

Nos. 18-485, 18-488

**IN THE 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, 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,

(Caption continued on inside cover.)

On Appeal from the United States District Court for the Eastern District of New York
Nos. 16-CV-4756 (NGG) (JO), 17-CV-5228 (NGG) (JO)
Hon. Nicholas G. Garaufis, 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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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, JEFFERSON B. SESSIONS III, United States Attorney General,

Defendants-Appellants.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, *amici* AASA, The School Superintendents Association; American Federation of School Administrators; American Federation of Teachers; Council of School Supervisors and Administrators; National Education Association; National School Boards Association; New York State Council of School Superintendents; New York State School Boards Association; New York State United Teachers; Professional Staff Congress/CUNY; School Administrators Association of New York State; United Federation of Teachers; and United University Professions state that they are not publicly-held corporations, do not issue stock, and do not have parent corporations.

/s/ Oriana Vigliotti

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I. 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.¹ *Amici*'s members know well the contributions made by Deferred Action for Childhood Arrivals (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.

American Federation of School Administrators (AFSA) is the only national education union for school administrators and represents principals and assistant principals. AFSA has more than 20,000 members located primarily in urban school districts across the nation. AFSA is committed to maintaining quality public education for all students and DACA recipients provide a significant and important component of our schools.

¹ *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 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)(E).

American Federation of Teachers (AFT) represents approximately 1.7 million members employed in K-12 and higher education, public employment, and healthcare. AFT has a long history of civil rights advocacy. AFT has members throughout the country who have received DACA. These members have utilized DACA to obtain employment in institutions that provide essential public services. AFT members also teach DACA students. These students are integral members of their educational institutions. They contribute to the diversity of experience and viewpoint in classrooms, engage in valuable research projects, and play leadership roles in student life.

Council of School Supervisors and Administrators (CSA) represents New York City Department of Education Principals, Assistant Principals, Education Administrators, and Clinical Supervisors. CSA's membership totals nearly 6,400 active members and 15,000 retirees. DACA recipients are students and employees in the schools CSA members lead. CSA advocates for the strongest and most inclusive learning environment for students.

National Education Association (NEA) represents more than three million education employees, including teachers, counselors, nurses, and support professionals throughout the country. DACA educators are among NEA's members. DACA recipients also make up a large contingent of the students served

by NEA members. NEA has made the protection of DACA and its recipients, families, and school communities a top advocacy priority.

National School Boards Association (NSBA), through its state associations of school boards, including *amicus* NYSSBA, 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.

New York State Council of School Superintendents has a membership comprising approximately 97% of New York State superintendents, Boards of Cooperative Educational Services (BOCES) of New York State superintendents, superintendents of special act districts and other administrators. Superintendents are responsible for enforcing all provisions of law and all rules and regulations relating to school management. The Council advocates for the state's superintendents, develops and promotes policy on matters relating to K-12 education, school finance, and school leadership. The Council has appeared as *amicus curiae* in numerous proceedings involving issues affecting New York public schools.

New York State School Boards Association (NYSSBA) represents the governing boards of approximately 93% of the governing boards of New York. It often appears as *amicus curiae* in court proceedings affecting public education. The current proceeding presents issues that directly affect the mission and operation of K-12 public schools. Anxiety over possible arrests and deportation impairs the ability of students to study and learn, and to even attend school, which further affects their ability to acquire the knowledge and skills necessary to become productive members of society. This limits the capacity of boards to discharge their obligation to provide such opportunities. The rescission of DACA affects the continued employment of qualified educators and staff. This in turn affects the stability necessary to operate schools, a core responsibility of school boards.

New York State United Teachers (NYSUT) represents more than 675,000 people who work in, or are retired from, New York's schools, colleges, and healthcare facilities. These include teachers, university faculty, bus drivers, custodians, secretaries, cafeteria workers, and nurses. NYSUT's mission is to improve the professional and economic lives of its members and their families, to strengthen the institutions where they work, and further the cause of social justice. Numerous NYSUT members are DACA recipients. NYSUT members also teach

DACA recipients in their public schools. DACA has allowed NYSUT members to provide essential services to school communities.

Professional Staff Congress/CUNY (PSC) represents 30,000 faculty and professional staff working at the City University of New York and the CUNY Research Foundation. The PSC is a leader in advocating for fair working conditions and high-quality education at CUNY. The PSC is also a strong voice in support of CUNY students and their right to an education. Our members and their students include DACA recipients and families of DACA recipients.

School Administrators Association of New York State (SAANYS) represents over 7,200 public school principals, assistant principals, directors, and coordinators in New York public schools and BOCES in approximately 500 school districts. SAANYS, along with the NYS Federation of School Administrators, is part of the New York State School Administrators Consortium (NYSSAC), a lobbying consortium representing over 23,000 school leaders. SAANYS is the official New York representative on the National Association of Elementary School Principals and the National Association of Secondary School Principals. Through its representation and advocacy efforts, SAANYS supports school administrators who have received DACA's invaluable benefits, and those who encourage current DACA students to continue their education.

United Federation of Teachers (UFT) represents more than 80,000 teachers and other employees in the New York City School District, one of the largest school districts in the country. UFT advocates for the highest quality public education for all students, and develops and supports students and teachers. DACA recipients work in the schools in which our members teach and many are studying to become future educators.

United University Professions (UUP) represents more than 42,000 academic and professional staff in the State University of New York (SUNY). UUP negotiates collective bargaining agreements and advocates for quality public higher education. DACA recipients work in the UUP bargaining unit and study in colleges whose faculty it represents.

II. SUMMARY OF ARGUMENT

Since its inception in 2012, the Deferred Action for Childhood Arrivals (DACA) program has yielded immeasurable benefits for our nation's students and educators. For young people who, prior to DACA, had only a limited pathway to college and almost no realistic expectation of long-term employment, the program created new hope and a reason to strive for academic excellence. Since 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,² the Department of Homeland Security (DHS) immediately stopped accepting DACA applications and attempted to cut off renewal applications 30 days later. On December 15, 2017, Plaintiffs filed motions for provisional relief, and on February 13, 2018, the district court issued the preliminary injunction now before this Court. The injunction conforms to a prior order from the U.S. District Court for the Northern District of California, which reopened the door to DACA renewal applications.

The elimination of DACA would derail 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

² 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>.

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. Therefore, on behalf of millions of education stakeholders, *amici* urge the Court to uphold the February 13, 2018 preliminary injunction.

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 New York Progress & Prot. PAC v. Walsh*, 733 F.3d 483, 488 (2d Cir. 2013) (ordering the district court to enter a preliminary injunction to protect in part 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 Standard & Poor’s Corp. v. Commodity Exch., Inc.*, 683 F.2d 704, 711 (2d Cir. 1982) (recognizing a court’s broad discretion to fashion equitable relief in furtherance of the public interest). 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.

"A new sense of confidence." Areli Morales attended public schools in New York City where, she states, "I felt voiceless for many years . . . I remember

wanting to be invisible”³ DACA gave Morales “a new sense of confidence to move forward with [her] studies.” She was able to obtain work authorization, a Social Security number, and attend college. Morales wants to pursue a career in education and will graduate from Brooklyn College in 2018. If Morales can renew her DACA status, she declares, “I plan to use my experiences of being undocumented to be an empathic teacher I hope to create a positive classroom environment that fosters acceptance, understanding, and empowerment to educate future generations of children, so they can strive to reach their greatest potential.”

“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

³ Tatyana Kleyn et al., *Learning from Undocumented Students: Testimonios for Strategies to Support and Resist*, 14 *The New Educator* 1, 5 (forthcoming 2018).

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.

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.

“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 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 status 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 DACA announcement 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, notes 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, Immediate Past President of the New York State School Boards Association, describes how the anxiety around 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.

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 student with DACA 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 post-secondary school for disabled students. 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. Second-grade teacher Karina Alvarez in Austin, Texas experienced this first-hand. 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 status 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 status. Walsh notes, “About eighty percent of tutors go on to obtain a teaching credential or permit to continue to be involved in education.” The Mini-Corps tutors are “in the pipeline to become teachers, administrators, [and] superintendents.” If these tutors are no longer able to work

lawfully, Mini-Corps will lose hard-to-replace staff and the state will lose committed educators.

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 pressing 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, R.A., a high school teacher in New York, is open with students about his immigration status. The majority of his students come from immigrant backgrounds and some are undocumented. R.A. states, “That is why I shared my experience . . . I wanted them to know that this person that is in front of them . . . that I’m also an immigrant.” He believes his openness helps students 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 educator with DACA, said that he became a teacher because he knew he could reach immigrant students: “I wanted to amplify the voices of students and families who shared both my story and values. I wanted to ensure that there would be even just one less child who felt isolated and helpless because of his or her immigration status.” Ginette Magaña, *DACAmented Teachers: Educating and Enriching Their Communities*, Obama White House: Blog (Aug. 4, 2015), <https://obamawhitehouse.archives.gov/blog/2015/08/04/dacamented-teachers-educating-and-enriching-their-communities>.

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. Absent the preliminary injunction allowing for renewal applications, she will have to stop working with her mentees during their important senior year.

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 students and educators with DACA, 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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CERTIFICATE OF COMPLIANCE

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 length limitation of Second Circuit Rule 29.1(c) because it contains 6,441 words, which is less than half of the 14,000 words allowed for principal briefs under Second Circuit Rule 32.1(a)(4).

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CERTIFICATE OF SERVICE

I hereby certify that on April 11, 2018, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Second 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.

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