

# 18-485 (L)

18-488 (Con.)

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

Case Nos. 16-CV-4756 (NGG)(JO)(E.D.N.Y.), 17-CV-5228 (NGG)(JO)(E.D.N.Y.)

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MARTÍN JONATHAN BATALLA VIDAL; MAKE THE ROAD NEW YORK, on behalf of itself, its members, its clients and all similarly situated individuals; ANTONIO ALARCON; ELIANA FERNANDEZ; CARLOS VARGAS; MARIANO MONDRAGON; CAROLINA FUNG FENG, on behalf of themselves and all similarly situated individuals; STATE OF NEW YORK; STATE OF MASSACHUSETTS; STATE OF WASHINGTON; STATE OF CONNECTICUT; STATE OF DELAWARE; DISTRICT OF COLUMBIA; STATE OF HAWAII; STATE OF ILLINOIS; STATE OF IOWA; STATE OF NEW MEXICO; STATE OF NORTH CAROLINA; STATE OF OREGON; STATE OF PENNSYLVANIA; STATE OF RHODE ISLAND; STATE OF VERMONT; STATE OF VIRGINIA; STATE OF COLORADO;

*Plaintiffs-Appellees,*

v.

DONALD J. TRUMP, President of the United States; UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES; UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT; UNITED STATES OF AMERICA; UNITED STATES DEPARTMENT OF HOMELAND SECURITY; KIRSTJEN M. NIELSEN, Secretary of Homeland Security; JEFFERSON B. SESSIONS III, Attorney General of the United States;

*Defendants-Appellants.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

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BRIEF *AMICUS CURIAE* OF PARTNERSHIP FOR EDUCATIONAL JUSTICE,  
DELAWARECAN, HAWAIIKIDSCAN, VIRGINIA EXCELS, AND NEWMEXICOKIDSCAN

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## **STATEMENT OF CORPORATE DISCLOSURE**

Pursuant to Federal Rule of Appellate Procedure 26.1, *amici curiae*

Partnership for Educational Justice, DelawareCAN: The Delaware Campaign for Achievement Now, HawaiiKidsCAN, NewMexicoKidsCAN, and Virginia Excels are nonprofit organizations, and are therefore not publicly held corporations that issue stock, nor do they have parent corporations.

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## INTEREST OF *AMICI CURIAE*<sup>1</sup>

*Amici* are Partnership for Educational Justice, DelawareCAN: The Delaware Campaign for Achievement Now, HawaiiKidsCAN, NewMexicoKidsCAN, and Virginia Excels, each of which is a member of the education nonprofit 50CAN: 50-State Campaign for Achievement Now. *Amici* advocate for a high-quality education for all children, regardless of their immigration status, home address, or economic background. *Amici* work to empower families and improve the quality of public schools by conducting research, surveying students, teachers, and school administrators, engaging in legal action, fostering grassroots organizing efforts, and advocating for policies and practices at the state and local level. Through their research and advocacy efforts, *amici* are uniquely situated to articulate the irreparable harm that will be experienced by kindergarten through twelfth grade (“K-12”) students if the September 5, 2017 DACA Rescission Memorandum<sup>2</sup> is enforced. Moreover, the work performed by *amici* will be impeded if the District Court’s order granting a

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<sup>1</sup> No party’s counsel authored this brief, in whole or in part, no party or party’s counsel contributed money intended to fund preparation or submission of this brief, and no person other than *amici* and their counsel contributed money intended to fund preparation or submission of this brief. All parties have consented to the filing of this *amicus* brief.

<sup>2</sup> Memorandum on Rescission of Deferred Action For Childhood Arrivals from Acting Secretary Elaine C. Duke (Sept. 5, 2017) (“Rescission Memorandum”).

preliminary injunction<sup>3</sup> is not affirmed, because undocumented students and their parents will be less willing to openly engage with nonprofit organizations if they are vulnerable to deportation.

### PRELIMINARY STATEMENT

In *Plyler v. Doe*, the Supreme Court held that the Equal Protection Clause of the Fourteenth Amendment guarantees all children in the United States the right to a public elementary and secondary education, regardless of immigration status. 457 U.S. 202 (1982). Because it is “doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education . . . [s]uch an opportunity. . . is a right which must be made available to all on *equal terms*.” *Id.* at 222-223 (citing *Brown v. Board of Education*, 347 U. S. 483, 493 (1954)) (emphasis added). If the Rescission Memorandum is enforced, hundreds of thousands of undocumented K-12 students will suffer irreparable educational injury and will be deprived of the ability to obtain a K-12 public education on equal terms with their U.S.-born peers.

Prior to the enactment of the “Deferred Action for Childhood Arrivals” (“DACA”) program, the educational prospects of undocumented children were significantly curtailed by their immigration status, which often prevented them from gaining access to many of the academic resources available to their U.S.-born

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<sup>3</sup> See Feb. 13, 2018 Mem. & Order, ECF No. 208.

peers. The implementation of DACA in 2012, however, rapidly expanded undocumented young people's future opportunities, incentivizing them to work harder, complete high school, and gain admission to colleges and universities. DACA has also allowed undocumented adolescents to take part in many rites of passage, such as working legally and securing internships, which position students to pursue long term educational and career goals. Critically, DACA has eliminated the daily fear of arrest and deportation among recipients. As a result, undocumented K-12 students have enjoyed better mental health, allowing them to focus on their studies rather than their worries and anxiety. If the preliminary injunction is not affirmed, undocumented students will be stripped of many resources that supported their academic success in recent years, and schools across the nation will face significant obstacles in educating and mentoring these students.

DACA has also provided significant educational benefits to U.S.-born children. DACA's work authorization allows parents who are DACA recipients to better provide for their families, helping their children gain access to valuable educational resources. Additionally, parents who are not threatened with deportation are more likely than their undocumented counterparts to take advantage of public benefits that help children thrive and succeed academically. DACA provides psychological relief to children who previously lived in constant fear that their parents would be deported, thereby improving their performance at

school. Furthermore, thousands of K-12 students are currently taught by DACA-recipient teachers who bring unique skills to the classroom. If DACA ends, U.S.-born children of DACA recipients will be more likely to live in poverty and to suffer from mental health problems, impairing their ability to succeed in school, and students who are taught by DACA-recipient teachers will be deprived of highly effective educators at a time when qualified teachers are in particularly short supply.

For all of these reasons, the District Court’s order preliminarily enjoining the enforcement of the Rescission Memorandum serves the public interest and should be affirmed.

## ARGUMENT

### **I. ENDING DACA WILL CAUSE IRREPARABLE EDUCATIONAL INJURY TO K-12 STUDENTS WHO HAVE ALREADY RECEIVED DACA OR WHO WOULD HAVE BEEN ELIGIBLE TO RECEIVE DACA**

In *Plyler v. Doe*, the Court recognized that educating the next generation of adults is “perhaps the most important function of state and local governments.” 457 U.S. at 222-223 (citing *Brown*, 347 U.S. at 493). The Migration Policy Institute (“MPI”) estimates that at least 130,000 DACA recipients are currently in high school,<sup>4</sup> and hundreds of thousands of elementary and middle school students

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<sup>4</sup> Jie Zong, et al., *A Profile of Current DACA Recipients by Education, Industry, and Occupation*, MPI Fact Sheet, 4 (Nov. 2017).

will become eligible to receive DACA in coming years.<sup>5</sup> If the preliminary injunction is not affirmed, these students will lose their motivation to succeed academically, be ostracized from mainstream society, and will experience increased mental health problems. As a result, public schools across the country will encounter significant challenges in fulfilling their duty to educate hundreds of thousands of K-12 students.

**A. If the District Court’s Order Is Not Affirmed, Barriers to Higher Education and Legal Employment Will Decrease Motivation and Academic Engagement Among K-12 Students Who Have Already Received DACA or Who Would Have Been Eligible to Receive DACA**

In the pre-DACA era, undocumented young people were discouraged from excelling academically because they faced substantial obstacles that foreclosed many of their post-high school opportunities. For example, federal law prohibits undocumented students from receiving federal financial aid, and state laws governing access to in-state tuition and state financial aid vary wildly.<sup>6</sup> Forced to work at low-paying jobs, and ineligible for much of the financial aid and scholarship money available to their peers, undocumented college students often

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<sup>5</sup> Randy Capps, et al., *The Education and Work Profiles of the DACA Population*, MPI Issue Brief, 3 (Aug. 2017).

<sup>6</sup> *I have DACA and I can Use the FAFSA? Say What?!*, United We Dream, 4-5 (2016).

found it impossible to afford tuition.<sup>7</sup> These students were also barred from participating in work-study programs that offset college costs and provide entry-level professional experience, and they were excluded from any college major or career that required “hands on” training in the form of internships or other programs.<sup>8</sup>

Even those undocumented students who did manage to obtain some form of higher education were often relegated to “low-end service sector work,” such as “light manufacturing, construction, and private businesses, such as landscaping, housekeeping, and cleaning.”<sup>9</sup> These jobs, which rarely matched the education or skill level of undocumented high school graduates, seldom provided benefits, opportunities for advancement, or job security.<sup>10</sup> As a result, undocumented high school and college graduates frequently expressed frustration with the “very narrow range of opportunities” available to them.<sup>11</sup> As one young woman put it, “I graduated from high school and have taken some college credits. . . . Neither of my

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<sup>7</sup> ROBERTO G. GONZALES, *Lives in Limbo: Undocumented and Coming of Age in America*, 89, 124 (2016).

<sup>8</sup> Roberto G. Gonzales, et al. *Becoming DACAmented: Assessing the Short-Term Benefits of Deferred Action for Childhood Arrivals*, 58 *American Behavioral Scientist*, 1854 (2014).

<sup>9</sup> GONZALES, *supra* note 7, at 125.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

parents made it past fourth grade. . . . But I'm right where they are. . . . Why did I even go to school?"<sup>12</sup>

Predictably, undocumented high school students in the pre-DACA era often became unmotivated as they confronted a severely limited set of educational and professional prospects.<sup>13</sup> Before DACA, undocumented high school students dropped out of school more and enrolled in college less than their peers.<sup>14</sup> A 2013 study found that almost 84 percent of U.S.-born Hispanic high school students completed high school, whereas only 67 percent of undocumented immigrant high school students born in Mexico and Central America did so.<sup>15</sup> Documented high school students were four times as likely as their undocumented peers to enroll in college.<sup>16</sup> Undocumented students often found it difficult to believe that investing in their education would provide any significant long-term gains—one researcher who examined the daily lives of undocumented children prior to the enactment of

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<sup>12</sup> *Id.* at 124.

<sup>13</sup> Hirokazu Yoshikawa, et al., *Unauthorized Status and Youth Development in the United States*, 27 *Journal of Research on Adolescence*, 10 (2016).

<sup>14</sup> Emily Greenman & Matthew Hall, *Legal Status and Educational Transitions for Mexican and Central American Immigrant Youth*, 91 *Social Forces*, 1479 (April 22, 2013).

<sup>15</sup> *Id.* at 1486.

<sup>16</sup> *Id.* at 1490.

DACA reported that her subjects spoke of legal status as “the most important factor in decisions related to future college attendance.”<sup>17</sup>

The threat of deportation deprived undocumented students of key educational resources in the pre-DACA era. Undocumented students were often barred from participating in college preparation programs that required applicants to provide Social Security numbers.<sup>18</sup> Undocumented students were less willing than their U.S.-born peers to seek support from teachers and guidance counselors because the “risks of disclosure [of their immigration status] were judged too great.”<sup>19</sup> Lacking mentors to help them navigate the college application process, many undocumented young people did not learn about the limited opportunities for scholarships and financial aid that were available to them.<sup>20</sup> These students missed out on educational and cultural experiences due to fear of deportation. One young man recalled telling his classmates that his parents would not let him take part in a senior class trip, when in reality he could “not risk going through the freeway immigration checkpoints.”<sup>21</sup>

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<sup>17</sup> JOANNA DREBY, *Everyday Illegal: When Policies Undermine Immigrant Families*, 178-179 (2015); GONZALES, *supra* note 7, at 125.

<sup>18</sup> GONZALES, *supra* note 7, at 98.

<sup>19</sup> *Id.* at 109.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 113.



Students who are vulnerable to deportation are more likely to be chronically absent from school, especially during periods of increased enforcement efforts.<sup>22</sup> Poor attendance jeopardizes students' academic performance, with one study finding that ninth-graders who experienced prolonged absences dropped out of high school at higher rates.<sup>23</sup> An 18 year-old student in Delaware<sup>24</sup> described feeling extremely anxious whenever family members picked her up or dropped her off at school before she received DACA because she worried that she or her relatives might be detained outside of the school entrance.<sup>25</sup>

Almost overnight, DACA provided undocumented K-12 students with a remarkably expanded set of options. Encouraged by the prospect of working toward real careers, high school-aged DACA recipients reported “an immediate change in their motivation.”<sup>26</sup> Attending college and working in their “dream

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<sup>22</sup> DREBY, *supra* note 17, at 103.

<sup>23</sup> Robert Balfanz, et al., *Preventing Student Disengagement and Keeping Students on the Graduation Path in Urban Middle-Grades Schools*, 42 *Educational Psychologist* 224 (2007).

<sup>24</sup> To provide the Court with a better understanding of how the DACA rescission will affect the educational prospects of K-12 students, DelawareCAN has shared the perspectives of a number of DACA-recipient students with whom the organization has worked. The names of these students have been withheld to protect their anonymity.

<sup>25</sup> Interview of 18 Year-Old Female DACA Recipient from Delaware, Dec. 19, 2017.

<sup>26</sup> Roberto G. Gonzales, et al., *DACA at Year Three: Challenges and Opportunities in Accessing Higher Education and Employment*, American Immigration Council, 2 (Feb. 1, 2016).

fields” suddenly became attainable goals.<sup>27</sup> As one young woman explained, “My freshman year and my sophomore year, I did really bad, mostly because I was just not motivated because . . . all of this is going to be worthless in the end. But then when DACA came out, I started doing a lot better. . . . I was super motivated.”<sup>28</sup>

DACA has also allowed these students to come out of the shadows and take full advantage of the academic resources many U.S.-born students take for granted. A 2018 study found that the implementation of DACA significantly improved attendance and graduation rates among Hispanic high school students, with the gap in high school completion between undocumented Hispanic young people and their citizen peers shrinking by 40%.<sup>29</sup> Moreover, DACA led to a 22% increase in college attendance rates among Hispanic high school graduates.<sup>30</sup>

The release of the Rescission Memorandum has already led to decreased motivation and increased absenteeism among immigrant students. Dr. Marguerite Oetting, a pediatrician whose practice focuses on immigrant and low-income

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<sup>27</sup> *Id.*

<sup>28</sup> Roberto G. Gonzales & Kristina Brant, *Analysis: DACA Boosts Young Immigrants’ Well-Being, Mental Health*, NBC News (Jun. 15, 2017), <https://www.nbcnews.com/news/latino/analysis-daca-boosts-young-immigrants-well-being-mental-health-n772431>.

<sup>29</sup> Elira Kuka, Na’ama Shenhav, & Kevin Shih, *Do Human Capital Decisions Respond to the Returns to Education? Evidence from DACA*, National Bureau of Economic Research, 17 (Feb. 2018).

<sup>30</sup> *Id.*

patients,<sup>31</sup> described treating a 17 year-old DACA recipient who had intended to enroll in a nursing program, but is now reconsidering her plan because she does not know whether she will be able to obtain a job after graduating.<sup>32</sup> Dr. Oetting also reported that the aunt of one of her patients, a 15 year-old DACA recipient, refused to allow her nephew to go to school for weeks because she worried that the police would be called—and he would ultimately be deported—if he happened to get into a fight with another student.<sup>33</sup> Recently, after Immigration and Enforcement officers conducted a raid in Las Cruces, New Mexico, the town’s public schools experienced a 60% increase in absences compared to the previous week.<sup>34</sup>

When students are afraid of being detained or deported, they are less likely to go to class, seek support from school officials, and apply for scholarships.<sup>35</sup> If the Rescission Memorandum is enforced, the academic opportunities available to current DACA recipients, as well as those of children who planned to apply for DACA, will again be curtailed by their immigration status.

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<sup>31</sup> To provide the Court with a better understanding of how the DACA rescission will affect the health of K-12 students, we interviewed a number of medical professionals who treat immigrant youth. These doctors were interviewed in their individual capacities and did not speak on behalf of any organization with which they are affiliated. We did not solicit or receive any information that could be used to identify their patients.

<sup>32</sup> Interview of Dr. Marguerite Oetting, Dec. 18, 2017.

<sup>33</sup> *Id.*

<sup>34</sup> Jonathan Blitzer, *After an Immigration Raid, a City’s Students Vanish*, *The New Yorker* (March 23, 2017).

<sup>35</sup> GONZALES, *supra* note 7, at 109; DREBY, *supra* note 17, at 103.

**B. If the District Court’s Order is Not Affirmed, K-12 Students Who Have Already Received DACA or Who Would Have Been Eligible to Receive DACA Will Be Forced Out of Mainstream American Society, Irreparably Impairing Their Educational Opportunities**

A guaranteed K-12 public school education ensures that undocumented children develop “identities, values, and aspirations that parallel their American born citizens and peers.”<sup>36</sup> Before the enactment of DACA, however, undocumented young people began to experience what Harvard professor Roberto Gonzales describes as a “transition to illegality” upon reaching adolescence. Undocumented teenagers found themselves left behind as their U.S.-born peers reached many of the milestones that mark growing up in the United States.<sup>37</sup>

Prohibited from obtaining driver’s licenses in many states, these adolescents were forced to rely on public transit long after their friends had started driving. In areas lacking reliable public transportation, this could be tremendously isolating, making daily commutes to school difficult and time consuming.<sup>38</sup> Obtaining any official form of identification, in fact, posed a significant challenge for

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<sup>36</sup> Roberto G. Gonzales & Sarah A. Rendon-Garcia, *Understanding the Deferred Action for Childhood Arrivals (DACA) Impact on Young Adults’ Well-Being*, APA (Nov. 2016), <http://www.apa.org/pi/families/resources/newsletter/2016/11/deferred-action.aspx>.

<sup>37</sup> *Id.*

<sup>38</sup> *Becoming DACAmended*, *supra* note 8, at 1855.

undocumented young people in the pre-DACA era, meaning visits to libraries and other educational institutions could be hampered by their immigration status.<sup>39</sup>

As their friends strengthened their resumes and started saving for college through summer jobs and internships, undocumented young people in the pre-DACA era were frequently forced to perform unskilled labor for low wages.<sup>40</sup> Furthermore, because many financial institutions require customers to provide identification documents, young people without Social Security numbers were often prevented from opening bank accounts, making saving for higher education, and paying for college applications far more challenging.<sup>41</sup>

DACA's work authorization allows undocumented young people to obtain jobs and internships that provide entry-level work experience, build resumes, and strengthen college applications.<sup>42</sup> An 18-year old DACA recipient who is currently a freshman at her "dream" university described how DACA's work authorization allowed her to obtain an internship with a college preparation leadership program. Through this program, she was able to educate over 200 students, including a

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<sup>39</sup> GONZALES, *supra* note 7, at 113.

<sup>40</sup> GONZALES, *supra* note 7, at 125.

<sup>41</sup> *Becoming DACAmended*, *supra* note 8, at 1855.

<sup>42</sup> Roberto G. Gonzales & Angie M. Bautista-Chavez, *Two Years and Counting: Assessing the Growing Power of DACA*, American Immigration Council (June 16, 2014), <https://www.americanimmigrationcouncil.org/research/two-years-and-counting-assessing-growing-power-daca>.

number of other DACA recipients, about the college application process, which she had successfully navigated herself despite her family's economic hardships.<sup>43</sup>

DACA recipients' increased wages can now be deposited into interest-bearing bank accounts, and they can build credit by obtaining credit cards.<sup>44</sup>

Although 38 states, including New York and Virginia, currently bar undocumented individuals from acquiring driver's licenses, all 50 states allow DACA recipients to do so.<sup>45</sup> DACA recipients have seized on the opportunity to join mainstream society—a 2015 survey of 2,700 DACA recipients found that approximately 60% of respondents had found a new job, 20% had gotten a paid internship, 50% had opened their first bank account, 33% had obtained a credit card, and 60% had gotten a driver's license.<sup>46</sup>

If the Rescission Memorandum is enforced, current DACA recipients, along with children who planned to apply for DACA, will lose their ability to gain educational and professional experience through legal employment. Moreover, they will be forced to live in the shadows without access to driver's licenses, bank

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<sup>43</sup> Interview of 18 Year-Old Female DACA Recipient from Delaware, Dec. 19, 2017.

<sup>44</sup> Gonzales & Bautista-Chavez, *supra* note 42.

<sup>45</sup> *DACA – Federal Policy and Examples of State Actions*, National Conference of State Legislatures (Sept. 5, 2017), <http://www.ncsl.org/research/immigration/deferred-action.aspx>.

<sup>46</sup> Roberto G. Gonzales, *DACA's Beneficiaries Landed Good Jobs, Enrolled in College, and Contributed to Society*, Vox (Sept. 5, 2017), <https://www.vox.com/2017/9/2/16244380/daca-benefits-trump-undocumented-immigrants-jobs>.

accounts, or credit cards, making the process of applying to, enrolling in, and paying for college far less manageable.

**C. If the District Court’s Order is Not Affirmed, K-12 Students Who Have Already Received DACA or Who Would Have Been Eligible to Receive DACA Will Suffer from Mental and Physical Health Issues That Negatively Affect Academic Performance**

Immigration status has a significant effect on children’s mental health, with undocumented children experiencing higher rates of anxiety and depression than their U.S.-born peers.<sup>47</sup> These conditions impair children’s performance in school by interfering with their ability to focus on course work and exacerbating behavioral problems.<sup>48</sup> Furthermore, children who are exposed to “unrelenting turmoil” over a prolonged period of time can experience significant cognitive delays.<sup>49</sup> The President of the American Academy of Pediatrics, Dr. Fernando Stein, has explained that, “[Fear] can impact [children’s] health and development. . . . [P]rolonged exposure to serious stress—known as toxic stress—can harm the developing brain and negatively impact short- and long-term health.”<sup>50</sup>

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<sup>47</sup> Stephanie Potochnick and Krista Perreira, *Depression and Anxiety among First-Generation Immigrant Latino Youth*, 198 *Journal of Nervous and Mental Disease*, 470 (2010).

<sup>48</sup> Jens Hainmueller et al., *Protecting Unauthorized Immigrant Mothers Improves Their Children’s Mental Health*, 357 *Science*, 1042 (Sept. 8, 2017).

<sup>49</sup> Olga Khazan, *The Toxic Health Effects of Deportation Threat*, *The Atlantic* (Jan. 27, 2017).

<sup>50</sup> Maggie Fox, *Pediatricians Speak Out Against President Trump’s Immigration Orders*, *NBC News* (Jan. 26, 2017), <https://www.nbcnews.com/storyline/>

In the pre-DACA era, the daily lives of undocumented young people were often defined by their perpetual fear of deportation, which in turn led to increased rates of anxiety-related disorders among undocumented youth. As these young people entered adolescence and began to face “disadvantage due to their . . . legal status,” they experienced “worries about blocked mobility. . . anxiety, and fear of deportation.”<sup>51</sup> For many undocumented adolescents, “fear of getting caught motivated decisions not to participate.” One young woman explained, “Nothing, nowhere felt safe. . . . [I was] afraid of walking. . . or [being] outside [my] house”<sup>52</sup>

The “destabilizing” experience of being undocumented can also lead to depression and suicidal thoughts in undocumented youth.<sup>53</sup> Feelings of hopelessness were common in undocumented students who encountered barriers to educational and career goals in the pre-DACA era. One student explained:

When that whole college process started, it definitely hit me hard. It was just really frustrating. I felt like I had put so much work into school, into studying, into making good grades. I went into depression . . . . I started thinking I’m never going to go anywhere and it’s all because of some

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immigration-border-crisis/pediatricians-speak-out-against-president-trump-s-immigration-orders-n712296.

<sup>51</sup> Caitlin Patler & Whitney Laster Pirtle, *From Undocumented to Lawfully Present: Do Changes to Legal Status Impact Psychological Wellbeing Among Latino Immigrant Young Adults?* *Social Science & Medicine*, 2 (2017).

<sup>52</sup> GONZALES, *supra* note 7, at 102.

<sup>53</sup> Rachel Siemons et al., *Coming of Age on the Margins: Mental Health and Wellbeing Among Latino Immigrant Young Adults Eligible for Deferred Action for Childhood Arrivals (DACA)*, 19 *Journal of Immigrant and Minority Health*, 543-544 (2016).



paper I don't have. It was really rough. I was angry all the time.<sup>54</sup>

Another young man described feeling despondent about his future after learning that he was undocumented, stating, "College and law school were definitely in my plans. But when my mom told me I wasn't legal, everything turned upside down. I didn't know what to do. I couldn't see my future anymore."<sup>55</sup> Even middle school students experienced the psychological effects of being undocumented. An 18-year old young man recalled feeling discouraged in middle school because he worried that his immigration status would prevent him from attending college or having a career that interested him. Receiving DACA gave him renewed his hope for the future and inspired him to work harder in school.<sup>56</sup> Similarly, a seventh-grade boy who dreamed of being a chef told one researcher that he felt "[a] lot of stress, a lot of sadness" because of the educational and professional roadblocks he expected to encounter.<sup>57</sup> After this boy received DACA a few years later, his mother reported that he was acting like a "new person."<sup>58</sup>

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<sup>54</sup> *DACA at Year Three*, *supra* note 26, at 8.

<sup>55</sup> GONZALES, *supra* note 7, at 102.

<sup>56</sup> Interview of 18 year-old Male DACA Recipient from Delaware, Dec. 20, 2017.

<sup>57</sup> DREBY, *supra* note 17, at 104.

<sup>58</sup> *Id.* at 187.

The Rescission Memorandum has already had a substantial detrimental impact on the psychological well-being of DACA recipients and children who planned to apply for DACA. Dr. Oetting described treating a 16 year-old DACA recipient who attempted suicide after the Trump administration announced its plans to end DACA. She consistently earned good grades and had been excited to apply to colleges, but she became terrified of what was going happen to her if DACA ended. She told Dr. Oetting that she tried to end her own life she had listened to her mother cry herself to sleep every night for weeks, and she “did not know what else to do.”<sup>59</sup> Dr. Julie Linton, Co-Chair of the American Academy of Pediatrics Immigrant Health Special Interest Group, described treating a 13-year-old boy shortly after the DACA rescission was announced. The boy, who planned to apply for DACA when he turned 15, tearfully described his anxiety to Dr. Linton and told her that he “had no hope for the future.”<sup>60</sup> Dr. Janine Young, a pediatrician whose practice focuses on recent immigrants and refugees, described treating a 17-year-old female DACA recipient experiencing severe organ failure. In need of a life-saving surgery and extensive follow up care, the patient became terrified that she would lose her medical coverage when she turned 18 if DACA was rescinded. She stopped eating, and her already reduced weight plummeted.

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<sup>59</sup> Interview of Dr. Marguerite Oetting, Dec. 18, 2017.

<sup>60</sup> Interview of Dr. Julie Linton, Oct. 31, 2017.

She became withdrawn in school and failed many of her classes. Dr. Young diagnosed her with severe anxiety and depression and ultimately prescribed anti-depressants.<sup>61</sup>

The anxiety, stress, and depression associated with undocumented status can lead to physical health problems, such as stomach ailments, headaches, and sleeping issues, which negatively affect academic performance and school attendance.<sup>62</sup> Since the DACA rescission was announced, doctors who treat immigrant children have reported increased complaints of such symptoms. Dr. Linton described treating a 16 year-old female DACA recipient who had planned to attend college and medical school. The patient explained that she was distressed because the end of DACA meant that she would no longer be able to “pursue her dreams.” She reported that she could not sleep and that she was having trouble concentrating in school.<sup>63</sup>

DACA has provided significant psychological relief to current DACA recipients, along with children who planned to apply for DACA, by alleviating their daily fear of deportation and expanding their future opportunities. If the

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<sup>61</sup> Interview of Dr. Janine Young, Nov. 30, 2017.

<sup>62</sup> Jonathan Blitzer, *Undocumented Immigrants Brace for the Trump Administration*, *The New Yorker* (Dec. 19, 2016).

<sup>63</sup> Interview of Dr. Julie Linton, Oct. 31, 2017.

Rescission Memorandum is enforced, these students will experience significant health problems that will impair their academic performance.

## **II. ENDING DACA WILL IRREPARABLY HARM K-12 STUDENTS WHOSE PARENTS ARE DACA RECIPIENTS OR WHOSE PARENTS WOULD HAVE BEEN ELIGIBLE TO RECEIVE DACA**

A quarter of DACA recipients are parents of U.S.-born children.<sup>64</sup> If these parents lose their work authorization, they will be worse off financially and less equipped to provide their U.S.-born children with critical educational resources. Moreover, if DACA recipients lose their protection from deportation, their children will experience increased stress and anxiety due to fears that their parents will be detained or deported. Because poverty and psychological stress are significant causes of poor academic performance and behavioral issues in children, the educational prospects of U.S.-born children of DACA recipients will be irreparably harmed if the preliminary injunction is not affirmed.

### **A. If the District Court's Order is Not Affirmed, Adult DACA Recipients Will Have Greater Difficulty Providing for Their U.S.-Born Children, Leading to Poorer Academic Performance**

No longer relegated to low wage, unskilled labor, DACA recipients have significantly increased their earnings since the policy was enacted, and many have obtained jobs that provide benefits such as health insurance and paid leave.<sup>65</sup> If

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<sup>64</sup> Samantha Michaels, *1 in 4 Dreamers are Parents of US Citizens*, Mother Jones (Sept. 7, 2017).

<sup>65</sup> Gonzales & Bautista-Chavez, *supra* note 42.

they lose their work authorization, these individuals will once again be consigned to low paying jobs that require them to work long hours away from their children.<sup>66</sup> As a result, these parents will be less capable of providing their children with critical resources that accelerate learning, such as educational books and toys, pre-kindergarten programs, technology, and tutors. Furthermore, being undocumented exacerbates the “economic stressors associated with parenting.”<sup>67</sup> One-third of children born to undocumented parents live in poverty, compared with 18 percent of children with U.S. citizen parents,<sup>68</sup> and the average income for families with at least one undocumented parent in 2007 was about 40% lower than that of U.S. citizen families.<sup>69</sup>

Living in poverty puts children at a severe academic disadvantage. One study found that children who live in impoverished communities are four times more likely than their peers to be chronically absent from school.<sup>70</sup> As discussed above in Section II.A, erratic attendance is directly linked to poor academic performance. Additionally, low wages and a lack of identification documents

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<sup>66</sup> HIROKAZU YOSHIWAKA, *Immigrants Raising Citizens: Undocumented Parents and Their Young Children*, 17-18 (2011).

<sup>67</sup> DREBY, *supra* note 17, at 105.

<sup>68</sup> *Id.*

<sup>69</sup> GONZALES, *supra* note 7, at 64.

<sup>70</sup> Hedy N. Change and Mariajosé Romero, *Present, Engaged, and Accounted For: The Critical Importance of Addressing Chronic Absence in the Early Grades*, National Center for Children in Poverty, 13 (Sept. 2008).

make it incredibly difficult for undocumented parents to obtain adequate, safe housing for their families.<sup>71</sup> As a result, housing instability is common among undocumented families—one researcher reported that almost 90% of the mixed-status families (*i.e.*, U.S.-born children with undocumented parents) she interviewed lived in rented homes.<sup>72</sup> Frequent relocation is “most consequential for children” and can negatively affect their behavioral patterns and academic performance.<sup>73</sup>

Many undocumented parents are unwilling to take advantage of public benefits that are available to their U.S.-born children due to fears of government institutions.<sup>74</sup> This avoidance results in “low rates of enrollment of citizen children in programs that could help foster their early learning”<sup>75</sup> such as publicly funded pre-kindergarten programs.<sup>76</sup> Moreover, when children do not receive food benefits that they urgently need, they become vulnerable to hunger and nutritional deficiencies that can impair “thinking skills, behavior, and health, all factors that

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<sup>71</sup> GONZALES, *supra* note 7, at 64.

<sup>72</sup> DREBY, *supra* note 17, at 105.

<sup>73</sup> GONZALES, *supra* note 7, at 64.

<sup>74</sup> *Id.* at 63.

<sup>75</sup> YOSHIWAKA, *supra* note 66, at 22.

<sup>76</sup> Laura Bornfreund, *Study Finds Drop in Preschool Enrollment for Latino Children*, New America (April 14, 2011), <https://www.newamerica.org/education-policy/early-elementary-education-policy/early-ed-watch/study-finds-drop-in-preschool-enrollment-for-latino-children/>.

impact academic performance.”<sup>77</sup> Dr. Sarah Stelzner, a pediatrician whose practice focuses in large part on Latin American immigrants, reports that she has already witnessed a drop in the number of WIC and Medicaid renewals among her patients—even for children who are citizens.<sup>78</sup>

Furthermore, undocumented parents frequently have to work longer hours to make ends meet, leaving little time to help children with their schoolwork.<sup>79</sup> Forced to hide their status and relegated to the fringes of society, these parents often lack the confidence to navigate the bureaucracy of their children’s educational systems, leading many undocumented parents to minimize their involvement in their children’s schooling.<sup>80</sup> The academic prospects of children suffer when their parents disengage from their education—lack of parental involvement is a key factor in poor attendance and performance in school.<sup>81</sup>

If the Rescission Memorandum is enforced, the U.S.-born children of DACA-recipient parents will suffer significant educational harms due to their families’ economic struggles and the looming threat of deportation.

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<sup>77</sup> *Nutrition and Students’ Academic Performance*, Wilder Research (Jan. 2014).

<sup>78</sup> Interview of Dr. Sarah Stelzner, Dec. 1, 2017.

<sup>79</sup> GONZALES, *supra* note 7, at 63.

<sup>80</sup> DREBY, *supra* note 17, at 84.

<sup>81</sup> Grace Chen, *Parental Involvement is Key to Student Success*, Public School Review (July 2, 2017), <https://www.publicschoolreview.com/blog/parental-involvement-is-key-to-tudentsuccess>.

**B. If the District Court’s Order is Not Affirmed, U.S.-Born Children of Adult DACA Recipients Will Experience Health Issues That Negatively Affect Academic Performance**

Growing up poor has serious consequences for children’s mental health and cognitive abilities—low-income children have less brain surface area on average than their more affluent peers, and “young adults who [grow] up in poverty have more activity in the brain’s negative emotion centers and less in the self-regulation portions.”<sup>82</sup> A recent study found that children of undocumented Mexican parents are at a higher risk of developmental delays than children of U.S.-born Caucasian parents.<sup>83</sup> Furthermore, when children fear that their parents will be deported, they experience increased stress and anxiety, which, as discussed above in Section II.C, can lead to poor academic performance, erratic attendance, and behavioral issues.<sup>84</sup>

Because undocumented parents must prepare their children for the possibility that one or both of their parents might be detained without warning, children often learn about their family’s immigration status at a young age.<sup>85</sup> Kay Holland, a Licensed Clinical Social Worker whose practice focuses on low-income and immigrant children, reports that a number of her patients’ parents have submitted letters to school administrators instructing them to allow Ms. Holland to

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<sup>82</sup> Khazan, *supra* note 49.

<sup>83</sup> YOSHIWAKA, *supra* note 66, at 17.

<sup>84</sup> DREBY, *supra* note 17, at 39.

<sup>85</sup> *Id.* at 46.



collect their children from school if they are unexpectedly detained. Predictably, Ms. Holland has noticed a significant uptick in anxiety-related disorders among her patients since the DACA rescission was announced. In particular, children and teenagers in mixed-status families are experiencing increased rates of anxiety and insomnia, impairing their performance in school.<sup>86</sup> Dr. Stelzner described treating a U.S.-born five year-old girl with Downs Syndrome whose older sisters are DACA recipients. Her family became extremely distressed after the Trump administration announced its plan to end DACA, and the five year-old picked up on the stress that was permeating her home life and began to have behavioral problems at school.<sup>87</sup>

If the Rescission Memorandum is enforced, the U.S.-born children of DACA recipients will be more likely to experience poverty-related cognitive delays, and they will suffer from heightened stress and anxiety due to fears that their parents will be taken away, irreparably harming their educational opportunities.

### **III. ENDING DACA WILL IRREPARABLY HARM K-12 STUDENTS WHOSE TEACHERS ARE DACA RECIPIENTS**

Access to quality teachers is the most important in-school factor affecting student achievement—effective teachers lead to higher standardized test scores and

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<sup>86</sup> Interview of Kay Holland, LCSW, Dec. 1, 2017.

<sup>87</sup> Interview of Dr. Sarah Stelzner, Dec. 1, 2017.

improved graduation and college enrollment rates.<sup>88</sup> The MPI estimates that 20,000 DACA recipients are currently working as teachers in public K-12 schools, including 2,000 in New York.<sup>89</sup> If these educators lose their work authorization, their classes will be disrupted and their students will be deprived of uniquely qualified educators and role models, irreparably harming these students' educational prospects and exacerbating the existing teacher shortage.

**A. If the District Court's Order is Not Affirmed, DACA-Recipient K-12 Teachers Will be Forced to Abruptly Leave Their Jobs, Destabilizing Classroom Environments and Worsening the Teacher Shortage**

It is well established that teacher turnover negatively affects student learning.<sup>90</sup> If DACA-recipient teachers lose their work authorization, the classroom environments of K-12 students will be destabilized as teachers abruptly leave at random points in the school year. The departures of DACA-recipient teachers will exacerbate the existing teacher shortage, meaning thousands of K-12 students across the country will lose access to fully certified, qualified educators at a time when these positions are particularly difficult to fill.

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<sup>88</sup> *Teachers Matter: Understanding Teachers' Impact on Student Achievement*, Rand Education, <https://www.rand.org/education/projects/measuring-teacher-effectiveness/teachers-matter.html>.

<sup>89</sup> Moriah Balingit, *As DACA Winds Down, 20,000 Educators are in Limbo*, The Washington Post (Oct. 25, 2017).

<sup>90</sup> Desiree Carver-Thomas and Linda Darling-Hammond, *Teacher Turnover: Why It Matters and What We Can Do About It*, Learning Policy Institute (August 2017).

Sudden teacher departures can weaken students' academic performance while increasing the workload on remaining teachers, impairing school-wide achievement.<sup>91</sup> Predictably, teacher stability has a positive effect on academic performance—one study found that a reduction in teacher attrition corresponded with a significant increase in student achievement in mathematics.<sup>92</sup> Teacher departures can deal “a major psychological blow to the school community”—after a number of teachers unexpectedly left a Newark middle school in the midst of the academic year, students reported feeling “hurt, angry and confused.”<sup>93</sup> Moreover, evidence shows that the effects of teacher turnover are most harmful in schools with underserved student populations, such as majority Black and Latino student bodies.<sup>94</sup>

Every state in the country is currently affected by teacher shortages.<sup>95</sup> For the 2015-2016 school year, Virginia school districts reported teacher shortages for subjects including secondary English, foreign languages, Algebra, and special

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<sup>91</sup> Matthew Ronfeldt et al., *How Teacher Turnover Harms Student Achievement*, *Am. Educ. Res. J.* 4, 31 (2011).

<sup>92</sup> *Id.* at 21.

<sup>93</sup> Sara Neufeld, *Perseverance at a Newark school following midyear teacher turnover*, *The Hechinger Report* (May 28, 2013), <http://hechingerreport.org/perseverance-at-a-newark-school-following-midyear-teacher-turnover/>.

<sup>94</sup> *Id.* at 22, 25.

<sup>95</sup> Valerie Strauss, *Teacher Shortages Affecting Every State as 2017-18 School Year Begins*, *The Washington Post* (Aug. 28, 2017).

education.<sup>96</sup> A 2018 study found that teacher shortages in California are disproportionately affecting schools that serve low-income students, schools with racially and ethnically diverse student bodies, and schools in rural communities.<sup>97</sup>

The negative effects of teacher shortages only increase as schools struggle to find “Band-Aids” such as “substitutes, untrained staff, canceled classes, larger class sizes” to address teacher vacancies.<sup>98</sup> States throughout the country have loosened requirements for educators in an effort to fill teacher vacancies, potentially depriving K-12 students of adequately prepared teachers.<sup>99</sup> In 2017, for example, 40% of newly hired teachers in the Los Angeles Unified district were not fully certified.<sup>100</sup> The governor of Arizona recently signed a law permitting anyone who has a bachelor’s degree and five years of “relevant” experience to teach K-12 students—even if they lack formal education training—and parents in one Arizona school district have stepped in to serve as noncertified teachers.<sup>101</sup>

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<sup>96</sup> *Id.*

<sup>97</sup> Leib Satcher, Desiree Carver-Thomas, and Linda Darling-Hammond, *Understaffed and Underprepared: California Districts Report Ongoing Teacher Shortages*, Learning Policy Institute (Feb. 5, 2018), <https://learningpolicyinstitute.org/product/ca-district-teacher-shortage-brief>.

<sup>98</sup> Valerie Strauss, *Why it’s a big problem that so many teachers quit — and what to do about it*, The Washington Post (Nov. 27, 2017).

<sup>99</sup> *Id.*

<sup>100</sup> Louis Freedberg, *Teacher shortages persist in California and getting worse in many communities*, EdSource (Feb. 20, 2018).

<sup>101</sup> Strauss, *supra* note 95.

If the Rescission Memorandum is enforced, thousands of K-12 students across the country will be deprived of stable learning environments at a time when qualified teachers are in short supply, irreparably harming the educational opportunities of these students.

**B. If the District Court’s Order is Not Affirmed, K-12 Students Will Be Deprived of Access to Uniquely Qualified DACA-Recipient Teachers**

DACA-recipient teachers bring a unique set of skills to the classroom. Many are bilingual, allowing them to effectively communicate with both U.S.-born and immigrant students.<sup>102</sup> Moreover, DACA-recipient teachers “serve as role models and navigators for students who face the intersecting challenges of poverty and undocumented status.”<sup>103</sup> Nearly 7% of K-12 students in the United States are undocumented or have at least one undocumented parent.<sup>104</sup> Because of their backgrounds, DACA-recipient teachers are uniquely capable of “mirroring [these

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<sup>102</sup> Soudi Jiménez, *‘Dreamers’, primero rechazados, ahora esenciales para resolver la falta de profesores bilingües en EEUU* (“Dreamers, First Rejected, Now Essential to Solve the Shortage of Bilingual Teachers”), Hoy (Aug. 15, 2016), <http://www.hoylosangeles.com/noticias/local/hoyla-loc-dreamers-en-el-cuarto-aniversario-de-daca-inciden-en-la-reduccion-del-deficit-de-profesores-bilingue-story.html>.

<sup>103</sup> Viridiana Carrizales, *Why TFA Supports DACA and Undocumented Students*, Teach for America (Feb. 28, 2017), <https://www.teachforamerica.org/top-stories/why-teach-for-america-supports-daca-and-undocumented-students>.

<sup>104</sup> *Id.*

students'] life experiences.”<sup>105</sup> One DACA-recipient teacher explained his approach to teaching:

I work to inspire my students to see themselves as agents of change, and to be proud of who they are. In my classroom, I work to create a welcoming space where my students can discuss their cultural heritage, feel valued and set goals for the impact they can make within their own communities.<sup>106</sup>

New Mexico’s 2018 Teacher of the Year, a DACA recipient whose classes largely consist of children from immigrant families, described feeling devastated when the DACA rescission was announced because “I realized this has the impact of taking me away from my students and the job that I love doing—the job that's truly a calling.”<sup>107</sup>

Teach for America (“TFA”), an organization that recruits recent college graduates to teach in low-income schools, actively seeks out DACA recipients to serve as educators because these individuals provide “additional inspiration and

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<sup>105</sup> *Id.*

<sup>106</sup> Ginette Magana, *DACAmented Teachers: Educating and Enriching Their Communities*, The Obama White House (Aug. 4, 2015), <https://obamawhitehouse.archives.gov/blog/2015/08/04/dacamented-teachers-educating-and-enriching-their-communities>.

<sup>107</sup> Madeline Will, *N.M. Teacher of the Year, a Dreamer, Attended Trump's State of the Union. Here's Her Story*, Education Week (Feb. 1, 2018), [http://blogs.edweek.org/teachers/teaching\\_now/2018/02/new\\_mexico\\_teacher\\_of\\_year\\_dream\\_trump\\_state\\_of\\_the\\_union.html](http://blogs.edweek.org/teachers/teaching_now/2018/02/new_mexico_teacher_of_year_dream_trump_state_of_the_union.html).

offer guidance [to students] based on [their] background.”<sup>108</sup> Nearly 200 current and former DACA-recipient TFA members have taught thousands of students in 18 regions across the country, from Massachusetts to the Bay Area.<sup>109</sup> TFA often places DACA-recipient educators in “shortage-area subjects and hard-to-staff schools,”<sup>110</sup> including inner city charter schools<sup>111</sup> and high schools just minutes from the Mexican border.<sup>112</sup>

Furthermore, while all children benefit when schools employ teachers from diverse backgrounds, children of color consistently perform better when taught by teachers of color, leading to “better attendance, fewer suspensions and higher test scores.”<sup>113</sup> Studies have shown that “teachers of color, relative to their White colleagues, have higher expectations for and are more likely to improve learning for students of color.”<sup>114</sup> Because the overwhelming majority of DACA-recipient

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<sup>108</sup> *Join TFA as a DACA Recipient*, Teach for America, <https://www.teachforamerica.org/join-tfa/daca-recipients>.

<sup>109</sup> *Id.*

<sup>110</sup> Carrizales, *supra* note 103.

<sup>111</sup> Liz Robbins, *Once Accepted, Soon Rejected? New York’s Young Immigrants Uncertain Under Trump*, New York Times (Dec. 15, 2016).

<sup>112</sup> *On the Border, a DACAdmented Science Teacher Fights On*, Teach for America (June 16, 2017), <https://www.teachforamerica.org/one-day-magazine/border-dacamented-science-teacher-fights>.

<sup>113</sup> Robert Samuels, *With Hispanic Students on the Rise, Hispanic Teachers in Short Supply*, The Washington Post (Nov. 15, 2011).

<sup>114</sup> Valerie Strauss, *The Troubling Shortage of Latino and Black Teachers — and What to Do About It*, The Washington Post (May 15, 2016).

teachers are people of color,<sup>115</sup> their presence in the classroom is beneficial to all students of color, regardless of immigration status.

If the Rescission Memorandum is enforced, thousands of K-12 students across the country will be deprived of uniquely qualified educators, irreparably harming their educational opportunities.

### CONCLUSION

For the foregoing reasons, the District Court's order preliminarily enjoining the enforcement of the Rescission Memorandum should be affirmed to ensure that public schools throughout the country fulfill their Constitutional obligation to provide a full and equal education to all K-12 students. A preliminary injunction prohibiting the Government from enforcing the Rescission Memorandum is in the public interest and is necessary to prevent irreparable educational injury to the K-12 population.

Dated: April 11, 2018

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<sup>115</sup> Sarah Hooker and Michael Fix, *County-Level View of DACA Population Finds Surprising Amount of Ethnic & Enrollment Diversity*, MPI Commentary (Sept. 2014), <https://www.migrationpolicy.org/news/county-level-view-daca-population-finds-surprising-amount-ethnic-enrollment-diversity>.



## CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the word limit of Federal Rule of Appellate Procedure 32(a)(7) and Local Rule 29.1 because the brief contains 6,890 words, excluding the parts exempted by Rule 32(f). I further certify that this brief complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a), because it has been prepared using Microsoft Word 2016 in a proportionately spaced typeface, 14-point Times New Roman.

Dated: April 11, 2018

COOLEY LLP

By: /s/William J. Schwartz  
William J. Schwartz

*Attorney for Amici Curiae*

## **CERTIFICATE OF SERVICE**

I hereby certify that on April 11, 2018, I electronically filed the foregoing with the Clerk of the Court using the appellate CM/ECF system. All counsel in this case are participants in the district court's CM/ECF system.

By: /s/Azadeh Sakizadeh  
Azadeh Sakizadeh