

Nos. 18-587, 18-588, 18-589

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**In the Supreme Court of the United States**

DEPARTMENT OF HOMELAND SECURITY, ET AL., PETITIONERS,  
v.  
REGENTS OF THE UNIVERSITY OF CALIFORNIA, ET AL., RESPONDENTS.

*ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE NINTH CIRCUIT*

DONALD J. TRUMP, PRESIDENT OF THE  
UNITED STATES, ET AL., PETITIONERS,  
v.  
NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF  
COLORED PEOPLE, ET AL., RESPONDENTS.

*ON WRIT OF CERTIORARI BEFORE JUDGMENT  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT*

KEVIN K. MCALEENAN, ACTING SECRETARY OF  
HOMELAND SECURITY, ET AL., PETITIONERS,  
v.  
MARTIN JONATHAN BATALLA VIDAL, ET AL., RESPONDENTS.

*ON WRIT OF CERTIORARI BEFORE JUDGMENT  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT*

**BRIEF FOR LAWYERS' COMMITTEE FOR CIVIL  
RIGHTS UNDER LAW, THE ANTI-DEFAMATION  
LEAGUE, THE LEADERSHIP CONFERENCE ON  
CIVIL AND HUMAN RIGHTS, AND 42 OTHER SOCIAL  
JUSTICE ORGANIZATIONS AS *AMICI CURIAE*  
IN SUPPORT OF RESPONDENTS**

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## **QUESTIONS PRESENTED**

1. Whether DHS's decision to wind down the DACA policy is judicially reviewable.
2. Whether DHS's decision to wind down the DACA policy is lawful.

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## INTEREST OF *AMICI CURIAE*<sup>1</sup>

*Amici*, the Lawyers' Committee for Civil Rights Under Law, the Anti-Defamation League, the Leadership Conference on Civil and Human Rights, and 42 other social justice organizations,<sup>2</sup> are national and regional civil rights groups and equal justice organizations, each committed to the promotion of civil liberties throughout the country and the elimination of discrimination in any form.

The Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee") is a nonpartisan, non-profit 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'

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<sup>1</sup> Pursuant to Supreme Court Rule 37.6, counsel for *amici* represent that they authored this brief in its entirety and that none of the parties or their counsel, nor any other person or entity other than *amici* or their counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

Pursuant to Rule 37.3(a), counsel for *amici* also represent that all parties have consented to the filing of this brief; letters reflecting their blanket consent to the filing of *amicus* briefs are on file with the Clerk.

<sup>2</sup> A list of the 42 other social justice organizations as *amici curiae* is set forth below in the Appendix at 1a.

Committee has filed numerous lawsuits and submitted six *amicus* briefs in support of challenges to DACA's rescission, including in all three cases currently before the Court.

Anti-Defamation League ("ADL"), founded in 1913, is an anti-hate organization that seeks to stop the defamation of the Jewish people, and secure justice and fair treatment to all. Its 25 regional offices further this mission with programmatic support to promote civil rights and combat all forms of bigotry. ADL is rooted in a community that has experienced the plight of living as refugees throughout its history. ADL has advocated for fair and humane immigration policy since its founding and has been a leader in exposing anti-immigrant and anti-refugee fervor that has poisoned our nation's debate. Consistent with its principles and values, ADL joins this brief.

The Leadership Conference on Civil and Human Rights ("The Leadership Conference") is a diverse coalition of more than 200 national organizations charged with promoting and protecting the civil and human rights of all persons in the United States, including immigrants. It is the nation's largest and most diverse civil and human rights coalition. For more than half a century, The Leadership Conference, based in Washington, D.C., has led the fight for civil and human rights by advocating for federal legislation and policy, securing passage of every major civil rights statute since the Civil Rights Act of 1957. The Leadership Conference works to build an America that is inclusive and as good as its ideals.

*Amici* are particularly well suited to offer assistance to the Court based on their experience working with and in immigrant communities of color including those affected by the rescission of DACA. *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.

### INTRODUCTION

The Department of Homeland Security (“DHS” or the “Department”) failed to consider serious reliance interests engendered by the Deferred Action for Childhood Arrivals (“DACA”) program prior to termination, in violation of the Administrative Procedures Act (“APA”). In this brief, *amici* seek to highlight some of the significant commitments in education, investments in home ownership, and service to our military program that participants have made in reliance on DACA.

The DACA program, announced on June 15, 2012, provided eligible undocumented immigrants protection from deportation and made them eligible for work authorization subject to approval of an initial application and renewal every two years thereafter. The policy’s coverage was limited in scope to individuals under the age of thirty-one present in the country on or after June 12, 2012 who arrived in the United States before the age of sixteen. Thus, while the DACA program was available to only eligible individuals in the United States prior to June 2012, foreign-born persons who entered after this time are ineligible.

Imbued with the spirit of the American dream, and in reliance on the DACA program, enrollees have made substantial investments in themselves, their families, and their communities. Contrary to the government’s assertion in its brief to this Court (*e.g.*, Pet. Br. 46), the DACA enrollees are *not* engaged in

“ongoing illegal activity” or “ongoing violation of federal law.” To the contrary, under DACA and with the government’s permission, enrollees are *legally* engaged in educational, tax-paying, teaching, and military activities. *See, e.g.*, Case No. 18-589 Pet. App. 115a (“[H]undreds of thousands of DACA recipients and those close to them planned their lives around the program.”).

Without any consideration for these substantial reliance interests engendered by DACA over the last several years, the Department abruptly terminated the program. In doing so, the government upended the lives of nearly 700,000 productive young adults, their families, and their communities. These DACA recipients, in an effort to play by the rules, came out of the shadows to enroll in the program.

The APA’s requirements are designed to protect against arbitrary and capricious reversals or terminations of policies and programs that induce serious reliance interests of the type found here. With the government’s encouragement, DACA enrollees 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 invested in and have come to rely on the substantial benefits provided by DACA enrollees. Yet the administrative record is void of any mention, let alone consideration of these interests.

The government’s complete failure to consider such serious reliance interests before abruptly rescinding DACA is the hallmark of arbitrary and capricious conduct.

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

In its opening brief, the government argues that the decision to rescind DACA is an unreviewable discretionary act, even though the justification offered was that the program lacked proper statutory authority and was therefore illegal. This argument is unavailing. “[A]n official cannot claim that the law ties her hands while at the same time denying the courts’ power to unbind her.” *NAACP v. Trump*, 298 F. Supp. 3d 209, 249 (D.D.C. 2018). Indeed, Acting Secretary of Homeland Security Duke’s proffered rationale for the rescission of DACA – that DHS did not have the authority to institute DACA in the first place – placed its decision squarely within the bounds of an “agency action” reviewable under the APA. *Regents of Univ. of Cal. v. DHS*, 908 F.3d 476, 494-498 (9th Cir. 2018) (citing *City of Arlington v. FCC*, 569 U.S. 290 (2013)).

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).

Here, DHS violated core principles governing its actions under the APA. The Department abused its discretion because it “entirely failed to consider an important aspect of the problem,” namely the impact of its policy change on the hundreds of thousands of DACA enrollees 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).

Although agencies are free to change their existing policies, they must provide a reasoned explanation for a policy change, where that change implicates serious reliance interests:

*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 Motor Cars, LLC v. Navarro*, 136 S. Ct. 2117, 2125-2126 (2016) (emphasis added).

This Court's opinion in *Perez v. Mortgage Bankers Association* is also instructive on the importance of reliance in APA cases:

The APA contains a variety of constraints on agency decision making—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) (emphasis added). *See also Smiley v. Citibank (South Dakota), NA*, 517 U.S. 735, 742 (U.S. 1996) (citations and quotations omitted) (“Sudden 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.”).

Here, as the lower courts repeatedly found, DHS failed entirely to consider the reliance interests of the DACA enrollees, their employers, and their communities. *See* Case No. 18-587, Pet. App. 60a (“As [in *Encinol*], the administrative record here includes no analysis of the ‘significant reliance issues involved.’ . . . The administrative record includes no consideration to the disruption a rescission would have on the lives of DACA recipients, let alone their families, employers and employees, schools and communities.”) (Alsup, J.); Case No. 18-588, Pet. App. 54a (“The Rescission Memo made no mention of the fact that DACA had been in place for five years and had engendered the reliance of hundreds of thousands of beneficiaries, many of whom had structured their education, employment, and other life activities on the assumption that they would be able to renew their DACA benefits.”) (Bates, J.); Case No. 18-589, Pet. App. 114a (“The record 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.”) (Garaufis, J.).<sup>3</sup>

The reliance by DACA enrollees was certainly reasonable. DACA did not guarantee a “substantive right, immigration status or pathway to citizenship” as the government emphasizes. Pet. Br. 5. But deferred action enabled and incentivized individuals to pursue schooling, jobs, investments, tax-payment, military service, and home ownership. These are not “ongoing illegal activit[ies],” Pet. Br. 46, but rather the activities that DACA enrollees have earned under the program. No court has determined that the reliance under DACA to do these things was unreasonable. Indeed, as Judge Nicholas Garaufis of the U.S. District Court for the Eastern District of New York found, “it is obvious that hundreds of thousands of DACA recipients and those close to them planned their lives around the program.” Case No. 18-589, Pet. App. 115a.

The original DACA policy: (i) was not challenged in the DAPA litigation before this divided Court; (ii) was supported by an opinion of the Office of Legal Counsel<sup>4</sup>; and (iii) has not been found to violate the Constitution.

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<sup>3</sup> The Texas court, which previously ruled that DAPA was illegal, concluded that reliance interests were so significant that a preliminary injunction should not issue against DACA. *Texas v. United States*, 328 F. Supp. 3d 662, 742 (S.D. Tex. 2018) (“[T]he reality of the situation is that [DACA] conferred lawful presence and numerous other benefits, and many DACA recipients and others nationwide have relied upon it for the last six years.”). The court specifically noted (a) DACA recipients’ loss of benefits that flow from lawful presence, and (b) loss of employees to various schools, states, municipalities, employers and industries. *Id.*

<sup>4</sup> See Dep’t of Justice Office of Legal Counsel, *The Department of Homeland Security’s Authority to Prioritize Removal of Certain Aliens Unlawfully Present in the United States and to Defer Removal of Others*, 38 Op. O.L.C. (2014).

These observations further support the recipients' reasonable reliance on the program to build successful lives in this country.

In its opening brief, the government argues that DHS “sufficiently considered the reliance interests of DACA recipients” in rescinding the program. Pet. Br. 42. Specifically, it points to the wind-down period set out in the Duke Memorandum, which permitted existing DACA grants “to expire according to their stated two-year terms” and purportedly “allow[ed] a limited window for additional renewals.” *Id.* But neither those provisions of the Duke Memorandum nor any others reference the serious reliance interests engendered by DACA. *See* Case No. 18-587, Pet. App. 117a-118a. Indeed, *nowhere in the administrative record* are the reliance interests of the nearly 700,000 DACA enrollees mentioned. There are no studies, calculations, or analyses. And in fact, the “wind-down” period appears to have been designed to benefit the Department, not DACA enrollees, whose interests are not mentioned *anywhere* in the Duke Memorandum. *See* Joint App. 878 (Sessions Memorandum recommending a wind-down to address the “costs and burdens *that will be imposed on DHS* associated with rescinding this [DACA] policy.”) (Emphasis added); *see also* Case No. 18-589, Pet. App. 117a (“While the Acting Secretary stated that she ‘[r]ecogniz[ed] the complexities associated with winding down the program,’ the Sessions Letter makes clear that these complexities referred to the burdens on DHS of winding down the DACA program.”).

The government also points to Secretary Nielsen’s subsequent memorandum in which she stated that she did not take the DACA rescission “lightly” and referenced “sympathetic circumstances” of DACA

recipients. Pet. Br. 42. But lip service in a *post-hoc* rationalization does not provide the reasoned analysis of the serious reliance interests engendered by the DACA program, as required by the APA. See Case No. 18-587, Pet. App. 125a; see also, e.g., *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515-16 (2009) (“[A] reasoned explanation is needed for disregarding facts and circumstances that underlay . . . the prior policy.”).

As Judge Bates explained astutely:

[T]he Nielsen Memo—like the Duke Memo before it—fails to engage meaningfully with the reliance interests and other countervailing factors that weigh against ending the program . . . .

Although this time around the Nielsen Memo at least “acknowledge[s] how heavily DACA beneficiaries had come to rely on” the program, *id.*, it does little more than that. Instead of considering DACA’s benefits to DACA recipients and to society at large, Secretary Nielsen simply states that “the asserted reliance interests” are outweighed by DACA’s “questionable legality . . . and the other reasons for ending the policy,” and then goes on to suggest that she should not even have to consider those interests . . . .

Like the Duke Memo, the Nielsen Memo demonstrates no true cognizance of the serious reliance interests at issue here—indeed, it does not even identify what those interests are.

Case No. 18-588, Pet. App. 106a-107a. Such “[a]n ‘unexplained inconsistency’ in agency policy indicates that the agency’s action is arbitrary and

capricious, and therefore unlawful.” *Jimenez–Cedillo v. Sessions*, 885 F.3d 292, 298 (4th Cir. 2018) (quoting *Encino Motor Cars*, 136 S. Ct. at 2125).

The following section sets forth several serious reliance interests engendered by DACA enrollees that the government was required to consider prior to rescinding the DACA policy, but instead ignored.

## **II. DACA ENGENDERED SERIOUS RELIANCE INTERESTS THAT THE GOVERNMENT FAILED TO CONSIDER**

Since its inception, nearly 800,000 DACA enrollees 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 without proper consideration of the consequences of rescission – or used solely as a political bargaining chip.<sup>5</sup> *See* Pet. App. 12a–13a (793,026 enrollees, with 689,800 active as of September 2017).

The Department is the responsible agency for adjudicating the rights of 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.*

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<sup>5</sup> Annie Karni and Sheryl Gay Stolberg, *Trump Offers Temporary Protections for ‘Dreamers’ in Exchange for Wall Funding*, N.Y. Times (Jan. 9, 2019), <https://www.nytimes.com/2019/01/19/us/politics/trump-proposal-daca-wall.html>. The government’s brief to this Court acknowledges that DACA is a possible tradeoff in a deal with Congress (*see* Pet. Br. 32 and 39), although the Administration has hardly exercised “executive restraint” on many matters pertaining to immigration.

*Penn. Indus. Chem. Corp.*, 411 U.S. 655 (1973) (quotations omitted). It was around this guidance that the DACA recipients planned their lives moving forward in the United States.

By explicitly targeting “productive young people,”<sup>6</sup> the federal government plainly contemplated that DACA enrollees would be contributing members of our society and that the nation would benefit from their social and economic efforts. With the opportunity to advance their lives through education, employment, and homeownership, DACA enrollees have been induced by the promise of being able to achieve financial security for themselves and their families – and to be part of the fabric of America. And it is on the basis of this promise that childhood arrivals revealed themselves to the government and submitted to a rigorous application and background check process, the cost of which was borne by the applicant. Indeed, there were individuals who opted not to apply to the DACA program on the basis that they could not afford the significant application fee or because of the program requirement to provide personal and private information to the federal government.<sup>7</sup>

The states and the federal government, in turn, would benefit from an increased population of productive, legally employable workers, who pay taxes and

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<sup>6</sup> 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>.

<sup>7</sup> See New American Economy, Overcoming the Odds: The Contributions of DACA-Eligible Immigrants and TPS Holders to the U.S. Economy (May 2019), [https://www.newamericaneconomy.org/wp-content/uploads/2019/05/DACA-TPS\\_Brief.pdf](https://www.newamericaneconomy.org/wp-content/uploads/2019/05/DACA-TPS_Brief.pdf).

make significant contributions to the economy. And, indeed, they have. “DACA enrollees and their households pay \$5.7 billion in federal taxes and \$3.1 billion in state and local taxes annually.”<sup>8</sup> The termination of DACA will only place further strain on states and local communities that were already under economic pressure.

The Department’s failure to consider such reliance interests, let alone provide an “analysis” of its action “is arbitrary and capricious and so cannot carry the force of law.” *Encino Motor Cars*, 136 S. Ct. at 2125.

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

It is indisputable 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). In *Plyler*, this Court ruled that undocumented school age children had a constitutional right to a free public education. *Id.* (“Education provides the basic tools by which individuals might lead economically productive lives to the benefit of us all . . . “[e]ducation has a fundamental role in maintaining the fabric of our society.” Because of *Plyler*, generations of undocumented persons have succeeded in school and integrated into the American culture.

The DACA program has had the practical effect of extending the rationale of *Plyler* to post-secondary education. By relying on the rights granted by DACA, tens of thousands of undocumented persons have

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<sup>8</sup> Nicole Svjlenka, *What We Know About DACA Recipients in the United States*, Ctr. for Amer. Progress, (Sept. 5, 2019), <https://www.americanprogress.org/issues/immigration/news/2019/09/05/474177/know-daca-recipients-united-states/>.

gained access to and invested substantial time and money in a college education. And many of those persons, once educated, have entered the workforce as teachers, giving back to their communities.

DACA teachers, in particular, 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.<sup>9</sup> There is currently a severe shortage nationally of teachers in the public education sector, estimated to be as high as 327,000.<sup>10</sup> The consequences of a shortage in public educators are well known: larger class sizes, fewer teacher aides, fewer guidance counselors, and fewer extra-curricular activities.

Further, 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.<sup>11</sup> Public schools have

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<sup>9</sup> 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](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*, USA Today (Oct. 11, 2017), <https://www.usatoday.com/story/news/2017/10/11/thousands-daca-teachers-risk/752082001/>.

<sup>10</sup> 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/>.

<sup>11</sup> "Racial and ethnic minorities accounted for 20% of all public elementary and secondary school teachers in the United States

seen increased enrollment by students of color, especially by Latinos.<sup>12</sup> By 2025, it is expected that a majority of high school graduates will be students of color.<sup>13</sup> DACA has allowed schools to recruit qualified teachers serving students of diverse backgrounds.

DACA teachers do much more than just fill available positions; they also serve as mentors and role models. 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.<sup>14</sup> “Foreign-born teachers not only educate Americans, but also serve as cultural ambassadors for immigrant students who may not be as familiar with American traditions, customs, and social norms.”<sup>15</sup>

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during the 2015-16 school year.” A.W. Geiger, *America’s Public School Teachers Are Far Less Racially And Ethnically Diverse Than Their Students*, Pew Research Center (Aug. 27, 2018), <https://www.pewresearch.org/fact-tank/2018/08/27/americas-public-school-teachers-are-far-less-racially-and-ethnically-diverse-than-their-students/>.

<sup>12</sup> 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>.

<sup>13</sup> *Id.*

<sup>14</sup> Lisette Partelow, *America Needs More Teachers of Color*, Ctr. for Amer. Progress (Sept. 14, 2017), <https://www.americanprogress.org/issues/education-k-12/reports/2017/09/14/437667/america-needs-teachers-color-selective-teaching-profession/>.

<sup>15</sup> Yukiko Furuya et al., *A Portrait of Foreign-Born Teachers In The United States*, George Mason University, Institute for Immigration Research (Jan. 2019), [https://www.immigrationresearch.org/system/files/Teacher\\_Paper.pdf](https://www.immigrationresearch.org/system/files/Teacher_Paper.pdf).

Viridiana Carrizales, who led the DACA Initiative at Teach or 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.”<sup>16</sup> As Vanessa Luna, a DACA recipient who taught as a Teach for America teacher and now serves as the Co-Founder and Chief Programming Officer at ImmSchools, explains: “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.”<sup>17</sup>

School environments with DACA educators help reflect the diversity of communities, the country, and the world, which, in turn, helps 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.<sup>18</sup> The loss of 20,000 DACA teachers will cause severe and lasting harm to students and their educational trajectories, and more broadly our country, which depends on the great talent of future generations.

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<sup>16</sup> See Toppo, *supra* n.9.

<sup>17</sup> 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>.

<sup>18</sup> 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>.

In *Plyler*, the 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.

Here, as in *Plyler*, the federal government failed to consider the profound reliance interests and costs to DACA recipients and their educational communities around the nation resulting from the rescission of DACA.

### **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. Indeed, the federal government and its agencies have developed programs and marketing around that well-accepted precept.<sup>19</sup> 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. They made these significant and life changing investments in reliance on DACA.

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<sup>19</sup> See, e.g., U.S. Dep't of Housing and Urb. Dev., *The National Homeownership Strategy: Partners in the American Dream* (1995).

The online real estate database company Zillow estimates that 123,000 DACA enrollees are homeowners and, indeed, purchased their homes *after* their DACA applications had been approved.<sup>20</sup> Similarly, a survey of DACA recipients conducted by the Center for American Progress found that 19 percent of respondents age 25 and older purchased their first home after being granted DACA.<sup>21</sup>

DACA made it possible for these individuals to establish roots and purchase homes thanks to access to credit, which was previously unavailable to them. Lending institutions extended this credit and offered mortgages to enrollees in complete reliance on DACA. In relying on the same, DACA participants make \$613.8 million in annual mortgage payments. 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.

Further, through homeownership, DACA recipients “pay an estimated \$380 million a year in property taxes to their communities.”<sup>22</sup> As tenants, DACA

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<sup>20</sup> 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/>.

<sup>21</sup> Tom K. Wong et al., *DACA Recipients’ Livelihoods, Families, and Sense of Security Are at Stake This November*, Ctr. For Am. Progress (Sept. 19, 2019), <https://www.americanprogress.org/issues/immigration/news/2019/09/19/474636/daca-recipients-livelihoods-families-sense-security-stake-november/>.

<sup>22</sup> See Casey, *supra* n.20.

enrollees contribute \$2.3 billion in rental payments annually. Communities that benefit, even depend, on the property tax revenues from these DACA recipient homeowners will, in turn, be financially upended.

Creating a pathway to homeownership is particularly important for communities of color that 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 own a home compared to 73 percent of whites.<sup>23</sup> 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's decision to rescind DACA threatens to strip these individuals of their most valuable investments without any consideration of 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 “physicians, nurses, and

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<sup>23</sup> U.S. Census Bureau, Quarterly Residential Vacancies And Homeownership, Fourth Quarter 2017 (Jan. 30, 2018), <https://www.census.gov/housing/hvs/files/currenthvspress.pdf>.

certain experts in language with associated cultural backgrounds.”<sup>24</sup>

The Defense Department’s MAVNI materials entice recruits with the “opportunity of early citizenship” to “recognize their contribution and sacrifice.” *Id.* at 2. According to a Defense Department MAVNI fact sheet, “[t]he Law ensures” that such contribution and sacrifice be recognized. *Id.* 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.”<sup>25</sup>

Beginning in 2014, the Defense Department granted DACA enrollees eligibility to apply for the MAVNI program.<sup>26</sup> At the time of rescission, the Defense Department estimated that up to 900 DACA recipients were either serving or had signed contracts to serve through MAVNI.<sup>27</sup>

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<sup>24</sup> See Dep’t of Def., Military Accessions Vital to National Interest (MAVNI) Recruitment Pilot Program, <https://www.defense.gov/news/MAVNI-Fact-Sheet.pdf>.

<sup>25</sup> 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).

<sup>26</sup> See MAVNI Fact Sheet, *supra* n. 24.

<sup>27</sup> Alex Horton, *The Military Looked to ‘Dreamers’ to Use Their Vital Skills. Now the U.S. Might Deport Them*. Wash. Post (Sept. 7, 2017), <https://www.washingtonpost.com/news/checkpoint/wp/>

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.<sup>28</sup>

The administrative record is 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 serious reliance interests and those described above is arbitrary and capricious under the APA.

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2017/09/07/the-military-looked-to-dreamers-to-use-their-vital-skills-now-the-u-s-might-deport-them/.

<sup>28</sup> *See id.*

**CONCLUSION**

For the foregoing reasons, *amici* urge this Court to affirm the decisions of the lower courts to enjoin the rescission of DACA.

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## **APPENDIX**

**APPENDIX: LIST OF *AMICI CURIAE***

**42 Other Social Justice Organizations**

1. Advocates for Youth
2. Andrew Goodman Foundation
3. Arab American Institute
4. Asian & Pacific Islander American Health Forum
5. The Asian American Legal Defense and Education Fund
6. Bend the Arc: A Jewish Partnership for Justice
7. Center for Responsible Lending
8. Center for the Study of Hate & Extremism
9. Coalition for Disability Health Equity
10. Disability Rights Education & Defense Fund
11. Equal Justice Society
12. Equality California
13. Farmworker Justice
14. Hispanic National Bar Association
15. Human Rights Campaign
16. In Our Own Voice: National Black Women's Reproductive Justice Agenda
17. Jewish Council for Public Affairs
18. Juvenile Law Center
19. League of Women Voters of the United States
20. Legal Aid at Work
21. Matthew Shepard Foundation
22. The Mississippi Center for Justice

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23. National Association of Human Rights Workers
24. National Center for Lesbian Rights
25. National Coalition for Asian Pacific American Community Development
26. National Council on Independent Living
27. National Employment Law Project
28. National Employment Lawyers Association
29. National Health Law Program
30. National Hispanic Media Coalition
31. National Partnership for Women & Families
32. National Women's Law Center
33. OCA - Asian Pacific American Advocates
34. People For the American Way Foundation
35. Self-Help Federal Credit Union
36. Silver State Equality-Nevada
37. The Southern Poverty Law Center
38. The Employee Rights Advocacy Institute for Law & Policy
39. The Sikh Coalition
40. UnidosUS
41. Voto Latino
42. Young Women's Christian Association USA