

# 18-485(L)

18-488(CON)

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## United States Court of Appeals for the Second Circuit

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MARTIN 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,*

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.*

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On Appeal from the United States District Court  
for the Eastern District of New York

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### **BRIEF FOR THE STATE OF NEW JERSEY AS *AMICUS* *CURIAE* IN SUPPORT OF PLAINTIFFS-APPELLEES**

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## INTRODUCTION AND INTEREST OF *AMICUS CURIAE*

New Jersey is a State of immigrants. Twenty-two percent of New Jersey residents were born outside of the United States, and an additional seventeen percent have at least one immigrant parent.<sup>1</sup> During the 2016-2017 school year, New Jersey had a total of 22,708 foreign students enrolled in state colleges and universities. Together with their dependent family members, they contributed \$790.2 million to the state economy and created or supported 9,943 jobs.<sup>2</sup>

For many New Jersey immigrants, the Deferred Action for Childhood Arrivals program, or DACA, has been life changing. DACA was established in 2012 as a form of prosecutorial discretion for “certain young people who were brought to this country as children and know only this country as home.”<sup>3</sup> Pursuant to DACA, an applicant could be considered for an exercise of “prosecutorial discretion” for a renewable two-year period if he or she: (1) came to the United States before turning sixteen; (2) had continuously resided in the United States for a period of at least five years; (3) was in school, had graduated from high

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<sup>1</sup> See *Immigrants in New Jersey* 1, Am. Immigration Council (2017), [https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants\\_in\\_new\\_jersey.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_in_new_jersey.pdf).

<sup>2</sup> See *New Jersey Benefits from International Students*, NAFSA Int’l Student Econ. Value Tool, <https://istart.iu.edu/nafsa/reports/state.cfm?state=NJ&year=2016>.

<sup>3</sup> See Memorandum from Janet Napolitano, Sec’y of Homeland Sec. for David V. Aguilar, Acting Comm’r, U.S. Customs and Border Prot., et al. (June 15, 2012), <https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf>.

school, had obtained a GED, or was honorably discharged from the military; (4) had not been convicted of a felony or certain misdemeanor offenses, and did not otherwise pose a threat to national security or public safety; and (5) was not older than 30. *Id.* DACA grantees could obtain work authorization if they could show an “economic necessity for employment.” 8 C.F.R. 274a.12(c)(14). And then-Secretary Napolitano instructed Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) officials to “immediately exercise their discretion, on an individual basis, in order to prevent [such] low priority individuals from being placed into removal proceedings or removed from the United States.” Memorandum from Janet Napolitano, *supra* note 3, at 2.

Since 2012, DACA has allowed nearly 800,000 young people to live, work, and build their lives in the United States. *See* Special Appendix (SA) 1. DACA grantees are healthcare professionals, artists, entrepreneurs, teachers, lawyers, bankers, software developers, designers, research assistants, professors, architects and construction workers.<sup>4</sup> They own homes and cars and have citizen children, siblings, and spouses. *See* JA 2168, JA 2175. They are full members of the New Jersey community—our neighbors and friends, teachers and students, brothers, sisters and colleagues.

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<sup>4</sup> *See American Dreamers*, N.Y. Times: Opinion, <https://www.nytimes.com/interactive/projects/storywall/american-dreamers/> (last visited Apr. 10, 2018).



On September 5, 2017, Defendants announced that they would end the DACA program as of March 5, 2018. Under Defendants' plan, "approximately 1,400 DACA recipients [would] lose deferred action each work day, beginning on March 5, 2018." SA 48. As a practical matter, that means that DACA recipients who voluntarily came forward and disclosed their status and presence to the United States government would "face the possibility of deportation from the country," SA 48, and immediately "lose their work authorization," thus becoming "legally unemployable in this country," SA 49. The States of New York, Massachusetts, Washington, Connecticut, Delaware, Hawaii, Illinois, Iowa, New Mexico, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, and the District of Columbia immediately filed suit. The United States District Court for the Eastern District of New York (Garaufis, J.) issued a preliminary injunction, holding that Defendants had not offered "legally adequate reasons" for their decision to end the program. SA 5.

This brief supplements appellees' brief by providing the perspective of the State of New Jersey, which has a strong interest in affirmance of the district court's injunction. The district court correctly held that the Plaintiff States had "demonstrated that they are likely to suffer irreparable harm if the court does not enjoin Defendants from fully implementing the DACA rescission." SA 47. The

same is true for New Jersey: rescinding DACA would profoundly and irreparably harm the State and its residents.

First, rescinding DACA would irreparably harm New Jersey's public colleges and universities by depriving them of the incredible diversity that DACA students bring to their institutions, of hundreds of thousands of dollars in tuition revenue, and of valuable employees, whom the institutions have spent money recruiting, training and retaining. Rutgers University, which has more than 350 registered DACA recipients as students, in particular would be severely harmed.

Second, rescinding DACA would seriously harm New Jersey's treasury. DACA grantees have lived in New Jersey for the majority of their lives and have become a vital part of their communities. They work here and pay taxes here—DACA eligible individuals earned an estimated \$811.9 million in New Jersey in 2015 and paid an estimated \$66 million in state and local taxes in New Jersey in 2016. If DACA were rescinded, the State would lose an estimated \$21 million per year in taxes. As for active DACA recipients, they earned an estimated \$576.2 million per year in 2017. Overall, removing all workers with DACA from New Jersey's economy could cost New Jersey an estimated \$1.587 billion in annual GDP losses.

Third, rescinding DACA would harm New Jersey's sovereign interest in protecting the health and welfare of its residents. DACA recipients who lose

employer-sponsored health insurance may refrain from seeking necessary medical care. In fact, forty-eight percent of DACA recipients surveyed reported that even if they were injured, they would be less likely to go to a hospital to seek medical treatment if DACA were rescinded. Moreover, rescinding DACA would seriously threaten the financial security of families that are supported by DACA grantees, and could lead to DACA grantees being separated from their citizen children who live in New Jersey. An estimated 12,650 DACA recipients in the State of New Jersey have an American citizen sibling, spouse, or child, and an estimated 4,472 have an American citizen child. Finally, rescinding DACA would harm New Jersey's sovereign interest in enforcing its criminal laws. Fifty-three percent of DACA recipients reported that they would be less likely to report a crime they witnessed to the police if DACA were rescinded.

Because rescinding DACA would profoundly and irreparably harm the State of New Jersey, the district court's injunction should be affirmed.

## **ARGUMENT**

### **I. RESCINDING DACA WOULD IRREPARABLY HARM THE STATE OF NEW JERSEY.**

#### **A. DACA Grantees Are Integral Members of the New Jersey Community.**

DACA has enabled people who were brought to the United States as children to step out of the shadows and to live as full and productive members of

society. There are an estimated 53,000 people who are eligible for DACA in New Jersey.<sup>5</sup> As of September 4, 2017, there were 17,400 current, active DACA recipients in the State.<sup>6</sup> And there were a total of 22,817 initial DACA applications and 37,546 renewal applications approved for New Jersey residents.<sup>7</sup>

According to a survey of more than 3,000 DACA recipients, the average DACA recipient was brought to the United States at age 6.5, has lived in this country for 18.8 years, and is currently 25.2 years old. JA 2163. Approximately seventy-three percent of DACA recipients live with an American citizen spouse, child, or sibling. JA 2173-2174 (72.7%). Approximately ninety-one percent are currently employed. JA 2164 (91.4%). They earn, on average, \$36,232 per year (those twenty five and older earn, on average, \$41,621 per year). JA 2167. And at least seventy-two percent of the top twenty-five Fortune 500 companies employ

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<sup>5</sup> See *National and State Estimates of the DACA-Eligible Population, 2017*, Migration Policy Inst., <https://www.migrationpolicy.org/sites/default/files/datahub/State%20and%20County%20Estimates%20of%20DACA-Eligible%20Population-2017-FINAL.xlsx>.

<sup>6</sup> See *Approximate Active DACA Recipients (September 4, 2017)*, U.S. Citizenship and Immigration Servs., [https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/daca\\_population\\_data.pdf](https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/daca_population_data.pdf).

<sup>7</sup> See *Number of Form I-821D, Consideration of Deferred Action for Childhood Arrivals (January 31, 2018)*, U.S. Citizenship and Immigration Servs., [https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/DACA\\_FY18\\_Q1\\_Data\\_plus\\_Jan\\_18.pdf](https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/DACA_FY18_Q1_Data_plus_Jan_18.pdf).

DACA recipients. JA 2164. In addition to the approximately ninety-one percent who are currently working, approximately forty-five percent of DACA recipients are currently in school. JA 2170 (44.9%). Of those, approximately seventy-two percent are pursuing a bachelor's, masters or professional degree. JA 2171 (71.5%).

Applying these figures to the 17,400 active DACA recipients in New Jersey, an estimated 15,904 DACA recipients in New Jersey are currently employed (91.4% of 17,400); 940 own their own business (5.4% of 17,400); 7,813 are in school (44.9% of 17,400); 5,586 are pursuing a bachelor's, master's or professional degree (71.5% of 7,813); and 12,650 have an American citizen sibling, spouse, or child (72.7% of 17,400).

DACA has had a transformative impact on the lives of recipients. After receiving DACA, fifty-four percent of respondents got their first job; five percent started their own business; sixty-five percent bought their first car; sixteen percent bought their first home; sixty-one percent opened their first bank account; sixty-six percent got their first credit card; ninety percent got a driver's license or state identification card for the first time; and forty-nine percent became organ donors. JA 2166, 2168, 2174.

Two examples are illustrative. Christian Ugaz came to the United States from Peru when he was seven years old.<sup>8</sup> He lived in Union City, New Jersey, graduating third in his high-school class of nearly 700 students. *Id.* He received a full tuition scholarship to Saint Peter’s University in Jersey City, where he majored in Biochemistry and Latino Studies. *Id.* DACA was announced during Ugaz’s first year of college, and he received his first work permit that summer. *Id.* With DACA, Ugaz was able to work to support himself through college, including in a research program at Princeton University’s Chemistry Department and on a project that was published in the Journal of the American Chemical Society. *Id.* Ugaz currently works at the Icahn School of Medicine at Mount Sinai as a Clinical Research Coordinator. *Id.* He wants to go to medical school to pursue a joint MD/Master of Public Health degree. *Id.*

Fernando Da Silva came to the United States when he was 12 years old.<sup>9</sup> He says DACA was “like a dream”—giving him the chance to work for a better life for himself and his daughter. *Id.* With DACA, Da Silva got a certificate in Construction Project Management and was hired at a top tier construction

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<sup>8</sup> See *American Dreamers*, N.Y. Times: Opinion, <https://www.nytimes.com/interactive/projects/storywall/american-dreamers/stories/christian-ugaz> (last visited Apr. 10, 2018).

<sup>9</sup> See *American Dreamers*, N.Y. Times: Opinion, <https://www.nytimes.com/interactive/projects/storywall/american-dreamers/stories/fernando-da-silva> (last visited Apr. 10, 2018).

management company in New Jersey, where he works as a Construction Superintendent. *Id.* He is looking to buy his first home. *Id.*

Rescinding DACA would dramatically alter the course of these two young lives. It would also irreparably harm the State of New Jersey.

**B. Rescinding DACA Would Harm New Jersey's Proprietary Interests.**

Rescinding DACA would irreparably harm the work of New Jersey institutions and the New Jersey state treasury.

**1. Rescinding DACA would harm New Jersey's public colleges and universities.**

First, rescinding DACA would irreparably harm New Jersey's public colleges and universities. New Jersey has four public research universities (Rutgers, New Jersey Institute of Technology, Rowan University, and Montclair State University); seven public state colleges (The College of New Jersey, Kean University, New Jersey City University, Ramapo College of New Jersey, Stockton University, Thomas Edison State University, and William Paterson University); and nineteen public county community colleges. Almost 500 students attending the four public research universities, 200 students attending the seven state colleges, and more than 1,500 students attending New Jersey's community colleges are registered DACA recipients.

DACA has provided these 2,200 students the opportunity to obtain an excellent and affordable New Jersey education. Under the New Jersey Tuition Equality Act, DACA recipients qualify for in-state tuition in New Jersey. *See* N.J.S.A. 18A:62-4.4. They are not, however, currently eligible for federal education grants or loans, or for state financial aid.<sup>10</sup>

DACA's work authorization allows recipients to finance the cost of their New Jersey education by working. Ninety-four percent of survey recipients currently in school said that receiving DACA allowed them to pursue "educational opportunities that [they] previously could not" have pursued before DACA. *See* JA 2170-2171. Without the ability to work to support themselves, many DACA grantees will be forced to drop out of school without finishing their degrees. *See* SA 49 (recognizing that DACA recipients, "due to the imminent loss of their employment ... may need to drop out of school.").<sup>11</sup>

New Jersey's public educational institutions thus have much to lose if DACA is rescinded. First, they will lose hundreds of thousands of dollars in

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<sup>10</sup> On March 26, 2018, the New Jersey State Senate passed a bill to allow undocumented immigrants, including DACA recipients, to apply for state financial aid. *See* S. 699, 218th Sess. (N.J. March 26, 2018), [http://www.njleg.state.nj.us/2018/Bills/S1000/699\\_I1.HTM](http://www.njleg.state.nj.us/2018/Bills/S1000/699_I1.HTM).

<sup>11</sup> *See also* Erin Delmore, *What Happens to DACA Students Now? They Could Be Shut Out Of College For An Unexpected Reason*, Bustle (Feb. 2018), <https://www.bustle.com/p/what-happens-to-daca-students-now-they-could-be-shut-out-of-college-for-unexpected-reason-8245095>.



tuition revenue. Second, they will lose the resources they have spent educating students who are ultimately forced to drop out of school before earning their degrees.

They will also lose the diversity that DACA students bring to their institutions. DACA grantees often bring unique viewpoints and backgrounds to campus. New Jersey's public institutions have emphasized the importance of this diversity on campus—diversity which brings different perspectives and ideas to the classroom and adds to exciting and enthusiastic classroom discussion and the overall culture of the campus. DACA students are a large part of this diversity, and without them, the institutions and the remaining students lose this vital educational experience. As the President of the New Jersey Institute of Technology (NJIT), which has over 50 DACA students, eloquently explained:

Difference is a catalyst for learning and human development, which occur through collaboration, questioning, analysis, and debate. Ultimately, these actions result in a deeper understanding of people, enhanced capability to solve problems of all types, and opportunities to improve quality of life for all. NJIT's DACA students are emblematic of the strength that is gained through diversity. They were born in more than 18 different nations, are majoring in disciplines across the academic spectrum, are represented in every class from freshman to senior as well as our graduate programs, and they maintain a cumulative grade point average above a 3.0. Subtracting such a pool of talent

and ambition from any learning community would be a deep and painful loss.<sup>12</sup>

And New Jersey's public colleges and universities will lose valuable employees. Many DACA recipients are employed by New Jersey's public colleges and universities. The institutions have spent money in recruiting, training, and retaining these employees. If DACA is rescinded, these employees, like the students, lose their work authorizations, and these institutions must spend valuable public resources to recruit, train, and retain new employees. *See* SA 49 (recognizing that employers "will suffer due to the inability to hire or retain ... DACA recipients, affecting their operations on an ongoing basis and causing them to incur unrecoverable economic losses.").

The example of Rutgers is illustrative. Rutgers, the State University of New Jersey, is a leading national research university and New Jersey's preeminent public institute of higher education. Rutgers has 30 schools and colleges, nearly 300 research centers and institutes, and over 69,000 students. Rutgers also has more than 350 students who are registered DACA recipients.

Any repeal of DACA will severely harm these students. In addition to the problems with financing the cost of a Rutgers education discussed above, rescinding DACA would also limit the academic opportunities available to Rutgers

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<sup>12</sup> *See* Memorandum from President Joel S. Bloom to NJIT Cmty. (Sept. 5, 2017), <http://www.njit.edu/president/message-president-bloom-0/>.

students who are current DACA grantees. Some majors at Rutgers include workplace internships that require the student be eligible to work in the United States, and many graduate programs require teaching or otherwise require students to have employment authorization to complete elements of the program.<sup>13</sup>

Since Defendants announced they would rescind DACA, Rutgers has gone out of its way to reassure DACA recipients that they remain a “vital and valued part of [the university’s] community of scholars,” and the school would continue “to do all [it could] to support [their] successful completion of a Rutgers degree.”<sup>14</sup> Rutgers President Robert Barchi called the move to end DACA “wrong, unwise, and inconsistent with American values.” *Id.* He reassured students that Rutgers would continue to employ admissions policies that do not consider immigration status and would continue to protect the privacy of all students. *Id.* The school has

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<sup>13</sup> See *What Career Options Are Available For Undocumented Students? Undocumented Students FAQ*, Rutgers Div. of Student Affairs, <https://slwordpress.rutgers.edu/deanofstudents/wp-content/uploads/sites/56/2017/01/Undocumented-Students-FAQ.pdf>.

<sup>14</sup> See Letter from Robert Barchi to Members of the Rutgers Cmty. In Response to the Trump Administration’s Announcement on DACA (Sept. 5, 2017), <https://president.rutgers.edu/public-remarks/letters/response-trump-administrations-announcement-daca>.

even created a detailed Resource Guide for DACA grantees,<sup>15</sup> and provides free and low-cost legal services to undocumented students.<sup>16</sup>

Despite its best efforts, any move to end DACA would severely harm Rutgers as a community. Diversity is part of Rutgers' core mission, an active strategy that includes inclusion, respect, equality and fairness. Rutgers "value[s] and rel[ies] upon the contributions that all ... students, faculty, staff, and researchers—from every background and place of birth—make to the richness of [the] academic community."<sup>17</sup> DACA students contribute to Rutgers' goal of a diverse, inclusive and cohesive culture, and rescinding DACA would undermine this goal. As President Barchi has stressed, "[c]ultural and ethnic diversity are essential elements of" the Rutgers identity, and a "particular strength of Rutgers as a public research university." *Id.*

DACA grantees have enhanced the educational experience of all students at New Jersey's public colleges and universities. These institutions, which are vital

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<sup>15</sup> See *Research Guide: Resources for DACA Impacted Students*, Rutgers Univ. Libraries, [https://libguides.rutgers.edu/DACA\\_CAMDEN](https://libguides.rutgers.edu/DACA_CAMDEN) (last updated Mar. 27, 2018, 10:37 AM).

<sup>16</sup> See *Does Rutgers Provide Free Or Low Cost Immigration Services To Undocumented Students? Undocumented Students FAQ*, Rutgers Div. of Student Affairs, <https://slwordpress.rutgers.edu/deanofstudents/wp-content/uploads/sites/56/2017/01/Undocumented-Students-FAQ.pdf>.

<sup>17</sup> See Robert Barchi, *Nation Must Honor the Promise of DACA, and Bridge Act Is a Good Start*, Philadelphia Inquirer: Viewpoints (September 6, 2017, 10:01 AM), <http://www.philly.com/philly/opinion/commentary/daca-trump-bridge-act-20170906.html>.

to our State's economy and to the success of our State as a whole, will be permanently and irreparably harmed if Defendants' rescission of DACA is permitted to go into effect.

## **2. Rescinding DACA would harm the state treasury.**

Beyond harming the State's public colleges and universities, rescinding DACA would seriously harm the state treasury. As the New Jersey Chamber of Commerce has recognized, DACA grantees "have lived here virtually all of their lives and have become engrained in our communities. Like the rest of our citizens, they work here and they pay taxes here."<sup>18</sup> The State of New Jersey will suffer direct and substantial economic losses if Defendants' rescission order were to go into effect.

Every DACA recipient contributes to the New Jersey economy through purchases of goods and services and the tax receipts that those purchases generate. The spending power of DACA eligible individuals in New Jersey was estimated at \$679 million in 2015.<sup>19</sup>

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<sup>18</sup> See *NJ Chamber of Commerce President Tom Bracken's Statement on DACA*, New Jersey Chamber of Commerce (Oct. 10, 2017) <http://www.njchamber.com/press-releases/449-nj-chamber-of-commerce-president-tom-bracken-s-statement-on-daca>.

<sup>19</sup> See *Examining the Contributions of the DACA-Eligible Population in Key States*, New Am. Econ. Research Fund (Nov. 6, 2017), <http://research.newamericaneconomy.org/report/examining-the-contributions-of-the-daca-eligible-population-in-key-states/>.

Even more importantly, DACA eligible individuals earned an estimated \$811.9 million in New Jersey in 2015, *see id.*, and pay an estimated \$66 million in state and local taxes each year.<sup>20</sup> If DACA were rescinded, the State would lose an estimated \$21 million per year in taxes. *Id.*

As for active DACA recipients in Jersey, they earned an estimated \$576.2 million per year in 2017 (\$36,231.91 multiplied by 15,904). This translates into \$35.7 million in Social Security contributions (6.2% of \$576.2 million) and \$8.4 million in Medicare contributions (1.45% of \$576.2 million), in addition to state and local taxes. *See, e.g.*, JA2182-2199 (same analysis for other States).

And it is not only tax revenue that New Jersey stands to lose. New Jersey businesses have invested significant time and money in hiring and training DACA recipients. If DACA is rescinded, they will lose the value of their investments as well as the services of qualified and trained employees. According to one estimate, terminating DACA would cost New Jersey \$384 million in budgetary costs and \$1.376 billion in other economic costs, for a total of \$1.76 billion between 2018 and 2028. *See* JA 3944. In addition, removing all DACA workers from New

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<sup>20</sup> *See* Misha E. Hill and Meg Wiehe, *State & Local Tax Contributions of Young Undocumented Immigrants, Appendix 1*, Inst. on Taxation and Econ. Policy (Apr. 25, 2017), <https://itep.org/wp-content/uploads/2017DACA.pdf>.

Jersey's economy would cost New Jersey an estimated \$1.587 billion in annual GDP losses.<sup>21</sup>

### **C. Rescinding DACA Would Harm New Jersey's Sovereign and Quasi-Sovereign Interests**

Beyond harming New Jersey's treasury and New Jersey's public colleges and universities, rescinding DACA would also harm New Jersey's residents, which directly impacts the State's sovereign and quasi-sovereign interests.

First, rescinding DACA will harm public health in New Jersey, thus impeding New Jersey's sovereign interest in protecting the health of its residents. Fifty-seven percent of DACA recipients got a job with health insurance or other benefits for the first time after receiving DACA. JA 2166. Without work authorization, DACA recipients will not only lose their jobs, they will also lose "their employer-sponsored healthcare coverage, which will endanger DACA recipients and their families and impose tremendous burdens on [State] public health systems." SA 49 (internal citation omitted). This is because DACA recipients without health insurance may avoid obtaining necessary medical care unless and until an emergency arises. Even then, forty-eight percent of DACA

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<sup>21</sup> See Nicole Prchal Svajlenka, Tom Jawetz, and Anjie Bautista-Chavez, *A New Threat to DACA Could Cost States Billions of Dollars*, Ctr. for Am. Progress (July 21, 2017, 10:05 AM), <https://www.americanprogress.org/issues/immigration/news/2017/07/21/436419/new-threat-daca-cost-states-billions-dollars/>.

recipients surveyed reported that even if they were injured, they would be less likely to go to the hospital to seek treatment if DACA were rescinded. JA 2179.

New Jersey also has a sovereign interest in protecting families that live in the State. An estimated 12,650 DACA recipients in the State of New Jersey have an American citizen sibling, spouse, or child (72.7% of 17,400), and an estimated 4,472 have an American citizen child (25.7% of 17,400). *See* JA 2173-2174.

Rescinding DACA would seriously threaten the financial security of families that are supported by DACA grantees.<sup>22</sup> The numbers are staggering—across the United States, 200,000 American citizen children could see their parents deported.<sup>23</sup>

Finally, New Jersey has a sovereign interest in enforcing its criminal laws. Fifty-three percent of DACA recipients reported that they would be less likely to report a crime they witnessed to the police if DACA were rescinded. JA 2179.

Forty-seven percent reported that they would be less likely to report a crime even if

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<sup>22</sup> *See, e.g.,* Dara Lind, *What Happens To A Family When They Have Equal Rights, And Then Lose Them? Immigrant Parents Struggle With The Future—And Try To Protect Their US-Born Children From The Terrible Truth*, Vox (Dec. 14, 2017), <https://www.vox.com/policy-and-politics/2017/12/14/16752114/daca-children-us-citizens> (telling the story of Treisi Martinez, a 25-year-old DACA grantee and mother of two who supports her children by working as an administrative assistant at her children's school).

<sup>23</sup> *See* Pricilla Alvarez, *Will DACA Parents Be Forced to Leave Their U.S.-Citizen Children Behind?* The Atlantic (Oct. 21, 2017) <https://www.theatlantic.com/politics/archive/2017/10/donald-trump-daca/543519/>.



they themselves were the victim, and sixty percent reported they would be less likely to report if their employer was committing wage theft. *Id.* Defendants’ immigration policies have already made con artists more brazen in preying on immigrants’ fears of deportation,<sup>24</sup> and rescinding DACA could harm the State of New Jersey’s ability to enforce its criminal laws against such scams.

## **II. THE NATIONWIDE INJUNCTION SHOULD BE AFFIRMED**

The district court correctly held that Plaintiffs “demonstrated that they are likely to suffer irreparable harm if the court does not enjoin Defendants from fully implementing the DACA rescission.” SA 47. As the court correctly recognized, “the decision to rescind DACA, if carried into effect, will have profound and irreversible economic and social implications” and will “profoundly disrupt the lives of hundreds of thousands of people.” SA49.

One out of every 400 U.S. workers may be forced out of the lawful workforce. Business owners who knowingly employ DACA grantees after their work permits expire could face steep penalties including fines and jail time. Former DACA recipients could be separated from their families and their communities, including their United States citizen children. As the district court

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<sup>24</sup> *See, e.g.,* Erik Ortiz, *Trump’s Immigration Policies May Give Rise to More Fraud, Experts and Advocates Warn*, NBC News (Apr. 5, 2017, 8:03AM), <https://www.nbcnews.com/news/us-news/trump-s-immigration-policies-may-give-rise-more-fraud-experts-n740156>.

correctly concluded, “[i]t is impossible to understand the full consequences of a decision of this magnitude.” *Id.*

In addition to the harm to the Plaintiff States that the district court recognized, this brief has demonstrated that rescinding DACA would also irreparably harm the State of New Jersey. The same is true for many other States across the country. Indeed, as the district court recognized in a similar suit in California, the injury “reaches beyond the geographical bounds” of any particular State and “affects every state and territory of the United States.” *Regents of the Univ. of Cal. v. U.S. Dep’t of Homeland Sec.*, 279 F. Supp. 3d 1011, 1049 (N.D. Cal. 2018).

Moreover, as the district court correctly noted, any injunction that applied only in particular States “would be unworkable, partly in light of the simple fact that people move from state to state and job to job.” SA 55. The district court’s nationwide injunction should therefore be affirmed.

## **CONCLUSION**

The judgment of the district court should be affirmed.

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Dated: April 11, 2018

## CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) because this brief contains 4,242 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

Dated: April 11, 2018

/s/ Rachel Wainer Apter  
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## CERTIFICATE OF SERVICE

I hereby certify that on April 11, 2018, I electronically filed the foregoing *amicus curiae* brief by using the appellate CM/ECF system.

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

Dated: April 11, 2018

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