18-485(L)

18-488 (CON)

United States Court of Appeals for the Second Circuit

MARTÍN JONATHAN BATALLA VIDAL; MAKE THE ROAD NEW YORK, on behalf of itself, its members, its clients, and all similarly situated individuals; ANTONIO ALARCON; ELIANA FERNANDEZ; CARLOS VARGAS; MARIANO MONDRAGON; CAROLINA FUNG FENG, on behalf of themselves and all other similarly situated individuals; STATE OF NEW YORK; STATE OF MASSACHUSETTS; STATE OF WASHINGTON; STATE OF CONNECTICUT; STATE OF DELAWARE;

(*Caption continued on the inside cover*)

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

BRIEF OF *AMICI CURIAE* THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW, ANTI-DEFAMATION LEAGUE, AND SOCIAL JUSTICE ORGANIZATIONS IN SUPPORT OF PLAINTIFFS-APPELLEES

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Dated: April 11, 2018

District of Columbia; State of Hawaii; State of Illinois; State of Iowa; State of New Mexico; State of North Carolina; State of Oregon; State of Pennsylvania; State of Rhode Island; State of Vermont; State of Virginia;
State of Colorado;
Plaintiffs-Appellees,

v.

Donald J. Trump, President of the United States; United States Citizenship And Immigration Services; United States Immigration And Customs Enforcement; United States Of America; United States Department Of Homeland Security; Kirstjen M. Nielsen, Secretary of Homeland Security; and Jefferson B. Sessions III, United States Attorney General;
Defendants-Appellants.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and 29(a)(4)(A), *amici curiae* the Lawyers' Committee for Civil Rights Under Law, the Anti-Defamation League, the Lawyers' Committee for Civil Rights and Economic Justice, the Mississippi Center for Justice, the Southern Poverty Law Center, the Washington Lawyers' Committee for Civil Rights and Urban Affairs, and Advocates for Youth certify that *amici* are not publicly held corporations, that *amici* do not have parent corporations, and that no publicly held corporation owns 10 percent or more of their stock.

Dated: April 11, 2018

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STATEMENT OF INTEREST OF *AMICI CURIAE*[1]

Amici, the Lawyers' Committee for Civil Rights Under Law, the Anti-Defamation League, the Lawyers' Committee for Civil Rights and Economic Justice, the Mississippi Center for Justice, the Southern Poverty Law Center, the Washington Lawyers' Committee for Civil Rights and Urban Affairs, and Advocates for Youth are national and regional civil rights groups and social justice organizations, each committed to the promotion of civil liberties throughout the country and the elimination of discrimination in any form.[2] *Amici* are particularly well suited to offer *amicus* assistance to this Court based on their experience working on immigration issues. *Amici* have observed firsthand the ways in which DACA has improved the lives of undocumented young people and enabled them to make significant social and economic contributions that have made our country greater.

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[1] *Amici* submit this brief without an accompanying motion for leave to file because all parties have consented to its filing. Fed. R. App. P. 29(a)(2). No counsel for a party has authored this brief in whole or in part, and no party or counsel for a party has made a monetary contribution intended to fund the preparation or submission of the brief. No person other than *amici* or their counsel has made a monetary contribution to the preparation or submission of this brief. Fed. R. App. P. 29(a)(4)(E).

[2] List of Individual *Amici Curiae* with Statements of Interest is set forth in the Appendix at A-1.

INTRODUCTION

Amici submit this brief in support of Plaintiffs-Appellees to focus the Court's attention on an issue of overarching significance – the Department of Homeland Security's failure to consider substantial reliance interests when it terminated the Deferred Action for Childhood Arrivals ("DACA") program. The DACA program, announced on June 15, 2012, provided eligible undocumented immigrants protection from deportation and granted them work authorization subject to approval of an initial application and renewal every two years thereafter. Imbued with the spirit of the American Dream, DACA enrollees have made substantial investments in themselves, for their families, and in our communities in reliance on DACA's promulgation. Without consideration for the reliance interests DACA engendered over the last five years, the government abruptly decided to pull the rug out from underneath hundreds of thousands of childhood arrivals who, in an effort to play by the rules, had come out of the shadows to enroll in the federal program.

The Administrative Procedure Act (APA)'s procedural safeguards and requirements are designed to protect against capricious reversals or terminations of policies and programs that induce substantial reliance interests of the type found here. DACA enrollees have invested in job-specific training programs, enrolled in universities, obtained jobs as educators, purchased homes, and enlisted in the

military in service of our country. In turn, educational institutions, local communities, and employers have extended already limited opportunities and resources to DACA enrollees. These personal, social, and institutional investments were made in reliance on the government's representations and the implied promise that the government would not, on the basis of some political whim, execute an about-face. Where, as here, the government has failed to take into account the significant reliance interests of those who are directly affected before abruptly axing a federal program, the decision to terminate should be viewed as nothing more than arbitrary and capricious.

Moreover, as the Supreme Court has stated unequivocally, to "direct[] the onus of a parent's misconduct against his children does not comport with the fundamental conceptions of justice." *Plyler v. Doe, 457 U.S. at 219-220*.

> Visiting . . . condemnation on the head of an infant is illogical and unjust. Moreover, imposing disabilities on the . . . child is contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrongdoing.

Id. (quoting *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164 (1972)). By the same reasoning, the federal government's rescission of the DACA program is arbitrary and capricious because it "visits condemnation on" and punishes young individuals who were brought to this country as children. *See id.* The Department of Homeland Security ("DHS") has not offered a rational basis for the rescission

because there is no such basis on which to justify a programmatic reversal that serves only to penalize *childhood* arrivals, in violation of fundamental principles underlying our legal system.

ARGUMENT

I. THE GOVERNMENT WAS REQUIRED TO CONSIDER RELIANCE INTERESTS PRIOR TO TERMINATING DACA

In his thorough and well-reasoned opinion, Judge Garaufis noted repeatedly that the DACA "program" was just that – a "program" that "permitted certain individuals without lawful immigration status who entered the United States as children to obtain 'deferred action'. . . and authorization to work legally in this country." (JA213-215).

Because it was a broad "program" and not an enforcement action against a particular individual, the repeal of the program was unquestionably subject to the APA. Under Section 706 (2)(A) of the APA, federal courts may review and set aside agency action found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). The district court below concluded that, on this record, that test had been met: ". . . Plaintiffs are substantially likely to succeed on the merits of their claim that Defendants' decision to end the DACA program was substantively arbitrary and capricious." (SA26).

The court thoroughly analyzed the reasons found in the record offered by DHS at the time of the revocation of the program, notably, that DACA was unconstitutional and had been effectively declared illegal in prior litigation in federal court in Texas concerning a related, but separate, program. The court below thoroughly considered those proffered rationales and concluded, properly, that those rationales lacked merit.

The court then turned to what it deemed a *post-hoc* rationalization offered in the present litigation as a basis for revocation of the program: the risk that if DACA were not revoked, it would have been invalidated in litigation brought by certain states which had previously attacked the DACA program. In response to this *post-hoc* rationalization—the "litigation risk" rationale—the court properly noted that DHS had not weighed that risk against the reliance interests of DACA recipients and the public at large. (SA6, 43). Accordingly, under *Chaney*, the agency cannot defend its decision on this basis. *Heckler v. Chaney*, 470 U.S. 821, 830 (1985).

The lower court's findings on the reliance issue are unassailable. Of note, the first sentence of the opinion recognizes the important and compelling nature of the substantial reliance interests presented here:

> Since 2012, nearly 800,000 DACA recipients have relied on this program to work, study, and keep building lives in this country.

(SA1; JA2329-2331.) By contrast, Defendants' opening brief in this court asserts, in conclusory fashion, "[o]n its face, DACA confers no legitimate reliance interests." Def.'s Br. at 37.

On this critical point, the district court opinion has the better argument. The court began its reliance analysis by reciting the applicable law:

> Even accepting for the sake of argument that 'litigation risk' furnished a discernible, reasoned basis for Defendants' decision to end the DACA program, Defendants nevertheless acted arbitrarily and capriciously by ending that program without taking any account of reliance interests that program has engendered. To withstand review under the APA's arbitrary-and-capricious standard, the agency that is changing its policy need not explain why the reasons for the new policy are better than the reasons for the old policy. *Fox Televisions Stations*, 556 U.S. at 514-15. That agency must nevertheless engage in reasoned decision making, which, among other things, means that the agency must consider 'serious reliance interests' engendered by the previous policy. *Id*. at 515; *see also Encino Motor Cars, LLC v. Navarro*, 136 S. Ct. 2117, 2125-27 (2016).

(SA39.) The lower court then identified a number of reliance interests engendered by the DACA program:

- DACA recipients have "raised families, invested in their education, purchased homes and cars, and started careers";
- Employers have hired, trained, and invested time in their DACA recipient employees;

- Educational institutions have enrolled DACA recipients who, if they lose their DACA benefits, may be forced to leave the United States or may see little need to continue pursuing educational opportunities;
- States have expended resources modifying their motor vehicle and occupational licensing regimes to accommodate DACA recipients.

(SA43.) As the court noted, the official APA record in the case "does not indicate that Defendants acknowledged, let alone considered, these or any other reliance interests engendered by the DACA program. That alone is sufficient to render their supposedly discretionary decision to end the DACA program arbitrary and capricious." *Id.*

Applying the Supreme Court's decision in *Encino Motor Cars*, the court found that the government is not free "to disregard reliance interests engendered by the longstanding interpretation of the act when it alters its regulations." (SA39) (citing *Encino*, 136 S. Ct. at 2124-26.)

In completely ignoring reliance interests, the Department of Homeland Security ("DHS") violated two core APA principles that govern its actions. First, it acted arbitrarily and capriciously and abused its discretion because it "entirely failed to consider an important aspect of the problem," namely the impact its policy change would inescapably have on persons who would be directly affected by the decision. *See Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut.*

Auto. Ins. Co., 463 U.S. 29, 43 (1983). DHS seeks to justify its deliberate decision to ignore those effects by claiming that its abuse of discretion is exempt from judicial review under *Heckler v. Chaney*, 470 U.S. 821 (1985), because there is no meaningful standard against which to judge the agency's exercise of discretion. But that case is facially distinguishable because it dealt with an agency's refusal to take an enforcement action requested by the plaintiffs, as opposed to the agency taking coercive enforcement action against DACA participants.

Moreover, Defendants' arguments rely on a statutory provision that does not exempt the agency action from judicial review. Where Congress has wished to impose such restrictions, it has enacted express provisions to preclude judicial review of specific agency decisions. *See Block v. Community Nutrition Institute*, 467 U.S. 340 (U.S. 1984). Indeed, Congress has included such restrictions in statutory provisions that concern different agency actions. *See, e.g.* 8 U.S.C. § 1252 ("[m]atters not subject to judicial review" enumerated). That Congress did not include any such restriction in the statutory provision on which Defendants rely, demonstrates that the agency's action is not exempt from judicial review.

Second, in accordance with *Encino Motor Cars*, the lower court invoked the second core principle that while an agency is free to change its existing policies, it is nonetheless required to state a reasoned explanation for a policy reversal:

> In explaining its changed position, an agency must also be cognizant that longstanding policies may have engendered serious reliance interests that must be taken in account. In such cases it is not that further justification is demanded by the mere fact of policy change; but that a reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy. It follows that an unexplained inconsistency in agency policy is a reason for holding an interpretation to be an arbitrary and capricious change from agency practice.

Encino, 136 S. Ct. at 2125-2126. As the lower court properly concluded, *Encino* stands for the proposition that where an agency gives "almost no reason at all" for its change in position, the agency fails to provide the sort of reasoned explanation required in light of the "significant reliance issues involved." Op. at 41 (citing *Encino*, 136 S. Ct. at 2126–2127).

The Supreme Court's recent decision in *Perez v. Mortgage Bankers Association* reinforces the district court's conclusion that an agency's failure to consider reliance interests in APA cases constitutes reversible error. There, the Court stated:

> The APA contains a variety of constraints on agency decisionmaking—the arbitrary and capricious standard being among the most notable. . . . [T]he APA requires an agency to provide more substantial justification when 'its new policy rests upon factual findings that contradict those which underlay its prior policy; or when prior policy has engendered serious reliance interests that must be taken into account. It would be arbitrary and capricious to ignore such matters' (citations omitted).

135 S. Ct. 1199, 1209 (2015).

Based on the administrative record, the lower court concluded that the challengers to the DACA repeal had established both reliance interests and injury to those interests: "Plaintiffs have extensively documented the irreparable harms they will suffer if the DACA program ends." (SA48.) Notably, by suffering the loss of deferred action, DACA recipients will lose their work authorization, becoming legally unemployable in this country. (SA49.) Some DACA recipients will also lose their employer-sponsored health care coverage, endangering the recipients and their families, and imposing burdens on public health systems. *Id.* Other DACA recipients may lose their homes or need to drop out of school. *Id.* And employers will suffer significant economic losses due to their inability to hire or retain DACA enrollees.

The district court also found that the injury the government's action will cause to the economy is "staggering," resulting in $215 billion in lost GDP over the next decade and nearly $1 billion in lost state and local tax revenue. (SA49.) Finally, the court properly noted the "profound and irreversible economic and social implications" of the DACA repeal. *Id.* As the court concluded:

> It is impossible to understand the full consequences of a decision of this magnitude. If the decision is allowed to go into effect prior to a full adjudication on the merits, there is no way the court can "unscramble the egg" and undo the

> damage caused by what, on the record before it, appears to have been a patently arbitrary and capricious decision.

(SA49.) On this record, then, the reliance interests of DACA recipients and educational institutions are profound. Under an unbroken and long standing line of APA cases, the government was required to, but did not, consider these interests prior to rescinding the program. These interests not considered include the interests of educational institutions, the interests of employers, the interests of the military, the interests of state governments, and, of course, the reliance interests of the DACA enrollees themselves. To assist the Court in analyzing the issues presented, *amici* will address in greater detail several significant interests that DHS should have considered, but instead ignored.

II. DACA ENGENDERED SUBSTANTIAL ECONOMIC RELIANCE INTERESTS THAT THE GOVERNMENT FAILED TO CONSIDER

Courts have long recognized that "[s]udden and unexplained change or change that does not take account of legitimate reliance on prior interpretation may be arbitrary, capricious or an abuse of discretion." *Smiley v. Citibank (South Dakota), NA*, 517 U.S. 735, 742 (U.S. 1996) (citations and quotations omitted). Reliance interests such as these may never find a clearer manifestation than in the economic activities of nearly 800,000 Americans who invested in their education and job training, purchased homes, and enlisted in the military in

reliance on the understanding that their right to remain in the United States would not be rescinded on the basis of executive caprice.

DHS is the responsible agency for adjudicating the right of human persons to remain on American soil, and "the rulings, interpretations and opinions of the responsible agency, while not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgment to which litigants may properly resort for guidance." *U.S. v. Penn. Indus. Chem. Corp.*, 411 U.S. 655 (1973) (quotations omitted). It was around DHS guidance that DACA recipients planned their lives moving forward in the United States.

Indeed, by explicitly targeting "productive young people,"[3] the federal government implicitly contemplated that the DACA enrollees would be contributive members of our society and that the nation would benefit from their social and economic contributions. The government concluded that, with the opportunity to invest in themselves and in the favorable business climate of the United States, DACA enrollees would be induced by the promise of being able to achieve financial security for themselves and their families. The States and the federal government, in turn, would benefit from an increased population of legally

[3] *See* Memorandum from Janet Napolitano, Sec'y of Homeland Sec., Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children (June 15, 2012), https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf.

employable workers, who pay taxes and make significant contributions to the economy. While DACA has meant more than money to its enrollees, it is the abrupt reneging of the mutual economic commitments without regard for the substantial reliance interests that violates the safeguarding principles of the APA.

A. Reliance Interests of DACA Students, Educators and Educational Institutions

There is no question that access to education is vitally important to all persons in the United States—whether citizens, lawful resident aliens, or undocumented persons. *See Plyler v. Doe*, 457 U.S. 202, 226 (1982). The Supreme Court held in *Plyler* that a Texas statute denying undocumented children a free public education violated the Equal Protection Clause. *Id.* Because of *Plyler*, generations of undocumented persons have learned English, succeeded in school, and been integrated into American society. The DACA program has had the practical effect of extending the rationale of *Plyler* to post-secondary education. By asserting rights granted by DACA, tens of thousands of undocumented persons have gained access to higher education. And many of those individuals, once educated, have entered the education profession as teachers.

DACA enrollees have substantially relied on the government's representations by investing in their education, seeking job-specific training and enrolling as students in institutions of higher learning. Public schools and institutions of higher learning have extended opportunities and resources to

individuals as students and educators on the basis of and in reliance on applicants' DACA protected status. The devastating effect of the federal government's unreasoned departure and betrayal of these educational reliance interests is manifest.

DACA teachers are a significant asset to our nation's public schools, especially in cities with large, immigrant student populations. An estimated 20,000 DACA recipients are employed as educators throughout the U.S., and many of them possess in-demand bilingual language skills.[4] There is currently a severe shortage nationally of teachers in the public education sector, estimated to be as high as 327,000 public educators.[5] The consequences of a shortage in public education employment are well known: larger class sizes, fewer teacher aides, fewer guidance counselors, and fewer extra-curricular activities.

[4] Moriah Balingit, *As DACA winds down, 20,000 educators are in limbo*, Wash. Post (Oct. 25, 2017), https://www.washingtonpost.com/local/education/as-daca-winds-down-20000-educators-are-in-limbo/2017/10/25/4cd36de4-b9b3-11e7-a908-a3470754bbb9_story.html (citing data provided by the Migration Policy Institute); *see also* Greg Toppo, *20,000 DACA teachers at risk — and your kids could feel the fallout, too* (Oct. 11, 2017, 7:00 AM), https://www.usatoday.com/story/news/2017/10/11/thousands-daca-teachers-risk/752082001/.

[5] Elise Gould, *Local public education employment may have weathered recent storms, but schools are still short 327,000 public educators*, Econ. Pol'y. Inst. (Oct. 6, 2017), http://www.epi.org/publication/teacher-employment-may-have-weathered-storms-but-schools-are-still-short-327000-public-educators/.

Furthermore, in the past few decades, the racial makeup of the country's student population has drastically shifted, but the overwhelming majority of public school teachers continue to be white.[6] Public schools have seen increased enrollment by students of color, especially by Latinos.[7] By 2025, it is expected that a majority of high school graduates will be students of color.[8] The DACA program has allowed schools to recruit qualified teachers with whom their students can identify.

In already resource-strapped school districts, DACA teachers do much more than just fill available positions; they also serve as mentors and role models to minority students. For many communities, DACA teachers mirror the experiences of their immigrant students, which informs their teaching with cultural competence, helps develop positive relationships with students and creates more welcoming school environments.[9]

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[6] The latest data shows that about 84 percent of public school teachers are white. C. Emily Feistritzer, *Profile of Teachers in the U.S. 2011*, Nat. Ctr. for Educ. Info. (July 2011), https://www.edweek.org/media/pot2011final-blog.pdf.
[7] Alice Yin, *Education by the Numbers*, N.Y. Times (Sept. 8, 2017), https://www.nytimes.com/2017/09/08/magazine/education-by-the-numbers.html.
[8] *Id.*
[9] Lisette Partelow, *America Needs More Teachers of Color*, (September 14, 2017, 9:00 AM), https://www.americanprogress.org/issues/education-k-12/reports/2017/09/14/437667/america-needs-teachers-color-selective-teaching-profession/.

Recent research has demonstrated that when students of color have teachers from similar backgrounds, they are more likely to succeed. A recent study published by the Institute of Labor Economics found that "low-income black male students in North Carolina who have just one black teacher in third, fourth, or fifth grade are less likely to drop out of high school and more likely to consider attending college."[10] Viridiana Carrizales of Teach For America aptly noted that "[w]e cannot afford to lose so many teachers and impact so many students. . . . [e]very time a student loses a teacher, that is a disruption in the student's learning."[11]

As Vanessa Lina, a DACA recipient who served as a Teach for America teacher and now serves as a recruiter, told *The New York Times*: "We're going to lose leaders and lose teachers – it's not only their presence, but having a teacher that can share the same experiences that you possibly had growing up. . . . Their advocacy, their leadership, their resilience is extraordinary because of their own personal journey."[12]

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[10] Seth Gershenson et al., *The Long-Run Impacts of Same-Race Teachers*, IZA Inst. of Lab. Econ., Mar. 2017, http://ftp.iza.org/dp10630.pdf

[11] Greg Toppo, *20,000 DACA teachers at risk — and your kids could feel the fallout, too* (Oct. 11, 2017, 7:00 AM), https://www.usatoday.com/story/news/2017/10/11/thousands-daca-teachers-risk/752082001/.

[12] Liz Robbins, *For Teachers Working Through DACA, a Bittersweet Start to the School Year*, N.Y. Times (Sept. 7, 2017), https://www.nytimes.com/2017/09/07/nyregion/daca-teachers.html.

Diversity in classroom teaching is critical to educational equity, and students of all racial and ethnic backgrounds, especially immigrant students, benefit from having DACA educators. School environments that reflect the diversity of communities, the country, and the world help open students' minds to new perspectives and actively engage them in learning. Prejudice and bias are countered in schools and communities when respect for diversity is taught, modeled, and experienced firsthand by children.[13] The loss of 20,000 DACA teachers will cause severe and lasting harm to students and their educational trajectories, and more broadly to our country which depends on the great talent of future generations.

In *Plyler*, the Supreme Court made an observation that is apt for the present DACA revocation:

> In determining the rationality of § 21.031 [denying access to school to undocumented persons], we may appropriately take into account its costs to the Nation and to the innocent children who are its victims. In light of these countervailing costs, the discrimination contained in § 21.031 can hardly be considered rational unless it furthers some substantive goal of the State.

[13] Anti-Defamation League (ADL), *Creating an Anti-Bias Learning Environment*, https://www.adl.org/education/resources/tools-and-strategies/creating-an-anti-bias-learning-environment

Plyler v. Doe, 457 U.S 202, 224 (1982). Here, as in *Plyer*, the federal government has not taken into account the costs of its program change to either the nation or to DACA recipients and has offered no countervailing rationale as to how termination would further a substantive goal of the federal government. In fact, the record before the trial court below is replete with evidence of the harm that would result from a DACA repeal.

B. DACA Enrollees Purchased Homes and Lending Institutions Extended Loans in Reliance on DACA

Homeownership has long been recognized as an integral part of the American Dream and a critical factor in establishing economic security. Indeed, the federal government and its agencies have developed programs and marketing around that well-accepted precept.[14] DACA put that dream within reach for enrollees and provided them an opportunity to achieve financial security for themselves and their families and contribute to the economic stability of their communities through homeownership. In turn, enrollees responded to these incentives and made significant and life changing investments in reliance on DACA.

The online real estate database company Zillow estimates that 123,000 DACA enrollees are homeowners and, indeed, purchased their homes *after* their

[14] *See e.g.*, U.S. Dep't of Housing and Urb. Dev., *The National Homeownership Strategy: Partners in the American Dream* (1995).

DACA applications had been approved.[15] DACA made it possible for these individuals to establish roots and purchase homes thanks to access to credit, which was previously unavailable to them prior to their enrollment. Lending institutions extended mortgages to enrollees in complete reliance on DACA. These transactions and their underlying commitments were based on the fundamental understanding that the government would not, without due consideration, terminate the program and upend the lives of tens of thousands of individuals.

According to a survey of DACA recipients conducted by the Center for American Progress, nearly 24 percent of respondents over the age of 25 purchased a home after their DACA application was approved.[16] Through homeownership, DACA recipients "pay an estimated $380 million a year in property taxes to their communities."[17] Communities that benefit, often to a significant extent, on the property tax revenues from these DACA recipient homeowners will, in turn, be financially unsettled.

Creating a pathway to homeownership is particularly important for members

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[15] Alexander Casey, *An Estimated 123,000 'Dreamers' Own Homes and Pay $380M in Property Taxes*, Zillow (Sept. 20, 2017), https://www.zillow.com/research/daca-homeowners-380m-taxes-16629/.
[16] Tom K. Wong, *Results from Tom K. Wong et al., 2017 National DACA Study*, Ctr. for Am. Progress (Oct. 7, 2017), https://cdn.americanprogress.org/content/uploads/2017/11/02125251/2017_DACA_study_economic_report_updated.pdf.
[17] Casey, *supra* note 15.

of communities of color who continue to suffer as a result of the widening racial and ethnic wealth gap in this country. Owning a home is often the largest investment families make. Yet, only 47 percent of Hispanics and 42 percent of African Americans own a home, compared to 73 percent of whites.[18] DACA allowed undocumented immigrants who had previously faced barriers to homeownership because of their status to accumulate long-term wealth and security in reliance on the government's representations and DACA's promulgation. The government has abruptly stripped these individuals of their most significant investments without having considered their reliance interests.

C. Promises of "Expedited Citizenship" for DACA Enrollees Serving Vital Military Interests

DACA enrollees have also relied on a military program established in 2008 that provides the promise of "expedited citizenship" opportunities in exchange for service vital to the national interest. The Military Accessions Vital to the National Interest (MAVNI) program offers fast-tracked citizenship review for enrollees, "whose skills are considered to be vital to the national interest," such as

[18] U.S. Census Bureau, Quarterly Residential Vacancies And Homeownership, Fourth Quarter 2017 (Jan. 30, 2018 10:00 AM), https://www.census.gov/housing/hvs/files/currenthvspress.pdf.

"physicians, nurses, and certain experts in language with associated cultural backgrounds."[19]

The Defense Department's MAVNI materials entice recruits with the "opportunity of early citizenship" to "recognize their contribution and sacrifice."[20] According to a Defense Department MAVNI fact sheet, "[t]the Law ensures" that such contribution and sacrifice be recognized.[21] In testimony to Congress, the Defense Department made clear the benefit from service in the MAVNI program: "This program recruits legal non-citizens with critical foreign language and cultural skills, as well as licensed healthcare professionals, *and as an additional incentive*, they receive expedited U.S. citizenship processing in return for their service."[22]

Beginning in 2014, the Defense Department granted DACA enrollees eligibility to apply for the MAVNI program.[23] The Defense Department estimates

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[19] *See* U.S. Dep't of Def., Military Accessions Vital to National Interest (MAVNI) Recruitment Pilot Program, https://www.defense.gov/news/MAVNI-Fact-Sheet.pdf.
[20] *Id.* at 2.
[21] *Id.*
[22] Statement of Nancy E. Weaver, Department of Defense Senior Language Authority, Before the House Armed Services Committee Subcommittee on Oversight and Investigations, June 29, 2010, http://prhome.defense.gov/Portals/52/Documents/RFM/Readiness/DLNSEO/docs/Weaver%20Testimony%20062910.pdf (emphasis added).
[23] See MAVNI Fact Sheet, *supra* note 19.

that up to 900 DACA recipients are either serving or have signed contracts to serve through MAVNI.[24]

DACA enlistees in the MAVNI program have been left in limbo by the government's decision to rescind DACA, not knowing whether they will be permitted to carry out their service or be deported, let alone receive early citizenship review as promised. Moreover, DACA enlistees in MAVNI have provided extensive information to the federal government through the enrollment process and are in constant contact with the military (or are already in service), making them particularly vulnerable to deportation proceedings. Worse still, deportation could result in enrollees facing the most serious of consequences, including "harsh treatment or interrogation" by foreign adversaries.[25]

The administrative record in this case is totally devoid of any consideration whatsoever of the military's promises and the reliance thereon by DACA enrollees in the MAVNI program. Termination of the DACA program without consideration of these interests was arbitrary and capricious under the law recited above.

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[24] Alex Horton, *The military looked to 'dreamers' to use their vital skills. Now the U.S. might deport them.* (Sept. 7, 2017), https://www.washingtonpost.com/news/checkpoint/wp/2017/09/07/the-military-looked-to-dreamers-to-use-their-vital-skills-now-the-u-s-might-deport-them/.

[25] *See id.*

CONCLUSION

For the foregoing reasons, *amici* urge this Court to affirm the district court's preliminary injunction order.

April 11, 2018

Respectfully Submitted,

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APPENDIX

List of *Amici Curiae* with Individual Statements of Interest

The Lawyers' Committee for Civil Rights Under Law	The Lawyers' Committee for Civil Rights Under Law (the "Lawyers' Committee") is a nonpartisan, nonprofit civil rights organization formed in 1963, at the request of President John F. Kennedy, to enlist the American bar's leadership and resources in defending the civil rights of racial and ethnic minorities. Through the Lawyers' Committee, attorneys have represented thousands of clients in civil rights cases across the country challenging discrimination in virtually all aspects of American life. In furtherance of its commitment to challenge policies that discriminate against immigrants and refugees, the Lawyers' Committee has filed numerous lawsuits and submitted amicus briefs in cases involving issues similar to this one.
Anti-Defamation League	The Anti-Defamation League ("ADL") was founded in 1913 "to stop the defamation of the Jewish people, and to secure justice and fair treatment to all." Today, ADL is one of the world's leading civil rights organizations. As an organization founded by immigrants and sworn to protect the interests of religious and ethnic minorities, ADL believes that when our nation's values are threatened, we are duty-bound to return to the founding principles that propelled this nation of immigrants. As such, ADL has advocated for fair and just immigration policies for more than a century, including a pathway to citizenship for young undocumented immigrants brought to this country as children. As part of its commitment to create an ever-more just and inclusive society, ADL has filed amicus briefs in numerous cases challenging policies that undermine the ideal of America as a nation of immigrants. At stake in this case are the lives of 800,000 undocumented immigrants who were brought to the United States as children, their families, communities, and all of us who depend on a future that embraces diversity as a strength.

The Lawyers' Committee for Civil Rights and Economic Justice	The Lawyers' Committee for Civil Rights and Economic Justice ("LCCR") fosters equal opportunity and fights discrimination on behalf of people of color and immigrants. LCCR engages in creative and courageous legal action, education, and advocacy, in collaboration with law firms and community partners. As part of this work, LCCR has long sought to further immigrant justice through impact litigation. Immigrant entrepreneurs also are assisted through LCCR's Economic Justice Project. LCCR thus has a strong interest in ensuring that DACA recipients and DACA-eligible immigrants are not unlawfully deprived of economic, educational, and other opportunities through rescission of the DACA program.
Mississippi Center for Justice	The Mississippi Center for Justice, the Deep South Affiliate of the Lawyers Committee for Civil Rights Under Law, is a 501(c)(3) nonprofit public interest law organization founded in 2003 in Jackson, Mississippi and committed to advancing racial and economic justice. Supported and staffed by attorneys and other professionals, the Center develops and pursues strategies to combat discrimination and poverty statewide. One of *amicus*' original areas of interest involved predatory loan practices directed at migrant poultry workers, and MCJ has remained concerned about the plight of Mississippi's growing immigrant population for the last decade, particularly in the areas of access to healthcare, education, housing and fair lending. MCJ has signed on as *amicus* for several cases challenging President Trump's travel ban, and it has the same concerns regarding the termination of DACA.
Southern Poverty Law Center	Southern Poverty Law Center ("SPLC") has provided pro bono civil-rights representation to low-income persons in the Southeast since 1971. SPLC has litigated numerous cases to enforce the civil rights of immigrants and refugees to ensure that they are treated with dignity and fairness. SPLC also monitors and exposes extremists who attack or malign groups of people based on their immutable characteristics. SPLC is dedicated to reducing prejudice and improving intergroup relations. SPLC has a strong interest in opposing discriminatory governmental action that undermines the promise of civil rights for all.

The Washington Lawyers' Committee for Civil Rights and Urban Affairs	The Washington Lawyers' Committee for Civil Rights and Urban Affairs is a non-profit civil rights organization established to eradicate discrimination and poverty by enforcing civil rights laws through litigation and public policy advocacy. In furtherance of this mission, the Washington Lawyers' Committee represents some of the most vulnerable populations in Washington, D.C., Maryland and Virginia, including immigrants and non-English speakers, who are often discriminated against on the basis of their national origin, and who are often unaware of their legal rights and protections.
Advocates for Youth	Advocates for Youth is a national reproductive and sexual health/rights organization that centers the needs and voices of young people. The President's decision to end DACA is an attack on immigrant youth and families living in our communities, as well as on our values of fairness, equality, and opportunity. At Advocates for Youth, we center young people, people of color, LGBTQ communities, and children of immigrants—all of who would be disproportionately impacted if DACA was rescinded. We are committed to the health and safety of all young people, and the President should be as well. This shameful decision will not deter us from working to ensure the reproductive and sexual health and rights of all young people are realized regardless of citizenship status. As a nation, we must find the moral clarity to end attacks on immigrants.

CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it uses a proportionally spaced typeface (Times New Roman) in 14-point. It was prepared using Microsoft Word. It complies with the type-volume limits of Fed. R. App. P. 29(a)(5) because it contains 4,759 words, which is less than half of the 13,000 words allowed for principal briefs under Fed. R. App. P. 32(a)(7)(B)(i).

Dated: April 11, 2018

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CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing Amicus Brief in Support of Plaintiffs-Appellees was made, this 11th day of April 2018, through the Court's Case Management/Electronic Case Files system upon the attorneys of record for the parties.

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