

21-40680

**United States Court of Appeals
for the Fifth Circuit**

STATE OF TEXAS; STATE OF ALABAMA; STATE OF ARKANSAS;
STATE OF LOUISIANA; STATE OF NEBRASKA; STATE OF SOUTH CAROLINA;
STATE OF WEST VIRGINIA; STATE OF KANSAS; STATE OF MISSISSIPPI,

Plaintiffs-Appellees,

v.

UNITED STATES OF AMERICA; ALEJANDRO MAYORKAS, Secretary,
U.S. Department of Homeland Security; TROY MILLER, Acting Commissioner,
U.S. Customs and Border Protection; TAE D. JOHNSON, Acting Director
of U.S. Immigration and Customs Enforcement; UR M. JADDOU,
Director of U.S. Citizenship and Immigration Services,

Defendants-Appellants,

(caption continues inside front cover)

On Appeal from the United States District Court
for the Southern District of Texas

**BRIEF FOR STATES OF NEW YORK, CALIFORNIA, COLORADO,
CONNECTICUT, DELAWARE, HAWAII, ILLINOIS, MAINE,
MARYLAND, MASSACHUSETTS, MICHIGAN, MINNESOTA, NEVADA,
NEW MEXICO, NORTH CAROLINA, OREGON, PENNSYLVANIA,
RHODE ISLAND, VERMONT, VIRGINIA, WASHINGTON, AND
WISCONSIN, AND THE DISTRICT OF COLUMBIA
AS AMICI CURIAE IN SUPPORT OF APPELLANTS FOR REVERSAL**

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Dated: December 15, 2021

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VELASQUEZ; OSCAR ALVAREZ; LUIS A. RAFAEL; NANCI J. PALACIOS GODINEZ; JUNG
WOO KIM; CARLOS AGUILAR GONZALEZ; STATE OF NEW JERSEY,

Intervenor Defendants-Appellants.

CERTIFICATE OF INTERESTED PERSONS
Supplemental Statement of Interested Parties Pursuant to Local Rule 29.2

Texas v. United States, No. 21-40680

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

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INTRODUCTION AND INTERESTS OF AMICI

Amici States of New York, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington, and Wisconsin, and the District of Columbia, file this brief in support of defendants-appellants in this lawsuit challenging the lawfulness of the Deferred Action for Childhood Arrivals policy (DACA). Amici States have a profound interest in DACA. More than 344,000 DACA recipients live in amici States, where they are valued members of the community and vital members of the workforce who contribute to the tax base.

Since the federal government first adopted DACA nearly a decade ago, amici States have come to rely on it. We have hired and trained hundreds of DACA recipients, and we depend on the nearly 35,000 DACA recipients who work in the healthcare sector and are an integral part of our response to the COVID-19 pandemic. In addition, by enabling grantees to work lawfully and to access other benefits that stem from the grant of deferred action, DACA has increased our tax receipts and decreased the strain on our social safety nets.

For the reasons appellants explain—and as courts across the country have held—this Court should hold that DACA is a lawful exercise of the Executive Branch’s authority to “[e]stablish[] national immigration enforcement policies and priorities,” 6 U.S.C. § 202(5), and to “administ[er] and enforce[]” laws relating to immigration and naturalization, 8 U.S.C. § 1103(a)(1).¹ Longstanding practice and precedent establish the U.S. Department of Homeland Security’s authority to grant deferred action to individuals who lack lawful status. And the challenged policy here, which requires officials to act on a case-by-case basis, falls squarely within the agency’s discretionary authority. *See* Fed. Br. at 27-42; N.J. Br. at 13-24; DACA Recipients Br. at 44-49.

¹ *See Regents of the Univ. of Cal. v. United States Dep’t of Homeland Sec.*, 908 F.3d 476 (9th Cir. 2018), *vacated in part and rev’d in part on other grounds*, 140 S. Ct. 1891 (2020); *Batalla Vidal v. Nielsen*, 279 F. Supp. 3d 401 (E.D.N.Y. 2018), *vacated on other grounds sub nom. Department of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891 (2020). As appellants have explained, this Court’s decision regarding the separate Deferred Action for Parents of Americans, or DAPA, in *Texas v. United States*, 809 F.3d 134 (5th Cir. 2015), is distinguishable. *See* Br. for Fed. Appellants (“Fed. Br.”) at 11, 24-27, 35-38, 47-48, ECF No. 00516123005; Br. of Intervenor Def.-Appellant State of N.J. (“N.J. Br.”) at 24-27, ECF No. 00516122966; Br. of Intervenor Defs.-Appellants DACA Recipients (“DACA Recipients Br.”) at 47, ECF No. 00516122995.

We submit this amicus brief to emphasize that if this Court disagrees, any remedy it issues must take account of the significant reliance interests of DACA recipients, their families, their communities, their employers, and the amici States. As the district court recognized, “it is not equitable for a government program that has engendered such significant reliance to terminate suddenly.” (*See* ROA.25242.) That is especially true here, where several prior legal challenges to DACA failed, and where the plaintiffs did not initiate this suit until nearly six years after DACA was adopted.

ARGUMENT

Many of the amici States have litigated in defense of DACA’s validity and have prevailed in other federal courts. See *supra* at 2 n.1. That litigation has enhanced the reliance that those States and their residents have placed on the continuation of DACA. If this Court disagrees with the conclusions of those other courts, it must weigh the significant reasonable reliance interests at stake when crafting an appropriate remedy. Specifically, the Court should ensure that any remedy minimizes the profound harm that terminating DACA would cause to all who have relied on the policy in structuring their affairs over the past decade:

hundreds of thousands of individuals who know no home other than this country, as well as their families, communities, employers, and the States where they reside.

I. COURTS HAVE ADOPTED A WIDE RANGE OF REMEDIES TO MINIMIZE THE DISRUPTIONS THAT FLOW FROM ABRUPTLY ENDING POLICIES THAT HAVE ENGENDERED SIGNIFICANT RELIANCE INTERESTS

When both parties to a lawsuit present claims of injury, “the traditional function of equity has been to arrive at a ‘nice adjustment and reconciliation’ between the competing claims.” *Weinberger v. Romero-Barcelo*, 456 U.S. 306, 312 (1982). In crafting a remedy, courts balance the interests of the parties and the possible harms that may result from granting or withholding the requested relief. *See id.* Equitable remedies are distinguished by their “[f]lexibility rather than rigidity,” which affords the judiciary the power to “mould each decree to the necessities of the particular case.” *Hecht Co. v. Bowles*, 321 U.S. 321, 329 (1944).

Consistent with these principles, courts have been especially careful to account for the potential adverse effects of invalidating long-established laws, programs, or policies with substantial nationwide impact. Where appropriate, courts have regularly drawn on traditions of equity to devise

remedies that minimize such harms. See Ronald M. Levin, “*Vacation*” at *Sea: Judicial Remedies and Equitable Discretion in Administrative Law*, 53 Duke L.J. 291, 323 (2003) (internet).

For example, this Court and others have sometimes remanded a matter to an agency without vacating the agency’s underlying action despite holding that the agency violated the Administrative Procedure Act (APA). See, e.g., *Texas Ass’n of Mfrs. v. United States Consumer Prod. Safety Comm’n*, 989 F.3d 368, 389-90 (5th Cir. 2021); *Central & S.W. Servs., Inc. v. EPA*, 220 F.3d 683, 692, 702 (5th Cir. 2000).² Courts have employed that approach where vacatur would be “disruptive” and there is “at least a serious possibility that the agency will be able to substantiate its decision given an opportunity to do so.” *Central & S.W. Servs., Inc.*, 220 F.3d at 692 (quotation and alteration marks omitted); see also *Radio-Television News Dirs. Ass’n v. FCC*, 184 F.3d 872, 888 (D.C. Cir. 1999) (remanding matter for agency’s further consideration, including

² See also *Black Warrior Riverkeeper, Inc. v. United States Army Corps of Eng’rs*, 781 F.3d 1271, 1290-92 (11th Cir. 2015) (collecting cases); accord *Department of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1907-08 (2020) (recognizing that, where an agency’s explanation for its action is inadequate, a court “may remand [the matter] for the agency”).

possibility of conducting a new rulemaking); *Allied-Signal, Inc. v. United States Nuclear Regul. Comm'n*, 988 F.2d 146, 150-51 (D.C. Cir. 1993) (remanding matter where it was “conceivable” that the agency could explain its action).

Along similar lines, courts have sometimes vacated an agency action but stayed the order of vacatur for a “limited time to allow the agency to attempt to cure the defects that the court has identified.” *NAACP v. Trump*, 298 F. Supp. 3d 209, 244, 245 (D.D.C. 2018). In other cases, courts have stayed an order of vacatur pending development of a new plan or promulgation of a new rule. *See Natural Res. Def. Council, Inc. v. EPA*, 301 F. Supp. 3d 133, 145 (D.D.C. 2018); *see also Friends of the Earth, Inc. v. EPA*, 446 F.3d 140, 148 (D.C. Cir. 2006) (recognizing that district courts “retain[] some remedial discretion” to stay their orders and give a regulated entity a “reasonable opportunity” to develop a plan to come into compliance with federal law).

Outside of the context of the APA, courts have also taken care to minimize harm to significant reliance interests even when holding laws or governmental actions unconstitutional. In *Buckley v. Valeo*, for example, the Supreme Court held that the process for selecting the commissioners

of the Federal Election Commission violated the Appointments Clause. 424 U.S. 1, 143 (1976). The Court nevertheless stayed its judgment for 30 days to give Congress “an opportunity to reconstitute the Commission” without interrupting enforcement of the country’s campaign-finance laws. *Id.*

The Supreme Court took a similar approach several years later in *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 54, 87 (1982) (plurality opinion). There, the Court held that Article III prohibited Congress from vesting non–Article III judges with jurisdiction over all chapter 11 bankruptcy proceedings. *Id.* But the Court made clear that its decision applied only prospectively, as retroactive application of the decision would “surely” have “visit[ed] substantial injustice and hardship upon those litigants who relied upon the Act’s vesting of jurisdiction in the bankruptcy courts.” *Id.* at 88. The Court also stayed its judgment for about three months to “afford Congress an opportunity to reconstitute the bankruptcy courts or to adopt other valid means of adjudication, without impairing the interim administration of the bankruptcy laws,” *id.*, and later extended its stay for about another

three months at the federal government’s request, *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 459 U.S. 813, 813 (1982).³

As these cases make clear, federal courts have broad discretion to craft remedies that reduce the harms that flow from invalidating laws and other policies of national significance. And they are especially careful to do so in cases where their holding on the merits would disrupt long-settled reliance interests.

³ See also, e.g., *Aurelius Inv., LLC v. Puerto Rico*, 915 F.3d 838, 862-63 (1st Cir. 2019) (staying mandate for 90 days to allow the President and Senate to remedy defective appointments to oversight board or “reconstitute the Board in accordance with the Appointments Clause,” and clarifying that the ruling did not “eliminate any otherwise valid actions of the Board prior to the issuance of our mandate in this case”), *rev’d on other grounds sub nom. Financial Oversight & Mgmt. Bd. for P.R. v. Aurelius Inv., LLC*, 140 S. Ct. 1649 (2020); *Moore v. Madigan*, 702 F.3d 933, 942 (7th Cir. 2012) (staying mandate for 180 days to allow Illinois legislature to craft new legislation after holding that the State’s law regulating the carrying of firearms in public violated the Second Amendment); *EEOC v. CBS, Inc.*, 743 F.2d 969, 975-76 (2d Cir. 1984) (staying mandate for approximately four months to afford Congress an opportunity to “take appropriate measures” to remedy the invalid transfer of powers to the EEOC).

II. ANY REMEDY IN THIS CASE MUST ACCOUNT FOR THE SIGNIFICANT RELIANCE INTERESTS AT STAKE

A. DACA Creates Substantial Social and Economic Benefits on Which Amici States Rely

Since 2012, DACA has provided access to work authorization and protection from removal to approximately 825,000 individuals, including over 492,000 individuals in amici States.⁴ DACA recipients have grown up in this country, enrolled in degree programs, embarked on careers, purchased homes, and started their own families, all in reliance on the policy. As the experiences of amici States show, the success of DACA grantees has rippled through our States: DACA recipients bolster our tax bases and economies, work in our essential industries, and enrich the student bodies and faculties of our public universities. Amici States thus have a vital interest in preserving this longstanding policy and the many state programs and laws we have adopted in reliance on it.

⁴ See Comment Letter from Att’y Gen. 1 (Nov. 19, 2021) (internet); see also U.S. Citizenship and Immigr. Servs., U.S. Dep’t of Homeland Sec., *Number of Form I-821D, Consideration of Deferred Action for Childhood Arrivals Requests by Intake and Case Status, by Fiscal Year Aug. 15, 2012–Dec. 31, 2020* (internet). (For authorities available on the internet, full URLs appear in the Table of Authorities. All URLs were last visited on December 15, 2021.)

1. DACA grantees are vital to communities, economies, and public universities

In the last decade, DACA has enabled hundreds of thousands of immigrants to further their education and find better employment. In a 2020 survey of current DACA recipients, 91.7 percent reported that they were employed or in school.⁵ In addition, 63.2 percent reported obtaining a higher-paying job after receiving DACA, and 59 percent reported finding employment with health insurance or other benefits.⁶ Because DACA incentivizes recipients to remain in school and pursue further education, the policy has also led to greater productivity amongst grantees and more opportunities for high-skilled work. As a result, DACA grantees today are

⁵ Tom K. Wong et al., *New DHS Policy Threatens to Undo Gains Made by DACA Recipients*, Ctr. for Am. Progress (Oct. 5, 2020) (internet).

⁶ *Id.*

among the nation's educators⁷ and healthcare workers,⁸ homeowners and business owners⁹.

Amici States, in particular, have hired and trained hundreds of DACA recipients to fill critical positions. California, for instance, employs nearly 300 DACA recipients across its state agencies and departments because of their specialized skills and qualifications.¹⁰ These individuals

⁷ Approximately 20,000 DACA recipients are teachers in school districts across the country. Nicole Prchal Svajlenka & Trinh Truong, *The Demographic and Economic Impact of DACA Recipients: Fall 2021 Edition*, Ctr. for Am. Progress (Nov. 24, 2021) (internet).

⁸ As of November 2021, an estimated 34,000 healthcare workers and support staff—including nurses, dentists, pharmacists, and physician assistants—depend on DACA for authorization to work in this country. *See id.*; *see also* Nicole Prchal Svajlenka, *Demographic Profile of DACA Recipients on the Frontlines of the Coronavirus Response*, Ctr. for Am. Progress (Apr. 6, 2020) (internet). The number also includes nearly 200 medical students, medical residents, and physicians. *See* Br. for Amici Curiae Ass'n of Am. Med. Colls. et al. in Supp. of Resp'ts at 3, *Regents of the Univ. of Cal.*, 140 S. Ct. 1891 (2020) (Nos. 18-587, 18-588, 18-589).

⁹ Nearly a quarter of DACA recipients ages 25 and older have been able to purchase homes. Wong et al., *New DHS Policy Threatens to Undo Gains Made by DACA Recipients*, *supra*. Nearly eight percent of that group has started small businesses. Democrats of the Comm. on Small Bus., *Economic Impact of DACA: Spotlight on Small Business* 7 (2018) (internet).

¹⁰ As of July 2020, California employed at least 288 DACA recipients across 26 agencies and departments, including the Department of Corrections and Rehabilitation, Department of Health Care Services, Department of Transportation, Department of Water Resources,

(continued on the next page)

are vital to furthering the State's priorities in public safety, public health, infrastructure, and veterans affairs. Other amici States have also made significant investments in training DACA grantees to work in underserved communities. Illinois, for example, offers DACA recipients interest-free loans through the Illinois Finance Authority to pay for higher-degree programs, so long as applicants commit to serving four years in an underserved Illinois community following their graduation.¹¹

DACA grantees are also integral members of amici States' institutions of higher learning. Thousands are currently enrolled in the States' public universities and colleges:

- In California, the University of California system alone has over 4,000 undocumented students, including 1,700 DACA recipients. It is also estimated that as many as 156,000 undocumented students attend California's community colleges, and 10,063 attend its state universities, including a significant number of DACA recipients.

and Department of Veterans Affairs. *See* Comment Letter from Att'y Gen., *supra*, at 12.

¹¹ *Id.* at 18-19.

- In New York, an estimated 19,084 DACA recipients are in post-secondary schools, and 13,645 DACA grantees are currently obtaining a bachelor's degree or higher.
- In Pennsylvania, approximately 1,176 DACA recipients were enrolled in postsecondary education as of 2017.¹²

Amici States benefit not just from DACA grantees' tuition dollars, which are substantial,¹³ but also from their unique experiences, which help further the States' important interest in fostering diverse and inclusive educational environments. Because of DACA, amici States' public universities and colleges are able to employ grantees in a variety of roles, including as professors, teachers, teaching assistants, administrators, research assistants, and postdoctoral researchers.¹⁴ As amici's experiences show, these individuals have made significant contributions to the

¹² *Id.* at 13-14, 14 n.64 (listing estimated enrollment numbers of DACA grantees in public universities and colleges in the States of New York, California, New Jersey, Connecticut, Massachusetts, Hawaii, Pennsylvania, Washington, Illinois, Nevada, and Minnesota).

¹³ *Id.* at 15.

¹⁴ *Id.* at 16 & n.75. For example, the California State University system estimates that it currently employs 500 DACA grantees. *Id.* at 16-17.

research expertise and exchange of ideas that are central to these institutions' academic missions.¹⁵

DACA recipients are also vital to amici States' economies. Recipients and their households pay an estimated \$6.2 billion in federal taxes and an estimated \$3.3 billion in state and local taxes annually, including over \$2.1 billion in state and local tax revenue to amici States.¹⁶ Allowing new initial DACA requests would lead to an estimated increase of \$2.8 billion in state and local tax revenue over the next 20 years.¹⁷ And there is more: DACA recipients' estimated spending power—\$25.3 billion—contributes substantially to the overall economic health of amici States.¹⁸ In particular, DACA grantees' home purchases and small businesses create jobs

¹⁵ *See id.* at 13.

¹⁶ *See Svajlenka & Truong, The Demographic and Economic Impact of DACA Recipients: Fall 2021 Edition, supra.*

¹⁷ Ike Brannon & M. Kevin McGee, *The Costs of Closing DACA Initial Enrollments*, 43 Regul. 30, 33 (2021) (internet).

¹⁸ *See Svajlenka & Truong, The Demographic and Economic Impact of DACA Recipients: Fall 2021 Edition, supra.*

and new spending in local economies, resulting in a positive feedback loop that amplifies the benefits to amici States.¹⁹

Amici States have especially relied on the contributions of DACA recipients during the COVID-19 pandemic. An estimated 343,000 DACA grantees serve as “essential critical infrastructure workers” across the country, which include workers in healthcare, education, and food preparation and service.²⁰ In light of the current labor shortage in these industries,²¹ DACA recipients’ participation in the workforce is crucial to our ability to cope with, and recover from, the pandemic. DACA recipients also serve on the medical frontlines. Approximately 34,000 grantees are healthcare workers providing patient care,²² and those numbers are poised to increase as DACA recipients currently studying in the States’

¹⁹ Democrats of the Comm. on Small Bus., *Economic Impact of DACA: Spotlight on Small Business*, *supra*, at 7; National Ass’n of Realtors, *Jobs Impact of an Existing Home Purchase* (internet).

²⁰ See Svajlenka & Truong, *The Demographic and Economic Impact of DACA Recipients: Fall 2021 Edition*, *supra*.

²¹ See Comment Letter from Att’ys Gen., *supra*, at 27-28.

²² See Svajlenka & Truong, *The Demographic and Economic Impact of DACA Recipients: Fall 2021 Edition*, *supra*.

postsecondary institutions graduate.²³ Given the current acute shortage of healthcare workers,²⁴ amici States have a critical interest in retaining qualified healthcare workers and ensuring a robust pipeline into the healthcare professions.

2. DACA increases public safety and decreases the strain on safety net programs

In addition to creating significant economic and educational benefits, DACA has also improved the public safety and health of residents in amici States. As amici's experiences show, public safety is best protected

²³ See Julio C. Ramos et al., *The Impact of Deferred Action for Childhood Arrivals (DACA) Medical Students—A Scarce Resource to US Health Care*, 109 Am. J. of Pub. Health 429 (2019) (internet).

²⁴ See, e.g., Press Release, Bureau of Lab. Statistics, U.S. Dep't of Lab., *The Employment Situation—November 2021*, at 4 (Dec. 3, 2021) (internet) (national decline in healthcare workforce of 450,000 between February 2020 and November 2021); Laura Romero & Jay Bhatt, *Pandemic Has Made Shortage of Health Care Workers Even Worse, Say Experts*, ABC News (May 21, 2021) (internet) (long-term nursing shortage exacerbated by COVID-19 pandemic); Mem. from Christopher J. Howard, Deputy Dir., Cal. Off. of Statewide Planning and Dev., to Cal. Healthcare Workforce Pol'y Comm'n 1 (June 25, 2020) (internet) (58 of 72 California areas have a shortage of registered nurses, including 19 areas with high-severity shortages); Griffin Stockford, *Maine Plans to Address Health Care Worker Shortage Via Initiatives Aimed at Recruitment, Advancement*, News Ctr. Me. (Oct. 25, 2021) (internet) (shortage of healthcare workers in Maine, exacerbated by the COVID-19 pandemic, has led to scaling back of services in hospitals).

when all members of the community—regardless of immigration status—are encouraged to report crimes and to participate in policing efforts without fear of immigration consequences.²⁵ Multiple studies have shown that, by deferring the possibility of immediate removal, DACA removes a significant obstacle to reporting crime.²⁶

Amici States’ experiences also confirm that DACA enhances public health outcomes and reduces healthcare costs to the States.²⁷ As studies repeatedly have shown, DACA improves mental health not only among DACA recipients, but also their family members.²⁸ In addition, an estimated 59 percent of DACA recipients have been able to obtain jobs that

²⁵ See Comment Letter from Att’ys Gen., *supra*, at 17.

²⁶ See *id.* at 23; see also Br. of Amici Curiae Current & Former Prosecutors & Law Enf’t Leaders in Supp. of Resp’ts at 13-14, *Regents of the Univ. of Cal.*, 140 S. Ct. 1891 (2020) (Nos. 18-587, 18-588, 18-589).

²⁷ See Comment Letter from Att’ys Gen., *supra*, at 18-21, 24-25.

²⁸ See Atheendar S. Venkataramani et al., *Health Consequences of the US Deferred Action for Childhood Arrivals (DACA) Immigration Programme: A Quasi-Experimental Study*, 2 *Lancet Pub. Health* 175, 178-79 (2017) (internet); Jens Hainmueller et al., *Protecting Unauthorized Immigrant Mothers Improves Their Children’s Mental Health*, 357 *Sci.* 1041, 1043 (2017) (internet).

provide health insurance or other benefits.²⁹ Without DACA, these individuals (and their dependents) would likely be forced to forgo needed healthcare, including preventative care, creating costly health problems in the long run.³⁰ They would also likely rely on state-funded or state-administered healthcare (or both), increasing the strain on amici States' safety nets.³¹

3. Amici States have structured programs, policies, and laws in reliance on DACA and the benefits it confers

In light of DACA recipients' many contributions and the associated societal benefits, amici States have adopted programs and laws to ensure that individuals eligible for deferred action can reach their full potential. California, for instance, has invested millions of dollars to help DACA applicants prepare and file their applications. As of October 2020, California had invested approximately \$14.8 million in fee payment assistance for applicants, and its Department of Social Services had provided millions

²⁹ Wong et al., *New DHS Policy Threatens to Undo Gains Made by DACA Recipients*, *supra*.

³⁰ See Jennifer Tolbert et al., *Key Facts About the Uninsured Population*, Kaiser Fam. Found. (Nov. 6, 2020) (internet).

³¹ See Comment Letter from Att'ys Gen., *supra*, at 19-20.

more in grants to organizations that help individuals prepare initial DACA applications and renewal requests.³²

Amici states have also made significant investments in DACA recipients' higher education and professional development. Many of the amici States, including Connecticut, Delaware, the District of Columbia, Hawaii, Illinois, Nevada, New Mexico, Massachusetts, Minnesota, Oregon, Virginia, and Washington, have extended in-state tuition benefits to DACA recipients who are state residents.³³ Some, including New York, California, and Minnesota have not only extended in-state tuition benefits but also enabled grantees to apply for state-administered student aid and scholarships.³⁴ And several States have enacted laws and regulations to integrate DACA recipients into professional licensing schemes: DACA recipients in Illinois may now apply for law licenses, and those in New

³² *See id.* at 21.

³³ *See id.* at 15.

³⁴ In New York, for example, DACA recipients who attend high school in-state and meet other eligibility criteria may access state-administered student grants and scholarships. N.Y. Educ. Law §§ 355(2)(h)(10), 661(5)(a), 6206(7)(e). Similarly, DACA recipients in California and Minnesota may apply for in-state tuition and state-funded financial aid. Cal. Educ. Code §§ 66021.7, 68130.5(a); Minn. Stat. Ann. § 135A.043; *id.* ch. 136A.

York may obtain teaching certifications and other professional licenses, including for law and nursing.³⁵

Finally, a number of amici States have structured healthcare access programs in reliance on DACA.³⁶ New York, for example, currently funds Medicaid coverage for low-income undocumented immigrants who have received deferred action; undocumented immigrants who are not DACA grantees may qualify only for Medicaid coverage for necessary emergency services.³⁷ If DACA were terminated or limited, New York would be compelled to seek a legislative change of its scheme: the State would either have to spend additional state funds to maintain the current level

³⁵ See 705 Ill. Comp. Stat. Ann. 205/2(a), (b); 20 Ill. Comp. Stat. Ann. 2105/2105-140; 105 Ill. Comp. Stat. Ann. 5/21B-15(f); *Matter of Vargas*, 131 A.D.3d 4, 6, 12, 27-28 (N.Y. App. Div. 2015) (per curiam) (DACA grantee may satisfy standard for good character and general fitness necessary for admission to practice law in New York); Press Release, N.Y. State Educ. Dep't, *Board of Regents Permanently Adopts Regulations to Allow DACA Recipients to Apply for Teacher Certification and Professional Licenses* (May 17, 2016) (internet).

³⁶ See Comment Letter from Att'ys Gen., *supra*, at 20.

³⁷ See Office of Health Ins. Programs, N.Y. Dep't of Health, GIS 13 MA/011, Children's Health Insurance Program Reauthorization Act (CHIPRA) Expanded Coverage for Certain Qualified and PRUCOL Aliens (May 7, 2013) (internet).

of Medicaid coverage or be forced to limit coverage for some or all of those formerly eligible for DACA to treatment of emergency conditions as well.³⁸

B. Abrupt Termination of DACA Would Cause Substantial Disruption and Harm to Amici States

Termination of the nearly decade-long policy of deferred action would upend the programs and laws that amici States have adopted in reliance on DACA, in addition to devastating the lives of hundreds of thousands of individuals and their families. Amici States would be forced to replace the DACA recipients we have trained and hired (see *supra* at 11-12), and would lose the benefit of the substantial investments we have made in the higher education of DACA grantees (see *supra* at 19-20). Additionally, amici States would be forced to expend significant time and resources changing the many laws and regulations we have enacted over

³⁸ See Comment Letter from Att'ys Gen., *supra*, at 20-21. A number of other amici States, including Colorado, Delaware, and Massachusetts, currently offer limited state-funded or state-administered public health-care services (or both) for undocumented immigrants. See *id.* at 20 n.89. If DACA is terminated, many former grantees would likely lose access to employer-sponsored health insurance and have to rely on these state services, significantly increasing their cost. *Id.*

the last decade in reliance on the policy of deferred action—laws governing everything from financial aid and professional licensing to Medicaid coverage. See *supra* at 18-21.

Ending or limiting DACA would also inflict substantial economic harm on DACA grantees, their families, and their States. Terminating DACA would cause recipients to sustain significant losses in income, with negative tax and other consequences for the States in which they reside.³⁹ A full rollback of DACA is projected to result in a loss of an estimated \$280 billion in national economic growth over the course of a decade.⁴⁰ And it would also lead to an estimated loss of \$33.1 billion in Social Security contributions and \$7.7 billion in Medicare contributions—funds that are critical to ensuring the financial health of these national programs upon which residents of amici States rely.⁴¹ Even if DACA is not

³⁹ Failing to allow new requests (which is the result of the district court's current injunction), would result in a \$26.1 billion loss in income for DACA-eligible individuals over the next 20 years. See Brannon & McGee, *The Costs of Closing DACA Initial Enrollments*, *supra*, at 32.

⁴⁰ Ike Brannon & Logan Albright, *The Economic and Fiscal Impact of Repealing DACA*, Cato Inst.: Cato at Liberty (Jan. 18, 2017) (internet).

⁴¹ Jose Magaña-Salgado & Tom K. Wong, *Draining the Trust Funds: Ending DACA and the Consequences to Social Security and Medicare 1* (Immigrant Legal Res. Ctr. 2017) (internet).

terminated, but merely closed to new requestors, the consequences still would be severe: it is projected that California alone would lose more than \$260 million in state and local tax revenue over the next decade and almost \$1 billion over the next 20 years.⁴²

Finally, removing DACA's protections would weaken amici States' social safety nets. Absent work authorization, many DACA recipients and their dependents would lose access to their employer-sponsored health insurance, thus limiting their access to care and increasing their reliance on state-funded and state-administered health services. The projected costs to amici States are substantial. To illustrate: it is estimated that New York and Illinois would have incurred an estimated \$18.5 million and \$20.2 million, respectively, in additional public health costs if the previous attempt to rescind DACA had not been reversed.⁴³

Ending deferred action would also have negative consequences for amici States' law enforcement. According to a 2020 survey of DACA recipients, without deferred action, recipients would be 30.6 percent less

⁴² Brannon & McGee, *The Costs of Closing DACA Initial Enrollments*, *supra*, at 33-34.

⁴³ See Comment Letter from Att'ys Gen., *supra*, at 20.

likely to report crimes committed against them, and nearly 50 percent less likely to report wage theft by employers.⁴⁴ This statistic is a matter of particular concern given the heightened vulnerability to crime faced by immigrant communities.⁴⁵

In light of the above, amici States have a profound interest in preserving the benefits of DACA and minimizing the profound harms that would result from its termination.

⁴⁴ Tom K. Wong et al., *Amid Changes to the DACA Program and COVID-19, DACA Recipients Are Fired Up and Civically Engaged*, United We Dream (Oct. 2, 2020) (internet).

⁴⁵ See, e.g., Stefano Comino et al., *Silence of the Innocents: Undocumented Immigrants' Underreporting of Crime and Their Victimization*, 39 J. of Pol'y Analysis & Mgmt. 1214, 1216 (2020) (internet).

CONCLUSION

The district court's order vacating and enjoining DACA should be reversed. If the Court disagrees, however, it should tailor any remedy to minimize the profound harms that would result from abruptly terminating the nearly decade-old policy.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 32(a) of the Federal Rules of Appellate Procedure, Kelly Cheung, an employee in the Office of the Attorney General of the State of New York, hereby certifies that according to the word count feature of the word processing program used to prepare this brief, the brief contains 4,862 words and complies with the typeface requirements and length limits of Rules 29 and 32(a)(5)-(7) and the corresponding local rules.

/s/ Kelly Cheung

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was filed electronically with the Court's CM-ECF system on December 15, 2021. Service will be effectuated by the Court's electronic notification system upon all parties and counsel of record.

Dated: New York, New York
December 15, 2021

/s/ Grace X. Zhou