

No. 19-3769-cv

In the United States Court of Appeals for the Second Circuit

MICHAEL P. KEARNS, in his individual capacity and official capacity as Clerk
of the County of Erie, New York,

Plaintiff-Appellant,

v.

ANDREW M. CUOMO, in his official capacity as Governor of the State of New
York, LETITIA JAMES, in her official capacity as Attorney General of the State
of New York, MARK J.F. SCHROEDER, in his official capacity as Commissioner
of the New York State Department of Motor Vehicles,

Defendants-Appellees,

v.

NEW YORK STATE CONSERVATIVE PARTY,

Defendant.

On Appeal from the U.S. District Court for the Western District of New York

**BRIEF OF *AMICI CURIAE* RURAL & MIGRANT MINISTRY, NEW
YORK IMMIGRATION COALITION, HISPANIC FEDERATION, AND
NEIGHBORS LINK INC. IN SUPPORT OF DEFENDANTS-APPELLEES**

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Pursuant to Fed. R. App. P. 26.1 and 29(c)(1), counsel for *amici curiae* Rural & Migrant Ministry, New York Immigration Coalition, Hispanic Federation, and Neighbors Link Inc. certify that the *amici curiae* consist of four non-profit non-partisan organizations engaged in policy, advocacy, and community education. Two are membership-based organizations.

None of the *amici curiae* are publicly held corporations. None of the *amici curiae* have a parent company and no publicly held company has any form of ownership interest in any of the *amici curiae*.

TABLE OF CONTENTS

	<u>Page</u>
INTEREST OF <i>AMICI CURIAE</i>	1
DISCUSSION	5
I. THE HISTORY AND PROVISIONS OF NEW YORK’S GREEN LIGHT LAW	6
II. THE SUCCESS OF THE GREEN LIGHT LAW AND POSITIVE IMPACT ON INDIVIDUALS SINCE DECEMBER 2019	11
III. THE CRITICAL NEED FOR PRIVACY PROTECTIONS DUE TO THE INCREASE IN IMMIGRATION ENFORCEMENT	20
IV. PLAINTIFF-APPELLANT’S APPEAL SHOULD BE DENIED AND THE DISTRICT COURT ORDER SHOULD BE AFFIRMED	23
CONCLUSION	27

TABLE OF AUTHORITIES

Page(s)

Cases

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INTEREST OF AMICI CURIAE

Immigrants represent one-fifth of New York’s total population and make up almost twenty-five percent of its labor force.¹ *Amici* are non-profit organizations that serve and provide resources to the diverse communities of New York State, as well as advocate for and educate individuals about the Driver’s License Access and Privacy Act, S.B. 1747-B, 247 Legis. Sess. (N.Y.) (the “Green Light Law” or the “DLAPA”).

Enacted in 2019, the Green Light Law facilitates access to driver’s licenses for those eligible, undocumented New Yorkers without a Social Security number who need to legally drive to, among other things, care for their minor children, attend to their families’ medical needs, meet with their immigration attorneys, and practice their religions. These New Yorkers can acquire a standard license without (i) inquiry into their immigration or citizenship status—a status *wholly* irrelevant to the ability to drive—or (ii) third-party access to the information submitted supporting their age and identity in connection with their application. Over a half million citizens in the state live with at least one family member who is undocumented, making the Green

¹ Pursuant to Federal Rules of Appellate Procedure 29(a)(2) and 29(a)(4)(E) and the Second Circuit’s Local Rule 29.1(b), the *amici curiae* state as follows: All parties have consented to the filing of this brief. No counsel for any party authored this brief in whole or in part. No party and no party’s counsel contributed money that was intended to fund preparing or submitting this brief. No person – other than *amici curiae*, their members, or their counsel – contributed money that was intended to fund preparing or submitting this brief.

Light Law something that benefits not just the undocumented individual, but also, in many instances, their family members.²

Amici are organizations that are united in their unwavering support of undocumented individuals, other immigrants, and mixed-status families residing in New York.³

- Rural and Migrant Ministry (“RMM”) is a nonprofit organization that provides programs and services to immigrant and rural communities in Suffolk, Putnam, Orange, Ulster, Dutchess, Columbia, Sullivan, Wayne, Monroe, Orleans, Cayuga, Yates, Ontario, Genessee, Livingston, Erie, and Seneca Counties. In support of the Green Light Law, RMM ran a grassroots campaign and met with legislative offices and local officials to help bring about the successful passage of the law. Additionally, RMM has historically provided transportation services to individuals in these rural communities.
- New York Immigration Coalition (“NYIC”) is an umbrella policy and advocacy organization for more than 160 immigrant community-based groups in New York, representing the collective interests of approximately four million New Yorkers, including in Erie County. In 2016, NYIC launched a statewide coalition to advocate for driver’s licenses for all New Yorkers, irrespective of immigration status, because it was a top priority for its membership. As part of its advocacy efforts, NYIC has devoted substantial resources to support grassroots groups in immigrant communities to advocate for the Green Light Law. NYIC has continued its advocacy in support of the Green Light Law

² American Immigration Council, *Fact Sheet: Immigrants in New York* (Oct. 4, 2017), (<https://www.americanimmigrationcouncil.org/research/immigrants-in-new-york>).

³ National Immigration Law Center, *Frequently Asked Questions: The Affordable Care Act & Mixed-Status Families* (Dec. 2014), (https://www.nilc.org/issues/health-care/aca_mixedstatusfams/) (last visited Feb. 18, 2020) (“A ‘mixed-status family’ is a family whose members include people with different citizenship or immigration statuses. One example of a mixed-status family is one in which the parents are undocumented and the children are U.S.-born citizens”).

since its passage, and has devoted considerable resources to communication, programming, and education so that individuals have the knowledge and means to obtain a driver's license under the Green Light Law.

- Hispanic Federation (“HF”) is a nonprofit member organization that works to empower and advance the Hispanic community through public policy advocacy, leadership development, and community revitalization. HF also deployed a public education and media campaign aimed at educating immigrant communities about the Green Light Law, particularly in rural communities where public transportation is sparse. HF, in support of the Green Light Law, produced policy papers, including a memorandum explaining the benefits of the law. Since the passage of the Green Light Law, over 1,000 individuals (likely all beneficiaries of the law) have visited HF's website to learn more about the Green Light Law.
- Neighbors Link Inc. (“Neighbors Link”) is a private not-for profit multi-services social agency with offices serving communities in the Lower Hudson Valley and Westchester County. Its mission is to make entire communities stronger through the healthy integration of immigrants. Neighbors Link has supported the Green Light Law and provides workshops for those seeking to obtain a driver's license.

As set forth above, *amici* have a substantial interest in the outcome of this case, which implicates a subject matter of their advocacy and directly impacts the communities they serve.

Not only do *amici* have an interest in assisting these individuals in acquiring driver's licenses so that they can legally drive—a basic, pervasive, and often necessary requirement for modern society—they also have an interest in ensuring that an applicant seeking a license under the Green Light Law can do so without risk of immigration enforcement consequences. *Amici* therefore have a strong interest in ensuring the law continues to be implemented as originally enacted. Additionally,

for certain individuals served by *amici*, their interest in this action was recognized by the lower court. *Kearns v. Cuomo*, No. 1:19-CV-00902, 2019 WL 5060623, at *5 (W.D.N.Y. Oct. 9, 2019) (denying motion to intervene, but stating “the individuals who comprise the RMM et al. proposed intervenors, through their declarations, have plainly established a direct, substantial, and legally protectable interest in the action”) (footnote omitted).

Plaintiff-Appellant’s appeal arises out of an unsuccessful challenge to the Green Light Law prior to its implementation. To reverse or remand the November 8, 2019 trial court decision (the “Order”) would reinvigorate an action in which Plaintiff-Appellant simply does not have standing. It could also, depending on the scope of the Court’s opinion, potentially impact those served by *amici* who have already acquired a driver’s license or are in the process of doing so pursuant to the terms of the law. It may also make it less likely that other eligible individuals will apply for a standard driver’s license.

Amici’s brief therefore seeks to provide an overview for the Court of the need for and impact of the Green Light Law on the daily lives of thousands of New Yorkers who seek to provide for their families, access medical care and education, and participate in their communities. *Amici* respectfully request that the Court affirm the lower court’s decision, confirming the determination that Plaintiff-Appellant lacks standing to bring this suit and dismissing the action.

DISCUSSION

Before the Green Light Law was signed into law in the summer of 2019, more than 750,000 New Yorkers over the age of 16 were barred from obtaining a state driver's license because of their immigration status.⁴ These individuals may have been conditional permanent residents, individuals with family-sponsored visas, or non-immigrant temporary visa holders, as well as undocumented immigrants.

Without a driver's license, especially in areas of New York without adequate public transportation, participation in daily life is difficult. The lack of transportation hinders community and cultural integration as well as timely access to necessities such as healthcare. Pre-Green Light Law, individuals often risked driving because they lacked reasonable public transportation alternatives, but still needed to travel to attend school, worship, and work.⁵ Consequently, their need to participate in society led immigrants to drive without licenses, putting them at odds with law enforcement, and increasing the risk that a routine traffic stop would result in arrest, detention, or even deportation. It is well-reported that immigrants without

⁴ New York Immigration Coalition, *Green Light NY: 2019 State Budget & Policy Priorities* (2019), (<https://d1jikt90t87hr.cloudfront.net/323/wp-content/uploads/sites/2/2019/01/GreenlightOnePager2019v2.pdf>) (last visited Feb. 16, 2020).

⁵ Green Light New York, *GREEN LIGHT NY: Driving Together* (2019), (<https://greenlightny.files.wordpress.com/2019/02/green-light-ny-factsheet-for-legislators-3.pdf>) (last visited Feb. 16, 2020).

valid identification or permission to drive constantly fear that simple interactions with police, such as a traffic violation, will put them at risk of arrest and deportation.⁶ Among other things, this leads to immigrants avoiding and not reporting criminal incidents to the police, even when they are a victim of or witness to a crime.

In the short period of time since the Green Light Law has gone into effect, it has had an incredible impact on these individuals. Since December 2019, based on publicly available reports, thousands of individuals have applied either for their learner's permit or a standard license under the law.

I. THE HISTORY AND PROVISIONS OF NEW YORK'S GREEN LIGHT LAW

Defendants-Appellees' brief summarizes the history of New York's driver's licensure laws. Appellees Br. at 4-5, Feb. 12, 2020, ECF No. 42. New York law has never expressly conditioned the issuance of a driver's license on an individual's citizenship or immigration status. Rather, it was the type of identification required to be submitted in support of an application that has the effect of precluding non-citizen New Yorkers without Social Security numbers

⁶ See, e.g., Kelsey Neubauer, *On Long Island, Undocumented Drivers Risk Their Freedom from Town to Town*, DOCUMENTED NY (May 31, 2019), (<https://documentedny.com/2019/05/31/on-long-island-undocumented-drivers-risk-their-freedom-from-town-to-town/>); Steve Hughes, *Troy Woman Faces Deportation after Rolling Through Stop Sign*, TIMES UNION (June 28, 2018), (<https://www.timesunion.com/news/article/Troy-woman-faces-deportation-after-rolling-13034879.php>).

from obtaining driver's licenses. This resulted from their lack of documentation, *not* their immigration status.

Passed on June 17, 2019 and effective as of December 14, 2019,⁷ the Green Light Law waives the requirement for applicants to provide their Social Security number if they submit additional proof of identity and age, along with an affidavit stating that they have not been issued a Social Security number.⁸ In support of this application, an individual can now submit foreign passports, consular identification documents, and foreign driver's licenses as valid "primary forms of such proof." DLAPA § 3, *amending* N.Y. Veh. & Traf. Law § 502(1). Consequently, it is not just non-citizen immigrants who benefit from the Green Light Law, but also other individuals who may be in this country legally but lack a Social Security number, and previously had to go through an unnecessary and burdensome process to get a waiver for this requirement. This also includes individuals in mixed-status households.

When the individual applies, the New York State Department of Motor Vehicles ("DMV") is prohibited from inquiring about an applicant's citizenship or

⁷ See Press Release, THE NEW YORK STATE SENATE, *Senate Passes Driver's License Access & Privacy Act (Green Light NY)* (June 17, 2019), (<https://www.nysenate.gov/newsroom/press-releases/senate-passes-drivers-license-access-and-privacy-act-green-light-ny>) ("Green Light Law Press Release"); *see also* Ch. 37, 2019 N.Y. Laws. § 8, pg. 6.

⁸ See Green Light Law Press Release.

immigration status, as well as from collecting and retaining documentation and information about such status, the individual's Social Security eligibility, or the documents submitted with the application to demonstrate proof of age or identity. DLAPA § 3 (*amending* N.Y. Veh. & Traf. Law § 502(1)). Additionally, because New York is permitted to issue licenses known as “standard licenses” that are exempt from federal REAL ID requirements, *see* REAL ID Act of 2005, Pub. L. 110-177 § 508, 121 Stat. 2543 (*codified at* 49 U.S.C. § 30301 *et seq.*), the Green Light Law prevents access to DMV records that would reveal whether an individual's license is a standard license or one compliant with federal REAL ID requirements. DLAPA § 2 (*amending* N.Y. Veh. & Traf. Law § 502(1)).⁹ Of course, this means that when the Department of Homeland Security (“DHS”) requirements related to the REAL ID law are implemented in October, these licenses will not serve as identification for voting nor will they permit individuals to board aircraft or access secure federal facilities such as military bases which require an individual to present identification.¹⁰

⁹ *Federal REAL ID*, NEW YORK STATE DEPARTMENT OF MOTOR VEHICLES, (<https://dmv.ny.gov/driver-license/federal-real-id>) (last visited Feb. 19, 2020) (noting that the delineation between a standard license and a REAL ID would be clear from the face of the licenses, as REAL ID compliant licenses have a star designation on them).

¹⁰ *Driver's License and the Green Light Law*, NEW YORK STATE DEPARTMENT OF MOTOR VEHICLES, (<https://dmv.ny.gov/driver-license/driver-licenses-and-green-light-law>) (last visited Feb. 19, 2020) (The DMV's website currently makes it clear that the Green Light Law does not change one's eligibility to vote in New York, and

The Green Light Law further limits access to the applicant’s personal information by restricting disclosure by the DMV to third parties, including the federal government, except in limited circumstances that do not concern immigration enforcement. For example, under the Green Light Law, the DMV may disclose personal information to third parties “where expressly required pursuant to [49 U.S.C. § 303 (National Driver Register)], to comply with a lawful court order, judicial warrant signed by [an Article III] judge . . . , or subpoena for individual records issued pursuant to the criminal procedure law or the civil practice law and rules.” *See id.* Consequently, individuals apply for a license without fear that others will be easily able to access sensitive information that could cause further inquiry into their immigration status.

When the Green Light Law was originally introduced, these protections were discussed side-by-side with the need to provide access to the standard license. Assemblyman Marcos A. Crespo emphasized that the law “allows for undocumented immigrant New Yorkers, who contribute to our state economy in so many ways, to drive safely to and from school, work, and home. Not only will our roads throughout New York State be safer, but families of immigrants will have more peace of mind

that only U.S. citizens are eligible to register to vote); *see also Federal REAL ID*, NEW YORK STATE DEPARTMENT OF MOTOR VEHICLES, (<https://dmv.ny.gov/driver-license/federal-real-id>) (last visited Feb. 19, 2020)

while their loved ones are on the roads.”¹¹ Moreover, it was a necessary measure, as another sponsor of the law stated, because when “you look at what is currently happening at the federal level, every day we read about children's families that are being separated because they may have—a driver may have passed a stoplight, a red light. And the next thing you know, mothers and fathers are separated for months on end from their children. . . . you look at these families, these undocumented families—they cannot take their children to schools. Some of them have children that are so sick . . . that it's brought me to tears because they cannot take a sick child to a hospital for medical attention.”¹²

As of December 2019, 16 states and territories, along with New York, allow residents to apply for driver’s licenses, regardless of immigration status, which, among other things, recognizes that expanding access to driver’s licenses helps prevent simple traffic infractions from resulting in arrest and deportation, keeps the roads safe, benefits other drivers through access to insurance, and reduces the rate of hit-and-runs.¹³

¹¹ News Release, *Assembly Passes Driver’s License and Privacy Act #GreenLightNY*, ASSEMBLY SPEAKER CARL E. HEASTIE (June 12, 2019), (<https://nyassembly.gov/Press/files/20190612.php>).

¹² New York State Senate, *Stenographic Record* (Reg. Sess. June 17, 2019), (<https://www.nysenate.gov/transcripts/floor-transcript-061719txt>, at 5923:15-5923:22, 5924:11-5924:17) (last visited Feb. 16, 2020).

¹³ Green Light Law Press Release; *see also* District Court Docket, ECF No. 35.

II. THE SUCCESS OF THE GREEN LIGHT LAW AND POSITIVE IMPACT ON INDIVIDUALS SINCE DECEMBER 2019

The passage of the Green Light Law was a major step forward to facilitate greater access to everyday necessities for all New Yorkers.¹⁴ Within the first three days the Green Light Law was in effect, there was a 133 percent increase in the number of applications to the DMV for learner’s permits.¹⁵ The prior three-day average for learner’s permits was 3,000 permits issued, but, in the first three days after the Green Light Law went into effect, 10,000 permits were issued.¹⁶ Then, in January 2020, the DMV issued nearly 65,000 driver’s licenses.¹⁷ Although there can be no information provided regarding precisely how many licenses were issued to individuals eligible only because of the Green Light Law, this is nearly double the amount of licenses issued in January of 2019.¹⁸ The Green Light Law, therefore,

¹⁴ Joseph Spector, *Permits Soar in New York as Undocumented Immigrants get Driving Rights*, DEMOCRAT & CHRONICLE (Jan. 16, 2020), (https://www.democrataandchronicle.com/story/news_politics/albany/2020/01/16/permits-soar-undocumented-immigrants-get-new-york-driving-rights/4476749002/); *see also* News 4 Staff, *State Gives Out Almost 65,000 Licenses in First Full Month Under Green Light Law*, WIVB 4 (February 3, 2020, 9:03 PM), (<https://www.wivb.com/news/new-york/state-gives-out-almost-65000-licenses-in-first-full-month-under-green-light-law/>) (“New 4 Staff Article”).

¹⁵ News 4 Staff Article.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

has presumptively permitted thousands of New Yorkers to legally and safely access the roads.

For these thousands of New Yorkers, the law has already allowed them to drive to and from work, take their children to doctors' appointments and school, take other family members to receive health treatment, open bank accounts, sign up for car insurance, and generally be less afraid should they report a traffic or other violation. Revisions to the law, or reinvigoration of this suit, may cast into doubt the protections afforded to these individuals who already successfully applied for and/or acquired their licenses to legally drive on New York's roads.

For example, Eladio Beltran, a farmworker from Orleans County, applied for his learner's permit on the first day the Green Light Law went into effect.¹⁹ He came to the United States in 2001 when he was 14. Because he lives and works in a rural area, he first learned to drive "in the fields with a tractor, and by watching movies." *Id.* When he and his wife later saved enough money to buy a car of their own, they went to Illinois to try to register the car and gain a driver's license there, because Illinois had passed legislation similar to the Green Light Law. *Id.* Obviously, Mr. Beltran wanted to be able to drive legally.

¹⁹ See Noelle E. C. Evans, *Green Light Law Takes Effect: Undocumented Farmworker One of the First in Line for Driver's License*, WXXI NEWS (Dec. 18, 2019), (<https://www.wxxinews.org/post/green-light-law-takes-effect-undocumented-farmworker-one-first-line-drivers-license>).

Unfortunately, his efforts were unsuccessful. And, given his rural location, Mr. Beltran still needed to use the car as part of his everyday life, including for healthcare emergencies. *Id.* When his wife went into labor, and an ambulance would not have arrived on time, his only option was to drive her to the hospital. *Id.* Five years ago, however, he was pulled over while driving without a license and detained for three days in a federal immigration detention center. *Id.* Now released, he still faces potential deportation. *Id.* Nevertheless, he was one of the first applicants for a New York State driver’s license so that he can have the opportunity to “be able to drive my children around and have more fun times together as a family without worrying about any problems of having any traffic violations . . .” *Id.*

His story echoes the stories of so many others for whom the Green Light Law offers both peace of mind and an opportunity to engage fully in the world around them. Specifically, the four individuals who sought to intervene in the trial court action set forth in papers filed in the proceeding below the significant impact and harm on their daily existence should they lose the right to obtain a license under the Green Light Law. *See* District Court Docket, ECF No. 42 (“JV Decl.”). Individual 1 is an undocumented father of two young children who works and lives on a rural dairy farm in the remote, mostly agricultural region of Niagara County. JV Decl., Ex. D ¶¶ 2-5. He works six days a week, makes about \$860 a week, and lives a 25 minute drive away from his children and their American mother. *Id.* ¶¶ 3, 5, 7. There

is no public transportation where he resides; therefore, in order to see his children, he must either pay up to \$65 each way for private transport or drive his truck without a license. *Id.* ¶¶ 4, 7, 9. Prior to the enactment of the Green Light Law, he feared an interaction with the local sheriff and immigration officials every time he drove. *Id.* ¶ 11. Obtaining a license allows him to drive to his children's home legally and then take them shopping or to doctor's appointments, without the fear of a police interaction resulting in his deportation. *Id.* ¶ 12.

Similarly, Individual 2, a full-time caregiver, is an undocumented mother who lives with her husband, a warehouse worker, and their two young children, both of whom suffer from disabilities, in Westchester County. JV Decl., Ex. E ¶¶ 1, 3-5, 14. Their six-year-old son is in a wheelchair, has spina bifida borne from a hydrocephalic condition, and needs to be taken on a regular basis to local doctors. *Id.* ¶¶ 5-9. He also needs to be taken for special treatment at a children's hospital in Philadelphia, a two-and-a-half-hour car drive from their home. *Id.* ¶¶ 5-9. Unless a friend can drive them, Individual 2 is forced to pay for transportation in emergency situations and for frequent trips to her son's urologist or other destinations, which can cost \$20 to \$50 each way. *Id.* ¶¶ 11-13. Regular taxis and private car hires cannot accommodate the size of his wheelchair. *Id.* ¶ 13. Her husband is unavailable to transport their son due to his demanding six-day-a-week work schedule, plus his New York driver's license is temporary and must be renewed each year. *Id.* ¶ 16.

Prior to the enactment of the Green Light Law, when their son had an emergency, they had to hire a driver with a wheelchair-accessible vehicle for at least \$50 to go to the local hospital. *Id.* ¶¶ 12, 13.

From March to August 2019, Individual 2 and her husband had to make arrangements to take their son to Philadelphia every 15 days; starting the past October and continuing for the next 11 years, they need to take him every three months. *Id.* ¶¶ 8-9. They also have to take him four times a week to physical therapy, which requires them to walk 35 minutes one-way pushing his wheelchair. *Id.* ¶ 10. Their eight-year-old daughter also has learning disabilities, which require special care. *Id.* ¶ 14. With a license, this family will have more flexibility in who can use the family car and not need to resort to the kindness of friends or expensive rides for local trips or the long drives to Philadelphia to see doctors or to take her children to therapists. *Id.* ¶¶ 16-18.

Individual 3 is an undocumented domestic violence survivor and a single mother of four children. JV Decl., Ex. F ¶¶ 3, 5. She lives in Dutchess County, where there are limited mass transit options, and she must often rely on cabs. *Id.* ¶¶ 8-10. Her 12-year-old son receives court-ordered psychological counseling every two weeks, due to his trauma associated with the domestic abuse his mother suffered. *Id.* ¶ 7. Without reliable transportation options, his mother had to figure out how to get him there each time. *Id.* A driver's license will enable her to rent or use a vehicle,

and also obtain legal assistance from her immigration lawyer in New York City related to her pending U-visa application. *Id.* ¶ 11.

Individual 4 is an undocumented young mother living in Nassau County with her six-month-old daughter and partner. JV Decl., Ex. G ¶ 2. Public transportation is scarce and unreliable where she lives, and hired cars are costly. *Id.* ¶ 3. While her partner has a car, he must use it six days a week to commute to his two jobs, each located over an hour away from their home. *Id.* ¶ 4. Recently, the couple's infant daughter, who suffers from gastroesophageal reflux, had a high fever, and her partner was unavailable to drive her and their daughter to the hospital even though the baby required emergency care. *Id.* ¶¶ 5-6. Additionally, due to her persistent lack of access to reliable transportation, Individual 4 was unable to attend weekly religious events, hosted in her native language and critical to her sense of community, at her church located approximately 45 minutes away from her home. *Id.* ¶¶ 8-9. Once she acquires her license, her partner will give her primary access to the family car to drive him to and from work, take care of their child, and attend religious services at their church. *Id.* ¶ 12.

Like Mr. Beltran and the four individuals who sought to intervene in the proceeding below, there are countless other stories of individuals whose lives have been improved due to the simple act of being able to apply for and acquire a driver's license. For example, Itzel Galvez, a 20-year-old resident of Newburgh, arrived in

the United States from Mexico as an infant.²⁰ Without a driver's license, Ms. Galvez, who works two-full time jobs, depended on unreliable taxi companies and ride sharing services such as Uber and Lyft, which cost her between \$120 to \$160 a week. *Id.* Now, Ms. Galvez has her first learner's permit.²¹ Although she was fearful that U.S. Immigration and Custom Enforcement ("ICE") officials would appear at local DMV offices to target applicants when she went to apply, Ms. Galvez explained "I risk being detained every day of my life . . . I am honestly terrified, but if I don't take the risk, I will never progress in this country."²²

Likewise, Epimenio Bermejo Hernandez, with his daughter in hand, applied for his first driver's license in twenty years, after coming to the United States from Mexico.²³ Mr. Hernandez, a resident of Orange County, had previously been ticketed ten times for driving without a license, which gave him great anxiety, and eventually caused him to take cabs everywhere or ask a co-worker for rides. *Id.*

²⁰ See Chris McKenna & Lana Bellamy, *Green Light Law to Take Effect*, TIMES HERALD RECORD (Dec. 8, 2019, 7:11 PM), (<https://www.recordonline.com/news/20191208/green-light-law-to-take-effect-soon>).

²¹ See Chris McKenna, *Undocumented Immigrants Keep Flocking to DMV for Driver's License*, TIMES HERALD RECORD (Dec. 20, 2019, 6:58 PM), (<https://www.recordonline.com/news/20191220/undocumented-immigrants-keep-flocking-to-dmv-for-drivers-license>).

²² See McKenna & Bellamy, *supra* note 20.

²³ See McKenna, *supra* note 22.

However, Mr. Hernandez no longer has to drive in fear once he receives his license.

Id.

Amici, who are regularly in contact with the individuals they serve or advocate for, also collected stories of undocumented individuals who now are able to apply for and acquire a license. Their lives and those of their dependents have vastly improved.

For example, *amici* RMM has collected anecdotes from its staffers who accompanied individuals applying for licenses in several rural geographic regions after the Green Light Law went into effect. One individual is a naturalized citizen with two young children, but her partner is undocumented. He is applying for a license, which provides her with peace of mind about his ability to drive on the roads when her children are in the car, especially if they were ever to be stopped by state troopers. Once her partner gets his license, he will be able to assist her in caring for their children, including by taking them to school and picking up necessary medication and food for the family.

In another example, a migrant farmworker couple with a toddler had their car impounded in Ulster County when they were pulled over for an expired registration while out to pick up groceries. Without adequate public transportation in the area, they were left stranded and unable to facilitate basic activities, such as grocery shopping. Now, they are able to apply for a license and can renew their registration.

Similarly, a rural farmer married to an American citizen and the father of a seven-year-old son is able to legally drive because of a license acquired when the Green Light Law went into effect. Not only did the license permit him to drive, he was able to open a bank account and put the title of his car under his own name for the first time. Another individual living in Suffolk County was able to get her license, which permitted her to register her car in her own name. Being able to drive in a rural area of Suffolk County where there is virtually no affordable or public transport has had a significant impact on her life and those of her children. She has also been able to use her driver's license as identification to enter her children's high school in order to drop them off and pick them up.

In another instance learned of by *amici*, an individual in Orange County applied for his license on the first day the Green Light Law went into effect, and acquired it soon thereafter. Since that time, and with the ability to drive, he has become very active and is “giving back” to his community—he drives himself, along with family and friends, to church; organized a volunteer effort around the holidays to assist the homeless; and became a local representative to an interfaith council that meets twice monthly. His gratefulness in being able to acquire a license spurred his efforts to more actively engage in his community.

As made clear by these stories, the Green Light Law, since its enactment, has facilitated daily life for and provided benefits beyond just the ability to drive to individuals in New York State.

III. THE CRITICAL NEED FOR PRIVACY PROTECTIONS DUE TO THE INCREASE IN IMMIGRATION ENFORCEMENT

Importantly, one of the primary reasons why privacy considerations and protections were crucial when the Green Light Law was implemented was the everyday threat of deportation and family separation for undocumented immigrant New Yorkers. Since 2016, there has been an extraordinary increase in ICE arrests and resulting detentions and deportation orders, throughout the country and in New York. For example, in 2017, a young father who was on the verge of qualifying for Deferred Action for Childhood Arrivals was arrested by ICE on his way to work just after his wife had given birth to their son.²⁴ He was deported within a month and has not seen his wife or son in almost two years. Stories such as this one are not uncommon. The fear and concerns of forced family separation are widespread in

²⁴ Raul Roman and Rafe H. Andrews, *When Deported, You Become Nothing*, POLITICO MAGAZINE (April 19, 2019), (<https://www.politico.com/magazine/story/2019/04/19/displaced-puebla-deportation-immigration-new-york-photos-226657%20>).

many immigrant and mixed-status households. In the first six months of 2019 alone, 11,490 undocumented New Yorkers were ordered to be deported.²⁵

Moreover, according to ICE’s publicly released statistics, from 2016 to 2018, the total number of at-large arrests across the country, which are those arrests conducted in the community as opposed to in a prison or jail, grew from 30,348 to 40,066—a 32 percent increase.²⁶ Over 85 percent of all removals across the country between January 2016 and September 2018 involved individuals who had never been convicted of a crime or who were not convicted of a crime classified as violent or serious.²⁷

According to a report from the American Immigration Council, the “Area of Responsibility” (“AOR”) for New York City had the third largest increase of custodial ICE arrests between 2016 and 2018.²⁸ In the Buffalo AOR, the at-large arrest rate grew about 124 percent, the second highest jump in the country after

²⁵ *Outcomes of Deportation Proceedings in Immigration Court*, TRAC IMMIGRATION (2019), (https://trac.syr.edu/phptools/immigration/court_backlog/deport_outcome_charge.php) (last visited Feb. 16, 2020).

²⁶ Guillermo Cantor, Emily Ryo, & Reed Humphrey, *Changing Patterns of Interior Immigration Enforcement in the United States, 2016-2018*, AMERICAN IMMIGRATION COUNCIL at 2 (June 2019), (http://americanimmigrationcouncil.org/sites/default/files/research/changing_patterns_of_interior_immigration_enforcement_in_the_united_states.pdf) (“AIC 2019 Report”) (last visited Feb. 16, 2020).

²⁷ *Id.* at 19.

²⁸ *Id.* at 24-25.

Philadelphia.²⁹ There has also been an uptick in “collateral” deportations, where ICE agents opportunistically arrest other undocumented immigrants on the scene, even if they are not on the ICE agent’s target list.³⁰

Over a month after the law went into effect, DHS announced its opposition to the Green Light Law.³¹ It took the bold step of announcing its intention to retaliate against *all* New Yorkers, citizens or not, for the State’s decision to permit individuals who are eligible to drive, but lack a Social Security number, from legally operating a vehicle and having a form of identification that, as detailed in one anecdote above, permits a mother to pick her children up from school.³² Of note, they made this announcement *after* the law went into effect and thousands have already submitted their paperwork, with the inherent assumption of privacy protections, for a license. Although the federal government purports that their objection to the Green Light Law is for public safety reasons, there have been multiple incidents in other states

²⁹ *Id.* at 25.

³⁰ Caitlin Dickerson & Zolan Kanno-Youngs, *Thousands Are Targeted as ICE Prepares to Raid Undocumented Migrant Families*, THE NEW YORK TIMES (July 11, 2019), (<https://www.nytimes.com/2019/07/11/us/politics/ice-families-deport.html>).

³¹ Letter from Chad F. Wolf, U.S. Department of Homeland Security Acting Secretary to Mark J.F. Schroeder, New York State Department of Motor Vehicle Acting Commissioner & Theresa L. Egan, New York State Department of Motor Vehicle Executive Deputy Commissioner (Feb. 5, 2020), (https://www.dhs.gov/sites/default/files/publications/20_0206_as1-letter-to-ny-dmv-signed.pdf).

³² *Id.*

where ICE has gained inappropriate access to state databases in order to target individuals for deportation.³³ It is partly for this reason that New York enacted a law with additional protections to prevent improper and inappropriate access to its databases.³⁴

IV. PLAINTIFF-APPELLANT’S APPEAL SHOULD BE DENIED AND THE DISTRICT COURT ORDER SHOULD BE AFFIRMED

The stories and statistics set forth above clearly demonstrate the overwhelming success of the Green Light Law in serving its expected goals of (i) increasing driver safety on New York roads; (ii) increasing revenue generated from DMV fees statewide given the increased number of licenses and permits; and (iii) giving individuals an opportunity to safely and legally drive—a basic, pervasive, and often necessary requirement for modern society. *Amici* have a significant interest in the law’s success given the resources they have dedicated and

³³ See, e.g., McKenzie Funk, *How ICE Picks Its Targets in the Surveillance Age*, THE NEW YORK TIMES MAGAZINE (Updated Oct. 3, 2019), (<https://www.nytimes.com/2019/10/02/magazine/ice-surveillance-deportation.html>); Jack Herrera, *DMV Employees Have Been Accused of Collaborating with ICE. This isn’t the First Time*, PACIFIC STANDARD (July 8, 2019), (<https://psmag.com/news/dmv-employees-have-been-accused-of-collaborating-with-ice-this-isnt-the-first-time>) (reporting on how ICE has turned to states’ driver’s license databases into catalogs for facial image recognition to acquire information of undocumented immigrants who obtained driver’s licenses under Vermont’s equivalent of the Green Light Law).

³⁴ See Joe Mahoney, *Cuomo signs bill allowing driver’s licenses for illegal immigrants*, THE DAILY STAR (June 17, 2019), (https://www.thedailystar.com/news/local_news/cuomo-signs-bill-allowing-driver-s-licenses-for-illegal-immigrants/article_7637fb28-1733-5462-9195-50cd75548226.html).

continue to dedicate in advocating for passage of the Green Light Law; historically providing transportation services to those who could not acquire a license prior to passage of the law; assisting immigrants, like those whose stories are highlighted above, acquire a license; and educating eligible individuals prior to and after implementation of the Green Light Law this past December.

As set forth above, undocumented New Yorkers, mixed-status families, and the organizations that serve them also have an interest in ensuring that an applicant seeking a license under the Green Light Law can do so without risk of immigration enforcement consequences, which protections would be eliminated or severely tested if the law is struck down or modified. This fear is based on reality. When protections akin to those in the Green Light Law did not exist in California, federal immigration enforcement officials accessed applicants' information in order to take punitive action, up to and including deportation, against them and their families.³⁵

³⁵ See, e.g., Tom Jones, Sergio Flores, & Gaby Rodriguez, *New Law Would Limit Access to Driver's License Records of Undocumented Immigrants*, NBC SAN DIEGO (April 12, 2019), (<https://www.nbcsandiego.com/news/local/New-Law-Would-Limit-Access-to-Undocumented-Drivers-Information-508523051.html>) (reporting that federal immigration officials gained access to driving records to acquire addresses of undocumented immigrants who obtained driver's licenses under California equivalent of the Green Light Law); see also Funk, *supra* note 34 (reporting on ICE's unfettered access to driver's license records—including driver's licenses photos, phone records, and driver's license application forms, which included key details like place of birth—of immigrants who obtained driver's licenses under Washington State's Green Light Law-equivalent).

Moreover, any argument by Plaintiff-Appellant that the Green Light Law is unconstitutional implicates the privacy protections preventing applicants either from affirmatively being identified or from becoming subject to prying inquiries by federal immigration officials. This is contrary to other daily activities where the federal government, state government, and other courts have recognized a privacy interest in an individual's immigration status to facilitate participation in everyday activities. *See, e.g., New York by Schneiderman v. Utica City Sch. Dist.*, 177 F. Supp. 3d 739, 744 (N.D.N.Y. 2016) (state education laws “even prohibit school officials from inquiring about . . . immigration status of students . . . as well as requesting information which would tend to reveal immigration status, such as Social Security numbers”) (internal quotation marks omitted); New York Executive Order No. 170.1, *Amendment to Executive Order 170 - State Policy Concerning Immigration Access to State Services and Buildings* (Apr. 25, 2018), <https://www.governor.ny.gov/news/no-1701-amendment-executive-order-170-state-policy-concerning-immigrant-access-state-services> (last visited Feb. 16, 2020) (“State officers or employees shall not inquire about an individual's immigration status . . . [as] immigration enforcement activity in these spaces create a chilling effect, preventing immigrants from fully participating”). Recently, a court identified that the United States Census Bureau would also be required to abide by statutory privacy requirements protecting against the identification of individuals if

such a citizenship status question were included on the census questionnaire. *See New York v. U.S. Dep't of Commerce*, 351 F. Supp. 3d 502, 618-19 (S.D.N.Y. 2019) (citing to 13 U.S.C. § 9(a)(2)), *aff'd in part, rev'd in part on other grounds and remanded by* 139 S. Ct. 2551 (2019); *cf.* 20 U.S.C. § 1232g(b)(1) (denying federal funds to educational institutions with “policy or practice of permitting the release of education records . . .” except in narrow circumstances that do not include immigration status queries).

Put simply, driving is a basic, pervasive, and often necessary requirement for modern society. *See, e.g., Delaware v. Prouse*, 440 U.S. 648, 662 (1979); *Wooley v. Maynard*, 430 U.S. 705, 715 (1977) (“[D]riving an automobile [is] a virtual necessity for most Americans . . .”); *Thomas v. Haslam*, 303 F. Supp. 3d 585, 616 (M.D. Tenn. 2018) (“Being unable to drive is the equivalent of a recurring tax or penalty on engaging in the wholly lawful ordinary activities of life . . .”). There has *never* been a statutory requirement that an individual be legally in this country in order to acquire a New York standard license. Appellees Br. at 4. Only within the past 20 years have undocumented immigrants been denied the ability to acquire a driver’s license in New York due to their lack of documentation (e.g., lack of a Social Security number), *not* due to their immigration status. *Compare* N.Y. Veh. & Traf. Law § 502(1) *with* Green Light Law § 2 (*amending* N.Y. Veh. & Traf. Law § 502(1)).

Amici join in the Defendants-Appellees’ arguments set forth in their opposition to the Plaintiff-Appellant’s opening brief, and urge the Court to affirm the Order. *Amici* submitted this brief in support of Defendants-Appellees’ arguments and to provide an aperture to assist the Court in assessing the need for and impact of the Green Light Law on the daily lives of thousands of New Yorkers who seek to provide for their families, access medical care and education, and to participate in their communities. Plaintiff-Appellant’s efforts to permanently deprive immigrant New Yorkers—the individuals served by the *amici* organizations—of the ability to acquire a driver’s license should be denied.

CONCLUSION

Amici urge the Court to affirm the district court’s dismissal of Plaintiff-Appellant’s claims for lack of standing, or affirm the dismissal on any of the three alternative grounds set forth in the Defendants-Appellees’ brief.

CERTIFICATE OF COMPLIANCE

I hereby certify that:

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 6,578 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. The brief further complies with the requirements of Fed. R. App. P. 23(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionately spaced typeface using Microsoft Word 2010 in 14-point Times New Roman font.

Dated: February 19, 2020

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By /s/ William C. Perdue
William C. Perdue
Attorney for *Amici Curiae*

CERTIFICATE OF SERVICE

I hereby certify that I am electronically filing the foregoing with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system on February 19, 2020.

Participants in the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

Dated: February 19, 2020

ARNOLD & PORTER KAYE SCHOLER LLP

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