

Consolidated Case Nos. 18-15068, 18-15069, 18-15070, 18-15071, 18-15072, 18-15128

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA *et al.*,
Plaintiffs-Appellees,

v.

U. S. DEPARTMENT OF HOMELAND SECURITY *et al.*,
Defendants-Appellants.

On Appeal from the United States District Court
for the Northern District of California
Nos. 17-05211, 17-05235, 17-05329, 17-05380, 17-05813
Hon. William Alsup, United States District Judge

**BRIEF OF PUBLIC EDUCATION GROUPS AS AMICI CURIAE
IN SUPPORT OF PLAINTIFFS-APPELLEES
FOR AFFIRMANCE OF PRELIMINARY INJUNCTION**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, *amici* AASA, The School Superintendents Association; Association of California School Administrators; California Faculty Association; California Federation of Teachers; California School Boards Association; California Teachers Association; National Education Association; and National School Boards Association state that they are not publicly-held corporations, do not issue stock, and do not have parent corporations.

/s/ Jason Walta
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People of State of Cal. ex rel. Van De Kamp v. Tahoe Reg’l Planning Agency, 766 F.2d 1319 (9th Cir. 1985), amended by 775 F.2d 998 (9th Cir. 1985)7

Other Authorities

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>26

Dan Goldhaber et al., Univ. of Washington Bothell, *The Theoretical and Empirical Arguments for Diversifying the Teacher Workforce: A Review of the Evidence* (Ctr. for Educ. Data & Research, Working Paper No. 2015-9)..... 24, 25

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>27

Jason A. Grissom, Luis A. Rodriguez & Emily C. Kern, *Teacher and Principal Diversity and the Representation of Students of Color in Gifted Programs*, 117 Elementary Sch. J. 396 (2017)24

Jason T. Downer et al., *Teacher-Child Racial/Ethnic Match Within Pre-Kindergarten Classrooms and Children’s Early School Adjustment*, 37 Early Childhood Res. Q. 26 (2016)24

Jie Zong et al., Migration Policy Inst., *A Profile of Current DACA Recipients by Education, Industry, and Occupation* (2017)..... 18, 20

Matthew Ronfeldt et al., *How Teacher Turnover Harms Student Achievement*, 50 Am. Educ. Res. J. 4 (2013) 19, 20

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

Nat’l Scientific Council on the Developing Child, *Persistent Fear and Anxiety Can Affect Young Children’s Learning and Development* (Harvard Univ. Ctr. on the Developing Child, Working Paper No. 9, 2010), <http://developingchild.harvard.edu/wp-content/uploads/2010/05/Persistent-Fear-and-Anxiety-Can-Affect-Young-Childrens-Learning-and-Development.pdf>17

Office of Planning, Evaluation & Policy Dev., U.S. Dep’t of Educ., *The State of Racial Diversity in the Educator Workforce* (July 2016), <https://www2.ed.gov/rschstat/eval/highered/racial-diversity/state-racial-diversity-workforce.pdf> 23, 25

Office of Postsecondary Educ., U.S. Dep’t. of Educ., *Teacher Shortage Areas Nationwide Listing 1990-1991 through 2017-2018* (June 2017), <https://www2.ed.gov/about/offices/list/ope/pol/ateachershortageareasreport2017-18.pdf>20

Randy Capps et al., Migration Policy Inst., *Implications of Immigration Enforcement Activities for the Well-Being of Children in Immigrant Families: A Review of the Literature* (2015)13

Roberto G. Gonzales et al., Ctr. for American Progress, *Taking Giant Leaps Forward: Experiences of a Range of DACA Beneficiaries at the 5-Year Mark* (2017)8

- U.S. Citizenship & Immigration Servs., *Approximate Active DACA Recipients* (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.pdf3, 25
- 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=.0583fbf55b1720

I. INTRODUCTION

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 the program began, many DACA recipients have completed high school and entered four-year colleges and universities. Almost 9,000 DACA recipients have joined the education profession. DACA teachers have helped alleviate the shortage of qualified educators, particularly in high needs schools and communities, and they serve as role models for the next generation of students, one that is increasingly diverse.

Following the September 5, 2017 decision by the Trump administration to rescind DACA,¹ the Department of Homeland Security (DHS) immediately stopped accepting DACA applications and attempted to cut off renewal applications 30 days later. On September 8, 2017, Plaintiffs filed this action. The district court granted Plaintiffs' request for provisional relief on January 9, 2018 by

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

issuing the preliminary injunction now before this Court. The injunction re-opened the door to DACA renewal applications. For the reasons we present below on behalf of millions of education stakeholders, we urge the Court to affirm the district court's preliminary injunction.

The elimination of DACA would wipe out the educational and professional gains made by DACA recipients and cause irreparable harm to the education communities where they live, work, and attend school. The DHS announcement already has destabilized schools and disrupted classrooms. If this Court does not affirm the injunction, the loss of much-needed DACA educators will worsen. Students will be irreparably harmed by the abrupt loss of trusted teachers who otherwise would have renewed their DACA status. And DACA recipients will be robbed of their public service careers, thwarted in their efforts to give back to a public education system that has given so much to them. *Amici* therefore urge the Court to uphold the January 9, 2018 preliminary injunction.

II. INTEREST OF AMICI CURIAE

Amici curiae represent millions of public school educators, superintendents, administrators, and elected school board members, whose shared purpose is to educate students regardless of their immigration status.² *Amici's* members know

² *Amici* submit this brief pursuant to Fed. R. App. P. 29(a)(2); all parties have consented to its filing. No party or party's counsel authored this brief in whole or

well the contributions made by DACA recipients and the harm that will befall their education communities if the preliminary injunction is lifted. *Amici* are:

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

Association of California School Administrators (ACSA) serves more than 18,000 California school administrators, including many who work in K-12 schools with DACA staff and students.

Berkeley Unified School District enrolls over 9,000 K-12 students. Berkeley immediately neighbors the metro area of San Francisco, Oakland, and Hayward, which has the ninth-most DACA recipients in the nation, approximately 15,500.³

Butte County Office of Education supports over 31,000 students enrolled in fourteen school districts. Butte COE also runs the statewide Mini-Corps program, which hires and trains over 400 bilingual college students to tutor more

in part, and no party or person other than *amici* contributed money to fund its preparation or submission. Fed. R. App. P. 29(a)(4).

³ U.S. Citizenship & Immigration Servs., *Approximate Active DACA Recipients: Leading Core Based Statistical Areas* 8 (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.

than 4,500 K-12 migrant youth across California. DACA recipients are among the college-student tutors employed in the Mini-Corps program.

California Faculty Association (CFA) represents 28,000 faculty employed by California State University. DACA recipients are among the membership of CFA and the students they serve. CFA is affiliated with *amici* California Teachers Association and National Education Association.

California Federation of Teachers (CFT), through its 135 affiliates, represents more than 120,000 teachers, faculty, librarians, nurses, counselors and classified employees working in California's public schools, private schools, community colleges, and the University of California system. DACA recipients are among the membership of CFT and the students they serve.

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

California Teachers Association (CTA) represents 325,000 education employees who work in California's more than 1,000 public school districts. DACA recipients are among the membership of CTA and the students they serve. CTA is affiliated with *amicus* National Education Association.

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

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

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

Moreno Valley Unified School District enrolls over 34,000 K-12 students in 41 schools. Moreno Valley immediately neighbors the metro area of Riverside, San Bernardino, and Ontario, California, which has the sixth-most DACA recipients in the nation, over 22,000.

National Education Association represents more than three million education employees, including teachers, counselors, nurses, and support professionals throughout the country. The DACA recipients who belong to *amici* CFA and CTA are also members of NEA.

National School Boards Association (NSBA), through its state associations of school boards, including *amicus* CSBA, represents the nation's 95,000 board members who, in turn, govern approximately 13,800 local districts serving more than 50 million public school students. NSBA has long advocated for equitable access to public schools. Article IV, Section 1.3 of NSBA's Beliefs and Policies states: "Public schools should provide equitable access and ensure that all students have the knowledge and skills to succeed," regardless of immigration status.

Oakland Unified School District enrolls nearly 50,000 K-12 students in 118 schools. Oakland is in the metro area with the ninth-most DACA recipients in the country. Together with San Francisco and Hayward, Oakland is home to approximately 15,500 DACA recipients.

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

San Diego Unified School District enrolls almost 130,000 K-12 students.

San Diego and neighboring Carlsbad are ranked 12th in the nation in the number of DACA recipients, with more than 11,300.

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

III. ARGUMENT

A. The Preliminary Injunction Serves the Public Interest.

The public interest is one of four key factors that courts weigh in granting injunctive relief. *See Hernandez v. Sessions*, 872 F.3d 976, 996–97 (9th Cir. 2017) (affirming a preliminary injunction in part to protect interests of the public).

Where the impact of an injunction reaches beyond the litigants, affecting the public, “a federal court’s equitable powers assume an even broader and more flexible character than when only a private controversy is at stake.” *Kansas v. Nebraska*, 135 S. Ct. 1042, 1053 (2015) (internal quotation marks and citations omitted); *see also People of State of Cal. ex rel. Van De Kamp v. Tahoe Reg’l Planning Agency*, 766 F.2d 1319, 1324 (9th Cir. 1985) (recognizing a district court’s broad discretion to fashion equitable relief in furtherance of the public interest), *amended by* 775 F.2d 998 (9th Cir. 1985). Here, the public has a critical

interest in the education and professional growth of the nation's youth. As *amici* set forth below, rescinding DACA would irreparably harm students and their education communities. Because the preliminary injunction addresses that irreparable harm and serves the public interest, it should be affirmed.

B. DACA Supports Students Who Have Embraced Opportunities, Deepened Engagement at School, and Pursued Goals Previously Believed Unattainable.

The DACA program has motivated countless young people to stay in school and further their education, according to the definitive longitudinal study on DACA recipients. The five-year study, conducted by Professor Roberto G. Gonzales at the Harvard Graduate School of Education, finds that 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 American 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. DACA is a demonstrated asset to K-12 matriculation.

“I could finally serve my community.” This was the reaction of Angelica Reyes upon learning of DACA.⁴ As a public school student in L.A., Reyes dreamed of becoming an educator, but felt that advanced academic and professional opportunities were out of reach because she was undocumented. 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.” Once Reyes obtained the work authorization conferred by her DACA status, she was able to get a job to pay for her tuition. While earning her teaching credential at UCLA, she also worked for several non-profit advocacy organizations that assist K-12 students with college preparedness, financial aid, health and nutrition, immigrant and racial justice, and recovery from domestic violence. Reyes is now a valued member of the teaching corps in the district where she herself was a student, LAUSD. Reyes teaches Advanced Placement U.S. and World History.

⁴ To provide the Court with an expanded understanding of how DACA has impacted public education, *amici* have interviewed numerous students, graduates, educators, school administrators, and board members. 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.

“The basic sense of human dignity.” Kateri Simpson teaches at a public school in Oakland, California. Undocumented students and DACA recipients are part of the school’s student body. 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 that paid at least minimum wage. 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.”

“A doorway to college.” A student who received DACA while still in high school recalls teachers encouraging her to prepare for college. She was a good student but felt higher education was out of reach because she was undocumented. For her, DACA opened “a doorway to college.” The student renewed her efforts at school and was admitted to the University of California. She is now in her junior year and majoring in psychology. She is able to afford tuition and serve as a public education employee by working for the University. Her goal is to attend graduate school and become a school counselor. Her public service career will be unattainable if she cannot renew her DACA status.

“A vehicle to better opportunities.” As a public school student in Texas, Roberto Valadez dreamed of becoming an academic, but his lack of 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 was accepted to the University of Texas at El Paso. 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.” To pursue his hope of graduate school and a career in education, Valadez must be able to renew his DACA status.

“DACA was a motivator.” Prior to receiving DACA, Texas college student 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, he received DACA and it “was a motivator.” Without it, “I would not have pushed my limits.” Ramirez is now the first in his family to go to college. He studies public health with the goal of pursuing a career in nursing. “Losing DACA would be devastating” for Ramirez because it will foreclose his public service career aspirations.

Everything will come “crashing down.” Raul Ramirez thought “the possibility of going to college was nonexistent” and “out of reach” before he received DACA. With DACA, however, he was excited to work hard in school and apply to colleges. Ramirez now studies nursing at the University of Rochester and has set his sights on medical school. But once DACA was put in jeopardy, “[t]hat was the point when everything I planned to do, including nursing school, came crashing down.” It is difficult to “have a plan for the future” in this period of uncertainty, and only the injunction allows Ramirez to stay the course with his studies.

These are just a few of the thousands of student and educator stories around the country. By opening the door to higher education and meaningful work in fields of public service, DACA gives young people a reason and the opportunity to succeed in their K-12 studies and beyond. If they lose their DACA status, the achievements they have worked so hard to attain will be diminished. The nation’s investments in educating and training DACA holders will be for naught. And for DACA recipients still in high school, the opportunities that motivated young people—and improved high school matriculation rates—will summarily vanish.

C. The Preliminary Injunction Shields Public Schools from Harms to Teaching and Learning.

The harm caused by the loss of DACA would not be borne by its recipients alone. Threats to end the program significantly disrupt classrooms and destabilize

school districts, producing effects that reverberate throughout communities. Without DACA renewals, the status of thousands of educators will expire on different dates throughout the school year. Teachers and staff will abruptly vanish from classrooms to the distress of their students and to the measurable detriment of educational outcomes. The loss of these DACA educators will worsen already-serious teacher shortages, deprive students of mentors and role models, and strip the teaching corps of much-needed diversity.

1. Threats to End DACA Destabilize the Classroom.

Public school administrators report that the attempts by DHS to terminate DACA create 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. Children often misunderstand whether they or their families have legal immigration status. Even those with legal status often believe “immigrant” is synonymous with unauthorized presence in the U.S. Randy Capps et al., Migration Policy Inst., *Implications of Immigration Enforcement Activities for the Well-Being of Children in Immigrant Families: A Review of the Literature* 6 (2015). As a result, students fear that they or their authorized relatives are in danger of being deported, which escalates their anxiety—and that of the classmates around them.

“We cannot tell them that everything will be okay.” Steve Corona is a member of the school board for Fort Wayne Community Schools, the largest school district in Indiana, where he has served for 36 years. He states that at the high school with the largest concentration of Hispanic students, the anxiety level of students has increased dramatically since the September 5, 2017 rescission announcement. A superintendent in Long Island, New York noted 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.” Heidi Sipe is the superintendent of the Umatilla School District in eastern Oregon. Umatilla is in a rural area and serves primarily Hispanic students. Sipe 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 it is not true.”

“Every single student is affected.” Cindi Marten is the Superintendent of San Diego Unified School District, which has a majority-Hispanic student population. The September 5, 2017 announcement of DACA rescission and enjoined attempt to halt renewal applications has already 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.” She observes that “as soon as you destabilize your school, you’re not delivering the quality of education that children deserve.” Marten emphasized that “the educational outcomes for our students are going to be compromised.”

“Students are unable to focus.” Sacramento City Unified School District Superintendent Jorge Aguilar reports that the September announcement threatening to end DACA already 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.” Matt Charlton, the superintendent of the Manson School District in Washington State, echoes these observations, noting that in his rural, majority-Hispanic district, there is now an overall “feeling of angst . . . that translates from families down to the kids . . . which impacts the classroom” and harms children’s ability to learn. And the accompanying anti-immigrant statements made by President Trump, especially those targeting DACA, have made the students of Renata Hewlette, a Long Island English Language

Learning teacher, extremely scared. As a result, her students are distracted and preoccupied in class and less able to focus on their studies.

“Conditions where educating students is harder.” Superintendent Matt Utterback, of the North Clackamas School District in the suburbs of Portland, Oregon 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.”

Superintendent Theron Schutte, of the Marshalltown Community School District in Iowa, has 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.” Susan Bergtraum, President of the New York State School Boards Association, says the anxiety around threats to DACA “leads to conditions where educating students is harder, which significantly impairs the ability of school boards to fully discharge their obligations to provide educational opportunities to all students as they are legally and constitutionally obligated to do.” The preliminary injunction curbs these ill effects and stabilizes the education environment. Schools will devolve into deepened disarray if the injunction is lifted.

The experiences of these administrators and school leaders are reflected in academic research. A working paper by the Harvard University Center on the

Developing Child found that such persistent anxiety can change a child's brain and negatively affect their physical, cognitive, and emotional development, which in turn impacts their ability to learn effectively in school. Nat'l Scientific Council on the Developing Child, *Persistent Fear and Anxiety Can Affect Young Children's Learning and Development 5* (Harvard 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>.

“There is not a light at the end of the tunnel for these kids.” The announced end of DACA also has caused many students to stop working towards their goals as they see carefully crafted plans unravel. Arianna Martinez, an Associate Professor at LaGuardia Community College in New York, teaches many DACA recipients. Those college students' “entire relationship to education and their future” has changed as the students now feel there is no point to obtaining a degree. Through her own academic research, Martinez has found that older DACA recipients enrolled in GED or ESL classes to prepare for college are struggling to envision a way forward. Superintendent Sipe spoke emotionally of a brilliant student who dreams of becoming a pediatrician but may no longer even consider college. Sipe also knows DACA students who have dropped out of college because of their disappointment and feeling of “why bother investing [in their

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

The loss of DACA would also mean that our nation’s schools would lose almost 9,000 valued education employees. Jie Zong et al., Migration Policy Inst., *A Profile of Current DACA Recipients by Education, Industry, and Occupation* 8

(2017). 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 like testing periods would irreversibly harm children and their educational outcomes. The preliminary injunction helps abate these disruptions until the merits of Plaintiffs' claims are adjudicated. An example of the harm caused by lapsing DACA status is second-grade teacher Karina Alvarez. While awaiting the delayed renewal of her DACA work permit, Alvarez was forced to temporarily resign from her classroom. Seven-year-olds cannot comprehend the reasons for such a loss, but research abundantly shows events like this diminish trust and thus students' psycho-social wellbeing and educational outcomes. During Alvarez's absence, her second-graders lost educational progress and relationship continuity with a trusted teacher. This 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 DACA teachers who leave 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. These impacts will only escalate in schools if the preliminary injunction is dissolved. A reversal of this provisional relief will place children in an unmitigated state of uncertainty.

2. Severe Teacher Shortages Would Only Worsen Absent the Injunction.

Throughout the country, states face a critical shortage of teachers. The U.S. Department of Education has found that “every state is dealing with shortages of teachers in key subject areas” in the 2017-18 school year. Valerie Strauss, *Teacher Shortages Affecting Every State As 2017-18 School Year Begins*, 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* Office of Postsecondary Educ., U.S. Dep’t. of Educ., *Teacher Shortage Areas Nationwide Listing 1990-1991 through 2017-2018* (June 2017), <https://www2.ed.gov/about/offices/list/ope/pol/ateachershortageareasreport2017-18.pdf>. DACA has helped districts ease these shortages. Approximately 9,000 DACA recipients nationwide work in education. Zong et al., *supra*, at 8. At a time when the nation can ill afford to lose teachers, the reversal of the district court’s provisional relief allowing for DACA renewals would lead to a significant loss of educational employees.

School leaders throughout the country report significant teacher shortages. In Oregon, Superintendent Sipe noted that her district posts positions for three to six months without receiving a single application. And Superintendent Utterback stated that his district has not been fully staffed for 18 months. In Sacramento, Superintendent Jorge Aguilar reports that his district is heavily impacted by the teacher shortage that is felt throughout California. He knows of employees who receive DACA and he fears the end of DACA would exacerbate the district's already-critical need for qualified staff.

K.R. is a Texas educator with DACA who teaches special education to hearing-impaired pre-K children. A course she took on deaf education was her "light at the end of the tunnel" and she knew she wanted to dedicate her life to teaching children with limited communication abilities. Absent the preliminary injunction, K.R.'s DACA and work authorization will expire, ending her career and very likely leaving her students without a specialized teacher due to a shortage of teachers for hearing-impaired students.

R.A. teaches history in a Bronx, New York high school. Receiving DACA "completely changed [his] life" and enabled him to pursue his dreams. R.A. has been able to extern in the U.S. Congress. Through his studies at UCLA, he became inspired to become an educator, in order to give something back. R.A.'s students are concerned he will no longer be able to teach them and have told him that "we

want you in the classroom.” This will not be possible unless R.A. can renew his DACA status.

Vicente Rodriguez was able to enter the University of California when he received DACA. An aspiring educator, Rodriguez graduated with a degree in both English and Ethnic Studies. He works as the Director of Social Services at a non-profit coordinating its after-school program. Rodriguez knows excellent DACA teachers who stand to lose their employment. Rodriguez points out that without DACA these highly educated individuals would likely choose to leave the U.S. to continue teaching. And absent the preliminary injunction, Rodriguez’s DACA will expire before he can complete a graduate teaching program.

Without DACA renewals, many aspiring educators will not have the chance to fill critical vacancies. Mike Walsh, President of the California School Boards Association and a Trustee of the Butte County Office of Education, observes that the Butte COE California Mini-Corps, which provides tutoring services to K-12 youth in migrant populations throughout the state, stands to lose numerous college-student tutors who hold DACA. Walsh notes, “About eighty percent of tutors go on to obtain a teaching credential or permit to continue to be involved in education. That’s a huge opportunity for them to . . . educate more students who are dealing with bilingual and migrant work.” The Mini-Corps tutors are “in the pipeline to become teachers, administrators, [and] superintendents.” If these tutors

are no longer able to work lawfully, Mini-Corps will lose hard-to-replace staff and the state will lose committed educators. Juana Zamora, the Director of Mini-Corps, has found that uncertainty around the future of DACA has created “a great deal of fear and apprehension among our DACA tutors.” It has already affected Mini-Corps’ work. “Some [DACA tutors] refrain from participating in program components” that require travel, for fear of “inadvertently jeopardizing their legal status.”

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. Reversing the preliminary injunction will bar them from the classrooms that so urgently need them. Countless students stand to lose the very support, instruction, and motivation that these aspiring educators and other public servants received because of DACA.

3. DACA Increases 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.” Office of Planning, Evaluation & Policy 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>.

For minority students, having a teacher who reflects a student's own ethnicity has a particularly positive effect. There are "meaningful 'role model effects' when minority students are taught by teachers of the same race." Dan Goldhaber et al., Univ. of Washington Bothell, *The Theoretical and Empirical Arguments for Diversifying the Teacher Workforce: A Review of the Evidence* 6 (Ctr. for Educ. Data & Research, Working Paper No. 2015-9). These effects are not subjective, but actually make 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, Luis A. Rodriguez & Emily C. Kern, *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*, 37 *Early Childhood Res. Q.* 26, 36 (2016).

It is therefore critical for schools to hire teachers from minority backgrounds to keep pace with the growing immigrant population. Yet districts have had difficulty doing so. The superintendents interviewed spoke of the gap between the number of Hispanic students compared to that of Hispanic educators. Between 2003 and 2012, “the increase in the percentage of Hispanic students [in the U.S.] far outpaced the modest increase in the percentage of Hispanic teachers.” Goldhaber et al., *supra*, at 1. In the 2011-12 school year, 24% of students were Hispanic, while only 8% of teachers were Hispanic. Office of Planning, Evaluation & Policy Dev., *supra*, at 6. The disparity between the increased need for Hispanic teachers and the lagging number of Hispanic teachers that districts are able to hire, is only expected to grow: “students of color are expected to make up 56 percent of the student population by 2024.” *Id.* at 1.

Districts thus have a critical need to hire an increasing number of Hispanic teachers to serve the needs of their expanding Hispanic student populations. DACA teachers have helped to meet this growing need, given that over 93% of DACA recipients were born in Latin American countries. U.S. Citizenship & Immigration Servs., *Approximate Active DACA Recipients: Country of Birth 1* (Sept. 4, 2017), https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/daca_population_data.pdf. Indeed, some districts have specifically

recruited DACA recipients. *See, e.g.,* Alexia 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>.

Many DACA educators acknowledge that their background makes them especially important to students, and that they have been drawn to teaching because of their desire to act as role models. For example, Angelica Reyes, who teaches Advanced Placement U.S. and World History in South Central Los Angeles, says many of her students come from immigrant backgrounds. Some of the students at her school are undocumented. Reyes believes that because she can understand the experiences of her students, she is uniquely able to teach them. She knows how to make American history relevant to them, because she can empathize with and incorporate their perspectives.

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

Similarly, Jaime Ballesteros, a California DACA educator, said that he became a teacher because he knew he could reach immigrant students: “I wanted to amplify the voices of students and families who shared both my story and values. I wanted to ensure that there would be even just one less child who felt isolated and helpless because of his or her immigration status.” Ginette Magaña, *DACAmented Teachers: Educating and Enriching Their Communities*, Obama White House: Blog (Aug. 4, 2015), <https://obamawhitehouse.archives.gov/blog/2015/08/04/dacamented-teachers-educating-and-enriching-their-communities>.

DACA recipient Karina Alvarez speaks to her second-graders, many of whom are Hispanic and some undocumented, about her own experience as an undocumented immigrant. Alvarez believes that her students “need to have a role model that has walked in their shoes . . . they need to see that college is in their reach, that it is possible for them to be a teacher or whatever they want to be.”

A.Z. teaches Spanish in Texas. She attended public schools and graduated second in her class, playing sports and musical instruments, and participating on student council. Growing up, she did not have many Hispanic teachers and decided to become a teacher so she could help her students feel that they could go to college. In addition to teaching Spanish, she mentors students in a college preparation program that she herself participated in as a student. A.Z. connects with and motivates her students as a result of their shared background. She enjoys

building relationships with her students and inspiring them to work harder. Absent the preliminary injunction allowing for renewal applications, she will have to stop working with her mentees during their critical senior year as her DACA expires.

Administrators recognize the need for a diverse teaching staff.

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

Public K-12 schools and universities stand to lose close to 9,000 education employees. Their students would lose trusted mentors who share their background

and experiences. These are losses that public schools, universities, and students cannot bear.

IV. CONCLUSION

The elimination of DACA will irreparably harm not only DACA students and educators, but also public school communities as a whole. DACA rescission will deprive schools and universities 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, countless young people will lose the motivation to succeed and society will forego the contributions of DACA recipients who seek to serve as public educators. DHS efforts to end DACA and halt renewal applications already have disrupted classrooms. To prevent these compounding losses to public education, *amici* respectfully request that this Court affirm the district court's preliminary injunction.

Respectfully submitted,

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This brief complies with the typeface and type-style requirements of Fed. R. App. P. 32(a)(5) and (6) because it uses a proportionally spaced typeface (Times New Roman) in 14-point. It complies with the type-volume limits of Fed. R. App. P. 29(a)(5) because it contains 6,379 words, which is less than half of the 14,000 words allowed for principal briefs under Ninth Circuit Rule 32-1(a).

/s/ Jason Walta
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CERTIFICATE OF SERVICE

I hereby certify that on March 20, 2018, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

/s/ Jason Walta
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