

1 ALICE O'BRIEN, Bar No. 180208
EMMA LEHENY, Bar No. 196167
2 NATIONAL EDUCATION ASSOCIATION
1201 16th Street, N.W.
3 Washington, D.C. 20036
Telephone (202) 822-7035
4 Fax (202) 822-7033
E-Mail: ELeheny@nea.org

5 *Attorneys for Amicus Curiae National Education
6 Association*

7 *Complete list of parties and counsel
8 may be found on the signature page*

9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN FRANCISCO DIVISION**

12 THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA and JANET
13 NAPOLITANO, in her official capacity as
President of the University of California,

14 Plaintiffs,

15 v.

16 U.S. DEPARTMENT OF HOMELAND
SECURITY and ELAINE DUKE, in her
17 official capacity as Acting Secretary of the
Department of Homeland Security,

18 Defendants,

19 And Related Cases.
20

No. 17-cv-05211-WHA
No. 17-cv-05235-WHA
No. 17-cv-05329-WHA
No. 17-cv-05380-WHA
No. 17-cv-05813-WHA

**ADMINISTRATIVE MOTION FOR
LEAVE TO FILE BRIEF OF K-12
SCHOOL DISTRICTS AND EDUCATION
ASSOCIATIONS AS AMICUS CURIAE IN
SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY INJUNCTION**

1 **INTRODUCTION**

2 Joining together to file this brief are eight of California’s largest K-12 school districts, and
3 state and national organizations representing K-12 educators, school administrators, and
4 governing boards. This group, K-12 Education Amici, respectfully moves for leave to file an
5 amicus curiae brief in support of Plaintiffs’ motion for preliminary injunction. Pursuant to the
6 Court’s October 25, 2017 Stipulation and Order Regarding Amicus Briefing, K-12 Education
7 Amici file this administrative motion for leave to file their amicus curiae brief. A copy of the
8 proposed brief is attached as Exhibit 1 to this motion. Plaintiffs have consented to the filing of
9 this motion and the accompanying amicus brief. Defendants take no position on the filing of this
10 motion and the accompanying amicus brief.

11 **IDENTITY AND INTEREST OF AMICI CURIAE**

12 The arbitrary rescission of the DACA program, to take effect March 6, 2018, will do
13 nothing less than traumatize the children of California’s public schools. Over 242,000
14 Californians who currently hold DACA and have met every expectation set by the program will
15 lose ties to home, community, family, and school. The trauma will not be felt by them in
16 isolation. Their siblings, classmates, teachers, friends, and communities will suffer with them.
17 Employees and members of undersigned Amici are the counselors, principals, teachers,
18 superintendents, paraprofessionals, aides, and nurses who staff our K-12 schools. Their purpose is
19 to care for our students, regardless of immigration status. It is that shared purpose, that
20 constitutional duty, which brings them together before this Court with urgency. Amici’s
21 education professionals know well the value of contributions made by DACA recipients and so
22 too the harm that will be worked by DACA’s termination.

23 K-12 Education Amici are:

24 **Association of California School Administrators** serves more than 18,000 California
25 school administrators, including many who work at K-12 schools with DACA staff and students.

1 **Berkeley Unified School District** enrolls over 9,000 K-12 students. Berkeley
2 immediately neighbors the metro area of San Francisco, Oakland, and Hayward, which has the
3 ninth most DACA recipients in the nation, approximately 15,500.¹

4 **California Faculty Association** represents 28,000 faculty employed by California State
5 University. An affiliate of Amici CTA and NEA, CFA represents DACA members. 88% of CSU
6 students taught by CFA members are graduates of California K-12 public schools.

7 **California Federation of Teachers** is the state affiliate of the American Federation of
8 Teachers in California. Through its 135 affiliates, CFT represents more than 120,000 teachers,
9 faculty, librarians, nurses, counselors and classified employees working in California's public
10 schools, private schools, community colleges and the University of California system. DACA
11 recipients are among the membership of CFT and the students they serve.

12 **California School Boards Association** represents the elected officials who govern public
13 school districts and county offices of education in nearly 1,000 educational agencies throughout
14 California. CSBA is dedicated to serving all students in California's K-12 schools, including the
15 roughly 300,000 students who are undocumented.

16 **California Teachers Association** represents 325,000 education employees who work in
17 California's more than 1,000 public school districts. DACA recipients are among the membership
18 of CTA and the students they serve. CTA is the California state affiliate of Amicus National
19 Education Association.

20 **Los Angeles County Board of Education** works with the Los Angeles County
21 Superintendent of Schools at the Los Angeles County Office of Education (LACOE) to provide
22 certain services, and to promote inclusive policies protecting the educational rights of all students,
23 including DACA recipients. Los Angeles County boundaries substantially overlap with the metro
24 area that has the most DACA recipients in the country, close to 90,000.

25
26 ¹ DACA population data is from the U.S. Citizenship & Immigration Services,
27 *Approximate Active DACA Recipients: Leading Core Based Statistical Areas*, p. 8 (Sept. 4, 2017),
28 available at [https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/daca_population_data.p](https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/daca_population_data.pdf)
df.

1 **Los Angeles County Superintendent of Schools** oversees LACOE and the 80 public
2 school districts and two million students it supports in the nation's most populous county. Among
3 the responsibilities of the Superintendent is the provision of services to educate teachers. Los
4 Angeles County boundaries substantially overlap with the metro area that has the most DACA
5 recipients in the country, close to 90,000.

6 **Los Angeles Unified School District** is the second-largest public school district in the
7 nation, enrolling more than 640,000 K-12 students. LAUSD boundaries substantially overlap with
8 the metro area that has the most DACA recipients in the country, close to 90,000.

9 **Moreno Valley Unified School District** enrolls over 34,000 K-12 students. Moreno
10 Valley immediately neighbors the metro area of Riverside, San Bernardino, and Ontario, which
11 has the sixth most DACA recipients in the nation, over 22,000.

12 **National Education Association** represents three million education employees, including
13 teachers, counselors, nurses, and support professionals in California and throughout the country.
14 The DACA recipients who belong to Amici CFA and CTA are also members of NEA.

15 **Oakland Unified School District** enrolls nearly 50,000 K-12 students. Oakland is in the
16 metro area with the ninth most DACA residents in the country. Together with San Francisco and
17 Hayward, Oakland is home to approximately 15,500 DACA recipients.

18 **Sacramento City Unified School District** enrolls nearly 50,000 K-12 students. The
19 greater Sacramento area is ranked 22nd in the nation with the most DACA recipients, close to
20 6,000.

21 **San Diego Unified School District** enrolls almost 130,000 K-12 students. San Diego and
22 neighboring Carlsbad are ranked 12th in the nation in the number of DACA residents, with more
23 than 11,300.

24 **West Contra Costa Unified School District** is based in Richmond and includes
25 surrounding cities. WCCUSD serves more than 32,000 K-12 students and sits just north of the
26 Oakland-San Francisco-Hayward metro area that is home to more than 15,000 DACA recipients.

1 **REASONS WHY THE MOTION SHOULD BE GRANTED**

2 “The district court has broad discretion to appoint amici curiae.” *Hoptowit v. Ray*, 682
3 F.2d 1237, 1260 (9th Cir.1982), abrogation on other grounds recognized by *Rainwater v.*
4 *McGinness*, 559 Fed. App’x 635, 635 (9th Cir. 2014). “District courts frequently welcome amicus
5 briefs from nonparties concerning legal issues that have potential ramifications beyond the parties
6 directly involved or if the amicus has ‘unique information or perspective that can help the court
7 beyond the help that the lawyers for the parties are able to provide.’” *NGV Gaming, Ltd. v.*
8 *Upstream Point Molate, LLC*, 355 F. Supp. 2d 1061, 1067 (N.D. Cal. 2005) (internal citation
9 omitted).

10 The Court should exercise its discretion and permit K-12 Education Amici to file the
11 attached amicus brief. K-12 Education Amici’s brief fills “the classic role of amicus curiae by
12 assisting in a case of general public interest[] [and] supplementing the efforts of counsel[.]”
13 *Miller-Wohl Co. v. Comm’r of Labor & Indus. State of Mont.*, 694 F.2d 203, 204 (9th Cir. 1982).
14 K-12 Education Amici’s brief focuses on the impact of DACA’s rescission on the education
15 system by drawing upon Amici’s knowledge of California’s public schools, students, and
16 employees. The educators, graduates, and administrators who contributed to this brief present
17 unique information for the Court’s consideration.

18 **CONCLUSION**

19 For the foregoing reasons, K-12 Education Amici respectfully request that the Court grant
20 it leave to file the amicus brief attached as Exhibit 1.

21 Dated: November 1, 2017

Respectfully submitted,

22 By: /s/ Emma Leheny

23 Emma Leheny (196167)

Alice O’Brien (180208)

24 National Education Association

1201 16th Street, N.W.

25 Washington, D.C. 20036

26 Tel: (202) 822-7035

Fax: (202) 822-7033

27 eleheny@nea.org

aobrien@nea.org

28 *Attorneys for National Education Association*

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Abhas Hajela (173155)
Capitol Advisors Group, LLC
925 L Street, Suite 1200
Sacramento, CA 95814
Tel: (916) 719-9438
Fax: (916) 443-7468
abe@capitoladvisors.org

Attorney for Association of California School Administrators

Andra M. Donovan (177792)
San Diego Unified School District
4100 Normal Street, Room 2148
San Diego, CA 92103
Tel: (619) 725-5630
Fax: (619) 725-5639
adonovan@sandi.net

Attorney for Berkeley Unified School District, Moreno Valley Unified School District, San Diego Unified School District, and West Contra Costa Unified School District

Kathryn M. Sheffield (218407)
California Faculty Association
980 9th Street, Suite 2250
Sacramento, CA 95814
Tel: (916) 441-4848
Fax: (916) 441-3513
ksheffield@calfac.org

Attorney for California Faculty Association

Glenn Rothner (67353)
Rothner, Segall & Greenstone
510 South Marengo Avenue
Pasadena, CA 91101
Tel: (626) 796-7555
Fax: (626) 577-0124
grothner@rsglabor.com

Attorney for California Federation of Teachers

Elaine M. Yama-Garcia (182210)
D. Michael Ambrose (274952)
California School Boards Association
Education Legal Alliance
3251 Beacon Boulevard

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Sacramento, CA 95691
Tel: (800) 266-3382
Fax: (916) 374-3407
eyama-garcia@csba.org
mambrose@csba.org
Attorneys for California School Boards Association

Laura P. Juran (199978)
Jean Shin (228423)
California Teachers Association
1705 Murchison Drive,
Burlingame, CA 94010
Tel: (650) 552-5440
Fax: (650) 552-5019
ljuran@cta.org
jshin@cta.org

Attorneys for California Teachers Association

Vibiana M. Andrade (98333)
Los Angeles County Office of Education
9300 Imperial Highway
Downey, CA 90242
Tel: (562) 922-6123
Fax: (562) 469-4334
andrade_vibiana@lacoedu

*Attorney for Los Angeles County Superintendent of
Schools and Los Angeles County Board of Education*

David Holmquist (179872)
Devora Navera Reed (188675)
Los Angeles Unified School District
333 South Beaudry Avenue, 20th Floor
Los Angeles, CA 90017
Tel: (213) 241-7600
Fax: (213) 241-8444
dholmquist@lausd.net
devora.naverareed@lausd.net

Attorneys for Los Angeles Unified School District

Michael L. Smith (217751)
Oakland Unified School District
1000 Broadway, Suite 680
Oakland, CA 94607
Tel: (510) 879-8696

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21
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24
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27
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Fax: (510) 879-4046
mike.smith@ousd.org

Attorney for Oakland Unified School District

Raoul Bozio (212073)
Sacramento City Unified School District
5735 47th Avenue
Sacramento, CA 95824
Tel: (916) 643-9097
Fax: (916) 399-2020
Raoul-bozio@scusd.edu

Attorney for Sacramento City Unified School District

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2
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4
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SIGNATURE ATTESTATION

I hereby attest that I have on file all holograph signatures for any signatures indicated by a “conformed” signature (/s/) within this e-filed document.

By: /s/ Emma Leheny
Emma Leheny (196167)

1 ALICE O'BRIEN, Bar No. 180208
EMMA LEHENY, Bar No. 196167
2 NATIONAL EDUCATION ASSOCIATION
1201 16th Street, N.W.
3 Washington, D.C. 20036
Telephone (202) 822-7035
4 Fax (202) 822-7033
E-Mail: ELeheny@nea.org

5 *Attorneys for Amicus Curiae National Education
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**BRIEF OF K-12 SCHOOL DISTRICTS
AND EDUCATION ASSOCIATIONS AS
AMICUS CURIAE IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

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1 **I. Introduction.**

2 Since its inception in 2012, the Deferred Action for Childhood Arrivals (DACA) program
3 has yielded immeasurable benefits for California primary and secondary schools, their educators,
4 and their students. The DACA program has given students, who prior to DACA had only a
5 limited pathway to college and almost no realistic expectation of lawful employment, new hope
6 and a reason to strive for academic excellence. Many of these DACA recipients have since
7 completed high school and entered four-year colleges and universities. Some have graduated and
8 gone on to earn their teaching certifications. These DACA teachers and other school employees
9 help fulfill the state's growing need for qualified educators and serve as role models and mentors
10 for the next generation of diverse Californian students.

11 The Department of Homeland Security (DHS) has made an ill-considered and thinly
12 reasoned decision to rescind DACA, one that will wipe out these gains and cause grievous
13 damage to K-12 schools and students. The DHS announcement has already destabilized schools
14 and disrupted classrooms. If implemented, the rescission will deprive districts of much-needed
15 DACA educators. It will also deprive DACA students of invaluable opportunities to work, study,
16 and give back to our schools and communities. *Amici* therefore urge the Court to grant Plaintiffs'
17 request for a preliminary injunction, to prevent DACA students and teachers from precipitously
18 losing full participation in the California schools where they learn, teach, and thrive.

19 **II. Students Have Embraced Opportunities Provided by DACA, Deepened their**
20 **Engagement at School, and Pursued Educational Goals Previously Believed**
21 **Unattainable.**

22 DACA has motivated countless young people to stay in school and to further their
23 education, as reflected in a five-year study of DACA recipients conducted by the Harvard
24 Graduate School of Education. Without DACA,

25 most unauthorized immigrant youth end their schooling before entering college.
26 Due to a combination of scarce family resources, exclusion from financial aid at
27 the state and federal levels, and depressed motivations, the majority of
28 unauthorized students pursuing higher education attend community colleges and
struggle to persist and graduate. With access to legal employment and diminished
fear of possible deportation [under DACA], many of the study's respondents
described their newfound motivation and interest in school.

1 Roberto G. Gonzales et al., *Taking Giant Leaps Forward: Experiences of a Range of DACA*
2 *Beneficiaries at the 5-Year Mark*, Center for American Progress (June 22, 2017),
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4 [leaps-forward](https://www.americanprogress.org/issues/immigration/reports/2017/06/22/434822/taking-giant-leaps-forward). “DACA has been the impetus for many young people . . . to return to school. . . .
5 Dozens of the respondents who had previously not finished high school told the authors that
6 DACA was an important impetus to re-enroll in school and training programs.” *Id.* DACA is
7 therefore a demonstrated asset to K-12 matriculation rates.

8 **“I could finally serve my community.”** This was the reaction of Angelica Reyes upon
9 learning of DACA.¹ As a public school student in L.A., Reyes dreamed of becoming an educator,
10 but felt that advanced academic opportunities were out of reach because she was undocumented.
11 With DACA, “it felt like an opportunity. I could finally serve my community. And I could be an
12 educator. DACA gave me a clear path to obtain the career I had been working towards.” Once her
13 DACA status was approved, she was able to get a job and pay for her tuition. She enrolled at
14 UCLA and earned her teaching credential. Reyes is now a valued member of the teaching corps in
15 the district where she herself was a student, Los Angeles Unified School District (LAUSD).
16 Reyes teaches Advanced Placement U.S. History.

17 **“A doorway to college.”** One interviewee received DACA while a high school student in
18 Stockton’s Lincoln Unified School District. In her own words, it changed her life. A good
19 student, teachers would try to motivate her to prepare for college. But lacking immigration status,
20 she felt college was out of reach. When she received DACA, however, it “gave [her] a doorway
21 to college.” Newly energized by the opportunities that DACA granted her, this young woman
22 gained admission to the University of California where she is now a junior, majoring in
23 psychology. DACA has made it possible for her to obtain employment to offset the cost of her
24 education; she works for the University, so she contributes as an employee as well. Her goal is to

25 _____
26 ¹ To provide the Court with an expanded understanding of how DACA has impacted
27 California public education, numerous students, educators, graduates, and administrators have
28 been interviewed in preparation of this brief. Interviewees self-identified and, where names are
used, it is with their permission. Others asked not to be named because of the uncertainty of their
DACA status. The education employers co-signing this brief do not track whether employees
hold DACA status, nor did they participate in identifying interviewees.

1 earn a B.A. in psychology, then attend graduate school. The rescission of DACA—a decision
2 made without regard for DACA’s core purpose of promoting education—would cut short the
3 dreams of this Stockton high school graduate to work as a school counselor.

4 **“The basic sense of human dignity.”** An educator interviewed for this brief, Kateri
5 Simpson, teaches at Oakland Unified School District (OUSD). Undocumented students and
6 DACA recipients are part of the OUSD student body. Simpson has seen first-hand how DACA
7 has motivated students to fully engage in school and work toward graduation because post-
8 graduate opportunities like college were now within reach. The students “all of the sudden . . .
9 had agency and advocacy They were able to work for themselves and that was such a
10 powerful thing.” Her students could stay in school and hold decently-paid employment. As
11 Simpson says, “The basic sense of human dignity to be able to work for what you want—I don’t
12 think can be underestimated.”

13 The experience of students like these in Los Angeles, Stockton, and Oakland are but
14 several of many thousands. By opening the door to meaningful work and higher learning, DACA
15 gave these young people a reason and the opportunity to succeed in their K-12 studies. If DACA
16 is taken away, the achievements they have worked so hard to attain—attending a university, or
17 pursuing a fulfilling career—will be lost as well. For DACA recipients still in high school, the
18 opportunities that motivated young people like those described above will vanish.

19 **III. Rescinding DACA Will Significantly Harm California Public Schools.**

20 The harm caused by the rescission of DACA will not be borne by its recipients alone. The
21 effects of the rescission will reverberate throughout communities, as the loss of DACA disrupts
22 classrooms and destabilizes school districts. As their DACA status expires on different dates
23 throughout the school year, DACA educators will vanish from classrooms to the distress of their
24 K-12 students and to the measurable detriment of educational outcomes. The loss of these DACA
25 educators will worsen already-serious teacher shortages, deprive students of mentors and role
26 models, and deplete the teaching corps of much-needed diversity.

1 **A. Terminating DACA traumatizes schoolchildren and destabilizes the learning**
2 **environment.**

3 Administrators report that the announced termination of DACA is already harming
4 schools by creating an atmosphere of anxiety and making it more difficult for fearful students to
5 focus on their studies. Cindi Marten is the Superintendent of San Diego Unified School District
6 (SDUSD), which has a majority Hispanic student population. When DACA became available in
7 2012, so many students were interested in the program that the district created a special DACA
8 office to provide students with information, resources, and application assistance. The demand for
9 these services was enormous. Since 2012, the district's DACA office has assisted students with
10 approximately 5,000 DACA applications. Similarly, in 2013, the LAUSD Board of Education
11 passed a resolution to establish a "DREAMers Program," to assist LAUSD students and graduates
12 in obtaining the educational histories needed to support DACA applications. From 2013 to 2017,
13 approximately 21,000 students and graduates availed themselves of this program. Programs like
14 these demonstrate public K-12 education—although ignored entirely by DHS in its decision—to
15 be at the very core of DACA.

16 The announced end of DACA has already caused great anxiety among the students at
17 SDUSD. "Kids are worried about what's going to happen to them," Superintendent Marten said.
18 The anxiety is not limited to students who have DACA or students who are immigrants. "People
19 think this is just . . . an immigration issue. That's not what we're seeing. Teachers and principals
20 are saying that kids are scared for their friends. They're also affected." Superintendent Marten
21 spoke of one mother who found her daughter crying at home, fearful that her best friend would be
22 deported. San Diego teachers similarly report that anxiety among the students transcends
23 immigration status. While non-immigrant students are, in Superintendent Marten's words, "not
24 afraid of being deported, they're afraid about their best friend or their best friend's mother. Every
25 single student is affected."

26 Superintendent Marten sees how these student anxieties are harming learning conditions
27 in San Diego schools. "Uncertainty destabilizes our schools," she said, and "as soon as you
28 destabilize your school you're not delivering the quality of education that children deserve."

1 Superintendent Marten emphasized that “kids can’t learn unless they feel safe.” She fears that
2 “the educational outcomes for our students are going to be compromised because kids can’t learn
3 when they’re feeling stressed. If they don’t feel safe, they’re not working.”

4 LAUSD and its Superintendent Michelle King sent letters to schools, families, and
5 employees denouncing the rescission of DACA and offering support, information, and resources.
6 But even the leaders of our largest school districts cannot fully assuage the fear caused by the
7 DHS decision. Sacramento City Unified School District Superintendent Jorge Aguilar reports that
8 the impending loss of DACA is already causing considerable student anxiety. He has observed
9 that this anxiety is “taking a toll on our ability to be able to provide the academic intervention
10 necessary. Students are unable to focus on their academic achievement when they are
11 experiencing the kind of trauma, anxiety and anguish that comes as a result of the ending of
12 DACA.” Indeed, such persistent anxiety can change a child’s brain and negatively affect their
13 physical, cognitive, and emotional development, which impacts their ability to learn effectively in
14 school. National Scientific Council on the Developing Child, *Persistent Fear and Anxiety Can*
15 *Affect Young Children’s Learning and Development* (Center on the Developing Child, Harv.
16 Univ., Working Paper No. 9, 2010), *available at* [http://developingchild.harvard.edu/wp-](http://developingchild.harvard.edu/wp-content/uploads/2010/05/Persistent-Fear-and-Anxiety-Can-Affect-Young-Childrens-Learning-and-Development.pdf)
17 [content/uploads/2010/05/Persistent-Fear-and-Anxiety-Can-Affect-Young-Childrens-Learning-](http://developingchild.harvard.edu/wp-content/uploads/2010/05/Persistent-Fear-and-Anxiety-Can-Affect-Young-Childrens-Learning-and-Development.pdf)
18 [and-Development.pdf](http://developingchild.harvard.edu/wp-content/uploads/2010/05/Persistent-Fear-and-Anxiety-Can-Affect-Young-Childrens-Learning-and-Development.pdf).

19 The loss of DACA will mean thousands of K-12 educators are no longer able to teach. *See*
20 *Moriah Balingit, As DACA winds down, 20,000 educators are in limbo*, Wash. Post, Oct. 25,
21 2017, at 7. And these valued DACA educators each hold individual expiration dates on their
22 DACA status. A district, school, or classroom will not be able to anticipate or prepare students for
23 their teachers’ staggered, unpredictable departures—many times, mid-year, or at critical points
24 like testing periods. Teacher turnover has long been shown to harm student academic
25 achievement. Matthew Ronfeldt et al., *How Teacher Turnover Harms Student Achievement*, 50
26 *Am. Educ. Res. J.* 4, 31 (2013). Not only do the students of teachers who leave mid-year perform
27 worse academically, but the students of teachers who remain are also negatively impacted. *Id.*
28 Turnover causes a decline in student achievement school-wide because it can damage faculty

1 morale, increase the workload of remaining teachers, and divert school district funds away from
2 student programs to training new hires. *Id.* at 8, 32. These types of impacts are inevitable in
3 California’s public K-12 schools if the DACA program is terminated.

4 **B. The loss of DACA will worsen already severe teacher shortages.**

5 Throughout the country, states face a critical shortage of teachers. The U.S. Department of
6 Education has found that “every state is dealing with shortages of teachers in key subject areas”
7 in the 2017-18 school year. Valerie Strauss, *Teacher Shortages Affecting Every State As 2017-18*
8 *School Year Begins*, Wash. Post, Aug. 28, 2017. California is particularly hard-hit. Seventy-five
9 percent of California school districts reported a shortage of qualified teachers in the 2016-17
10 school year. Fermin Leal, *State’s Teacher Shortage Hitting ‘Alarming Rates’ for 2016-17*, *New*
11 *Survey Says*, EdSource, Nov. 30, 2016, available at [https://edsources.org/2016/states-teacher-](https://edsources.org/2016/states-teacher-shortage-hitting-alarming-rates-for-2016-17-new-survey-says/573497)
12 [shortage-hitting-alarming-rates-for-2016-17-new-survey-says/573497](https://edsources.org/2016/states-teacher-shortage-hitting-alarming-rates-for-2016-17-new-survey-says/573497). DACA has helped school
13 districts ease those shortages. Approximately 20,000 DACA recipients nationwide work in
14 education, with approximately 5,000 in California alone. Balingit, *supra*, at 7. At a time when
15 California and the nation can ill afford to lose teachers, the rescission of DACA will mean a
16 significant loss of educational employees.

17 Superintendent Aguilar reports that Sacramento is a school district with a largely minority
18 and immigrant population and is heavily impacted by the teacher shortage that is felt throughout
19 the state. He is aware of educators and support professionals who are DACA recipients and he
20 fears that the end of DACA will exacerbate the district’s already-critical need for qualified staff.

21 Vicente Rodriguez was able to enter the University of California at Riverside when he
22 received DACA. An aspiring educator, Rodriguez graduated with a degree in English and Ethnic
23 Studies. He currently works as the Director of Social Services at a non-profit in Loma Linda
24 where he coordinates its after-school program. Rodriguez knows excellent K-12 DACA teachers
25 who stand to lose their employment with their status. Rodriguez points out that these are highly
26 educated and skilled individuals who will likely choose to leave the United States to continue
27 teaching, rather than remain and join the underground economy. Rodriguez’s aim of teaching will
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1 also be cut short—his DACA expires before he will be able to complete a graduate teaching
2 program.

3 An interviewed college student studying for a career in education shared that her DACA
4 status expires in 2019, making it impossible to fulfill her dream of becoming a K-12 educator.
5 Oakland teacher Kateri Simpson spoke of another student, one who was undocumented but
6 aspired to teach. He had even dropped out of high school at one point, but obtained DACA and
7 turned his life around. That student is now enrolled at the University of California with the aim of
8 becoming a counselor, teacher, or principal to work with students like himself. But his
9 contributions to K-12 public education will be foreclosed when his DACA expires, just a short
10 time after he graduates college.

11 California has invested in the K-12 and higher education of these motivated young people
12 whose professional aim is to give back, to educate students like themselves. The rescission of
13 DACA will bar these aspiring educators from the classrooms that so urgently need them. The
14 very support, instruction, and motivation that these aspiring educators received because of
15 DACA, they are now poised to give back to our K-12 schools.

16 **C. Ending DACA will hamper vital efforts to diversify the teaching profession.**

17 Numerous studies have shown that K-12 students benefit from teachers who are ethnically
18 and culturally diverse. “Teachers of color are positive role models for all students in breaking
19 down negative stereotypes and preparing students to live and work in a multiracial society. A
20 more diverse teacher workforce can also supplement training in the culturally sensitive teaching
21 practices most effective with today’s student populations.” U.S. Dept. of Educ., Office of
22 Planning, Evaluation & Policy Dev., Policy & Program Studies Serv., *The State of Racial*
23 *Diversity in the Educator Workforce* 1 (2016), available at
24 <https://www2.ed.gov/rschstat/eval/highered/racial-diversity/state-racial-diversity-workforce.pdf>.

25 Having a teacher who reflects a minority student’s own ethnicity has a particularly
26 positive effect on the student’s learning. There are “meaningful ‘role model effects’ when
27 minority students are taught by teachers of the same race.” Dan Goldhaber et al., The Center for
28 Education Data & Research, Univ. of Wash. Bothell, *The Theoretical and Empirical Arguments*

1 *for Diversifying the Teacher Workforce: A Review of the Evidence*, 6 (2015), available at
2 <http://m.cedr.us/papers/working/CEDR%20WP%202015-9.pdf>. These effects are not merely
3 subjective, but have a concrete and “meaningful impact on student test scores.” *Id.* at 3 “[A]
4 larger presence of Black and Hispanic teachers [is linked] to improved treatment or outcomes for
5 Black and Hispanic students along a variety of dimensions, including lower rates of exclusionary
6 discipline, lower likelihood of placement in special education, and higher pass rates on
7 standardized tests.” Jason A. Grissom et al., *Teacher and Principal Diversity and the*
8 *Representation of Students of Color in Gifted Programs: Evidence from National Data*, 117 *The*
9 *Elementary Sch. J.* 396, 400 (2017) (internal citations omitted). Similarly, “non-English proficient
10 Latino children revealed greater gains on a direct assessment of literacy . . . if their teacher was
11 also Latino rather than Caucasian.” Jason T. Downer et al., *Teacher-child Racial/Ethnic Match*
12 *Within Pre-Kindergarten Classrooms and Children’s Early School Adjustment*, *Early Childhood*
13 *Research Q.*, 4th Quarter 2016, at 36.

14 It is therefore critical for schools to hire teachers from minority backgrounds to keep pace
15 with the country’s growing immigrant population. Yet districts have had difficulty doing so.
16 Between 2003 and 2012, “the increase in the percentage of Hispanic students [in the United
17 States] far outpaced the modest increase in the percentage of Hispanic teachers.” Goldhaber,
18 *supra*, at 1 (2015) (internal citation omitted). A 2016 study by the U.S. Department of Education
19 found that in 2011-12, 24 percent of American students were Hispanic, while only 8 percent of
20 teachers were Hispanic. *The State of Racial Diversity in the Educator Workforce*, *supra*, at 5-6.
21 California suffers from a particularly large disparity between the numbers of Hispanic students
22 and Hispanic teachers, with most of the state facing over a 20 percent diversity gap between
23 students and educators. Michael Hansen & Diana Quintero, *Teacher diversity gaps hit close to*
24 *home for nearly everyone*, Brookings Inst. (Oct. 23, 2017),
25 [https://www.brookings.edu/blog/brown-center-chalkboard/2017/10/23/teacher-diversity-gaps-hit-](https://www.brookings.edu/blog/brown-center-chalkboard/2017/10/23/teacher-diversity-gaps-hit-close-to-home-for-nearly-everyone)
26 [close-to-home-for-nearly-everyone](https://www.brookings.edu/blog/brown-center-chalkboard/2017/10/23/teacher-diversity-gaps-hit-close-to-home-for-nearly-everyone). The disparity between the increased need for Hispanic
27 teachers, and the lagging number of Hispanic teachers that districts are able to hire, is only
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1 expected to grow: “students of color are expected to make up 56 percent of the student population
2 by 2024.” *The State of Racial Diversity in the Educator Workforce, supra*, at 1.

3 School districts thus have a critical need to hire an increasing number of Hispanic teachers
4 in order to serve the needs of their expanding Hispanic student populations. DACA teachers have
5 helped to meet this growing need, given that close to 80 percent of DACA recipients were born in
6 Mexico. U.S. Citizenship & Immigration Services, *Approximate Active DACA Recipients:
7 Country of Birth 1* (Sept. 4, 2017), available at
8 [https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigrati
10 on%20Forms%20Data/All%20Form%20Types/DACA/daca_population_data.pdf](https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigrati
9 on%20Forms%20Data/All%20Form%20Types/DACA/daca_population_data.pdf). Indeed, some
11 school districts have specifically recruited DACA recipients. *See, e.g.,* Alexia Fernandez
12 Campbell, *DACA immigrants are teaching American children. What happens after they’re gone?*,
13 *Vox* (Sept. 15, 2017), [https://www.vox.com/policy-and-politics/2017/9/15/16306972/daca-
15 teachers-dreamers](https://www.vox.com/policy-and-politics/2017/9/15/16306972/daca-
14 teachers-dreamers).

14 Many DACA educators acknowledge that their background makes them especially
15 important resources for their students, and have been drawn to the teaching profession because of
16 their desire to fill those roles. For example, Angelica Reyes, who teaches AP U.S. History in
17 South Central Los Angeles, says many of her students come from immigrant backgrounds. Some
18 of the students at her school are undocumented. Reyes believes that because she can understand
19 the experiences of her students, she is uniquely able to teach them. She knows how to make
20 American history relevant to them, because she can empathize with and incorporate their
21 perspectives.

22 Similarly, DACA educator Jaime Ballesteros said that he became a teacher specifically
23 because he knew he could reach immigrant and minority students: “I wanted to amplify the voices
24 of students and families who shared both my story and values. I wanted to ensure that there would
25 be even just one less child who felt isolated and helpless because of his or her immigration
26 status.” Ginette Magaña, *DACAmented Teachers: Educating and Enriching Their Communities*,
27 *White House Blog* (Aug. 4, 2015),
28

1 [https://obamawhitehouse.archives.gov/blog/2015/08/04/documented-teachers-educating-and-](https://obamawhitehouse.archives.gov/blog/2015/08/04/documented-teachers-educating-and-enriching-their-communities)
2 [enriching-their-communities.](https://obamawhitehouse.archives.gov/blog/2015/08/04/documented-teachers-educating-and-enriching-their-communities)

3 One of the DACA educators interviewed for this brief became a public middle and high
4 school math teacher in Los Angeles because he felt he could be particularly effective with
5 immigrant students who share his background. He is open with students about his immigration
6 status and his childhood in an economically depressed immigrant community. He believes his
7 openness helps students to feel safe so they can focus on their studies. He believes that students
8 trust him as a mentor and confidante in ways that help their morale and academic progress.

9 The end of the DACA program will mean that California schools will lose qualified,
10 committed teachers. Their students, meanwhile, will lose trusted mentors and role models who
11 are able to understand a shared background. These are losses that our schools and students can ill-
12 afford to bear.

13 **IV. DHS Entirely Failed to Consider the Promotion of Education, a Core Element of the**
14 **DACA Program, When It Decided to Rescind DACA.**

15 None of the vital concerns discussed here were considered by DHS when it decided to
16 rescind DACA. Despite education being a core element of the DACA program, DHS gave no
17 consideration to any education concerns whatsoever. This flagrant omission undermines any
18 argument that DHS undertook a reasoned analysis in making its decision.

19 An agency's decision to rescind a rule is invalid under the Administrative Procedure Act
20 (APA) if it is "arbitrary" and "capricious." 5 U.S.C. § 706(2)(A); *see Motor Vehicle Mfrs. Ass'n*
21 *of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 49-51 (1983) (finding a rule
22 rescission was arbitrary and capricious because the agency did not show sufficient analysis of the
23 change in policy). An agency is obligated to supply a reasoned analysis of its decision to rescind a
24 rule based on the consideration of relevant factors, and "an agency [decision] would be arbitrary
25 and capricious if the agency has . . . entirely failed to consider an important aspect of the
26 problem." *Motor Vehicle Mfrs. Ass'n*, 463 U.S. at 43. A reasoned analysis cannot disregard the
27 facts and circumstances that underlay the prior agency action being revoked. *See Organized Vill.*
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1 *of Kake v. U.S. Dep't of Agric.*, 795 F.3d 956, 968 (9th Cir. 2015) (citing *FCC v. Fox Television*
2 *Stations, Inc.*, 556 U.S. 502, 516 (2009)).

3 Plaintiffs have identified many relevant considerations that were disregarded by DHS in
4 its rescission of DACA. *See, e.g.*, Univ. of Cal. Compl. ¶¶ 12, 54 (stating that Defendants failed
5 to consider the previous administration's arguments as to why DACA is lawful); State of Cal.
6 Compl. ¶ 108 (noting that Defendants did not address DHS's previous rationale regarding the use
7 of prosecutorial discretion to focus limited resources on priority individuals). In addition, DHS
8 gave no consideration to the critical policy determinations concerning the promotion of K-12
9 education and DACA recipients' contributions to society that are central to the DACA program.

10 DACA derived from the Secretary of Homeland Security's broad statutory authority to
11 "[e]stablish[] national immigration enforcement policies and priorities." 6 U.S.C. § 202(5). In the
12 2012 DACA Memorandum, the Secretary premised DACA in part on the determination that U.S.
13 immigration law is not "designed to remove productive young people" of whom many "have
14 already contributed to our country in significant ways." Memorandum from Janet Napolitano,
15 Sec'y of DHS, to David Y. Aguilar, Acting Comm'r, CBP, et al., *Exercising Prosecutorial*
16 *Discretion with Respect to Individuals Who Came to the United States as Children*, at 2 (June 15,
17 2012), [https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-](https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf)
18 [who-came-to-us-as-children.pdf](https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf). The Memorandum conditioned eligibility for relief on whether
19 the applicant "is currently in school, has graduated from high school, [or] has obtained a general
20 education development certificate" *Id.* at 1. Thus, education is core to the DACA program.

21 DHS's limited justification for rescinding DACA makes no reference to these important
22 policy considerations. Not only has DACA granted deferred action to young people committed to
23 their education, it has the practical effect of enabling hundreds of thousands of those individuals
24 to pursue higher-level degrees, grow the U.S. economy, and give back to society in innumerable
25 ways, including by becoming educators themselves. By entirely failing to consider DACA's
26 policy of promoting education or the impact that rescinding DACA would have on public
27 education and DACA recipients' contributions to society, DHS acted arbitrarily and capriciously.
28 *See Organized Vill. of Kake*, 795 F.3d at 968.

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V. Conclusion.

The rescission of DACA will do serious harm to California’s K-12 schools and students. DACA gives young people a reason and an opportunity to succeed in school. By taking away the prospect of advanced learning and gainful employment, DACA rescission will rob society of the contributions of motivated, invested DACA recipients. DACA recipients who have already completed their studies will lose the ability to obtain legal employment, squandering not only their own hard work, but the resources that their schools and teachers have invested in them. The end of DACA would also deprive school districts of qualified teachers and mentors, diminish diversity in the teaching corps, and destabilize school environments. To prevent these harms, and to allow schools and students to succeed, *Amici* respectfully request that the Court grant Plaintiffs’ request for a preliminary injunction.

Dated: November 1, 2017

Respectfully submitted,

By: /s/ Emma Leheny

Emma Leheny (196167)
Alice O’Brien (180208)
National Education Association
1201 16th Street, N.W.
Washington, D.C. 20036
Tel: (202) 822-7035
Fax: (202) 822-7033
eleheny@nea.org
aobrien@nea.org

Attorneys for National Education Association

Abhas Hajela (173155)
Capitol Advisors, LLC
925 L Street, Suite 1200
Sacramento, CA 95814
Tel: (916) 719-9438
Fax: (916) 443-7468
abe@capitoladvisors.org

Attorney for Association of California School Administrators

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Andra M. Donovan (177792)
San Diego Unified School District
4100 Normal Street, Room 2148
San Diego, CA 92103
Tel: (619) 725-5630
Fax: (619) 725-5639
adonovan@sandi.net

*Attorney for Berkeley Unified School District,
Moreno Valley Unified School District, San Diego
Unified School District, and West Contra Costa
Unified School District*

Kathryn M. Sheffield (218407)
California Faculty Association
980 9th Street, Suite 2250
Sacramento, CA 95814
Tel: (916) 441-4848
Fax: (916) 441-3513
ksheffield@calfac.org

Attorney for California Faculty Association

Glenn Rothner (67353)
Rothner, Segall & Greenstone
510 South Marengo Avenue
Pasadena, CA 91101
Tel: (626) 796-7555
Fax: (626) 577-0124
grothner@rsglabor.com

Attorney for California Federation of Teachers

Elaine M. Yama-Garcia (182210)
D. Michael Ambrose (274952)
California School Boards Association
Education Legal Alliance
3251 Beacon Boulevard
Sacramento, CA 95691
Tel: (800) 266-3382
Fax: (916) 374-3407
eyama-garcia@csba.org
mambrose@csba.org

Attorneys for California School Boards Association

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Laura P. Juran (199978)
Jean Shin (228423)
California Teachers Association
1705 Murchison Drive
Burlingame, CA 94010
Tel: (650) 552-5440
Fax: (650) 552-5019
ljuran@cta.org
jshin@cta.org
Attorneys for California Teachers Association

Vibiana M. Andrade (98333)
Los Angeles County Office of Education
9300 Imperial Highway
Downey, CA 90242
Tel: (562) 922-6123
Fax: (562) 469-4334
andrade_vibiana@lacoed.edu
*Attorney for Los Angeles County Superintendent of
Schools and Los Angeles County Board of Education*

David Holmquist (179872)
Devora Navera Reed (188675)
Los Angeles Unified School District
333 South Beaudry Avenue, 20th Floor
Los Angeles, CA 90017
Tel: (213) 241-7600
Fax: (213) 241-8444
david.holmquist@lausd.net
devora.naverareed@lausd.net
Attorneys for Los Angeles Unified School District

Michael L. Smith (217751)
Oakland Unified School District
1000 Broadway, Suite 680
Oakland, CA 94607
Tel: (510) 879-8696
Fax: (510) 879-4046
mike.smith@ousd.org
Attorney for Oakland Unified School District

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Raoul Bozio (212073)
Sacramento City Unified School District
5735 47th Avenue
Sacramento, CA 95824
Tel: (916) 643-9097
Fax: (916) 399-2020
Raoul-bozio@scusd.edu

*Attorney for Sacramento City Unified School
District*

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SIGNATURE ATTESTATION

I hereby attest that I have on file all holograph signatures for any signatures indicated by a “conformed” signature (/s/) within this e-filed document.

By: /s/ Emma Leheny
Emma Leheny (196167)