

**Consolidated Case Nos. 18-15068, 18-15069, 18-15070, 18-15071, 18-15072, 18-15128, 18-15133, 18-15134**

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

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REGENTS OF THE UNIVERSITY OF CALIFORNIA, et al.,

*Plaintiffs – Appellees,*

v.

U.S. DEPARTMENT OF HOMELAND SECURITY, et al.,

*Defendants – Appellants.*

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On Appeal from the United States District Court  
for the Northern District of California,  
Honorable William H. Alsup, Presiding

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**BRIEF FOR *AMICI CURIAE*  
AMERICAN PROFESSIONAL SOCIETY  
ON THE ABUSE OF CHILDREN AND  
CALIFORNIA PROFESSIONAL SOCIETY  
ON THE ABUSE OF CHILDREN  
IN SUPPORT OF PLAINTIFFS - APPELLEES**

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## **INTEREST OF *AMICI CURIAE***

The American Professional Society on the Abuse of Children (“APSAC”) is the leading national organization for professionals serving children and families affected by child maltreatment, which includes both abuse and neglect. A multidisciplinary group, APSAC achieves its mission through expert training and educational activities, policy leadership and collaboration, and consultation emphasizing theoretically sound, evidence-based principles.

For 30 years, APSAC has played a central role in developing guidelines that address child maltreatment. It is qualified to inform the Court about the damage maltreatment can inflict on children’s brain development and cognitive ability. APSAC submits this brief to assist the Court in understanding the impact of parental detention and deportation on children’s physical, emotional, and mental development.<sup>1</sup> These facts provide important background information useful to a complete understanding of the Memorandum on Rescission of Deferred Action for Childhood Arrivals’ impact.

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<sup>1</sup> *Amici* acknowledge the research assistance of A.S. Lumsdaine, M.P.H.

APSAC members have a direct and substantial interest in these issues because of their historical and scientific experience with juvenile brain development, especially where child maltreatment is involved. APSAC is therefore qualified to advise the Court on the impact of child maltreatment on child and youth health, well-being, and ability to survive.

The California Professional Society on the Abuse of Children (“CAPSAC”) is a State Chapter of APSAC. CAPSAC plays a key role by providing a conduit between national leadership and California members of APSAC. CAPSAC shares APSAC’s direct and substantial interest in the issues addressed in this matter and is qualified to advise the Court on the impacts of child maltreatment.

This brief is filed with the consent of all parties, pursuant to Federal Rule of Appellate Procedure 29(a)(2).

#### **FED. R. APP. P. 29(C)(5) STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 29(c)(5), *amici* certify that no party or party’s counsel authored this brief in whole or in part, or contributed money that was intended to fund preparing or submitting this brief. No person contributed money intended to fund the preparation or submission of this brief.

## SUMMARY OF ARGUMENT

On September 4, 2017, Attorney General Jeff Sessions advised the Department of Homeland Security to end the DACA program, which it immediately did, indicating March 5, 2018 as the day on which DACA protection would cease. In taking this action, DHS endangered the mental and physical health of hundreds of thousands of children—mostly U.S. citizens—of DACA-protected parents.

*Amici* American Professional Society on the Abuse of Children and California Professional Society on the Abuse of Children submit this brief to assist the Court in its review by providing key facts, some the product of very recent research, about the impact of DACA status and its rescission on the children of recipients. The rescission places DACA recipients at immediate risk of detention and deportation. Abundant evidence indicates that the fear that a parent will be deported, let alone the actual detention and deportation, can cause toxic stress that damages the mental and physical health and normal development of children. The DACA rescission at issue here thus strikes at the heart of the Government's obligation to protect children from harm.

Any review of the District Court's order must weigh, in the balance of the public interest, the impact of the Order on the hundreds of thousands of

U.S. citizen children who are at risk of separation from their DACA recipient parents if the rescission is allowed to stand.

### **ARGUMENT**

The September 2017 Rescission Memo issued by DHS takes no notice of the human impact—on U.S. citizens and non-citizens alike—of ending Deferred Action for Childhood Arrivals (DACA) protections.<sup>2</sup> District Judge William Alsup indicated in his opinion and order granting the preliminary injunction that this failure to consider the personal impact played a role in his determination that the rescission is arbitrary and capricious. *Amici* APSAC and CAPSAC focus here on the most vulnerable class of affected persons entirely ignored by the Rescission Memo: the hundreds of thousands of children of DACA recipients, most of whom are U.S. citizens. Because DACA recipients are at immediate risk of detention and deportation if DACA is rescinded, the danger to their children is immediate.

These children are not at risk solely if their parent is actually detained and deported. Research shows that prior to detention and deportation, the

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<sup>2</sup> The brief Memorandum on Rescission of Deferred Action for Childhood Arrival (“Rescission Memo”) makes no mention of the impact this action would have on DACA recipients, much less their children. OB13-14, citing ER130, 125. In listing the factors upon which the rescission is based, the Assistant Secretary included only a review of the relevant litigation, not the impact on affected individuals.

very fact of rescission immediately causes high levels of anxiety and PTSD-like symptoms. Children risk loss of parental nurturance, but also loss of income; food security; housing security; access to health care; access to educational opportunity; and the sense of safety and security that is the foundation of healthy child development.

Children of DACA recipients are not the only children who will suffer; children of documented parents also suffer increased stress, as do affected school communities. Living in families with an average of four members, often of different immigration statuses, and within larger communities, not one DACA recipient is an island. The visible effects of deportation touch neighbors, friends and family; children witness arrests; classmates tell stories of arrests within their families; “for every two adults deported, one citizen-child is directly affected.”<sup>3</sup> What DACA recipients suffer post-rescission will be carried by all who surround them—especially children.

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<sup>3</sup> Luis H. Zayas and Laurie Cook Heffron, *Disrupting young lives: How detention and deportation affect U.S.-born children of immigrants*, Amer. Psych. Ass’n (Nov. 2016), <http://www.apa.org/pi/families/resources/newsletter/2016/11/detention-deportation.aspx>.

**I. RESCISSION OF DACA PROTECTION AFFECTS LARGE NUMBERS OF U.S. CITIZEN CHILDREN OF DACA RECIPIENTS.**

Nearly 700,000 people benefit from DACA protection; approximately 200,000 of them live in California.<sup>4</sup> Reliable estimates find that over 25% of DACA recipients are parents of a U.S. citizen child.<sup>5</sup> By this estimate, approximately 50,000 U.S. citizen children in California, and 200,000 nationwide, have a parent protected from removal by DACA.

To the extent that DACA rescission raises the risk profile for all unauthorized immigrants, a glance at this larger pool is instructive. From 2009-2013, 5.1 million U.S. children under 18 lived with at least one unauthorized immigrant parent (7% of the total U.S. child population). Most of these children were U.S. citizens (79%, or 4.1 million).<sup>6</sup> In California, children living with at least one unauthorized immigrant parent totaled

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<sup>4</sup> U.S. Customs and Immigration Serv., Active DACA Recipients: State of Residence as of Sept. 4, 2017, [daca\\_population\\_data USCIS.pdf](#).

<sup>5</sup> United We Dream, A Portrait of Deferred Action for Childhood Arrivals Recipients 9 (2015), <https://unitedwedream.org/2015/10/report-portrait-deferred-action-childhood-arrivals-daca-recipients/>; Tom Wong, 2017 National DACA Study (University of California, San Diego) 9 (2017), [https://cdn.americanprogress.org/content/uploads/2017/11/02125251/2017\\_DACA\\_study\\_economic\\_report\\_updated.pdf](https://cdn.americanprogress.org/content/uploads/2017/11/02125251/2017_DACA_study_economic_report_updated.pdf).

<sup>6</sup> Migration Policy Institute, A Profile of U.S. Children with Unauthorized Immigrant Parents 1, 3-4 (2016), <https://www.migrationpolicy.org/research/profile-us-children-unauthorized-immigrant-parents>.

1,481,000, making up 33% of the children of all immigrants and 17% of the state's total child population.<sup>7</sup>

The Rescission Memo reaches far into the schools, churches, and communities of hundreds of thousands of children in America. The damage done thereby cannot and must not be underestimated.

## **II. RESCISSION OF DACA PROTECTION IMMEDIATELY PLACES DACA RECIPIENTS IN DANGER OF DETENTION AND DEPORTATION.**

Once DACA protections are rescinded, former DACA recipients will be immediately eligible for detention and deportation. The DHS position on this question is clear:

Recipients of DACA are currently unlawfully present in the U.S. with their removal deferred. When their period of deferred action expires or is terminated, their removal will no longer be deferred and they will no longer be eligible for lawful employment.<sup>8</sup>

Nothing is known about how quickly persons formerly protected by DACA would be picked up. DHS does, after all, hold all the identifying information for these individuals. DHS states that it will not “proactively” share information on the identity of past DACA recipients unless certain

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<sup>7</sup> *Id.* at 9.

<sup>8</sup> U.S. Dep't of Homeland Security, Frequently Asked Questions: Rescission of Deferred Action for Childhood Arrivals (DACA), <https://www.dhs.gov/news/2017/09/05/frequently-asked-questions-rescission-deferred-action-childhood-arrivals-daca>.

conditions are met.<sup>9</sup> Nevertheless, DACA recipients have previously been detained and deported. According to Immigration and Customs Enforcement data recently acquired by the Washington Post, arrests of unauthorized immigrants with no criminal record doubled in fiscal year 2017, to 37,734.<sup>10</sup> Some of these detentions have targeted DACA recipients. DHS does not keep robust data on DACA revocations and does not track DACA detentions, so advocates must rely on anecdotal accounts. They report that DACA recipients have been detained and issued Notices to Appear (“NTA”); DHS then argues that the NTA strips recipients of DACA status, though advocates argue this contradicts the government’s own rules. Rep. Marc Veasey (D-Texas), who has called for an investigation of President Trump’s enforcement actions against DACA recipients, stated that many of his DACA constituents are living in fear and many are being held at border checkpoints for prolonged periods of time.<sup>11</sup>

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<sup>9</sup> *Id.*

<sup>10</sup> B. Hart, Arrests of Undocumented Immigrants Without Criminal Records Skyrocketed in 2017 (Feb. 12, 2018), <http://nymag.com/daily/intelligencer/2018/02/arrests-of-noncriminal-undocumented-immigrants-skyrocket.html>.

<sup>11</sup> Michelle Rodriguez, Trump Administration Has Illegally Attempted To Deport DACA Recipients, Advocates Say, Newsweek (Dec. 2, 2017), <http://www.newsweek.com/trump-administration-has-made-illegal-attempts-deport-daca-recipients-724842>.

Whether former DACA recipients are picked up right away or are never detained at all, the ever-present shadow of fear and anxiety that will loom over entire communities post-rescission has real costs to public health, and especially to the health and well-being of children.

**III. RESCISSION OF DACA PROTECTION WILL CAUSE U.S. CITIZEN CHILDREN TO SUFFER CONTINUING DAMAGE TO THEIR MENTAL AND PHYSICAL HEALTH.**

DACA rescission would not result in immediate removal of all recipients. But it would immediately push DACA recipients, who have been able to live as authorized immigrants, back into unauthorized status. Research shows that unauthorized parental status is a risk factor for children's health, whether or not it results in removal.

**A. Even the threat of detention and deportation causes children to suffer symptoms of traumatic stress and post-traumatic stress disorder.**

Deportation of one or both parents is devastating for a child. And research shows that deportation trauma is not limited to those children whose parents are actually removed; children of DACA recipients and even children of documented immigrants also suffer great fear and anxiety.

Trauma to children who experience detention and deportation of a parent can be severe. Children suffer symptoms like anxiety and insomnia and exhibit signs of fear. Impacts can include mental health symptoms and

disorders like depression, social isolation, self-stigma, aggression, withdrawal, negative academic consequences, separation anxiety, attachment disorder, and post-traumatic stress disorder.<sup>12</sup> Among children whose relatives have been detained or deported, anxiety, withdrawal and anger are common; more than 66% of youth aged 12-17 in one study showed withdrawal or detachment from others six months after a parent's immigration-related arrest.<sup>13</sup> Experiencing a parent's arrest, detention, and deportation accumulates on top of prior stress and can "detrimentally impact their mental health."<sup>14</sup> Moreover, children suffer symptoms such as depression, negative mood, physical symptoms, negative self-esteem, and anxiety disorders whether they accompany their deported parents or stay behind in the United States.<sup>15</sup>

Even the threat of deportation is highly traumatic for children. "As parents' risk of deportation rises, so too does the stress of their children...The lingering possibility of deportation of parents leaves children

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<sup>12</sup> Zayas and Hefron, *supra* n. 3.

<sup>13</sup> Sara Satinsky et al., Family Unity, Family Health: How Family-Focused Immigration Reform Will Mean Better Health for Children and Families 12 (2013), <https://humanimpact.org/wp-content/uploads/2017/09/Family-Unity-Family-Health-2013.pdf>.

<sup>14</sup> Zayas and Hefron, *supra* n. 3.

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

with constant anxiety and vigilance about the potential becoming real.”<sup>16</sup> A 2013 study of family unity and health among mixed-status families found that almost 75% of undocumented parents reported signs of PTSD in their children, compared to 40% of documented parents.<sup>17</sup> Among youth with undocumented parents, 85% reported PTSD symptoms related to their parent’s legal status and risk of deportation, compared to 57% of documented parents.<sup>18</sup>

**B. DACA rescission threatens to cut off access to reliable health care.**

Access to reliable health care is critical to child development and health. Unauthorized immigrants, including DACA recipients, are ineligible for Affordable Care Act coverage, but some DACA recipients have accessed health insurance via college or university health plans or have obtained employment-based insurance. In one survey, more than 25% reported that they got health insurance since DACA and 30% obtained health insurance through an employer.<sup>19</sup> These are positive indicators for the health of DACA recipients’ children, even though many remain uncovered. However, DACA

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<sup>16</sup> Zayas and Hefron, *supra* n. 3.

<sup>17</sup> Satinsky, *supra* n. 13.

<sup>18</sup> *Id.* at 8.

<sup>19</sup> Portrait of Deferred Action, *supra* n. 5, at 21.

rescission will cut off much of the access that exists; former recipients will no longer be able to work and access to higher education will be significantly reduced.

Further, parents no longer protected by DACA will be less likely to seek medical care for their children. Parents “may avoid encounters with providers for fear of discovery...undocumented immigrants make fewer visits to health care providers than citizens with authorized immigrant status.”<sup>20</sup> Doctors and health care providers are bound by federal law to protect patient information,<sup>21</sup> but this fact, if widely known in the immigrant community, does not garner trust.<sup>22</sup>

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<sup>20</sup> Zayas and Hefron, *supra* n. 3.

<sup>21</sup> See, e.g., Jeff Sconyers, JD, and Tyler Tate, MD, How Should Physicians Treat Patients Who Might Be Undocumented?, *AMA Journal of Ethics* 18(3) (March 2016): 229-236, doi:10.1001/journalofethics.2016.18.03.ecas4-1603.

<sup>22</sup> See, e.g., Immigrants, fearing Trump’s deportation policies, avoid doctor visits, PBS (Feb. 27, 2017), <https://www.pbs.org/newshour/health/immigrants-trump-deportation-doctor> (“Evidence that undocumented immigrants are avoiding clinics or hospitals because of the new guidelines is only anecdotal. But researchers have previously found that tightening of immigration policies have resulted in at least some increased fear in immigrant communities, with residents reluctant to leave their homes, go to the doctor, or take other actions they think might put themselves at risk.”); Lisa Zamosky, Health care options for undocumented immigrants, *Los Angeles Times* (Apr. 27, 2014), <http://www.latimes.com/business/la-fi-healthcare-watch-20140420-story.html> (“Many undocumented immigrants ‘say fear of deportation for themselves or family members is a barrier in

**C. DACA rescission is likely to cause income and food insecurity and reduce access to educational opportunity.**

Loss of DACA protections means, among other things, loss of work authorization and income from employment. That loss of income can bring with it food insecurity for children of DACA recipients. Though U.S. citizen children can qualify for food stamps, immigrant families are less likely to apply for them, and children may live in food insecure households indefinitely. Detention of a family member can leave a household food insufficient, with 80% of respondents to one survey stating that they ran out of food six months after detention and lacked money to get more.<sup>23</sup> “Regardless of legal status, children of undocumented immigrants more often suffer from food insecurity than children of U.S. citizens.”<sup>24</sup> Unauthorized immigrant parents “also may not use social services and public programs such as food stamps and child care subsidies, for which their citizen-children are eligible.”<sup>25</sup>

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terms of signing up for coverage and accessing healthcare services,’ says Laurel Lucia, policy analyst at the UC Berkeley Center for Labor Research and Education.”).

<sup>23</sup> Satinsky, *supra* n. 13 at 32-33.

<sup>24</sup> Zayas and Hefron, *supra* n. 20.

<sup>25</sup> *Id.*

DACA rescission is likely to harm access to educational opportunity for several reasons. First, the anxiety, depression, and other symptoms that children will suffer interfere with cognitive ability and focus, and behavioral issues like aggression can interfere with focus and attendance. Second, fear of an unauthorized immigrant parent's discovery and detention creates a climate of fear and avoidance.<sup>26</sup> In one survey of immigration-related raids in six cities, about one in five children had difficulty keeping up in school after the raids.<sup>27</sup>

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<sup>26</sup> Such fear is warranted. Media have reported many instances of parents arrested while taking their children to school. *See, e.g.*, Gary Klein, *Marin man arrested in ICE bust while dropping off child at school*, *Marin Independent Journal* (March 15, 2018), <https://www.mercurynews.com/2018/03/15/marin-man-arrested-in-ice-bust-while-dropping-off-child-at-school/>; Amy B. Wang, *U.S. immigration authorities arrest chemistry professor after he finishes getting his children ready for school*, *Independent* (Feb. 5, 2018), <http://www.independent.co.uk/news/world/americas/syed-ahmed-jamal-us-ice-arrest-immigrant-student-visa-donald-trump-daca-lawrence-kansas-professor-a8194736.html> (the detainee has three U.S. citizen children and no criminal record); Andrea Castillo, *Immigrant arrested by ICE after dropping daughter off at school, sending shockwaves through neighborhood*, *Los Angeles Times* (March 3, 2017), <http://www.latimes.com/local/lanow/la-me-immigration-school-20170303-story.html> (the detainee's 13-year-old daughter was present and filmed the arrest). There are a multitude of additional examples.

<sup>27</sup> Satinsky, *supra* n. 13 at 16.

**D. Deportation of a parent puts their children at a high risk of suffering trauma as a result of involvement with the child welfare system.**

When parents are detained, their children run a high risk of involvement with the child welfare and foster care system. The detention and deportation of DACA parents will therefore be the proximate cause of a substantial increase in the number of children in the United States—most of them U.S. citizens—suffering from neglect and dependency. Parental incarceration is already a major cause of child maltreatment, in the form of child neglect and dependency, in the United States. A government policy enforcing DACA rescission and enabling the detention and deportation of parents will increase the number of children suffering from this form of maltreatment as a direct result. With 5,100 children currently in foster care because of parental detainment or deportation, and about 15,000 likely remaining in care for the next five years because families cannot be reunited, the problem is significant.<sup>28</sup>

The child welfare system will have primary responsibility for meeting the needs of the children of many DACA recipients who are detained, incarcerated, or deported. However, child welfare system protocols were not

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<sup>28</sup> Center for Advanced Studies in Child Welfare, Foster Care and Deportation: Effects on Families (Nov. 27, 2012), [https://cascw.umn.edu/policy/foster\\_care\\_and\\_deportation\\_ef/](https://cascw.umn.edu/policy/foster_care_and_deportation_ef/).

developed to address either the realities of harm to children caused by the mass detention, incarceration, and deportation of their parents or the resulting catastrophic traumatic effects on children that would follow. The American public child welfare system was developed to address the trauma to children from child maltreatment, and subsequent separation and out-of-home placement as a result of such maltreatment. The system has developed intervention protocols to identify child abuse and neglect, provide a safe environment for victims of child abuse, work with families to ameliorate the causes of child maltreatment, support and reunify families, and find alternative permanent placement for children when reunification is not possible.

But many of the child welfare system's protocols for intervention do not apply to the children of DACA recipients who separated from their parents. Most of these children have not been maltreated. Rather, separation from DACA parents would be the result of the government's discretionary immigration enforcement. While the child welfare system is proficient in working with the trauma of separation and placement of children maltreated by their parents, maltreatment as a result detention and deportation will require new protocols of intervention and new education and training of staff. These children will likely suffer an increase in psychological and

emotional morbidity. This will decrease the potential success of child welfare interventions, increasing the threat of long-term psychological and emotional harm for these children.<sup>29</sup>

Psychological and emotional harm resulting from parental separation can cause significant health problems for children. Separations are especially difficult when, as in parental deportation, the child does not know where her parent is, whether she is safe, or when she will return.<sup>30</sup> Further difficulties for children placed in foster care can be common. Attachment is vital to a

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<sup>29</sup> The U.S. Department of Health and Human Services notes several difficulties that child welfare agencies face that make this outcome more likely. Workers and attorneys may be unfamiliar with immigration issues and, for example, may create case plans that unauthorized immigrant parents cannot complete (especially if they are in detention), or the child welfare professional may not understand the range of reasons why a parent could be detained or deported. Agencies may be reluctant to place a child in kinship care if the family members are also unauthorized immigrants. Perhaps most significantly, agencies may not have the capacity, policies, or procedures to reunify children with deported parents. Child Welfare Information Gateway, *Immigration and Child Welfare Issue Brief 5-6* (April 2015), <https://www.childwelfare.gov/pubPDFs/immigration.pdf>. *See also* Seth F. Wessler, *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System*, Applied Research Center (2011), <https://www.raceforward.org/research/reports/shattered-families>.

<sup>30</sup> *See* National Child Traumatic Stress Network, *Children with Traumatic Separation: Information for Professionals 1*, [http://www.nctsn.org/sites/default/files/assets/pdfs/children\\_with\\_traumatic\\_separation\\_professionals.pdf](http://www.nctsn.org/sites/default/files/assets/pdfs/children_with_traumatic_separation_professionals.pdf) (“Chronic separation from a caregiver [as in parental deportation] can be extremely overwhelming to a child...[separations] may be sudden, unexpected, or prolonged, and can be accompanied by additional cumulative stressful events.”).

child's healthy development and ability to self-regulate, and therefore the relationship with a stable caregiver like a foster parent is crucial. But a foster child may experience split loyalty, feeling that attaching to—loving—the foster parent is a betrayal of the absent parent.<sup>31</sup> The child placed into a foster or even a kinship home experiences ruptured relationships and separation from the familiar; new routines, rules, and people; having to obey strangers without their approval or choice; and labels and stigma that can come from being a “foster kid.”

The hardship of placement with a foster family is often multiplied by health issues. While not all foster children experience mental and physical health problems and developmental delays, the majority of foster children do.<sup>32</sup> Often this is because of maltreatment that children experience before placement. However, foster children sometimes experience neglect in foster care as well. Medical needs can remain unmet; 12% of foster children receive no routine healthcare, 34% do not receive immunizations, and 32% have at least one continuing unmet health care need post-placement.<sup>33</sup>

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<sup>31</sup> *Id.* at 2.

<sup>32</sup> Susan Vig et al., *Young Children in Foster Care: Multiple Vulnerabilities and Complex Service Needs*, *Infants & Young Children* 18(2): 147-160, 147 (2005).

<sup>33</sup> *Id.* at 150.

**E. Taken together, the factors impacting DACA recipients' children after rescission put them at a high risk of child traumatic stress, causing immediate and long-term damage.**

All of these impacts on children associated with detention and deportation, from anxiety and anger to loss of income and food security and possible involvement with the child welfare system, contribute to the development of child traumatic stress. Since a landmark study published by Kaiser Permanente and the Centers for Disease Control in 1998,<sup>34</sup> awareness of the significant physical and mental health impacts of traumatic stress on children has grown and its deleterious effects confirmed in study after study. More, the American Academy of Pediatrics—America's premier professional association of pediatricians—has issued a statement finding that:

Far too many children in this country already live in constant fear that their parents will be taken into custody or deported, and the message these children received today from the highest levels of our federal government exacerbates that fear and anxiety. No child should ever live in fear. When children are scared, it can impact their health and development. Indeed, fear and stress, particularly prolonged exposure

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<sup>34</sup> See Centers for Disease Control and Prevention, Adverse Childhood Experiences (ACEs), <https://www.cdc.gov/violenceprevention/acestudy/index.html>.

to serious stress—known as toxic stress—can harm the developing brain and negatively impact short- and long-term health.<sup>35</sup>

Left unbuffered, toxic stress disrupts normal development and negatively affects the immune systems and other physiology of growing children—potentially for life. Pediatrician Alan Shapiro notes the amplified effect of toxic stress for children with unauthorized immigrant parents: “In this biological framework, parental deportation becomes a double whammy for children, compounding the negative effect on a child’s health and well-being by increasing their risk for exposure to stressors and removing a key buffer to that stress, their parents.”<sup>36</sup>

Children flooded with unrelenting toxic stress face negative consequences that potentially last a lifetime. The message sent to all of California’s immigrant children by rescinding DACA brings with it unrelenting fear of losing either country or parents. And that choice leads to worse health outcomes, lower productivity, and less quality of life for hundreds of thousands of American children.

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<sup>35</sup> Am. Academy of Pediatrics, AAP Statement on Protecting Immigrant Children (Jan. 25, 2017), <https://www.aap.org/en-us/about-the-aap/aap-press-room/pages/aapstatementonprotectingimmigrantchildren.aspx>.

<sup>36</sup> Alan Shapiro, M.D., Immigration: deporting parents negatively affects kids’ health, *The Hill* (May 13, 2016), <http://thehill.com/blogs/congress-blog/healthcare/279544-immigration-deporting-parents-negatively-affects-kids-health>.

**F. Evidence showing the health benefits of legal status weighs in favor of sustaining the District Court’s decision.**

Abundant evidence demonstrates the negative health impacts on children of DACA rescission. Recent evidence also demonstrates the health-promoting impact of DACA protections and other forms of legal status.

A 2016 analysis of survey results from Latino immigrant young adults demonstrated that while retrospective reports of past psychological wellness among undocumented individuals were predicted by socioeconomic status, DACA status predicts current psychological wellness.<sup>37</sup> DACA essentially lowered the likelihood of psychological distress, such that “immigrants report better health after a transition to lawful presence.”<sup>38</sup> Specifically, “[r]eceiving DACA reduced the odds of distress, negative emotions, and worry about self-deportation by 76%-87%, compared to respondents without DACA.”<sup>39</sup>

A 2017 quasi-experimental study based on national retrospective data examined the physical and mental health effects of DACA, finding

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<sup>37</sup> Caitlin Patler, Ph.D., and Whitney Laster Pirtle, Ph.D., From undocumented to lawfully present: Do changes to legal status impact psychological wellbeing among latino immigrant young adults?, *Social Science & Medicine* 199 (2018) 39-48.

<sup>38</sup> *Id.* at 42, 44.

<sup>39</sup> *Id.* at 44.

significant benefits to mental health but no significant impact on physical health.<sup>40</sup> Researchers found that the “effects on mental health were large and clinically significant, with the DACA programme significantly reducing the odds of individuals reporting moderate or worse psychological distress.”<sup>41</sup> The authors noted further that these results should be expected, given other studies that show increasing anxiety and depression symptoms when policies raise the risk of deportation.<sup>42</sup>

In addition to studies relying on the self-reported health effects of DACA, a very important quasi-experimental study recently showed the impact of a mother’s DACA protection on the physical and mental health of her children. Researchers collected health information for children of DACA recipients with birthdates before and after June 15, 2012, the date on which DACA applicants had to be less than 31 years old. Their analysis demonstrated that when DACA protections were established, children of

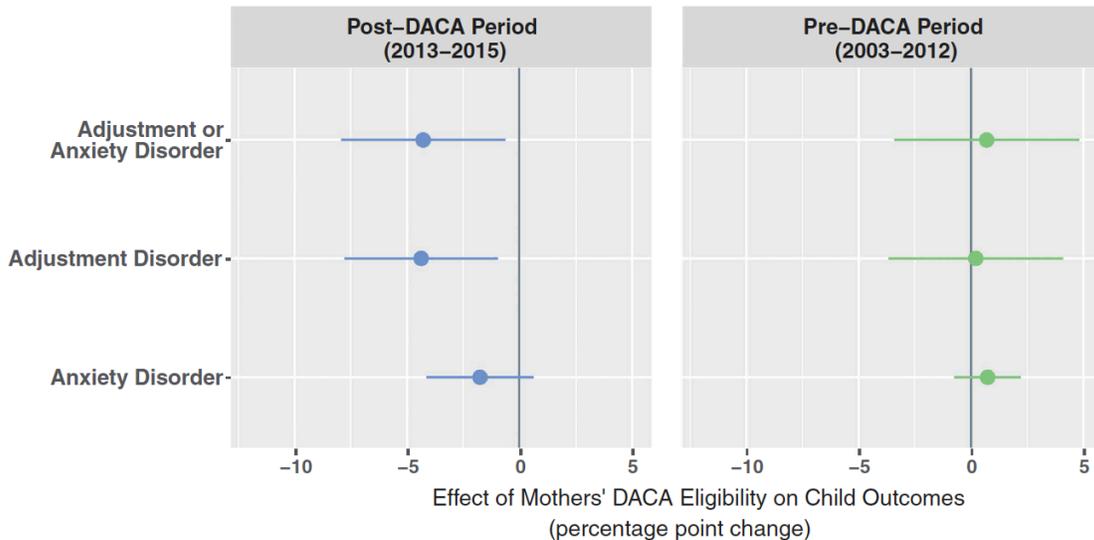
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<sup>40</sup> Atheendar S. Venkataramani et al., Health consequences of the U.S. Deferred Action for Childhood Arrivals (DACA) immigration programme: a quasi-experimental study e175, *Lancet Public Health* 2017 2:e175-181, [http://dx.doi.org/10.1016/S2468-2667\(17\)30047-6](http://dx.doi.org/10.1016/S2468-2667(17)30047-6).

<sup>41</sup> *Id.* at e179.

<sup>42</sup> *Id.*

mothers who qualified showed an immediate and statistically significant reduction in adjustment and anxiety disorder.<sup>43</sup>



**Figure 1.**

The data illustrated by Figure 1 demonstrate the clear decline of adjustment and anxiety disorders in children of DACA recipients after the protections were established. Specifically, “mothers’ DACA eligibility reduced adjustment and anxiety disorder diagnoses in their children by 4.3 percentage points [] from a baseline rate of 7.9% among children of

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<sup>43</sup> Jens Hainmueller et al., Protecting unauthorized immigrant mothers improves their children’s mental health, *Science* 357 (2017): 1041-1044. The authors chose to study mental health disorders because the effects were immediately observable upon establishment of DACA. “Moreover, examining mental health disorders that originate in childhood is important because they are associated with long-term health issues, low education, and welfare dependence, which generate considerable private and social costs.” *Id.* at 1042.

ineligible mothers at the threshold.”<sup>44</sup> As the authors note, the study’s results encourage further research on the impacts of protective status on the children of recipients—not only on the recipients themselves.

#### **IV. THE UNITED STATES HAS A RESPONSIBILITY TO PROTECT CHILDREN FROM HARM.**

The United States is a signatory to the United Nations Convention on the Rights of the Child.<sup>45</sup> The Convention emphasizes the importance of protecting child safety and family unity, specifying that the child “has the right to know and be cared for by his or her parents...States Parties shall ensure that a child shall not be separated from his or her parents against their will...both parents have common responsibilities for the upbringing and development of the child.”<sup>46</sup>

The twin principles of family unity and child protection animate the United States laws that require child welfare agencies to help families access

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<sup>44</sup> *Id.* at 1043.

<sup>45</sup> The United States has not ratified the Convention and is not bound by its terms. “However, [signing] is a means of authentication and expresses the willingness of the signatory state to continue the treaty-making process. The signature qualifies the signatory state to proceed to ratification, acceptance or approval. It also creates an obligation to refrain, in good faith, from acts that would defeat the object and the purpose of the treaty.” United Nations Frequently Asked Questions, citing Arts.10 and 18, Vienna Convention on the Law of Treaties 1969, <http://ask.un.org/faq/14594>.

<sup>46</sup> Convention on the Rights of the Child, Arts. 7, 9, 18.

services necessary to reunification. The U.S. Department of Health and Human Services notes that laws in all states “require the provision of services that will help families remedy the conditions that brought the child and family into the child welfare system...[such as] accessible, available, and culturally appropriate services that are designed to improve the capacity of families to provide safe and stable homes for their children.”<sup>47</sup>

Child well-being and family reunification are basic values of the child welfare system. Parents protected by DACA were brought here as children and given no other choice of home. Rescission of these protections puts their children at immediate risk and threatens their families with forced separation, in direct contravention of our nation’s core commitment to the protection of children. At a minimum, equity requires that the government weigh these concerns carefully in the balance in considering whether to rescind DACA.

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<sup>47</sup> Wessler, *supra* n. 29 at 15, quoting U.S. Dep’t of Health and Human Svcs, Administration for Children and Families, Child Welfare Information Gateway. “Reasonable Efforts to Preserve or Reunify Families and Achieve Permanency for Children: Summary of State Laws” (2009), [http://www.childwelfare.gov/systemwide/laws\\_policies/statutes/reunify.cfm](http://www.childwelfare.gov/systemwide/laws_policies/statutes/reunify.cfm).

## CONCLUSION

For the foregoing reasons, *amici* American Professional Society on the Abuse of Children and California Professional Society on the Abuse of Children respectfully request that this Court affirm the District Court's decision to grant a preliminary injunction, affirm the District Court's orders to the extent they deny the government's motion to dismiss, and reverse the District Court's dismissal of plaintiffs' APA notice-and-comment claims.

Dated:        March 20, 2018    Respectfully submitted,

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## **CERTIFICATE OF COMPLIANCE**

### **Fed. R. App. P. 32(g)**

Pursuant to Fed. R. App. P. 32(g), I certify that the attached brief is proportionally spaced, has a typeface of 14 points or more, and contains 5,061 words as counted by the Microsoft Word word processing program used to generate the brief.

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## CERTIFICATE OF SERVICE

I hereby certify that on March 20, 2018, I electronically filed the foregoing *amicus curiae* brief by using the appellate CM/ECF system.

I certify that the participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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