

Nos. 18-587, 18-588 and 18-589

IN THE
Supreme Court of the United States

DEPARTMENT OF HOMELAND SECURITY, *et al.*,

Petitioners,

v.

REGENTS OF THE UNIVERSITY
OF CALIFORNIA, *et al.*,

Respondents.

(For Continuation of Caption See Inside Cover)

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT

**BRIEF *AMICI CURIAE* OF THE NATIONAL
EDUCATION ASSOCIATION AND NATIONAL
PTA IN SUPPORT OF RESPONDENTS**

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DONALD J. TRUMP, PRESIDENT OF
THE UNITED STATES, *et al.*,

Petitioners,

v.

NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE, *et al.*,

Respondents.

**ON WRIT OF CERTIORARI BEFORE JUDGMENT TO THE
UNITED STATES COURT OF APPEALS FOR THE DISTRICT
OF COLUMBIA CIRCUIT**

KEVIN K. MCALEENAN, ACTING SECRETARY
OF HOMELAND SECURITY, *et al.*,

Petitioners,

v.

MARTIN JONATHAN BATALLA VIDAL, *et al.*,

Respondents.

**ON WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED
STATES COURT OF APPEALS FOR THE SECOND CIRCUIT**

QUESTION PRESENTED

This brief addresses the second question accepted for review by the Court:

Whether the Department of Homeland Security's decision to terminate the Deferred Action for Childhood Arrivals ("DACA") policy was arbitrary and capricious.

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INTEREST OF *AMICI*

National Education Association (“NEA”) is the largest and oldest educational association in the United States. Founded in 1857, NEA now represents three million teachers, counselors, nurses, and education support professionals throughout the country, including many DACA educators. Among the millions of public school students NEA members serve are hundreds of thousands of DACA recipients. DACA has provided a foundation for those students’ success both by granting them the certainty as to their legal status needed to pursue their educational aspirations and by granting that same certainty to their teachers who hold DACA status. As such, DACA meaningfully advances NEA’s core mission, which is to fulfill the promise of public education for every student. NEA, *The National Education Association Vision, Mission and Values*, 2019 Handbook 7, http://www.nea.org/assets/docs/2019_NEA_Handbook.pdf. A rescission of DACA will do real and lasting harm to those students and teachers, as well as to the entire project of public education.

National PTA (“PTA”) is a nationwide network of nearly 3.5 million families, students, teachers,

¹ No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission. Pursuant to Rule 37.3(a), counsel for *amici* also represent that all parties have consented to the filing of this brief; letters reflecting their blanket consent to the filing of *amicus* briefs are on file with the Clerk.

administrators, and business and community leaders devoted to making a difference for the education, health, safety and wellbeing of every child and making every child's potential a reality. National PTA is comprised of 54 state congresses, encompassing all 50 states, the District of Columbia, U.S. Virgin Islands, Puerto Rico and the Department of Defense Schools in Europe. Additionally, there are more than 24,000 local PTA units nationwide. PTA serves 16.5 million students across the country.

The overall purpose of PTA is to bring together families, educators and business and community leaders to solve the toughest challenges facing schools and communities and engage and empower families and communities to speak up and take action for every child. For more than 100 years, PTA has been a powerful voice for all children, a relevant resource for families and communities, and a strong advocate for public education.

INTRODUCTION AND SUMMARY OF ARGUMENT

Since its inception in 2012, the Deferred Action for Childhood Arrivals ("DACA") program has yielded immeasurable benefits for our nation's students and educators. For young people 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. Since DACA began over seven years ago, many DACA recipients, in reliance on the program, have completed high school, entered four-year colleges and universities, and graduated to embark on careers in public service. And school districts, also relying on DACA, have hired thousands of DACA recipients. DACA

recipients have helped alleviate the nationwide shortage of qualified educators, particularly in high needs schools and communities, and they serve as role models for the next generation of increasingly diverse students.

Following the September 5, 2017 decision by the Trump administration to rescind DACA, the Department of Homeland Security (“DHS”) immediately stopped accepting DACA applications and attempted to cut off renewal applications 30 days later. Memorandum from Elaine C. Duke, Acting Sec’y, DHS, to James W. McCament, Acting Dir., USCIS, et al., *Memorandum on Rescission of Deferred Action for Childhood Arrivals (DACA)* (Sept. 5, 2017), <https://www.dhs.gov/news/2017/09/05/memorandum-rescission-daca> (“Rescission Memo”). Lawsuits challenging the rescission quickly followed, including the three now before the Court.² In these cases, the district courts either vacated or enjoined in large part DHS’s rescission on a nationwide basis. *Regents of Univ. of Cal. v. U.S. Dep’t of Homeland Sec.*, 279 F. Supp. 3d 1011, 1049 (N.D. Cal. 2018) (issuing a nationwide injunction requiring DHS to continue accepting DACA renewals); *Regents of Univ. of Cal. v. U.S. Dep’t of Homeland Sec.*, 908 F.3d 476, 512 (9th Cir. 2018) (upholding injunction), *cert. granted sub nom. U.S. Dep’t of Homeland Sec. v. Regents of Univ. of Cal.*, 139 S.

² In a fourth case, not currently before this Court, a Maryland District Court held that the decision to rescind DACA was not arbitrary and capricious. *Casa De Md. v. U.S. Dep’t of Homeland Sec.*, 284 F. Supp. 3d 758, 772 (D. Md. 2018). The Fourth Circuit reversed in relevant part. *Casa De Md. v. U.S. Dep’t of Homeland Sec.*, 924 F.3d 684 (4th Cir. 2019). DHS has petitioned for a writ of certiorari in that case, which was distributed for the Court’s October 1, 2019 conference.

Ct. 2779 (2019); *Batalla Vidal v. Nielsen*, 279 F. Supp. 3d 401, 437 (E.D.N.Y. 2018) (issuing a nationwide injunction requiring DHS to continue accepting DACA renewals) *cert. granted sub nom. McAleenan v. Vidal*, 139 S. Ct. 2779 (2019); *NAACP v. Trump*, 315 F. Supp. 3d 457, 473 (D.D.C. 2018) (vacating Rescission Memo), *cert. granted sub nom. Trump v. NAACP.*, 139 S. Ct. 2779 (2019).

DHS violated the Administrative Procedure Act (“APA”), 5 U.S.C. § 706(2)(A), when it purported to rescind DACA without providing a reasoned explanation for its decision. The Rescission Memo fails to acknowledge that the elimination of DACA is a drastic change in policy and does not attempt to address the factual record that underlay the creation of DACA, nor the serious reliance interests the policy has created over the past seven years. These shortcomings render the agency’s action arbitrary and capricious.

Allowing this unlawful agency action to eliminate DACA would erase the educational and professional gains made by DACA recipients in reliance on DACA and cause lasting harm to the education communities that have invested in and have come to rely on DACA holders. Young children will suffer the abrupt departure of trusted teachers, teacher shortages will worsen as thousands of DACA educators lose their status, immigrant students will lose a lifeline to education mentors, and student learning will be harmed in both the short- and long-term.

Therefore, on behalf of millions of education stakeholders, *amici* urge the Court to affirm the judgments below as the Rescission Memo was an arbitrary and capricious agency action.

ARGUMENT

A. DHS Failed to Provide a Reasoned Explanation for the Policy Change, Including a Consideration of Reliance Interests, as Required by the APA

The APA instructs courts to hold as unlawful and set aside agency action that is arbitrary or capricious. 5 U.S.C. § 706(2)(A). “In order to permit meaningful judicial review, an agency must ‘disclose the basis’ of its action.” *U.S. Dep’t of Commerce v. New York*, ___ U.S. ___, 139 S. Ct. 2551, 2573 (2019) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 167–69 (1962)). That is, the agency needs to provide a “reasoned explanation” for its decision. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). When the agency is changing its policy, rather than writing on a blank slate, that reasoned explanation must demonstrate that the agency is aware that it is changing position and that there are good reasons for the new policy. *Encino Motorcars, LLC v. Navarro*, ___ U.S. ___, 136 S. Ct. 2117, 2125 (2016). When the new policy “rests upon factual findings that contradict those which underlay its prior policy; or when its prior policy has engendered serious reliance interests,” the agency must provide a “more detailed justification.” *Fox Television Stations*, 556 U.S. at 515. Ignoring these requirements constitutes “arbitrary [and] capricious” action. *Id.*; see also *Nat’l Cable & Telecomm. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967, 981–82 (2005) (holding that the failure of an agency to explain a change in its policy is a “reason for holding an interpretation to be [] arbitrary and capricious”).

DHS’s decision to rescind DACA represents an enormous shift in policy. When then-Secretary Janet

Napolitano announced the creation of DACA in 2012, she found that DHS needed the policy to “ensure that [its] enforcement resources [were] not expended on these low priority cases.” Memorandum from Janet Napolitano, Sec’y, DHS to David V. Aguilar, Acting Comm’r, CBP, et al., *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children*, 1-2 (June 15, 2012), <https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf> (“2012 DACA Memo”). She found that, as a group, DACA-eligible individuals “lacked the intent to violate the law,” and were “productive young people,” many of whom had “already contributed to our country in significant ways.” *Id.*

As late as June 2017, DHS had explicitly preserved DACA, even as it dismantled other programs that provided immigrants with relief. Memorandum from John F. Kelly, Sec’y, DHS to Kevin K. McAleenan, Acting Comm’r, CBP, et al., *Memorandum on Enforcement of the Immigration Laws to Serve the National Interest* (Feb. 20, 2017), Joint Appendix (“J.A.”) at 858; Memorandum from John F. Kelly, Sec’y, DHS to Kevin K. McAleenan, Acting Comm’r, CBP, et al., *Memorandum on Rescission Providing for Deferred Action for Parents of Americans [“DAPA”] and Lawful Permanent Residents* (June 15, 2017), J.A. at 870-71. At that time, DHS emphasized that it would prioritize enforcement of immigration laws against undocumented immigrants who had criminal backgrounds. J.A. at 859-63. When DHS did announce the rescission of DACA on September 5, 2017, the only basis it provided for its decision was its belief that DACA was unlawful, based on a ruling by the Fifth Circuit that DAPA conflicted with the discretion granted to DHS by the Immigration

and Nationality Act and a letter by the Attorney General opining that DACA was unconstitutional. Rescission Memo at 3-4.³

The Rescission Memo did not mention the findings provided in the 2012 DACA Memo nor did it discuss the serious reliance interests created by the program over the past several years, thus providing no reasoned explanation for why DHS rescinded the policy. As the interviews⁴ for this brief amply demonstrate, the explanation given for the policy in 2012 – that DACA-eligible individuals are productive young people who contribute to our country in significant ways – has only grown stronger. And, when serious reliance interests are at stake such as here, agencies must provide an explanation that is not

³ On June 22, 2018, after the D.C. District Court vacated the Rescission Memo and remanded the case to DHS, then-Secretary Kirstjen Nielsen issued a memorandum attempting to offer some explanation for DHS's decision. The Court should not consider this memorandum because its review is limited to the agency's contemporaneous explanation, not its post-hoc rationalization. *See U.S. Dep't of Commerce v. New York*, ___ U.S. ___, 139 S. Ct. 2551, 2573 (2019); *Vermont Yankee Nuclear Power Corp. v. Nat. Res. Def. Council, Inc.*, 435 U.S. 519, 549 (1978); *Camp v. Pitts*, 411 U.S. 138, 142–43 (1973) (per curiam). In any event, then-Secretary Nielsen's cursory consideration of the reliance interests cannot satisfy the APA's reasoned decision-making requirement.

⁴ To provide the Court with an expanded understanding of how DACA has impacted public education, *amici* have interviewed numerous students, graduates, educators, and school administrators. Where names are used, it is with interviewees' permission. Others asked not to be named or identifiably described because of the uncertainty of their DACA status or concern for their DACA students.

just reasoned, but “more detailed” than one for other types of agency action. *See Fox Television Stations*, 556 U.S. at 515. In reliance on the DACA program, DACA holders furthered their education and began careers as educators. In turn, school districts and communities relied on the many benefits provided by these DACA holders. But DHS failed to consider any of these serious reliance interests. That failure renders DHS’s action arbitrary and capricious, and accordingly unlawful. The Court should therefore affirm the judgments below.

B. In Reliance on DACA, Students Pursued Higher Education and Careers in Public Service

DACA has motivated countless young people to stay in school and further their education. Without DACA,

most unauthorized immigrant youth end their schooling before entering college [T]he 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 [because of DACA], many of the study’s respondents described their newfound motivation and interest in school.

Roberto G. Gonzales et al., Ctr. for Am. Progress, *Taking Giant Leaps Forward: Experiences of a Range of DACA Beneficiaries at the 5-Year Mark 2* (2017). “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. at 3. Forty percent of respondents in a nationwide survey of 1,105 DACA recipients reported that they were currently in school. Tom K. Wong et al., *2019 National DACA Survey*, <https://cdn.americanprogress.org/content/uploads/2019/09/18122133/New-DACA-Survey-2019-Final-1.pdf>. Of those respondents, 83% were already pursuing a bachelor’s degree or higher, and 93% reported that DACA allowed them to pursue education opportunities that had not previously been available. *Id.* And upon graduating from high school, many DACA holders pursue higher education so as to devote their careers to public service. Some 9,000 DACA holders are now working in education according to one 2017 estimate by the Migration Policy Institute. Jie Zong et al., Migration Pol’y Inst., *A Profile of Current DACA Recipients by Education, Industry, and Occupation* 7-8 (2017).

DACA holders invested in their education in reliance on the government’s promise in DACA that they would be able to pursue educational and job opportunities, and that those opportunities would not be taken away without due consideration. However, DHS failed to consider these serious reliance interests and the massive and irreparable harm rescinding DACA would have on the hundreds of thousands of DACA holders, their families, their students, and their communities. The interviews that follow speak powerfully to the very issues DHS should have considered.

“I could finally serve my community.” This was the reaction of Angelica Reyes upon learning of DACA. As a public school student in Los Angeles, Reyes dreamed of becoming an educator, but felt that advanced academic and professional opportunities were out of reach. During that time Reyes recalls, “I had done more than 1,000

hours of community service. It was heartbreaking that I couldn't be part of the system I had tried to enrich." With DACA, "it felt like an opportunity. I could finally serve my community. And I could be an educator. DACA gave me a clear path to obtain the career I had been working towards." While earning her teaching credential at the University of California at Los Angeles, Reyes also worked for several non-profit advocacy organizations that assist K-12 students with college preparedness, financial aid, health and nutrition, and recovery from domestic violence. Reyes is now a valued member of the teaching corps in the district where she herself was a student. A former Advanced Placement U.S. History teacher, Reyes now teaches World History and Ethnic Studies. Next, Reyes is hoping to pursue a doctorate in education.

"Helping everyday citizens." A senior at the University of Texas at Austin, Vanessa Rodriguez Minero majors in government. She volunteers in a program that brings college students to underserved high schools to advise on how to pursue higher education. For two years, Rodriguez Minero served as the constituent liaison for an Austin City Councilmember. She enjoyed "helping everyday citizens" navigate through government services to resolve their issues. Her goal is to use her education to give back to her community. In thinking about the potential end of DACA, Rodriguez Minero is concerned about "professional development, what happens after college, what happens with my degree, will I be able to work in a field that I'm very passionate about?"

"My dream of working in education." A graduate of the University of California, DACA-holder Vicente Rodriguez teaches in the San Bernardino City Unified

School District. This year, Rodriguez works one-on-one with a student receiving special education services. Last year, he served as the school's resident substitute, an assignment that included three months as a teacher providing bilingual education to second-graders. The former Director of Social Services at an after-school program providing academic support for school-aged children, Rodriguez has just this month applied for a master's program in education. His career goal is to teach high school students in the areas of English and Ethnic Studies, his majors in college, but he now feels that "my dream of working in education is slowly slipping away despite how far I have come."

"DACA gave me access to education." A Duke University senior, Axel Herrera is pursuing a double major in economics and sociology. Herrera has interned in the U.S. Congress and is applying to work at advocacy organizations after his graduation from Duke. Herrera presently volunteers for a STEM program where he has mentored a group of students since they were in sixth grade. Herrera receives mentorship, funding toward tuition, and career placement support through the Golden Door Scholarship program, which was established to advance the economic mobility of DACA recipients. "DACA gave me access to education," says Herrera, who sees the termination of DACA as an "extreme disruption," not just on a personal level but to schools and employers.

"I wanted to do something more." A bilingual teaching fellow in a school district outside of Seattle, A.M.P. is pursuing her teaching certification. Before DACA, she had always been a strong student, but she felt she had no clear pathway to college. When she received

DACA, she “wanted to do something more.” Working with a mentor teacher, A.M.P. now teaches third grade at the elementary school she attended as a child. Next year, she will have her own classroom and she intends to stay in her home district, but “I know there are a lot of [educators] who are wondering how they’ll be able to renew their DACA” and continue their teaching careers.

“The basic sense of human dignity.” Kateri Simpson teaches at a high school in Oakland, California. Simpson has seen first-hand how DACA has motivated students to fully engage in school and work toward graduation because higher education opportunities were now within reach. The students “all of a sudden . . . had agency and advocacy They were able to work for themselves and that was such a powerful thing.” Her students could afford to stay in school and, with DACA work authorization, hold jobs to support themselves in college. As Simpson says, “the basic sense of human dignity to be able to work for what you want—I don’t think can be underestimated.”

“It affects every aspect of my being.” Anayeli Marcos is in her last year of study for a dual master’s degree in social work and science at the University of Texas at Austin. Marcos aims to join a non-profit organization as a counselor or therapist and use her Spanish-language skills to help underserved clients. In addition to her studies, Marcos works 20 hours per week, helping to provide for her three U.S. citizen siblings. When an agency error caused a temporary break in Marcos’s DACA status, she says it “turned my world upside down.” She had to withdraw from UT-Austin for a semester, move back in with her parents, and cease work until the mistake could be corrected. “It affects every aspect of my being. It

not only affects me financially, it also affects my mental health.”

“Only take things day by day.” H.A. is an education support professional at an Arizona high school where he works as a lab technician and volunteers in the counseling department, supporting immigrant students and their parents. He previously assisted students with the college application process. He himself was accepted to state university with a scholarship but, lacking DACA at the time, enrolled in community college, where it took him seven years to complete his degree while working. H.A. is witnessing students at his school feel “confusion and panic” about DACA and related immigration issues, so he has started an immigrant student support group. He remains dedicated to his students but due to the uncertainty around DACA, he can “only take things day by day.”

“A vehicle to better opportunities.” As a public school student in Texas, Roberto Valadez dreamed of becoming an academic, but his immigration status made him feel that “no matter how hard I try, I can never go to college.” By high school, Valadez had begun to miss classes and struggle academically. But when DACA was announced, Valadez immediately recognized it as “a vehicle to better opportunities” and applied. He improved his schoolwork and recently graduated from the University of Texas at El Paso. He is currently working toward his Masters degree in Sociology and hopes to someday direct a non-profit organization and contribute to his community. Valadez states that “I feel like a new person after DACA.” While DACA has allowed Valadez to work for a decent wage and put himself through college, “without DACA, it’s game over.”

“A new sense of confidence.” Areli Morales attended public schools in New York City where, she states, “I felt voiceless for many years . . . I remember wanting to be invisible”⁵ DACA gave Morales “a new sense of confidence to move forward with [her] studies.” She was able to obtain work authorization, a Social Security number, and attend college. Morales graduated from Brooklyn College in 2018. She is currently working as a substitute teacher while pursuing her teaching license. If Morales can renew her DACA status, she declares, “I plan to use my 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 generations of children, so they can strive to reach their greatest potential.” Having relied on DACA and devoted years to her goal of becoming a teacher, the idea that she would not be able to teach, have her own classroom, and prepare her own lesson plans is “devastating.”

“DACA was a motivator.” Prior to receiving DACA, recent college graduate Joseph Ramirez would question the need to excel in school because he did not think he could go to college: “What am I going to do with that degree without a Social Security number?” During his senior year of high school, he received DACA. “DACA was a motivator,” Ramirez says. Without it, “I would not have pushed my limits.” Ramirez is the first in his family to graduate from college. “Losing DACA would be devastating” for Ramirez, who is helping his parents open a daycare for children in their community.

⁵ Based on a personal interview conducted by *amici* and excerpts from Tatyana Kleyn et al., *Learning from Undocumented Students: Testimonios for Strategies to Support and Resist*, 14 *The New Educator* 24, 29 (2018).

“What will they have to go through?” Jose Garibay recently graduated from St. Edwards College with a degree in political science. While in college, he volunteered for a college preparedness program for students from low-income communities. DACA meant Garibay was no longer afraid to be open and involved in community service. He hopes to go to law school or pursue a graduate degree in public policy. Garibay worries about his own career, but more than that, he worries about how DACA’s rescission will affect his younger brother, who just started college. And he is anxious about what college will look like for the young people he has helped through the college preparedness program. “What will they have to go through?”

These are just a few of the thousands of student and educator stories around the country. *See* Gonzales, *supra*, at 2; Wong, *supra*. By opening the door to higher education and meaningful work in fields of public service, DACA has provided young people with a powerful reason to engage and succeed in their K-12 studies and beyond. If they lose their DACA status, the achievements that they have worked so hard to attain will be cut short. The nation’s investment in educating and training DACA holders will be lost. And for DACA recipients still in high school, the DACA opportunities that motivated young people—and improved high school matriculation rates—will summarily vanish.

C. DHS Failed to Consider the Reliance Interests DACA Engendered in This Country’s Public Schools

The harm caused by the loss of DACA would not be borne by its recipients alone. Without DACA renewals, the

status of thousands of educators will expire on different dates throughout the school year. Teachers and staff will abruptly disappear from classrooms to the distress of their students and to the measurable detriment of educational outcomes. In addition, educational institutions across the country rely on thousands of DACA educators to help remedy significant teacher shortages, provide mentorship and role models to students, and diversify the teaching corps.

i. Without DACA, Thousands of Educators Would Abruptly Leave Their Students

The loss of DACA would mean that our nation's schools would lose thousands of valued education employees. Zong, *supra*, at 7-8. Given the individual DACA expiration dates of these educators, no district, school, or classroom can adequately prepare students for the staggered departure of beloved teachers. Departures that occur mid-year or at critical points of educational mastery would irreversibly harm children and their educational outcomes. Teacher Karina Alvarez in San Antonio, Texas experienced this first-hand. While awaiting the delayed renewal of her DACA work permit, Alvarez was forced to temporarily resign from her second grade class. Seven-year-olds cannot comprehend the reasons for such a loss, but research abundantly shows that such abrupt changes can have disruptive impacts on young children. *See, e.g.*, Nat'l Sci. Council on the Developing Child, *Young Children Develop in an Environment of Relationships* (Harv. Univ. Ctr. on the Developing Child, Working Paper No. 1, 2004), <https://developingchild.harvard.edu/wp-content/uploads/2004/04/Young-Children-Develop-in-an-Environment-of-Relationships.pdf>. During Alvarez's absence, her second-graders lost their relationship with

a trusted teacher and their academic progress lagged. This would occur on a much larger scale if thousands of teachers lose the ability to renew their DACA status.

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 would the students of lost DACA teachers perform worse academically, all students would be negatively impacted. *Id.* Turnover causes a decline in student achievement school-wide because it damages faculty morale, increases the workload of remaining teachers, and diverts district funds away from student programs to training new hires. *Id.* at 8, 32. Moreover, the loss of DACA would cause greater harm in subjects and at schools most likely to already suffer from high turnover. The subject with the highest rate of teacher turnover is English Language Learning (“ELL”). Leib Satcher et al., Learning Pol’y Inst., *A Coming Crisis in Teaching? Teacher Supply, Demand, and Shortages in the U.S.* 46, Fig. 24 (2016), https://learningpolicyinstitute.org/sites/default/files/product-files/A_Coming_Crisis_in_Teaching_REPORT.pdf. Turnover rates are also higher at schools with a greater percentage of students of color. *Id.* These are schools and subjects in which DACA educators are particularly impactful.

Karen Reyes teaches hearing-impaired toddlers.⁶ When she took a class in this specialized area, she felt it was the illuminating “light at the end of the tunnel” of

⁶ Based on a personal interview conducted by *amici* and excerpts from Erica L. Green, *With DACA in Limbo, Teachers Protected by Program Gird for the Worst*, N.Y. Times (Feb. 1, 2018), <https://www.nytimes.com/2018/02/01/us/politics/daca-teachers-trump.html>.

her own education. From that class, she knew she wanted to dedicate her life to teaching children with limited communication abilities. Reyes tries to explain the risk that she will be removed from her students' classroom using pictures and sign language. "They understand when I go on an airplane. Maybe they'll just think I'm on a never-ending flight." Reyes's area of specialization suffers from a teacher shortage. It often takes more than a year to fill a vacancy in her specialty. Were DACA terminated, her students would be left, likely for a long period of time, without an educator adequately trained to teach them. If DACA continues, however, Reyes will not only continue teaching but plans to further her career by acquiring a doctorate with the eventual goal of becoming a school audiologist.

ii. Educational Institutions Rely on Thousands of DACA Educators to Offset the Nationwide Teacher Shortage

Throughout the country, states face a critical shortage of teachers. The U.S. Department of Education found that every state was "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*, Wash. Post (Aug. 28, 2017), https://www.washingtonpost.com/news/answer-sheet/wp/2017/08/28/teacher-shortages-affecting-every-state-as-2017-18-school-year-begins/?utm_term=.0583fbf55b17; see also Off. 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>. For the 2018-19 school year, thirty states and the

District of Columbia had shortages of bilingual and ELL teachers. Corey Mitchell, *Wanted: Teachers as Diverse as Their Students*, Educ. Wk., (Sept. 17, 2019), <https://www.edweek.org/ew/articles/2019/09/18/wanted-teachers-as-diverse-as-their-students.html>. DACA helps districts ease these shortages. A rescission of DACA would leave tens of thousands of students in the breach, many of them in the most underserved schools.

School administrators shore up this data with first-hand experience. Heidi Sipe, the superintendent of the Umatilla School District in eastern Oregon, notes that her district posts positions for three to six months without receiving a single application. And Superintendent Matt Utterback, of the North Clackamas School District in the suburbs of Portland, Oregon, states that his district has not been fully staffed for years. In Sacramento, Superintendent Jorge Aguilar of the Sacramento City Unified School District reports that his district is heavily impacted by the teacher shortage that is felt throughout California. He fears that the end of DACA would exacerbate the district's already-critical need for qualified staff.

Mike Walsh, Immediate Past President of the California School Boards Association and a Trustee of the Butte County Office of Education, observes that the California Mini-Corps, which provides tutoring services to K-12 youth in migrant communities, stands to lose numerous college-student tutors who hold DACA status. Walsh notes, "About eighty percent of tutors go on to obtain a teaching credential or permit to continue to be involved in education." The Mini-Corps tutors are "in the pipeline to become teachers, administrators, [and]

superintendents.” If these young people are no longer able to work as tutors, Mini-Corps will lose hard-to-replace staff and the state will lose committed educators. The state’s investment in this training and development pipeline will be lost.

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. And in reliance on DACA, educational institutions have hired thousands of DACA educators to fill much needed positions. The termination of DACA would bar these qualified educators from the classrooms that so urgently need them.

iii. Educational Institutions Rely on DACA to Provide Essential Diversity in the Teaching Profession

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.” Off. of Plan., Evaluation & Pol’y Dev., U.S. Dep’t of Educ., *The State of Racial Diversity in the Educator Workforce* 1 (July 2016), <https://www2.ed.gov/rschstat/eval/highered/racial-diversity/state-racial-diversity-workforce.pdf>.

There are “meaningful ‘role model effects’ when minority students are taught by teachers of the same race.” Dan Goldhaber et al., Univ. of Wash. Bothell, *The Theoretical and Empirical Arguments for Diversifying the Teacher Workforce: A Review of the Evidence* 6 (Ctr.

for Educ. Data & Res., Working Paper No. 2015-9). These effects are not subjective, but are quantifiable in making a “meaningful impact on student test scores.” *Id.* at 3. 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 et al., *Teacher and Principal Diversity and the Representation of Students of Color in Gifted Programs*, 117 *Elementary Sch. J.* 396, 400 (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 et al., *Teacher-Child Racial/Ethnic Match Within Pre-Kindergarten Classrooms and Children’s Early School Adjustment*, 36 *Early Childhood Res. Q.* 26, 38 (2016).

It is therefore critical for schools to hire teachers whose backgrounds mirror those of an increasingly diverse student population. Yet districts have had difficulty doing so. 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 et al., *supra*, at 1. In the 2011-12 school year, 24% of students were Hispanic, while only 8% of teachers were Hispanic. Off. of Plan., Evaluation & Pol’y Dev., *supra*, at 6. This disparity is only expected to grow: “students of color are expected to make up 56 percent of the student population by 2024.” *Id.* at 1.

School districts thus have a pressing need to hire an increasing number of Latino educators to serve the needs

of their changing student populations. DACA teachers have helped to meet this growing need; over 93% of DACA recipients were born in Latin American countries. U.S. Citizenship & Immigr. Servs., U.S. Dep't of Homeland Sec., *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 for this reason. Tom Boasberg, Superintendent of Denver Public Schools, has advocated for DACA because it “allowed him to find talented bilingual teachers who can connect with his students.” Alexia Fernández 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>. Dallas Independent School District Superintendent Michael Hinojosa spoke highly of the DACA teachers, who “grew up in [the Dallas] community” and spoke both English and Spanish well. Dianne Solis & James Barragan, *U.S. Could Lose an Estimated 20,000 Teachers, Many Bilingual, as DACA is Phased Out*, The Dallas Morning News (Oct. 5, 2017), <https://www.dallasnews.com/news/immigration/2017/10/05/u-s-could-lose-an-estimated-20000-teachers-many-bilingual-as-daca-is-phased-out/>. Hinojosa said the district employs 68 DACA recipients, “including three dozen teachers.” *Id.* Teach for America actively recruits DACA recipients for its corps, noting that these individuals know “first-hand the concerns that undocumented kids face.” Teach For Am., *DACA Recipients*, (last visited Oct. 3, 2019), <https://www.teachforamerica.org/how-to-join/eligibility/daca>.

“Schools need to reflect our community.”

Administrators recognize the need for a diverse teaching staff. Matt Charlton, the superintendent of the Manson School District in Washington State, 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 Latino para-professionals to teaching positions because “schools need to reflect our community.” Thomas Ahart, the superintendent of the Des Moines School District in Iowa, 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.”

“It is so important for students to see themselves in their educators.” Superintendent Utterback observes that “students can go thirteen years without experiencing teachers who look like them.” This harms white students as well, observes Superintendent Utterback since “white students never experience seeing a person of color in a professional role.” Superintendent Sipe also emphasizes the importance of having teachers who reflect the student body. “It is so important for students to see themselves in their educators . . . so they can see pathways and futures they did not see before.” She reports that the student body in her district is over 70% Latino, but it does not have enough Latino educators, although the district actively pursues Latino candidates. Superintendent Theron Schutte, of the Marshalltown Community School District in Iowa, notes that his district is majority minority but the teaching staff is still predominately white. He explains

that his district has “great difficulty in hiring high-quality educators who mirror student demographics.”

“Just one less child who felt isolated.” 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. Jaime Ballesteros, a California educator with DACA, 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*, Obama White House: Blog (Aug. 4, 2015), <https://obamawhitehouse.archives.gov/blog/2015/08/04/dacamented-teachers-educating-and-enriching-their-communities>.

“A role model who has walked in their shoes.” DACA recipient Karina Alvarez speaks to her students, many of whom are Latino immigrants, about her own experience. Alvarez believes that her students “need to have a role model who 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.” A.M.P., from Washington State, also understands the importance of sharing her experience with her students. She teaches in a district where 37.9% of the student body – but only 8.2% of the teaching staff – is Latino. She explains: “something that has always driven me was to be the person you needed growing up.” Her school had an assembly where she and other immigrant educators talked to students about how they were able to go to college. She noted that

it was “heartwarming” and the children responded “really positively.” Angelica Reyes in Los Angeles relates that as an immigrant herself, she is able to “connect very well with students because of experiences in common, something many other teachers lack.” This connection supports students’ ability to focus on learning rather than becoming distracted and intimidated by public discourse that is “scary, it’s in our faces, it’s destructive to our families.”

iv. DHS Failed to Consider How DACA Rescission Would Undermine Student Learning for All Students

Public school administrators report that the rescission of DACA has created an atmosphere of anxiety that makes it more difficult for students to focus on their studies. This anxiety is not limited to students with DACA or those taught by DACA educators.

“Every single student is affected.” Cindy Marten is the Superintendent of San Diego Unified School District, in which Latino students make up about 45 percent of the student body. The September 5, 2017 announcement of DACA rescission caused great anxiety among San Diego students. “Kids are worried about what’s going to happen to them,” says Superintendent Marten. While non-immigrant students are, in Superintendent Marten’s words, “not afraid of being deported, they’re afraid about their best friend or their best friend’s mother. Every single student is affected.” And for younger children, who often misunderstand their family’s status or believe that “immigrant” is synonymous with unauthorized presence in the U.S., the anxiety and fear that they or their authorized relatives are in danger of being deported escalates their anxiety—and that of the classmates

around them. Randy Capps et al., Migration Pol’y Inst., *Implications of Immigration Enforcement Activities for the Well-Being of Children in Immigrant Families: A Review of the Literature* 6 (2015). Starting with the Rescission Memo and increasing through the present day, uncertainty about DACA has undermined students’ ability to learn, regardless of their immigration status. These significant negative impacts of DACA rescission were neither considered nor analyzed by DHS.

“DACA being rescinded takes away the hope from our students.” Superintendent Utterback says “stress has an impact on academics and behavior,” 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.” The same is true in the Highline Public Schools in Washington State, according to Superintendent Susan Enfield. Maile Valu, a counselor in her district, reports that the “constant uncertainty that our DACA students and our students [and] families without legal status face has caused fear, stress, anxiety, [and] hopelessness.” Daniela Laureano Francisco, a family liaison in Highline reports, “DACA being rescinded takes away the hope from our students.” Superintendent Schutte has also seen first-hand the 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.”

The experiences of these administrators are confirmed by academic research. A working paper by the Harvard University Center on the Developing Child found that 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 Sci. Council on the Developing Child, *Persistent Fear and Anxiety Can Affect Young Children's Learning and Development* 5 (Harv. Univ. Ctr. on the Developing Child, Working Paper No. 9, 2010), <http://developingchild.harvard.edu/wp-content/uploads/2010/05/Persistent-Fear-and-Anxiety-Can-Affect-Young-Childrens-Learning-and-Development.pdf>. The anxiety and stress caused by the threatened termination of DACA impacts students' academic success, professional prospects, and personal well-being.

“We cannot tell them that everything will be okay.”

A superintendent in Long Island, New York notes that since the rescission 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.” Superintendent Sipe, whose school district is in a rural area and serves primarily Latino students, says “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 we cannot make promises about things that are out of our control.”

“Students are unable to focus.” Superintendent Aguilar also reports that the Rescission Memo has caused considerable student anxiety. Aguilar observes that this anxiety is “taking a toll on our ability to be able to provide the academic intervention necessary. Students are unable to focus on their academic achievement when they are

experiencing the kind of trauma, anxiety, and anguish that comes as a result of the ending of DACA.” Indeed, more than half of DACA recipients surveyed report thinking about being deported at least once a day and almost 45% think about being detained in an immigration detention facility at least once a day. Wong, *supra* at 10. The repetition of such stark fears, articulated or not, deeply disturbs student learning and family support. Superintendent Charlton notes that in his rural, majority-Latino district, threats to DACA result in a persistent “feeling of angst . . . that translates from families down to the kids . . . which impacts the classroom” and harms children’s ability to learn. Superintendent Marten, from San Diego, observes that “as soon as you destabilize your school, you’re not delivering the quality of education that children deserve.” She emphasized that “the educational outcomes for our students are going to be compromised.”

No “light at the end of the tunnel for these kids.”

The Rescission Memo has caused many students to abandon their academic and professional goals as they see carefully crafted plans unravel. Arianna Martinez, an Associate Professor at LaGuardia Community College in New York, teaches many DACA recipients. Those college students’ “entire relationship to education and their future” has changed as the students now feel there is no point in obtaining a degree. Through her own academic research, Martinez has found that DACA recipients enrolled in continuing education classes to prepare for college are struggling to envision a way forward. Superintendent Sipe speaks emotionally of a brilliant student who dreams of becoming a pediatrician but may no longer even consider college. She also describes a student with DACA who dropped out of college because of their

disappointment and feeling of “why bother investing [in their education] if it does not do any good.” Superintendent Charlton speaks of how DACA gave students “that hope and inspiration to reach higher; to rescind that now is not fair” to his students. Superintendent Schutte expresses 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.”

Kids who “have done everything asked of them.”

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 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 DHS decision took none of these reliance interests into account. Hundreds of thousands of “productive young people” who have “contributed to our country in significant ways” see nowhere to go from here.

CONCLUSION

DHS swept away DACA, together with its recipients’ dreams and their communities’ needs, in one curt memorandum that failed to provide a reasoned explanation for the agency’s drastic change of course. DACA educators, students, and administrators can – and do, here in this brief – attest to the serious reliance interests engendered by DACA, as well as the disastrous results that will

ensue if the program is terminated. DACA rescission will deprive schools of qualified teachers and mentors, diminish diversity in the teaching corps, and destabilize school environments. By taking away the prospect of advanced learning and gainful employment, hundreds of thousands of young people will have the foundation that DACA provided shattered, and lose the basis on which they and their communities have made so much progress for the last seven years. The result will be damage to them, their families, their communities, and their students, as well as to the public schools in which they now serve. By failing to consider any of these significant reliance interests and impacts, DHS's decision to rescind DACA was arbitrary and capricious. Accordingly, *amici* urge the Court to affirm the judgments below.

Respectfully submitted,

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