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**ORAL ARGUMENT NOT YET SCHEDULED**

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**No. 21-5028**

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

WASHINGTON ALLIANCE OF TECHNOLOGY WORKERS,  
*Appellant,*

v.

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

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

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**Reply in Support of the Presidents' Alliance on Higher Education and  
Immigration's Motion For Leave to File Brief Amicus Curiae**

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July 6, 2021

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## ARGUMENT

On June 21, 2021, the nonprofit, nonpartisan Presidents’ Alliance on Higher Education and Immigration (“Presidents’ Alliance”)—with the support of over one hundred and fifty of its college and university members—filed a motion to participate as *amicus curiae* in this appeal to support the Optional Practical Training (OPT) program. Plaintiff-Appellant Washington Alliance of Technology Workers (“WashTech”) objects to the Presidents’ Alliance’s brief based on the inclusion of anonymous anecdotal accounts from OPT participants about their experiences—experiences that powerfully illustrate the importance of OPT to institutions of higher education, and their students, nationwide. *See* Appellant’s Resp. to Mot. of the Presidents’ Alliance on Higher Educ. & Immigr. For Leave to File Br. *Amicus Curiae* (“WashTech Resp.”) 1. This Court routinely accepts *amicus* briefs containing statements similar to those that WashTech challenges, and the brief will aid the Court in its adjudication of this important case. The Presidents’ Alliance’s motion should therefore be granted.

WashTech’s opposition to *amicus*’s motion is almost entirely devoid of legal argument. That is, of course, no surprise. Courts in this Circuit—including this Court—routinely accept *amicus* briefs that contain anonymous and attributed anecdotal statements. *See, e.g.*, Br. of American Veterans All., et al., as Amici Curiae in Supp. of Pls.-Appellees at 8-21, 23-25, *Doe 2 v. Shanahan*, 755 F. Appx

19 (D.C. Cir. 2019) (No. 1:17-cv-01597) (amicus brief containing several quoted statements from anonymous veterans and service members); Br. of Immigrant Rights Advoc. as Amici Curiae Supp. Pls.-Appellees at 12-14, *Jane Doe v. Azar*, 925 F.3d 1291 (D.C. Cir. 2019) (No. 18-5093) (amicus brief recounting experiences of individuals affected by the challenged Office of Refugee Resettlement policy precluding unaccompanied alien minors from obtaining an abortion); *Wash. All. Of Tech. Workers v. U.S. Dep't of Homeland Security*, No. 16-cv-1170, 2021 WL 329847, at \*3 n.2 (D.D.C. Jan. 28, 2021). WashTech cannot overcome the legal authority endorsing this completely uncontroversial practice.<sup>1</sup>

Attempting to sidestep the actual legal issue—can circuit courts accept *amicus* briefs containing anonymous statements—WashTech appears to ground its objection on the notion “that the American news media regularly portrays the judicial process as a political one.” WashTech Br. 1. That objection is entirely irrelevant to *amicus*'s motion. It is also, of course, meritless. The Presidents'

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<sup>1</sup> The *sui generis* cases WashTech cites are of no moment. In each, the brief at issue actually attempted to present adjudicative facts to the court for the purpose of resolving factual disputes between the parties. See *Brown v. Collier*, 929 F.2d 218, 235-36 (5th Cir. 2019); *New York v. Microsoft Corp.*, No. 19-1233, 2002 U.S. Dist. LEXIS 22862 (D.D.C. Nov. 6, 2002); *Animal Sci. Prods. v. Hebei Welcome Pharm. Co., Ltd.*, No. 06-MD-1738, 2012 U.S. Dist. LEXIS 142558, at \*7-8 (E.D.N.Y. Sep. 27, 2012). The challenged statements here, however, simply provide relevant context for the purely *legal* controversy between WashTech and the Government. *Accord* Br. for Intervenors-Appellees 58 n.16. Moreover, at no point do the decisions WashTech cites purport to categorically import the Federal Rules of Evidence into *amicus* practice, as WashTech would have this Court do.

Alliance and its members are not rogue actors attempting to make “mere political statements” about OPT. WashTech Br. 3. Quite to the contrary, the *amicus* brief provides fact-driven perspectives and statistics on the importance of OPT to higher education leaders, educators, students, and graduates—the core stakeholders in OPT and the constituencies that will be most directly impacted by WashTech’s desired cessation of the program.

For this reason, granting *amicus*’s motion will not “provide[] fuel to the perception that the courts act politically.” WashTech Br. 2 (citation omitted). The Presidents’ Alliance and its member-institutions have “a special interest in [the] litigation as well as a familiarity and knowledge of the issues raised . . . that could aid in the resolution of [the] case.” *Ellsworth Assocs., Inc. v. United States*, 917 F. Supp. 841, 846 (D.D.C. 1996). *Amicus*’s brief thus fits firmly within the purpose of *amicus* briefs, generally. *Prairie Rivers Network v. Dynegy Midwest Generation, LLC*, 976 F.3d 761, 763 (7th Cir. 2020) (listing permissible functions of *amicus* briefs, including “[h]ighlighting factual . . . nuance,” “[e]xplaining . . . commercial context,” “[p]roviding practical perspectives on the consequences of potential outcomes,” and “[s]upplying empirical data”).

Courts possess broad discretion to permit participation as an *amicus curiae*, *Nat’l Ass’n of Home Builders v. U.S. Army Corps of Eng’rs*, 519 F. Supp. 2d 89, 93 (D.D.C. 2007), so long as an *amicus* provides “timely and useful” information.

*Ellsworth Assocs.*, 917 F. Supp. at 846 (cleaned up). As Presidents' Alliance's brief shows, the perspective of its member-institutions is integral to this litigation.

### CONCLUSION

Presidents' Alliance respectfully urges the Court to grant its motion to participate as *amicus curiae*.

Respectfully submitted:

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July 6, 2021

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 6, 2021, I caused the foregoing to be electronically filed with the Clerk of the Court by using the CM/ECF system, which will provide electronic notice and an electronic link to this document to all attorneys of record.

By: /s/ Ishan K. Bhabha  
Ishan K. Bhabha

**CERTIFICATE OF COMPLIANCE**

I hereby certify that the foregoing motion complies with the type-volume limitation of Fed. R. App. P. 27 because it contains 790 words. This motion also complies with the typeface and the type-style requirements of Fed. R. App. P. 27 because this brief has been prepared in a proportionally spaced typeface using Word 14-point Times New Roman typeface.

Dated: July 6, 2021

By: /s/ Ishan K. Bhabha  
Ishan K. Bhabha