

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

MARTIN JONATHAN BATALLA VIDAL
et al.,

Plaintiffs,

v.

KIRSTJEN M. NIELSEN, Secretary,
Department of Homeland Security, et al.,

Defendants.

-----X

STATE OF NEW YORK et al.,

Plaintiffs,

v.

DONALD TRUMP, President of the United
States, et al.,

Defendants.

Case No. 16-CV-04756 (NGG) (JO)

Case No. 17-CV-05228 (NGG) (JO)

**BRIEF OF PUBLIC EDUCATION
GROUPS AS AMICUS CURIAE IN
SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY INJUNCTION**

Dated: December 22, 2017

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Arizona Dream Act Coal. v. Brewer, 757 F.3d 1053 (9th Cir. 2014)..... 6

Plyler v. Doe, 457 U.S. 202, 223 (1982)..... 9,14

Stamicarbon, N.V. v. Am. Cyanamid Co., 506 F.2d 532 (2d Cir. 1974)..... 6

Standard & Poor’s Corp. v. Commodity Exch., Inc., 683 F.2d 704 (2d Cir. 1982) 6

Other Authorities

Alexia Fernandez Campbell, *DACA immigrants are teaching American children. What happens after they’re gone?*, Vox (Sept. 15, 2017), <https://www.vox.com/policy-and-politics/2017/9/15/16306972/daca-teachers-dreamers>..... 18

Dan Goldhaber et al., The Ctr. for Educ. Data and Research, Univ. of Washington Bothell, *The Theoretical and Empirical Arguments for Diversifying the Teacher Workforce: A Review of the Evidence* (2015) 17

Ginette Magaña, *DACAmented Teachers: Educating and Enriching Their Communities* (Aug. 4, 2015), <https://obamawhitehouse.archives.gov/blog/2015/08/04/dacamented-teachers-educating-and-enriching-their-communities>..... 19

Jason A. Grissom, Luis A. Rodriguez & Emily C. Kern, *Teacher and Principal Diversity and the Representation of Students of Color in Gifted Programs*, 117 *The Elementary Sch. J.* 3 (2017)..... 17

Jason T. Downer, Priscilla Goble, Sonya S. Myers & Robert C. Pianta, *Teacher-child Racial/Ethnic Match Within Pre-Kindergarten Classrooms and Children’s Early School Adjustment*, *Early Childhood Research Quarterly* 37 (2016)..... 17

Jie Zong et. al., *A Profile of Current DACA Recipients by Education, Industry, and Occupation*, 2017 Migration Policy Inst. 13, 15

Matthew Ronfeldt et al., *How Teacher Turnover Harms Student Achievement*, 50 *Am. Educ. Res. J.* 4 (2013) 14

Memorandum from Elaine C. Duke, Acting Sec’y of DHS, to James W. McCament, Acting Dir., USCIS, et al., *Rescission of Deferred Action for Childhood Arrivals*

(DACA) (Sept. 5, 2017), <https://www.dhs.gov/news/2017/09/05/memorandum-rescission-daca> 1

Nat’l Scientific Council on the Developing Child, *Persistent Fear and Anxiety Can Affect Young Children’s Learning and Development* (Harvard Univ. Ctr. on the Developing Child, Working Paper 9, 2010), available at <http://developingchild.harvard.edu/wp-content/uploads/2010/05/Persistent-Fear-and-Anxiety-Can-Affect-Young-Childrens-Learning-and-Development.pdf> 12

Office of Planning, Evaluation and Policy Dev., U.S. Dep’t of Educ., *The State of Racial Diversity in the Educator Workforce* (July 2016), <https://www2.ed.gov/rschstat/eval/highered/racial-diversity/state-racial-diversity-workforce.pdf> 17, 18

Office of Postsecondary Educ., U.S. Dep’t. of Educ., *Teacher Shortage Areas Nationwide Listing 1990-1991 through 2017-2018* (June 2017), <https://www2.ed.gov/about/offices/list/ope/pol/ateachershortageareasreport2017-18.pdf> 15

Randy Capps et al., *Implications of Immigration Enforcement Activities for the Well-Being of Children in Immigrant Families: A Review of the Literature*, 2015 Migration Policy Inst. 10

Roberto G. Gonzales et al., *Taking Giant Leaps Forward: Experiences of a Range of DACA Beneficiaries at the 5-Year Mark*, 2017 Center for American Progress 7

Tatyana Kleyn et al., *Learning from Undocumented Students: Testimonios for Strategies to Support and Resist*, 14 *The New Educator* 1 (forthcoming 2018) 7

U.S. Citizenship and Immigration Servs., *Approximate Active DACA Recipients: Country of Birth* (Sept. 4, 2017), https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/daca_population_data.pdf 18

Valerie Strauss, *Teacher Shortages Affecting Every State As 2017-18 School Year Begins*, *Washington Post* (Aug. 28, 2017) 15

I. Introduction.

Since its inception in 2012, the Deferred Action for Childhood Arrivals (DACA) program has yielded immeasurable benefits for our nation's primary and secondary schools, colleges and universities, their educators, and their students. For students who, prior to DACA, had only a limited pathway to college and almost no realistic expectation of long-term employment, the program created new hope and a reason to strive for academic excellence. Many of these DACA recipients have since completed high school and entered four-year colleges and universities. Thousands have graduated and gone on to earn their teaching certifications. These DACA educators and other vital education employees help fulfill the nation's growing need for qualified educators, and serve as role models for the next generation of diverse students.

The Department of Homeland Security has made a cruel and thinly reasoned decision¹ to rescind DACA, one that will wipe out these gains and cause irreparable harm to schools, colleges, their staff and their students. The DHS announcement has already destabilized schools and disrupted classrooms. If not enjoined, the rescission will deprive districts of much-needed DACA educators. It will also deprive DACA students of invaluable opportunities to work, study, and give back to our schools and communities. *Amici* therefore urge the Court to grant Plaintiffs' request for a preliminary injunction, to prevent DACA students and teachers from precipitously losing full participation in the nation's schools where they learn, teach, and thrive.

II. Interest of Amici.

Amici Curiae represent millions of public school educators, superintendents, administrators, and elected school board members. *Amici* are:

¹ Memorandum from Elaine C. Duke, Acting Sec'y of DHS, to James W. McCament, Acting Dir., USCIS, et al., *Rescission of Deferred Action for Childhood Arrivals (DACA)* (Sept. 5, 2017), <https://www.dhs.gov/news/2017/09/05/memorandum-rescission-daca>.

AASA, The School Superintendents Association represents more than 13,000 educational leaders throughout the world. AASA advocates for the highest quality public education for all students. Districts led by AASA members benefit from both DACA educators and students.

American Federation of School Administrators is the only national education union for school administrators and represents principals and assistant principals. AFSA has more than 20,000 members located primarily in urban school districts across the nation. AFSA is committed to maintaining quality public education for all students and DACA recipients provide a significant and important component of our schools.

American Federation of Teachers represents approximately 1.7 million members employed in K-12 and higher education, public employment, and healthcare. AFT has a long history of civil rights advocacy. AFT has members throughout the country who have received DACA. These members have utilized DACA to obtain employment in institutions that provide essential public services. AFT members also teach DACA students. These students are integral members of their educational institutions. They contribute to the diversity of experience and viewpoint in classrooms, engage in valuable research projects, and play leadership roles in student life.

Council of School Supervisors and Administrators represents New York City Department of Education Principals, Assistant Principals, Education Administrators, and Clinical Supervisors. CSA's membership totals nearly 6,400 active members and 15,000 retirees. DACA recipients are students and employees in the schools CSA members lead. CSA advocates for the strongest and most inclusive learning environment for students.

National Education Association represents three million education employees, including teachers, counselors, nurses, bus drivers, librarians, para-professionals, and many other employees essential to public schools and universities. DACA educators are among NEA's

members. DACA recipients also make up a large contingent of the students served by NEA members. NEA's mission is "to fulfill the promise of public education to prepare every student to succeed in a diverse and interdependent world." NEA Vision, Mission, and Values (2006). NEA has made the protection of DACA and its recipients, families, and school communities a top advocacy priority.

National School Boards Association, through its state associations of school boards, represents the nation's 95,000 board members who, in turn, govern approximately 13,800 local districts serving more than 50 million public school students. NSBA has long advocated for equitable access to public schools. Article IV, Section 1.3 of NSBA's Beliefs and Policies states: "Public schools should provide equitable access and ensure that all students have the knowledge and skills to succeed ... regardless of factors such as race, gender, sexual orientation, ethnic background, English proficiency, immigration status, socioeconomic status, or disability."

New York State Council of School Superintendents has a membership comprising approximately 97% of New York State superintendents, Boards of Cooperative Educational Services (BOCES) of New York State superintendents, superintendents of special act districts and other administrators. Superintendents are responsible for enforcing all provisions of law and all rules and regulations relating to school management. The Council advocates for the state's superintendents, develops and promotes policy on matters relating to K-12 education, school finance, and school leadership. The Council has appeared as *amicus curiae* in numerous proceedings involving issues affecting New York public schools.

New York State School Boards Association represents the governing boards of approximately 93% of the governing boards of New York. It often appears as *amicus curiae* in court proceedings affecting public education. The current proceeding presents issues that

directly affect the mission and operation of K-12 public schools. Anxiety over possible arrests and deportation impairs the ability of students to study and learn, and to even attend school, which further affects their ability to acquire the knowledge and skills necessary to become productive members of society. This limits the capacity of boards to discharge their obligation to provide such opportunities. The rescission of DACA affects the continued employment of qualified educators and staff. This in turn affects the stability necessary to operate schools, a core responsibility of school boards.

New York State United Teachers represents more than 675,000 people who work in, or are retired from, New York's schools, colleges, and healthcare facilities. These include teachers, university faculty, bus drivers, custodians, secretaries, cafeteria workers, and nurses. NYSUT's mission is to improve the professional and economic lives of its members and their families, to strengthen the institutions where they work, and further the cause of social justice. Numerous NYSUT members receive DACA. NYSUT members also teach DACA recipients in their public schools. DACA has allowed NYSUT members to provide essential services to school communities.

Professional Staff Congress/CUNY represents 30,000 faculty and professional staff working at the City University of New York and the CUNY Research Foundation. The PSC is a leader in advocating for fair working conditions and high-quality education at CUNY. The PSC is also a strong voice in support of CUNY students and their right to an education. Our members and their students include DACA-recipients and families of DACA-recipients.

School Administrators Association of New York State represents over 7,200 public school principals, assistant principals, directors, and coordinators in New York public schools and BOCES in approximately 500 school districts. SAANYS, along with the NYS Federation of

School Administrators, is part of the New York State School Administrators Consortium (NYSSAC), a lobbying consortium representing over 23,000 school leaders. SAANYS is the official New York representative on the National Association of Elementary School Principals and the National Association of Secondary School Principals. Through its representation and advocacy efforts, SAANYS supports school administrators who have received DACA's invaluable benefits, and those who encourage current DACA students to continue their education.

United Federation of Teachers represents more than 80,000 teachers and other employees in the New York City School District, one of the largest school districts in the country. UFT advocates for the highest quality public education for all students, and develops and supports students and teachers. DACA recipients work in the schools in which our members teach and many are studying to become future educators.

United University Professions represents more than 42,000 academic and professional staff in the State University of New York (SUNY). UUP negotiates collective bargaining agreements and advocates for quality public higher education. DACA recipients work in the UUP bargaining unit and study in colleges whose faculty it represents.

Together, *Amici Curiae* represent over four million public school educators, 95,000 board members, and more than 33,000 other educational leaders, including all levels of the New York education system. Their duty and commitment is to care for all students, regardless of immigration status. Because of our members' direct role in education, *Amici* are uniquely aware of the benefits of DACA for our nation's students and for public education overall. *Amici's* members know first-hand the irreparable harm DACA recipients and public education will suffer absent an injunction.

III. ARGUMENT

A. A Preliminary Injunction Is Necessary to Prevent Irreparable Harm to the Vital Interests of DACA Recipients and Their Education Communities.

DACA's rescission will irreparably harm schools and students. To further the public interest in preventing that irreparable harm to the nation's schools and students, the Court should grant Plaintiffs' request for a preliminary injunction. A preliminary injunction is warranted when "the plaintiff has shown (1) a likelihood of success on the merits; (2) a likelihood of 'irreparable harm in the absence of preliminary relief'; (3) 'that the balance of equities tips in [the plaintiff's] favor'; and (4) 'that an injunction is in the public interest.'" *Abbott Labs. v. H&H Wholesale Servs., Inc.*, 670 F. App'x 6, 8 (2d Cir. 2016) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). Irreparable harm, or an injury for which there is no adequate legal remedy, includes the loss of opportunity to pursue and advance one's chosen career. *See Arizona Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014) (holding that DACA recipients would suffer irreparable harm in the absence of a preliminary injunction ordering Arizona to accept their work permits to obtain driver's licenses). And when such harms reach beyond the interests of the litigants, courts "may, and frequently do, go much further both to give and withhold relief in furtherance of the public interest than . . . when only private interests are involved." *Stamicarbon, N.V. v. Am. Cyanamid Co.*, 506 F.2d 532, 537 (2d Cir. 1974) (quotation omitted); *see also Standard & Poor's Corp. v. Commodity Exch., Inc.*, 683 F.2d 704, 711–12 (2d Cir. 1982) (affirming a preliminary injunction to protect interests of the public).

B. Students Have Embraced Opportunities Provided by DACA, Deepened their Engagement at School, and Pursued Goals Previously Believed Unattainable.

The DACA program has motivated countless young people to stay in school and further their education, according to the definitive longitudinal study on DACA recipients. The five-year study, conducted by the Harvard Graduate School of Education, finds that without DACA,

“most unauthorized immigrant youth end their schooling before entering college ... the majority of unauthorized students pursuing higher education attend community colleges and struggle to persist and graduate. With access to legal employment and diminished fear of possible deportation [under DACA], many of the study’s respondents described their newfound motivation and interest in school.”

Roberto G. Gonzales et al., *Taking Giant Leaps Forward: Experiences of a Range of DACA Beneficiaries at the 5-Year Mark*, 2017 Center for American Progress 2. “DACA has been the impetus for many young people ... to return to school. ... Dozens of the respondents who had previously not finished high school told the authors that DACA was an important impetus to re-enroll in school ...” *Id.* DACA is a demonstrated asset to K-12 matriculation.

“**A new sense of confidence.**” Areli Morales attended public schools in New York City. In writing about her experiences, she states that growing up as an undocumented immigrant was “one of the biggest challenges I have had to face.”² Morales “felt voiceless for many years ... I remember wanting to be invisible ...” DACA gave Morales “a new sense of confidence to move forward with my studies.” She was able to obtain work authorization, a Social Security number, and attend college. Morales plans to pursue a career in education and will graduate from Brooklyn College in 2018. If DACA remains in place, she plans “to use [her] experiences of being undocumented to be an empathic teacher ... I hope to create a positive classroom environment that fosters acceptance, understanding, and empowerment to educate future

² Tatyana Kleyn et al., *Learning from Undocumented Students: Testimonios for Strategies to Support and Resist*, 14 *The New Educator* 1, 5 (forthcoming 2018).

generations of children, so they can strive to reach their greatest potential.” Morales and New York have made a significant investment in her education which will only be lost if she cannot teach in public schools.

“A vehicle to better opportunities.” This was the reaction of Roberto Valdez upon learning of DACA.³ As a public school student in Texas, Valdez dreamed of becoming an academic, but felt that advanced academic opportunities were out of reach because he was undocumented. When he reached middle school he realized that being undocumented would hinder his future opportunities. He stopped caring about his schoolwork because he thought “no matter how hard I try I can never go to college.” In high school, he began missing school frequently and struggled academically. However, after the announcement of DACA, he immediately saw that it was a “vehicle to better opportunities” and applied. He improved his schoolwork and was accepted to the University of Texas at El Paso. Valdez states that “I feel like a new person after DACA.” While DACA has allowed Valdez to work for a decent wage and put himself through college, “without DACA, it’s game over.” He will not be able to pursue graduate studies as he had planned. His education and career will be irreversibly impeded.

“DACA was a motivator.” Prior to receiving DACA, Texas college student Joseph Ramirez would question the need to do well in school because he did not think he would go to college: “What am I going to do with that degree without a Social Security number?” During his senior year, he received DACA and it “was a motivator” and without it, “I would not have pushed my limits.” Ramirez is the first in his family to go to college. He studies public health

³ To provide the Court with an expanded understanding of how DACA has impacted public education, numerous students, educators, graduates, and administrators have been interviewed in preparation of this brief. Interviewees self-identified and, where names are used, it is with their permission. Others asked not to be named because of the uncertainty of their DACA status or concern regarding their DACA students.

with the goal of pursuing a career in nursing or public health. “Losing DACA would be devastating” for Ramirez because it would foreclose his public service career dreams.

Without DACA, everything will come “crashing down.” Raul Ramirez, a college student in New York, has a similar story. Before DACA, he had thought “the possibility of going to college was nonexistent” and “out of reach.” When he received DACA, he was excited to work hard and apply to colleges, knowing he now had an opportunity to pursue his career goals. He is an undergraduate at the University of Rochester where he studies nursing with the possibility of pursuing medical school. However, once the rescission of DACA was announced, “[t]hat was the point when everything I planned to do, including nursing school, came crashing down, and I was back to where I was before I went to college and didn’t have a plan for the future.” The DACA rescission will prevent Ramirez from developing his health career.

The experience of students like these in New York and Texas are but several of many thousands around the country. By opening the door to meaningful work and higher learning, DACA gave these young people a reason and the opportunity to succeed in their K-12 studies. If the DACA rescission is allowed to stand, the achievements they have worked so hard to attain—attending a university, or pursuing a fulfilling career—will be ripped away. The opportunities that motivated young people like those described above will summarily vanish. As the U.S. Supreme Court has noted this result is contrary to bedrock principles of our legal system: “Even if the State found it expedient to control the conduct of adults by acting against their children, . . . [federal action] directing the onus of a parent's misconduct against his children does not comport with fundamental conceptions of justice.” *Plyer v. Doe*, 457 U.S. 202, 220 (1982).

C. Rescinding DACA Will Irreparably Harm Public Schools.

The harm caused by the rescission of DACA will not be borne by its recipients alone. As the loss of DACA disrupts classrooms and destabilizes school districts, its effects will reverberate throughout communities. As the status of educators with DACA expires on different dates throughout the school year, teachers and staff will abruptly vanish from classrooms to the distress of their students and to the measurable detriment of educational outcomes. The loss of these DACA educators will worsen already-serious teacher shortages, deprive students of mentors and role models, and deplete the teaching corps of much-needed diversity.

1. Terminating DACA traumatizes schoolchildren and destabilizes the learning environment.

Public school administrators report that the announced termination of DACA is already harming schools by creating an atmosphere of anxiety and making it more difficult for students to focus on their studies. This anxiety is not limited to students with DACA or potential DACA status. Children often misunderstand whether they or their families have legal immigration status and even for those with legal status, they believe “immigrant” is synonymous with “unauthorized.” Randy Capps et al., *Implications of Immigration Enforcement Activities for the Well-Being of Children in Immigrant Families: A Review of the Literature*, 2015 Migration Policy Inst. 6. As a result, these children may believe that they or their authorized relatives are in danger of being deported, which escalates their anxiety. *Id.*

Steve Corona is the Chair of NSBA’s National Hispanic Council of School Board Members which advocates for the educational interests of Latino students, and a member of the school board for the Fort Wayne Community Schools, the largest school district in Indiana, where he has served for the past thirty-six years. He states that at the high school with the largest concentration of Hispanic students, the anxiety level of the students has increased dramatically

since the announcement of DACA's termination. A superintendent in Long Island, New York noted that since the announcement, he can "definitely sense an increase in anxiety and stress, both for the student who fears that the end of DACA means they have to go back to a country they have not lived in since the age of two; and for documented students, the worry is in wondering if their friend will need to go and leave the U.S." Heidi Sipe is the superintendent of the Umatilla School District in eastern Oregon. Umatilla is in a rural area and serves primarily Hispanic students. Superintendent Sipe also spoke of the atmosphere of fear that has permeated her district. "The fear is very real in young students all the way up to high schoolers." Sipe observes that the anxiety "puts educators in a really uncomfortable role because we cannot tell them that everything will be okay because it is not true."

Matt Charlton, the superintendent of the Manson School District in Washington state, echoed these observations, noting that in his rural, majority Hispanic district, there is now an overall "feeling of angst . . . that translates from families down to the kids . . . which impacts the classroom" and harms children's ability to learn. The numerous anti-immigrant statements made by President Trump, especially those targeting DACA, have made the students of Renata Hewlette, a Long Island English Language Learning teacher, extremely scared. As a result, her students are distracted and preoccupied in class. Superintendent Matt Utterback, of the North Clackamas School District in the suburbs of Portland, Oregon, sees how these student anxieties are harming learning conditions as well. "Stress has an impact on academics and behavior," he said, and children's ability to "concentrate, their ability to excel is being hampered because they are worried about their safety and future and that of their family members." Superintendent Theron Schutte, of the Marshalltown Community School District in Iowa, has also seen first-hand the ill effects of increased immigration-related anxiety on children including a "lack of

ability to focus, more frequent absenteeism, and lesser achievement with coursework and on test performance” as students struggle to focus. Susan Bergtraum, vice president of Nassau County’s BOCES and President of the New York State School Boards Association, observed that the anxiety around DACA’s rescission “leads to conditions where educating students is harder, which significantly impairs the ability of school boards to fully discharge their obligations to provide educational opportunities to all students as they are legally and constitutionally obligated to do.”

The experiences of these administrators and elected school board members are corroborated by academic research. A working paper by the Harvard University Center on the Developing Child found that such persistent anxiety can change a child’s brain and negatively affect their physical, cognitive, and emotional development, which in turn impacts their ability to learn effectively in school. Nat’l Scientific Council on the Developing Child, *Persistent Fear and Anxiety Can Affect Young Children’s Learning and Development* (Harvard Univ. Ctr. on the Developing Child, Working Paper 9, 2010), available at <http://developingchild.harvard.edu/wp-content/uploads/2010/05/Persistent-Fear-and-Anxiety-Can-Affect-Young-Childrens-Learning-and-Development.pdf>.

The announced end of DACA also has caused many students to stop working towards their goals as they see carefully crafted plans unravel. Arianna Martinez, an Associate Professor at LaGuardia Community College in New York, teaches many DACA recipients. The DACA students’ “entire relationship to education and their future” has changed as the students suddenly feel there is no point to obtaining a degree when a planned future and career in the U.S. are now in peril. Through her academic research, Martinez has found that older DACA recipients enrolled in GED or ESL classes in preparation for college now cannot envision a way forward.

Superintendent Sipe spoke emotionally of a brilliant student who dreams of becoming a pediatrician but is no longer even considering college. Sipe also knows DACA students who have dropped out of college because of their disappointment and feeling of “why bother investing [in their education] if it does not do any good” when the expectation of continuing immigration status has disappeared. Superintendent Charlton spoke of his district’s many DACA students, including those planning to be educators, and how their plans have been jeopardized. DACA gave students “that hope and inspiration to reach higher, to rescind that now is not fair” to his students. Superintendent Schutte discussed his concern that the termination of DACA will lead to a “greater challenge to encourage kids to finish school, a greater challenge to reduce the achievement gap and drop-out rate . . . there is not a light at the end of the tunnel for these kids.”

Laura Secory, Director of English Language Learning in the Des Moines School District, spoke of her many students whose plans will be irreparably harmed if the rescission of DACA is not enjoined. She spoke of one DACA student who was planning to attend a specialized school for disabled students for his post-secondary education. With DACA now threatened, the student has put aside those plans. In Superintendent Utterback’s district, “high school counselors and administrators are having conversations with kids who thought they had an avenue for post-secondary education” and now they do not know how to plan for the future. “These are really bright kids who have been in the school system for 13 years and have done everything asked of them and now they do not have the same opportunities as their classmates.”

The loss of DACA will also mean that an estimated 9,000 K-12 education employees will no longer be able to teach in our nation’s schools. Jie Zong et. al., *A Profile of Current DACA Recipients by Education, Industry, and Occupation*, 2017 Migration Policy Inst. 8. These valued

educators each hold individual DACA expiration dates. No district, school, or classroom can fully anticipate or, most importantly, prepare students for the staggered, unpredictable departure of beloved teachers. When this occurs mid-year, or at critical points like testing periods, children and their educational outcomes will be irreversibly damaged. An example is second-grade teacher Karina Alvarez, who while awaiting the delayed renewal of her DACA work permit, was forced to temporarily resign from her classroom. Seven-year-olds cannot comprehend the reasons for such a loss, but research abundantly shows events like this diminish trust and thus students' psycho-social wellbeing and educational outcomes. During Alvarez's absence, her second-graders lost educational progress and relationship continuity with a trusted teacher. This will occur on a much larger scale as thousands of teachers continue to lose their DACA status, now without the possibility of renewal.

Teacher turnover has long been shown to harm student academic achievement. Matthew Ronfeldt et al., *How Teacher Turnover Harms Student Achievement*, 50 Am. Educ. Res. J. 4, 31 (2013). Not only will the students of teachers who leave mid-year perform worse academically, but the students of teachers who remain are also negatively impacted. *Id.* Turnover causes a decline in student achievement school-wide because it can damage faculty morale, increase the workload of remaining teachers, and divert district funds away from student programs to training new hires. *Id.* at 8, 32. These impacts will only escalate in schools if the DACA rescission is not enjoined. In sum, the DACA rescission has placed children in an unmitigated state of uncertainty that "den[ies] them the ability to live within the structure of our civic institutions, and foreclose[s] any realistic possibility that they will contribute in even the smallest way to the progress of our Nation." *Plyler v. Doe*, 457 U.S. at 223.

a. Ending DACA will worsen already severe teacher shortages.

Throughout the country, states face a critical shortage of teachers. The U.S. Department of Education has found that “every state is dealing with shortages of teachers in key subject areas” in the 2017-18 school year. Valerie Strauss, *Teacher Shortages Affecting Every State As 2017-18 School Year Begins*, Washington Post (Aug. 28, 2017); *see also* Office of Postsecondary Educ., U.S. Dep’t. of Educ., *Teacher Shortage Areas Nationwide Listing 1990-1991 through 2017-2018* (June 2017),

<https://www2.ed.gov/about/offices/list/ope/pol/ateachershortageareasreport2017-18.pdf>. Every superintendent interviewed for this brief reported staffing shortages. Superintendent Sipe noted that her district posts positions for three to six months without receiving a single application. Superintendent Utterback stated that his district has not been fully staffed for 18 months.

DACA has helped districts ease these shortages. Approximately 9,000 DACA recipients nationwide work in education. Zong, *A Profile of Current DACA Recipients by Education, Industry, and Occupation* at 8. At a time when the nation can ill afford to lose teachers, the rescission of DACA will lead to a significant loss of educational employees.

In Sacramento, Superintendent Jorge Aguilar runs a district with a largely minority and immigrant population. According to Superintendent Aguilar, Sacramento is heavily impacted by the teacher shortage felt throughout California. He knows of employees who receive DACA and he fears the end of DACA will exacerbate the district’s already-critical need for qualified staff.

K.R. is a Texas educator with DACA who teaches special education to hearing impaired pre-K children. A course she took on deaf education was her “light at the end of the tunnel” and she knew she wanted to dedicate her life to teaching children with limited communication abilities. Because of DACA, K.R. has been able to work in her field, but her DACA expires in

2018. Absent an injunction, the DACA rescission will end her career and very likely leave her students without a specialized teacher, due to a shortage of teachers who can teach hearing impaired students.

R.A. teaches history in a Bronx, New York high school. Receiving DACA “completely changed [his] life” and enabled him to pursue his dreams. Because of DACA, R.A. was able to intern in the U.S. Congress and study in Italy. Through his studies at UCLA, he became inspired to become an educator to give something back. R.A.’s students are concerned he will no longer be able to teach them and have told him that “we want you in the classroom.” However, his DACA expires in 2019.

Vicente Rodriguez was able to enter the University of California when he received DACA. An aspiring educator, Rodriguez graduated with a degree in English and Ethnic Studies. He currently works as the Director of Social Services at a non-profit coordinating its after-school program. Rodriguez knows excellent DACA teachers who stand to lose their employment. Rodriguez points out that these are highly educated individuals who will likely choose to leave the U.S. to continue teaching. And Rodriguez’s DACA expires before he can complete a graduate teaching program.

Public schools have invested in the K-12 and higher education of these motivated young people whose professional aim is to give back, to educate students like themselves. The rescission of DACA will bar them from the classrooms that so urgently need them. Countless students stand to lose the very support, instruction, and motivation that these aspiring educators received because of DACA.

b. Ending DACA will hamper efforts to diversify the teaching corps.

Numerous studies have shown that students benefit from teachers who are ethnically and culturally diverse. “Teachers of color are positive role models for all students in breaking down negative stereotypes and preparing students to live and work in a multiracial society.” Office of Planning, Evaluation and Policy Dev., U.S. Dep’t of Educ., *The State of Racial Diversity in the Educator Workforce* (July 2016), <https://www2.ed.gov/rschstat/eval/highered/racial-diversity/state-racial-diversity-workforce.pdf>.

For minority students, having a teacher who reflects a student’s own ethnicity has a particularly positive effect. There are “meaningful ‘role model effects’ when minority students are taught by teachers of the same race.” Dan Goldhaber et al., The Ctr. for Educ. Data and Research, Univ. of Washington Bothell, *The Theoretical and Empirical Arguments for Diversifying the Teacher Workforce: A Review of the Evidence* 6 (2015). These effects are not subjective, but make a “meaningful impact on student test scores.” *Id.* For example, “a larger presence of Black and Hispanic teachers [is linked] to improved treatment or outcomes for Black and Hispanic students along a variety of dimensions, including lower rates of exclusionary discipline, lower likelihood of placement in special education, and higher pass rates on standardized tests.” Jason A. Grissom, Luis A. Rodriguez & Emily C. Kern, *Teacher and Principal Diversity and the Representation of Students of Color in Gifted Programs*, 117 *The Elementary Sch. J.* 3 (2017) (internal citations omitted). Similarly, “non-English proficient Latino children revealed greater gains on a direct assessment of literacy . . . if their teacher was also Latino rather than Caucasian.” Jason T. Downer, Priscilla Goble, Sonya S. Myers & Robert C. Pianta, *Teacher-child Racial/Ethnic Match Within Pre-Kindergarten Classrooms and Children’s Early School Adjustment*, *Early Childhood Research Quarterly* 37 (2016).

It is therefore critical for schools to hire teachers from minority backgrounds to keep pace with the growing immigrant population. Yet districts have had difficulty doing so. Every interviewed superintendent spoke of the gap between the number of Hispanic students compared to that of Hispanic educators. Between 2003 and 2012, “the increase in the percentage of Hispanic students [in the U.S.] far outpaced the modest increase in the percentage of Hispanic teachers.” Goldhaber, *The Theoretical and Empirical Arguments for Diversifying the Teacher Workforce: A Review of the Evidence* at 1. A 2016 study by the U.S. Department of Education found that in 2011-12, 24% of students were Hispanic, while only 8% of teachers were Hispanic. U.S. Dep’t of Educ., *The State of Racial Diversity in the Educator Workforce* at 6. The disparity between the increased need for Hispanic teachers and the lagging number of Hispanic teachers that districts are able to hire, is only expected to grow: “students of color are expected to make up 56 percent of the student population by 2024.” *Id.* at 1.

Districts thus have a critical need to hire an increasing number of Hispanic teachers to serve the needs of their expanding Hispanic student populations. DACA teachers have helped to meet this growing need, given that close to 80% of DACA recipients were born in Mexico. U.S. Citizenship and Immigration Servs., *Approximate Active DACA Recipients: Country of Birth* 1 (Sept. 4, 2017),

https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/daca_population_data.pdf. Indeed,

some districts have specifically recruited DACA recipients. *See, e.g.*, Alexia Fernandez Campbell, *DACA immigrants are teaching American children. What happens after they’re gone?*, Vox (Sept. 15, 2017), <https://www.vox.com/policy-and-politics/2017/9/15/16306972/daca-teachers-dreamers>.

Many DACA educators acknowledge that their background makes them especially important to students, and that they have been drawn to teaching because of their desire to act as role models. For example, DACA recipient Karina Alvarez teaches second-grade students in Texas, where many of her students are Hispanic and some are undocumented. Alvarez speaks to her students about her own experience as an undocumented immigrant. Alvarez believes that her students “need to have a role model that has walked in their shoes . . . they need to see that college is in their reach, that it is possible for them to be a teacher or whatever they want to be.”

Similarly, Jaime Ballesteros, a California DACA educator, said that he became a teacher because he knew he could reach immigrant students: “I wanted to amplify the voices of students and families who shared both my story and values. I wanted to ensure that there would be even just one less child who felt isolated and helpless because of his or her immigration status.”

Ginette Magaña, *DACAmented Teachers: Educating and Enriching Their Communities* (August 4, 2015), <https://obamawhitehouse.archives.gov/blog/2015/08/04/dacamented-teachers-educating-and-enriching-their-communities>.

A.Z. teaches Spanish in Texas. She attended public schools and graduated second in her class, playing sports and musical instruments, and participating on student council. Growing up, she did not have a lot of Hispanic teachers and decided to become a teacher so she could help her students feel that they could go to college. In addition to teaching Spanish, she mentors students in a college prep program that she participated in as a student. A.Z. connects with and motivates her students as a result of their shared background. She enjoys building relationships with her students and inspiring them to work harder. Unless DACA’s rescission is enjoined, she will have to stop working with her mentees during their critical senior year as her DACA expires.

Another DACA educator interviewed for this brief became a math teacher in Los Angeles because he felt he could be particularly effective with immigrant students. He is open about his prior lack of legal immigration status and his childhood in an economically depressed community. He believes his openness helps students to feel safe so they can focus on their studies and that students trust him as a mentor in ways that help their morale and academic progress.

R.A., a New York high school teacher, is similarly open with his students regarding his DACA status. “My school is 100% English language learners. That means the majority, 95%, are immigrants. Some have green cards, some are citizens, some may be undocumented. That is why I shared my experience . . . I wanted them to know that this person that is in front of them . . . that I’m also an immigrant.”

Administrators recognize the need for a diverse teaching staff. Superintendent Charlton said that “students benefit when they have role models and people teaching them who come from their background.” As a result, his district is trying to promote Hispanic para-professionals to teaching positions because “schools need to reflect our community.” Tom Ahart, the superintendent of the Des Moines School District in Iowa, which serves approximately 33,000 students, has witnessed the importance of a “diversity of points of view and different perspectives informing what happens in our classrooms,” and that having diverse educators is important so that “all students see models of success and leadership that look like them, so they start imagining different possibilities for themselves.” Superintendent Utterback echoed those sentiments, noting that “students can go thirteen years without experiencing teachers who look like them.” This harms white students as well since “white students never experience seeing a person of color in a professional role.”

Public K-12 schools and universities stand to lose 9,000 education employees. Their students will lose trusted mentors who share their background. These are losses that public schools and universities and their students can ill-afford to bear; losses that cannot be remedied absent injunctive relief.

IV. Conclusion.

The termination of DACA will irreparably harm our nation's public schools and universities and their students. DACA has given hundreds of thousands of young people a reason to succeed in school. By taking away the prospect of advanced learning and gainful employment, DACA rescission will rob society of the contributions of motivated, committed DACA recipients who seek education employment. Those who have already completed their studies will lose their employment, rendering useless not only their own hard work, but the resources that the country and teachers have invested in them. The end of DACA would deprive schools and universities of qualified teachers and mentors, diminish diversity in the teaching corps, and destabilize school environments. To prevent these harms, and to allow schools and students to succeed, *Amici* respectfully request that the Court grant Plaintiffs' motion for a preliminary injunction.

Respectfully submitted,

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