May 2024), tinyurl.com/yw6zw2y4. The same survey found that 36 percent of respondents skipped recommended medical tests or treatments due to the cost of care, and almost half (42 percent) skipped dental examinations or treatments. *Id.* at 3. The lack of affordable care also has financial implications, with 27 percent of respondents reporting they took on debt to afford a medical procedure and 12 percent taking on debt to afford medication. *Id.*

This has been the experience of the Proposed Individual Intervenors. Claudia Moya Lopez requires regular checkups to monitor for a possible leukemia recurrence, but she does not know how she is going to pay for those visits. Moya Lopez Decl. ¶¶ 13-14. Instead of saving money to help her children go to college or reinvest in her small business, she is always saving up for health expenses and unexpected medical emergencies. *Id.* ¶ 15. Hyun Kim cannot currently afford health insurance and must pay high out-of-pocket costs for any medical care, including doctor's appointments. Kim Decl. ¶ 8. As a result, he has avoided going to care for regular appointments, preventative care, and dental exams, even though he has a family history of diabetes. *Id.* ¶¶ 8-10. Under Dania Quezada Torres' university-based insurance plan, even for a short visit to the school clinic, she has had to pay around $150. Torres Decl. ¶ 11. Thus, she tries to avoid visiting the clinic or seeing a doctor if and when she has health concerns, and she will ration her prescription medication even though she needs the medication to stay focused on her studies. *Id.* ¶¶ 12-14.

Numerous other CASA members are similarly situated, in that access to healthcare coverage is a great concern in light of the financial stability it would bring them. Escobar Decl. ¶¶ 15,

17. CASA's members routinely report the financial hardships they experience due to the gap in access to affordable health insurance for DACA recipients. *Id.* ¶ 11. Many have even made personal and financial decisions in reliance on the Final Rule taking effect, and a preliminary injunction would irreparably harm those who have planned their financial goals around it.

IV. CMS Restores DACA Recipients' Access To Health Insurance Marketplaces

In April 2023, CMS announced a proposed rule to better "effectuate congressional intent in the ACA" to increase health coverage access. 88 Fed. Reg. 253134, 25316 (Apr. 26, 2023) (codified at 42 C.F.R. pts. 435, 457, 600; 45 C.F.R. pts. 152, 155) ("Proposed Rule"). The Proposed Rule sought to restore access to the marketplaces to all noncitizens "lawfully present" in the United States, including all those granted deferred action like DACA recipients, given "there [is] no statutory mandate to distinguish between recipients of deferred action under the DACA policy and other deferred action recipients." *Id.* at 25316. CMS proposed a target effective date of November 1, 2023—the start of the annual enrollment period for plans effective in calendar year 2024—and called for public comments to be submitted by June 23, 2023. *Id.* at 25313-14. CASA submitted two comments, including one urging CMS to act urgently to allow DACA recipients access to the marketplaces, including no later than November 1, 2023. NILC and Immigration Advocacy Organizations, Comment Letter to *Proposed Rule Clarifying Eligibility for a Qualified Health Plan through an Exchange*, Regulations.gov (June 26, 2023), tinyurl.com/362ce5n7.

Nearly a year after the comment period closed, CMS finally published a final rule in May 2024, eliminating the arbitrary DACA carveout for the healthcare marketplaces. 89 Fed. Reg. 39392 (May 8, 2024) (codified at 42 C.F.R. pts. 435, 457, 600; 45 C.F.R. pts. 152, 155) ("Final Rule"). The delay pushed the Final Rule's effective date back a full year. The Final Rule provides that DACA recipients will be eligible to purchase health insurance plans on the marketplaces during the upcoming enrollment period for 2025, which begins November 1, 2024. *Id.* at 39393.

After the Final Rule was issued, multiple states (the "States") challenged it through this lawsuit. On August 30, 2024, the States moved for a stay of the Final Rule and a preliminary injunction. ECF 35. The opposition to the motion for a preliminary injunction is due September 25, 2024, and there will be a hearing on that motion on October 15, 2024. ECF 44.

ARGUMENT

The Court should permit Proposed Intervenors to intervene because they have actual, concrete, and individualized interests in the subject matter of this action that will be gravely impaired if the States prevail in this case. The States seek to enjoin a rule that would allow Proposed Individual Intervenors and other CASA members to purchase health insurance from already established healthcare marketplaces. Defendants—CMS and the U.S. government—will not adequately represent Proposed Intervenors' interests because CMS's interests in this matter are largely institutional in nature. Proposed Individual Intervenors and CASA's members, by contrast, simply want to purchase health insurance and access preventative healthcare and other insurance benefits as soon as possible. CASA also has its own organizational interests in supporting its members and expending fewer funds to help its members obtain medical care. Proposed Intervenors thus have Article III standing and are entitled to intervene as a matter of right under Federal Rule of Civil Procedure Rule 24(a). At minimum, they should be granted permissive intervention under Rule 24(b).

I. Proposed Intervenors Have Standing

"In the Eighth Circuit, a prospective intervenor must 'establish Article III standing,'" which requires showing injury, causation, and redressability. *Nat'l Parks Conservation Ass'n v. U.S. E.P.A.*, 759 F.3d 969, 974 (8th Cir. 2014) ("*National Parks*"). Proposed Individual Intervenors satisfy each of these requirements. CASA also has both associational standing to represent the interests of its members and organizational standing based on its own interests.

Proposed Individual Intervenors satisfy the "injury in fact" requirement because they have an "injury to a legally protected interest that is 'concrete, particularized, and either actual or imminent.'" *United States v. Metro. St. Louis Sewer Dist.*, 569 F.3d 829, 834 (8th Cir. 2009). If the States succeed in enjoining the Final Rule, denying Proposed Individual Intervenors the ability to purchase health insurance on the marketplaces, Proposed Individual Intervenors will face financial injuries when they seek to obtain preventive or routine health screenings or regular primary care and treatment for any health conditions. Moya Lopez Decl. ¶¶ 16-17; Torres Decl. ¶¶ 17-18; Kim Decl. ¶¶ 14-15; *see also* Barker and Li, *The Cumulative Impact of Health Insurance on Health Status,* 55 Health Services Research 815, 820 (October 2020). Just as a plaintiff is not required to wait for a regulation to go into effect to challenge it as long as the injury it faces under the regulation is "certainly impending," *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013), proposed intervenors need not wait to defend a regulation when eliminating that regulation would subject them to "direct financial harm." *National Parks*, 759 F.3d at 975.[3]

The harms to the Proposed Individual Intervenors from not being able to access the marketplaces are not "speculative." *Clapper*, 568 U.S. at 409. Health insurance ensures people are not required to pay full healthcare costs out-of-pocket—they simply pay the member obligation (such as a copay). Access to health insurance reduces the risk an individual or family will suffer a "catastrophic health expenditure" that consumes a significant portion of their income.[4] Accordingly, vacating or enjoining the Final Rule, as the States seek in this lawsuit, would harm Proposed

[3] *See also Crossroads Grassroots Pol'y Strategies v. Fed. Election Comm'n*, 788 F.3d 312, 317 (D.C. Cir. 2015) ("Our cases have generally found a sufficient injury in fact where a party benefits from agency action, the action is then challenged in court, and an unfavorable decision would remove the party's benefit.").

[4] Scott KW, Scott JW, Sabbatini AK, et al., *Assessing Catastrophic Health Expenditures Among Uninsured People Who Seek Care in US Hospital-Based Emergency Departments*, JAMA Health (2021); Liu, C., et al., *The Affordable Care Act's Insurance Marketplace Subsidies were Associated with Reduced Financial Burden for US Adults*, 40 Health Affairs, 496 (March 2021).

Individual Intervenors by cutting off access to affordable health insurance coverage options on ACA marketplaces and requiring them to pay a higher price for medical care. A recent survey of DACA recipients shows that 48 percent of respondents experienced a delay in their medical care, and 71 percent of respondents stated they were unable to pay medical bills or expenses. NILC, *DACA Recipients' Access to Health Care: 2023 Report* 2 (May 2023), tinyurl.com/3hcyjtub. This "[r]isk of direct financial harm" from foreclosing of Proposed Individual Intervenors' access to marketplaces easily "establishes injury in fact." *National Parks*, 759 F.3d at 975.

Proposed Individual Intervenors also straightforwardly satisfy the other requirements for individual standing—"a causal connection between the injury and the conduct complained of," *Lujan v. Def. of Wildlife*, 504 U.S. 555, 560 (1992), and proof that a "favorable decision will likely redress the injury," *Metro. St. Louis Sewer Dist.*, 569 F.3d at 834—because the source of the injury is the lawsuit itself, and dismissing the lawsuit or denying relief would fully prevent that injury by ensuring the Final Rule goes into effect on November 1, 2024. *See Clapper*, 568 U.S. at 409; *see also National Parks*, 759 F.3d at 975 (proposed intervenor could trace injury to the plaintiffs' relief being granted and injury could be redressed by proposed intervenor prevailing in the litigation).

As to CASA, an organization has "associational" standing when (1) its members would otherwise have standing to sue in their own right, (2) the interests it seeks to protect are germane to the organization's purpose, and (3) the legal claims do not require the participation in the suit of each individual member. *See Kuehl v. Sellner*, 887 F.3d 845, 851 (8th Cir. 2018). For the reasons just explained, Proposed Individual Intervenors Claudia Moya Lopez and Hyun Kim satisfy the first requirement because they are CASA members and have standing to sue in their own right. Moya Lopez Decl. ¶ 7; Kim Decl. ¶ 5.

CASA also meets the other requirements for associational standing. One of CASA's core

missions is to support its members in improving their physical and mental health while also increasing their social stability. Escobar Decl. ¶¶ 4-5. If CASA's members were able to purchase health insurance, it would help them secure access to essential health services, such as primary and preventative care; obtain timely diagnosis of health concerns; and manage any chronic conditions. Finally, because the harm would be the same to all members wishing to purchase health insurance on the marketplaces—and would be equally addressed by dismissing the States' suit—individual members need not participate in this lawsuit. *Id.* ¶¶ 17-18. CASA's relief sought is simply the dismissal of the States' suit or judgment against the States on the merits, allowing the Final Rule to go into effect. This outcome is not particularized to any member, does not require individualized proof, and consequently does not require participation in this suit of individual members. *See Red River Freethinkers v. City of Fargo*, 679 F.3d 1015, 1022 (8th Cir. 2012); *Pharm. Rsch. & Mfrs. of Am. v. Williams*, 64 F.4th 932, 948 (8th Cir. 2023).

CASA also has standing on its own as an organization because delaying or preventing implementation of the Final Rule will injure CASA too, and its injuries satisfy the same elements applicable to individuals—injury, causation, and redressability. *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378-79 (1982). An organization satisfies the injury requirement when there is a "concrete and demonstrable injury to [the] organization's activities which drains its resources and is more than simply a setback to its abstract social interests." *Nat'l Fed'n of Blind of Mo. v. Cross*, 184 F.3d 973, 979 (8th Cir. 1999). CASA's mission relates to the wellbeing of immigrant communities. Escobar Decl. ¶¶ 4-5. To fulfill its mission, CASA regularly conducts educational campaigns to inform members of those communities of their rights and assists individuals in applying for immigration relief. *Id.* ¶¶ 5-11. CASA also helps its members understand their eligibility for affordable healthcare options; helps facilitate access to healthcare in hosting clinics, like vaccine

clinics; and has held clinics to help its members understand their options under the ACA and the Final Rule. *Id.* Such efforts have consumed time and resources that could have otherwise been spent providing direct services to CASA's members. *Id.* ¶¶ 14-16. If the States succeed in challenging the Final Rule, CASA will need to continue to divert these resources from other programs—requiring staff to devote up to 33 percent of their time (an equivalent of $33,000) to helping eligible DACA recipients secure alternative healthcare options—and this harm would be redressed by allowing the Final Rule to go into effect as scheduled. *Id.* ¶¶ 14, 16.

II. Proposed Intervenors Are Entitled to Intervene as of Right

Under Rule 24(a), "a court must permit anyone to intervene who: (1) files a timely motion to intervene; (2) claims an interest relating to the property or transaction that is the subject of the action; (3) is situated so that disposing of the action may, as a practical matter, impair or impede the movant's ability to protect that interest; and (4) is not adequately represented by the existing parties." *National Parks*, 759 F.3d at 975 (cleaned up). In this Circuit, Rule 24 "should be construed liberally, with all 'doubts resolved in favor of the proposed intervenor.'" *Id.* at 975. Proposed Intervenors satisfy each of these requirements.

A. Proposed Intervenors' Motion Is Timely

Given the early stage of this litigation, this motion is timely. In determining whether a motion to intervene is timely, courts consider four factors: "(1) the extent the litigation has progressed at the time of the motion to intervene; (2) the prospective intervenor's knowledge of the litigation; (3) the reason for the delay in seeking intervention; and (4) whether the delay in seeking intervention may prejudice the existing parties." *In re Uponor, Inc., F1807 Plumbing Fittings Prods. Liab. Litig.*, 716 F.3d 1057, 1065 (8th Cir. 2013). Each factor favors intervention.

Proposed Intervenors filed this motion only 23 days after the States filed the amended complaint and 21 days after their motion for preliminary injunction. The parties are also still

briefing the States' preliminary injunction motion, and Proposed Intervenors intend to respect the existing schedule on that motion by submitting a proposed brief on that motion concurrently with the deadline for CMS's brief. Proposed Intervenors' counsel is also available for oral argument on the date currently scheduled for that motion (October 15, 2024, ECF 44). Proposed Intervenors also plan to file concurrently with this motion a motion to transfer venue. Under this Court's rules for non-dispositive motions, briefing on the motion to transfer and on this motion to intervene can be completed concurrently within 21 days, by October 11, four days before oral argument on the preliminary injunction is scheduled. N.D. Civ. R. 7.1((B).

Courts routinely find motions to intervene timely and not prejudicial in cases like this one where the matter is "still in its infancy." *State v. Council on Env't Quality*, 2024 WL 3595252, at *3 (D.N.D. July 31, 2024); *Mille Lacs Band of Chippewa Indians v. State of Minn.*, 989 F.2d 994, 999 (8th Cir. 1993).

B. Proposed Intervenors Posses Legally Protectable Interests

The same interests that give Proposed Intervenors Article III standing also satisfy the requirement of a "recognized interest in the subject matter of the litigation." *National Parks*, 759 F.3d at 975. Their interest in purchasing health insurance on the marketplaces plainly satisfies this requirement because the lawsuit seeks to prevent them from doing exactly that.

The Final Rule grants DACA recipients a right to participate in the health insurance marketplaces. As a result, the Proposed Individual Intervenors have a legal right under the ACA this lawsuit seeks to eliminate. It is hard to imagine a more directly applicable interest in this lawsuit's subject matter. Those who have been stripped of a public good "have long been empowered to challenge the rescission" of such an interest in federal court. *See Hardaway v. Dist. of Columbia Housing Authority*, 843 F.3d 973 (D.C. Cir. 2016); *see also Americans for Safe Access v. Drug Enforcement Admin.*, 706 F.4d 438, 446 (D.C. Cir. 2013) (being forced to pay more out-of-pocket

for health insurance is a legally protected interest). Furthermore, accessing the marketplaces is not just an end in itself; rather Proposed Individual Intervenors want the significant benefits of the health insurance the marketplaces make available. For example, Claudia Moya Lopez seeks coverage for ongoing monitoring of a potentially life-threatening disease, Moya Lopez Decl. ¶ 13; Hyun Kim seeks preventative care and to discuss chronic disease concerns with a physician, Kim Decl. ¶ 9; and Dania Quezada Torres seeks affordable access to her prescription medication, Torres Decl. ¶¶ 11, 13.

These interests are similar to those found to be adequate in *Texas v. United States*, 805 F.3d 653 (5th Cir. 2015). There, 26 states challenged DHS's Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) program, and 3 would-be beneficiaries of the program moved to intervene. The court held the intervenors satisfied the "interest" requirement because they were the "intended beneficiaries of the challenged federal policy." *Id.* at 660. The same is true of the Proposed Individual Intervenors here. Because they are "the intended beneficiaries of the program being challenged," they have "interests that are sufficiently concrete and specific to support their intervention by right." *Id.* at 661.

Beyond CASA's associational interest in its members' access to marketplaces, CASA also has separate organizational interests in its members' stable and affordable access to preventative healthcare, which will save CASA the considerable resources it expends helping its members find healthcare services. *See Bost v. Illinois State Bd. of Elections*, 75 F.4th 682, 687 (7th Cir. 2023) (intervention permitted when organization had an "associational interest on behalf of its members" and would have to spend resources due to plaintiff's claim). As explained above, *supra* at pp. 11, 14, CASA's staff has devoted significant resources to preparing DACA recipients to enroll in marketplace plans and if the Final Rule were paused or enjoined, CASA would need to expend funds

to educate the community about the change to their eligibility for the marketplaces and help DACA recipients enroll and secure alternative healthcare options. Escobar Decl. ¶¶ 12-17.

C. Proposed Intervenors' Ability to Protect Their Interests May Be Impaired by the Court's Disposition of this Action

Proposed Intervenors also meet the third requirement of Rule 24—an unfavorable disposition of this lawsuit would "'as a practical matter impair or impede' [their] ability to protect [their] interest[s]." *National Parks*, 759 F.3d at 976. A proposed intervenor can meet this requirement if he may be "directly impacted by [a] court order" granting plaintiff's requested relief, *id.*, or "an unfavorable ruling may impair" the potential movant's interests. *Am. Med. Ass'n v. Stenehjem*, 2019 WL 10920631, at *5 (D.N.D. Nov. 26, 2019). Here, Proposed Intervenors would be "directly impacted" if the States are successful in enjoining the Final Rule because it would impair DACA recipients' ability to purchase insurance through the marketplaces and force CASA to spend resources attempting to help its members access other forms of healthcare.

D. Existing Parties Inadequately Represent Intervenors' Interests

Finally, Proposed Intervenors cannot rely on the U.S. government to adequately represent their interests. This requirement is met by a "minimal showing that representation '*may be*' inadequate." *Kan. Pub. Emps. Ret. Sys. v. Reimer & Kroger Assocs. Inc.*, 60 F.3d 1304, 1308 (8th Cir. 1995) (emphasis added). A government entity can represent the interests of its citizens only "to the extent the proposed intervenor's interests coincide with the public interest." *National Parks*, 759 F.3d at 976-77 (cleaned up). In short, only a minimal showing is required when the proposed intervenors' interests "are *not identical* to those which the [government] seeks to protect." *Planned Parenthood Minn., N.D., S.D., v. Alpha Ctr.*, 213 F. App'x 508, 510 (8th Cir. 2007) (emphasis added); *see also W. Virginia v. U.S. Env't Prot. Agency*, 2023 WL 3624685, at *3 (D.N.D. Mar. 31, 2023) (proposed intervenor's interests are not adequately protected by the federal government

where their interests are "not entirely aligned"). Proposed Intervenors easily meet this standard.

Courts have found the government to be an inadequate representative—and have thus granted intervention—even where the intervenors and the government "share the common legal goal of protecting" a certain law or regulation. *Stenehjem*, 2019 WL 10920631, at *5; *see also Texas*, 805 F.3d at 663. For example, in *Texas*, the Fifth Circuit held that "[a]lthough both the Government and the [immigrant intervenors] seek to uphold DAPA," there was inadequate representation because the government's broader institutional interests were distinct from the immigrant intervenors' interests in remaining in their home state; retaining custody of their U.S. citizen children; and obtaining work authorization, a driver's license, and lawful employment required to provide for their families. 805 F.3d at 662-63. In *Stenehjem*, the court similarly found that although the state government and the intervenors "share the common legal goal of protecting" a North Dakota law requiring doctors to inform patients seeking medication abortions that the procedure can be reversed, "their interests in the law are different." 2019 WL 10920631, at *5. The court explained that while the state has a "broad interest" in protecting its laws and "must represent the varied interests of all its citizens," the intervenors (pregnancy help centers) had "potential reputational and financial interests at stake" which were "narrower than the public interest." *Id.*

For many of the reasons discussed in those cases, the interests of the U.S. government and Proposed Intervenors are "not identical." *Alpha Ctr.*, 213 F. App'x at 510. The government's interests include "securing an expansive interpretation of executive authority." *Texas*, 805 F.3d at 663. The government also represents the interests of federal agencies, including those that assist in enforcing immigration laws. For example, the Final Rule is rooted in broad, institutional interests in "resource allocation, administrability, humanitarian concern, [and] agency convenience." 89 Fed. Reg. at 39395. The government also has an interest in preserving and maximizing its

authority in other areas of law. As a result, it may choose not to make certain arguments that could implicate other programs that turn on who is considered lawfully present or certain statutory interpretation arguments in order to avoid bad precedent or avoid being held to certain positions in future lawsuits. And, as occurred with the initial DACA carveout, there may be political considerations entirely unrelated to the ACA or to DACA that may animate the government's legal positions. *See supra* at p. 5 (discussing Makhlouf, *supra*, at 1126-27).

Proposed Intervenors do not share these governmental interests and are instead narrowly focused on securing affordable health insurance in a timely way. Proposed Intervenors seek to defend the Final Rule because of the direct, specific benefit they could realize from it, such as insurance that provides coverage for preventative care, prescription medication, and medical intervention regardless of availability of employer-sponsored plans. Moya Lopez Decl. ¶¶ 15-18; Kim Decl. ¶¶ 14-15; Torres Decl. ¶¶ 16-18. Their interests are thus "narrower than the public interest and cannot be subsumed within the broad public interest" represented by the government. *Stenehjem*, 2019 WL 10920631, at *5.

Critically, Proposed Intervenors have a far greater interest than the government in this matters' expeditious resolution. While DACA has been in place for over a decade, Proposed Individual Intervenors and CASA's members are still waiting for affordable healthcare access, as they have been long excluded from purchasing plans on the marketplaces. Moya Lopez Decl. ¶¶ 16-19; Kim Decl. ¶¶ 14-16; Torres Decl. ¶¶ 16-17. Whereas the government is burdened by political and strategic considerations that could impact its timing for seeking various relief in the litigation, Proposed Individual Intervenors' and CASA's members' interest is to move as expeditiously as possible because of their urgent need for affordable healthcare. This delay has already hurt DACA recipients. Escobar Decl. ¶ 11. The Proposed Rule set November 1, 2023, as the target effective

date so DACA recipients could have enrolled in plans that went into effect as early as December 2023. Proposed Rule at 25314. But the government did not even publish the Final Rule until May 2024, and DACA recipients' coverage will not take effect until January 1, 2025. Final Rule at 39393. Simply put, given the different natures of their respective interests, Proposed Intervenors have inadequate "assurance that the [government] will continue to support all the positions taken in" the Final Rule with the same sense of urgency Proposed Intervenors have in the interests at stake. *Mille Lacs*, 989 F.2d at 1001.

Finally, the adequate representation of Proposed Intervenors' interests is particularly vulnerable at this moment because the impending presidential election means they "cannot be assured" the government's current position "will remain static or unaffected by unanticipated policy shifts." *National Parks*, 759 F.3d at 977.

III. Proposed Intervenors Also Meet the Permissive Intervention Requirements

Because Proposed Intervenors meet the standard for mandatory intervention, this Court need not consider permissive intervention under Rule 24(b). Nonetheless, to the extent this Court reaches that issue, the Court should allow intervention under Rule 24(b). This Court may utilize its discretion to grant permissive intervention when the proposed intervenor can show "(1) an independent ground for jurisdiction, (2) timeliness of the motion, and (3) that the applicant's claim or defense and the main action have a question of law or fact in common." *Flynt v. Lombardi*, 782 F.3d 963, 966 (8th Cir. 2015). The "principal consideration" is whether the proposed intervention would unduly delay or prejudice the adjudication of the original parties' rights. *Stenehjem*, 2019 WL 10920631, at *6; *see also* Fed. R. Civ. P. 24(b)(3).

These factors are easily met because Proposed Intervenors have standing, *see supra* at pp. 8-12, and the case involves a federal question, 28 U.S.C. § 1331. Further, there is no danger of prejudice, *see supra* at pp. 12-13. And because Proposed Intervenors seek to defend the lawfulness

of the Final Rule against the States' challenge, their defense plainly has a "question of law or fact in common" with the "main action." *Flynt*, 782 F.3d at 966.

The Court should use its discretion to permit intervention here because Proposed Intervenors will significantly contribute to the full development of the relevant facts at issue, including the need for, and resulting public benefit of, the Final Rule. *Texas v. United States,* 2023 WL 3025080, at *4 (S.D. Tex. Apr. 20, 2023) (proposed intervenors who were direct participants in the challenged program would bring important perspectives and substantial expertise). Proposed Individual Intervenors will help explain what it has meant for DACA recipients not to be able to access the health insurance marketplaces—which is directly relevant to the equitable factors this Court must consider in deciding the pending motion for a preliminary injunction. And CASA will also "bring a wealth of experience in observing the direct impact of immigration regulations on individuals as opposed to political entities," since its members and clients are the individuals subject to the challenged policy. *Texas v. United States*, 2021 WL 411441, at *4 (S.D. Tex. Feb. 6, 2021) (granting intervention of membership and legal services organization). CASA's deep familiarity with the issues at the heart of this lawsuit is precisely the type of unique expertise that would aid the Court in developing the factual record. Counsel for Proposed Intervenors has significant experience in this area as well. For example, Gibson Dunn represented intervenors before the Supreme Court in *Department of Homeland Security v. Regents of the University of California*, 591 U.S. 1 (2020), where the Supreme Court held DHS' decision to rescind DACA was arbitrary and capricious, and NILC represented DACA recipients in *Arizona Dream Act Coalition v. Brewer*, 855 F.3d 957 (9th Cir. 2017), which involved questions about the status of DACA recipients under federal law.

In a recent challenge to another immigration policy, the court granted permissive

intervention where (1) the motion, filed early in the case months before the trial date, was timely; (2) proposed intervenors' defense of the challenged immigration program shared questions of law and fact with the main action; (3) there was no undue prejudice or delay where the matter was still in the early stages of litigation and intervention would not disrupt the briefing schedule; and (4) proposed intervenors' interests were not adequately represented by the federal government defendants, who despite sharing a goal of maintaining the at-issue program, had to balance that against the federal government's interest in its immigration enforcement measures. *Texas*, 2023 WL 3025080 at *2-4. The relevant factors in this case are materially indistinguishable. *See also Texas*, 2021 WL 411441 at *2-4 (another materially similar grant of permissive intervention).

Thus, to the extent the Court does not grant mandatory intervention, it can and should grant Proposed Intervenors' request for permissive intervention.

CONCLUSION

Proposed Intervenors respectfully request that the Court grant them intervention.

Date: September 20, 2024

Respectfully submitted,

/s/ Matthew S. Rozen

Matthew S. Rozen (VA Bar No. 85871)
John Matthew Butler (D.C. Bar No. 1721350)
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.,
Washington, D.C. 20036
mrozen@gibsondunn.com
mbutler@gibsondunn.com
Telephone: 202.955.8500
Facsimile: 202.467.0539

Betty X. Yang (TX Bar No. 24088690)
byang@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
2001 Ross Avenue Suite 2100
Dallas, Texas 75201
Telephone: 214.698.3100
Facsimile: 214.571.2900

Nicholas Espiritu*
espiritu@nilc.org
Gabrielle Lessard*
Lessard@nilc.org
Tanya Broder*
broder@nilc.org
NATIONAL IMMIGRATION LAW CENTER
3450 Wilshire Blvd.
Suite 108 – 62
Los Angeles, CA 90010
Telephone: 213.639.3900
Facsimile: 213.639.3911

Joanna E. Cuevas Ingram*
cuevasingram@nilc.org
Hilda Bonilla*
bonilla@nilc.org
NATIONAL IMMIGRATION LAW CENTER
P.O. Box 34573
Washington, DC 20043
Telephone: 202.216.0261
Facsimile: 202.216.0266

**Pro hac vice* forthcoming

Attorneys for Proposed Intervenors

CERTIFICATE OF SERVICE

I hereby certify that on September 20, 2024, I filed the foregoing memorandum of law using the Court's CM/ECF system, which will send a notice of the filing to counsel for all parties.

/s/ *Matthew S. Rozen*
Matthew S. Rozen

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
WESTERN DIVISION

The State of KANSAS, the State of NORTH DAKOTA, the State of ALABAMA, the State of ARKANSAS, the State of FLORIDA , the State of IDAHO, the State of INDIANA, the State of IOWA, the Commonwealth of KENTUCKY, the State of MISSOURI, the State of MONTANA, the State of NEBRASKA, the State of NEW HAMPSHIRE, the State of OHIO, the State of SOUTH CAROLINA, the State of SOUTH DAKOTA, the State of TENNESSEE, the State of TEXAS, and the Commonwealth of VIRGINIA, Plaintiff, v. UNITED STATES OF AMERICA and the CENTERS FOR MEDICARE & MEDICAID SERVICES, Defendants.	CIVIL ACTION NO. 1:24-cv-00150-DMT-CRH

DECLARATION OF HYUN KIM

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

1. I was born in 1996 in South Korea and currently live in Annandale, Virginia.

2. My father came to the United States legally in 1998 on a work visa. In 1999, at the age of three, my mother brought me to the United States. We initially came on tourist visas and then stayed in the United States to be with my father.

3. I grew up in Virginia from the age of three. My parents worked to support us, and I went to school in Virginia. The United States is the only place I have ever called home, and in fact, I did not even know that I was undocumented until I was applying for jobs in high school. I have no memory of my first years in South Korea, do not speak Korean well, and could not imagine starting over in South Korea.

4. I graduated high school in 2014. I want to attend college one day and am currently working full-time as a server to support myself and save up money for school. Like most restaurant jobs, it pays base pay and tips, but provides no benefits like health insurance. I work about 45 hours a week, which allows me to rent a room, make car payments, and pay for food and bills. I have filed taxes every year that I have been eligible, and I intend to do so this year and in future years.

5. In my spare time, I am active in my community. I volunteer with Hamkae Center, a grassroots non-profit organization that provides community services, youth leadership opportunities, and advocacy on behalf of Asian Americans in Virginia. My volunteering has included everything from participation in city litter cleanups to canvassing and phone banks. I am also a member of CASA, Inc.

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

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

8. I do not have any health insurance currently. If I go to a doctor, I have to pay out-of-pocket, which costs approximately $150-200 per appointment. Because of that, I try to not go to the doctor, and my health has suffered.

9. I have no affordable access to preventable care. I have not had a physical in three years and have never been able to see a dentist because these are luxuries I cannot afford. Even though I have a family history of diabetes, I have not been able to get myself tested. I am concerned that I could develop diabetes and not even know because I've not seen the doctor for so long. If I were to develop diabetes or another medical condition, I worry that I would not be able to afford treatment.

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

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

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

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

14. If I could purchase a health plan through the ACA marketplace and Virginia's Insurance Marketplace, I would be able to start seeking routine medical care, like annual physicians and dentist visits, to hopefully prevent medical problems, including diabetes, to the extent I may be at risk, in the future. I would also be able to live without constant fear that I will not be able to afford medical treatment when I need it, or that I will have to use my college savings to pay for medical treatment. Stability of health care expenses directly impacts my financial planning, including my goals to go to college, own my own home, and start a family.

15. If the implementation of the Final Rule is delayed because of this lawsuit, I will be directly harmed because my access to important health insurance and healthcare will be delayed. Every day that I am unable to afford insurance, I delay seeking routine medical care, increase my risk of needing to make an

expensive trip to the emergency room, and experience anxiety about my health and future.

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

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

Dated: September 19, 2024

Respectfully submitted,

Hyun Kim

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
WESTERN DIVISION

The State of KANSAS, the State of NORTH DAKOTA, the State of ALABAMA, the State of ARKANSAS, the State of FLORIDA , the State of IDAHO, the State of INDIANA, the State of IOWA, the Commonwealth of KENTUCKY, the State of MISSOURI, the State of MONTANA, the State of NEBRASKA, the State of NEW HAMPSHIRE, the State of OHIO, the State of SOUTH CAROLINA, the State of SOUTH DAKOTA, the State of TENNESSEE, the State of TEXAS, and the Commonwealth of VIRGINIA, Plaintiff, v. UNITED STATES OF AMERICA and the CENTERS FOR MEDICARE & MEDICAID SERVICES, Defendants.	CIVIL ACTION NO. 1:24-cv-00150-DMT-CRH

DECLARATION OF DANIA QUEZADA TORRES

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

1. I was born in September 1997 in Chihuahua City, Mexico and currently live in Seattle, Washington.

2. I have been in the United States since July 2003. My mother, sisters, and I came on tourist visas when I was 5 years old.

3. I grew up in California. My parents worked hard to create a life for us, and I went to school. I didn't know the legal repercussions of my status until I was in fourth or fifth grade, when a teacher made fun of my status. At home, it felt like a cloud of fear always loomed on us and we were very scared of law enforcement. We relied on our church congregation, which included other mixed status families.

4. Healthcare coverage was also a challenge growing up. My father's job did not offer health insurance and my mother was a stay-at-home mom. We paid out-of-pocket for everything and did not regularly access care. Eventually, I was able to get health insurance through California and finally accessed healthcare. In high school, I had to purchase insurance in order to play a school sport – water polo – so we purchased a very cheap plan.

5. The United States is my home. I have three siblings, two of whom live in the United States. My middle sister is a DACA recipient, and my older sister is a U.S. citizen. When I am not at school in Seattle, I stay with my sisters and mom in California. My older sister is in the process of purchasing a home and I hope to do the same someday.

6. I attended to Emory University, starting in 2015. I received a bachelor's degree in philosophy and classical civilizations. When I was applying to schools, Emory adjusted its financial aid policy to include DACA recipients, so I qualified to receive financial aid. I am proud to be part of Emory's first DACA class and one of the first DACA women to graduate from Emory. I would not have been able to

attend without DACA status.

7. I am currently in my third year of law school at the University of Washington. I wanted to be a lawyer since I was young, but prior to receiving DACA, I thought it was out of reach. I aspire to be an immigration lawyer, so I am working hard to excel in school and preparing to sit for the bar. I have interned for immigration policy organizations and advocated extensively for my community. I intend to continue advocacy and community service following law school. I have filed taxes every year that I have been eligible, and I intend to do so this year and in future years.

8. I applied for Deferred Action for Childhood Arrivals ("DACA") with U.S. Citizenship and Immigration Services (USCIS) approval in 2013. I was approved and received work authorization, as USCIS found me to be deserving of deferred action. DACA gave me a sliver of hope that I can realize my dreams. With work authorization, I am able to work and save money for school. I have never had a lapse in my DACA status.

9. I currently have limited school-based access to care. I pay the student fee and get one quarterly appointment at the school clinic. I looked previously at my options to purchase health insurance, but direct access as an individual is outside my small student budget.

10. Health insurance coverage is very important to me because I have been diagnosed with attention deficit disorder and obsessive-compulsive disorder. Without

medication for these diagnoses, I would not be able to study, apply to jobs, or work a future job. I need my medication to participate in social activities, be a good family member, and generally thrive. I would not be who I am today without it.

11. Right now, I pay a school fee that entitles me to a quarterly visit at the University of Washington school clinic and pay out-of-pocket for any other visits. These out-of-pocket visits have previously cost me around $150 for only a telehealth visit and prescriptions. I use my single school clinic visit to renew my prescriptions. Without these school services, it is very difficult for me to obtain my medications. Even over the summer, I take summer classes just to retain access to medication.

12. When I first moved to Seattle for school, I applied to a community clinic for low-cost care. I was found eligible for their low-cost services, but I found that I still could not afford those services. Instead, I relied on my one free quarterly visit at my student clinic. I was eligible for this program because I did not have an income. As I move forward in my career, I am concerned about losing access to benefits for low-income individuals, while affordable coverage remains out of reach.

13. When I have a delay in renewing my prescription, like when I am staying with my sister in California, I have to ration out my medication. Rationing is difficult and shows me I would not be able study or thrive without my medication. I believe

that insurance would make it easier for me to fill my prescriptions when I travel or visit family.

14. A few months ago, I had a health scare. I had a bacterial infection. I had already used my single school-clinic doctor's visit, so I tried to treat it on my own. The pain got worse and worse, so I had to go to urgent care. I told the doctor that I was uninsured, so the doctor wrote a prescription for especially strong antibiotics so I would need to pay for less medication and not have to return for additional visits. I had to pay out-of-pocket for the consult ($120) and medication (~$30-$40). I wish I had been able to take care of it sooner and avoid the pain and urgent care visit.

15. I have a lot of anxiety about how I will get the medications I need after graduating from law school. As an aspiring lawyer, I have to sit for the bar exam to practice law. My plan has been to obtain a full-time job and study for the bar part-time, which is how I prepared for my law school admission test. But if I cannot find a full-time job right away, I am very concerned about my ability to access the medications I need to study well for the bar, which could then delay my ability to work as a lawyer.

16. I heard about the Final Rule right when it came out and was very thankful. This rule would allow me to purchase affordable insurance on the ACA Washington Health Benefit Exchange Marketplace (Cascade Care), allowing me to focus on school and studying for the bar to fulfill my dream of becoming a lawyer. I have

registered on the Washington Health Benefit Exchange Marketplace and made an account so I can apply and purchase a plan right away. I have been waiting a long time for this access.

17. I am concerned that I will not be able to afford a plan through Cascade Care without the affordability credits because I am currently a student. If I cannot get the affordability credits, I would need to continue to put off my urgent health care needs even longer.

18. A preliminary injunction on the Final Rule would directly harm me because it would deny me the ability to access to affordable health care that I need. Without the Final Rule, I would continue to live in Washington and receive some limited access to healthcare through my school, but my concerns about my health and unexpected health expenses would directly impact my financial future after graduation, potentially coercing me to alter my life choices based on my limited access to health insurance.

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

Dated: September 19, 2024

Respectfully submitted,

Dania Quezada Torres

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
WESTERN DIVISION

The State of KANSAS, the State of NORTH DAKOTA, the State of ALABAMA, the State of ARKANSAS, the State of FLORIDA , the State of IDAHO, the State of INDIANA, the State of IOWA, the Commonwealth of KENTUCKY, the State of MISSOURI, the State of MONTANA, the State of NEBRASKA, the State of NEW HAMPSHIRE, the State of OHIO, the State of SOUTH CAROLINA, the State of SOUTH DAKOTA, the State of TENNESSEE, the State of TEXAS, and the Commonwealth of VIRGINIA, Plaintiff, v. UNITED STATES OF AMERICA and the CENTERS FOR MEDICARE & MEDICAID SERVICES, Defendants.	CIVIL ACTION NO. 1:24-cv-00150-DMT-CRH

DECLARATION OF CLAUDIA MOYA LOPEZ

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

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

2. In 2003, at the age of 11, my mother brought me to the United States because she was being threatened. I was too young at the time to understand why she brought

me to this country or why I could not go back to see my grandmother and other family back in El Salvador.

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

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

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

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

7. I am a member of CASA Virginia.

8. I applied for Deferred Action for Childhood Arrivals ("DACA") with U.S. Citizenship and Immigration Services (USCIS) in 2015, was approved and received work authorization right away, as USCIS found me to be deserving of

deferred action. My DACA status and work authorization is current and has never lapsed.

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

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

11. Throughout this time, I was very anxious about not only my health, but my ability to pay. My emergency room stay was covered by emergency Medicaid, but my cancer treatment was not. The hospital staff looked into options based on my income, but I was not eligible for many programs because my savings was too

high to qualify for low-income care. Because I own my own business, the medical stay limited my ability to work and build up my savings.

12. In the end, I was very fortunate that the hospital decided to cover the cost of my cancer treatment itself. However, cost remains a concern. There is still a debt listed on my bill that is larger than my income and over half of my savings.

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

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

15. Having access to affordable care would give me and my family so much more stability. It is very difficult to prepare for possible medical expenses out-of-pocket, especially as a small business owner. I dream of going to college, saving for my children's college education, taking my children to visit my home country, and maybe even purchasing a house in my home country. But instead of putting

money towards my future and my family, I am always saving up for health expenses and unexpected medical emergencies. If my cancer returns, I am not sure how I would be able to afford treatment, especially if I am too ill to operate my business.

16. When I heard about the Final Rule, I was so relieved. I have been waiting for it to come into effect so that I can immediately apply. Based on my current income, I would qualify for the ACA marketplace health plans in Virginia's Insurance Marketplace under the Final Rule. My Adjusted Net Income was approximately $45,000 in 2023. I expect to make a similar amount in 2024 and 2025.

17. If I could purchase a qualified health insurance plan through the ACA and Virginia's Insurance Marketplace, it would change my life completely because I would be able to get coverage for the blood tests I will need over the next several years. I would also be able to live without constant fear of needing a medical treatment I can't afford or needing to take on significant debt if my cancer returns or the doctors find any other health issues.

18. I learned about this lawsuit challenging the rule, and I wanted to share my experience and the injury not having access to enroll in the ACA and Virgnia's Insurance Marketplace causes in my life. If the implementation of the Final Rule is delayed because of this lawsuit, I will be directly harmed. Every day that I am unable to afford insurance, I am concerned about how I will pay for the medical care I need to stay alive and be around for my kids. If the Final Rule is delayed, it

will cause me significant anxiety about my health and my family's future.

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

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

Dated: September 19, 2024

Respectfully submitted,

Claudia Moya Lopez

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
WESTERN DIVISION

The State of KANSAS, the State of NORTH DAKOTA, the State of ALABAMA, the State of ARKANSAS, the State of FLORIDA , the State of IDAHO, the State of INDIANA, the State of IOWA, the Commonwealth of KENTUCKY, the State of MISSOURI, the State of MONTANA, the State of NEBRASKA, the State of NEW HAMPSHIRE, the State of OHIO, the State of SOUTH CAROLINA, the State of SOUTH DAKOTA, the State of TENNESSEE, the State of TEXAS, and the Commonwealth of VIRGINIA, Plaintiff, v. UNITED STATES OF AMERICA and the CENTERS FOR MEDICARE & MEDICAID SERVICES, Defendants.	CIVIL ACTION NO. 1:24-cv-00150-DMT-CRH

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

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

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

2. CASA is a non-profit membership organization headquartered in Langley Park,

Maryland with offices in Maryland, Virginia, Pennsylvania, and Georgia.

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

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

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

6. In my role as Chief of Programs and Services, I oversee CASA's portfolio of community-facing direct services, including its health, legal, and educational services; employment and workforce development programs; financial literacy and tax programs; and parent engagement programs. An important part of my role is to understand the needs and

experiences of our members so that I can work with my staff to design appropriate interventions to address those needs. I therefore speak frequently with community members and receive feedback from my staff regarding CASA members' fears, concerns, and decisions.

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

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

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

10. ACA enrollment is of great interest to our members in light of the financial and health security it would bring them. The number one advocacy and service provision priority for our members has always been access to healthcare. Our multilingual healthcare hotline receives about 3-4,000 calls per month, and 30-40% are regarding ACA enrollment. In the last fiscal year (July 2023 through June 2024) we provided assistance to 2,354 individuals navigating enrolling in an ACA Qualified Health Plan, Medicaid, or CHIP coverage option.

11. We routinely hear from our members when they experience issues accessing

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

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

13. This rule would affect all our members who are DACA recipients because they would be able to purchase insurance through the ACA marketplaces.

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

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

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

16. If the rule is paused during the upcoming Open Enrollment, CASA and its members would experience significant disruption. CASA would have to leverage significant resources to re-educate our population and would have to shift resources from some of our core programming to assist our members in seeking alternative health coverage or financial resources—all at the expense of our overall mission and other efforts. We estimate that, over a period of four to six months, CASA would need to assign two of our Health Navigators to devote approximately 33% of their time to helping eligible DACA recipients to secure alternative healthcare options if implementation of the Final Rule is delayed. In addition, we anticipate a

comparable impact to our Organizing team—during this same 4-6 month time period, we estimate that two organizers would have to devote nearly 33% of their time to educating and counseling DACA recipients and community advocates about the legal changes. Together, this equates to at least $33,000 in staff salaries that CASA will need to spend to address the delay of the Final Rule. Time spent on this issue also places a greater burden on performing and complying with deliverables we have on other grants, which also significantly threatens our funding sources.

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

18. Named Intervenors Claudia Moya Lopez and Hyun Kim are but two examples of CASA's many members who qualify under the Final Rule for Qualified Health Plans in the ACA marketplaces, such as Virginia's Insurance Marketplace, and who intend to apply and purchase affordable coverage. Both have significant health care needs, and for both, affordable coverage would mean financial stability to work and invest in their respective futures.

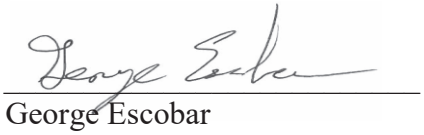
19. For CASA's members, the Final Rule represents bridging of a troubling gap in health care coverage that had kept DACA members from realizing their educational or employment dreams. Without the Final Rule, CASA's members who have DACA but who do not have coverage through an employer, for example those who own small businesses,

experience direct financial injury and harm to their ability to access healthcare. With the Final Rule and enrollment on November 1, 2024, CASA's members would not be arbitrarily excluded from the ACA marketplace, allowing them to live healthy, financially stable lives, and thrive.

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

Dated: September 19, 2024

Respectfully submitted,



George Escobar