

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

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IN THE  
**Supreme Court of the United States**

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DEPARTMENT OF HOMELAND SECURITY, ET AL.,  
*Petitioners,*

*v.*

REGENTS OF THE UNIVERSITY OF CALIFORNIA, ET AL.,  
*Respondents.*

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

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[Caption Continued on Following Page]

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**BRIEF FOR THE AMERICAN PROFESSIONAL  
SOCIETY ON THE ABUSE OF CHILDREN,  
THE AMERICAN ACADEMY OF PEDIATRICS,  
THE CENTER FOR LAW AND SOCIAL  
POLICY, AND 33 CHILD ADVOCACY  
ORGANIZATIONS, MEDICAL  
PROFESSIONALS, AND CHILD  
DEVELOPMENT EXPERTS AS AMICI CURIAE  
IN SUPPORT OF RESPONDENTS**

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DONALD J. TRUMP, PRESIDENT OF THE  
UNITED STATES, ET AL.,

*Petitioners,*

*v.*

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF  
COLORED PEOPLE, ET AL.,

*Respondents.*

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ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE D.C. CIRCUIT

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KEVIN K. MCALEENAN, ACTING SECRETARY OF  
HOMELAND SECURITY, ET AL.,

*Petitioners,*

*v.*

MARTIN JONATHAN BATALLA VIDAL, ET AL.,

*Respondents.*

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

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## INTRODUCTION AND INTEREST OF AMICI CURIAE<sup>1</sup>

The government’s decision to end the Deferred Action for Childhood Arrivals (DACA) policy has endangered the mental and physical health of hundreds of thousands of children—mostly U.S. citizens—whose parents are DACA recipients. As organizations dedicated to supporting children and promoting their well-being, amici are deeply concerned about the immediate and long-term effects of ending the DACA policy on this population. Since the Trump Administration announced the rescission of DACA, children of DACA recipients live with the fear that their parents will be taken away, and that fear negatively impacts all aspects of their lives, including their health, education, and overall family stability.

Amicus the American Professional Society on the Abuse of Children (APSAC) is the leading national organization for professionals serving children and families affected by child maltreatment. A multidisciplinary group, APSAC achieves its mission through expert training and educational activities, policy leadership and collaboration, and consultation emphasizing theoretically sound, evidence-based principles. For 30 years, APSAC has played a central role in developing guidelines that address child maltreatment. It is qualified to inform the Court about

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<sup>1</sup> The parties have consented to the filing of this amicus brief. No counsel for a party authored the brief in whole or in part. No party, counsel for a party, or any person other than amici and their counsel made a monetary contribution intended to fund the preparation or submission of the brief.



the damage that maltreatment can inflict on children's brain development and cognitive ability. APSAC submits this brief to assist the Court in understanding the impact of parental detention and deportation on children's physical, emotional, and mental development.

Amicus the American Academy of Pediatrics (AAP) is a non-profit professional membership organization of 67,000 primary care pediatricians and pediatric medical subspecialists, and pediatric surgical specialists dedicated to the health and well-being of infants, children, adolescents, and young adults. AAP believes that the future prosperity and well-being of the United States depends on the health and vitality of all of its children, without exception. Pediatricians have seen the negative effects that family separation and the threat of deportation have on child health. As such, AAP is uniquely positioned to understand the impact of the rescission of the DACA policy on the health of children.

Amicus the Center for Law and Social Policy (CLASP) is a national, nonpartisan anti-poverty non-profit organization advancing policy solutions for low-income people in the United States. CLASP develops practical yet visionary strategies for reducing poverty, promoting economic opportunity, and addressing barriers faced by people of color. CLASP has expertise in early care and education, early childhood development, child welfare, mental health, and immigration policy. CLASP recognizes the important role DACA has played in strengthening families and communities, and we are deeply concerned with the harmful impact that rescinding DACA will have on

thousands of young children with DACA parents, including possible separation from parents, weakened economic security, and poor developmental outcomes. CLASP strongly urges the Court to consider the long-term implications for children's health and well-being and uphold DACA protections.

Statements of interest for all other amici are included in the Appendix.

Amici submit this brief to assist the Court in its review by providing key facts about how DACA status and its rescission might impact the children of DACA recipients. The rescission of DACA plunges recipients into immediate uncertainty and stress. Recipients are at risk of immediate detention and deportation when their current protection expires. Even the threat of separation from their parents can cause children to suffer significant physiological stress that threatens their mental and physical health and their overall development, not to mention the harm to them caused by the actual detention and deportation of their parents.

The Executive Branch's long-standing recognition of its legal and moral responsibility to avoid inflicting harm on children is nowhere apparent in its arbitrary and capricious decision to end DACA. In explaining the Department of Homeland Security's decision to rescind DACA, then-Secretary Nielsen stated that "neither any individual's reliance on the expected continuation of the DACA policy nor the sympathetic circumstances of DACA recipients as a class" outweigh the reasons to end the policy. *Regents* Pet. App. 125a. Amici disagree.

The DACA policy was created to protect young people brought to this country as children. Rescinding the policy will harm not only those whom DACA initially sought to help, but also will harm hundreds of thousands of their U.S. citizen children by triggering short- and long-term health impacts during their critically important developmental years. This human toll must be considered.

### **SUMMARY OF ARGUMENT**

The September 2017 Memorandum on Rescission of Deferred Action for Childhood Arrivals (Rescission Memo) issued by the Department of Homeland Security (DHS) arbitrarily and capriciously ignores the human impact of ending DACA protections. The Rescission Memo does not even consider the detrimental impact this action will have both on DACA recipients and their children. *See* Pet. Br. 7-8, citing *Regents* Pet. App. 111a-119a. In listing the factors underlying its decision to rescind the policy, DHS considered only the relevant litigation, not the immense personal impact on hundreds of thousands of people. The district court noted this failure in finding the rescission arbitrary and capricious:

In terminating DACA, the administrative record failed to address the 689,800 young people who had come to rely on DACA to live and to work in this country. These individuals had submitted substantial personal identifying information to the government, paid hefty fees, and planned their lives according to the dictates of DACA. 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.

*Regents of the Univ. of Cal. v. U.S. Dep't of Homeland Sec.*, 279 F. Supp. 3d 1011, 1045 (N.D. Cal. 2018).

Amici focus here on the most vulnerable class of affected persons disregarded by the Rescission Memo: the hundreds of thousands of children of DACA recipients. Because DACA recipients are at immediate risk of detention and deportation if DACA is rescinded, the danger to their children also is immediate.

Indeed, these children are endangered not only by the actual detention and deportation of their parents, but also the looming fear of deportation. The imminent threat of losing DACA protection places children at risk of losing parental nurturance, as well losing income, food security, housing, access to health care, educational opportunities, and the sense of safety and security that is the foundation of healthy child development.

The mental health benefits to children whose mothers are protected by DACA, and therefore protected from the fear of deportation, are large and clinically significant. Jens Hainmueller et al., *Protecting unauthorized immigrant mothers improves their children's mental health*, 357 *Science* 1041-44 (2017), <https://tinyurl.com/y46cf7be>. Children who did not live in fear that their parent might be detained and deported saw significantly decreased adjustment and anxiety disorder diagnoses. *Id.* Conversely, exposure to immigration enforcement actions, such as raids,

negatively impacts birth outcomes. Infants born to Latina mothers had a 24% greater risk of low birth-weight after an immigration raid when compared with the same period one year earlier. Nicole L. Novak et al., *Change in birth outcomes among infants born to Latina mothers after a major immigration raid*, 46 Int'l J. Epidemiology 839 (2017), <https://tinyurl.com/y5ehbjs7>.

In addition to the children of DACA recipients, children of other immigrant parents and in affected school communities also suffer increased stress. DACA recipients live in households with an average of four members, often of different immigration statuses, and within larger communities. The effects of deportation touch neighbors, friends, and family. Children who witness arrests often share their stories with friends and classmates. “[F]or every two adults deported, one citizen-child is directly affected.” Luis H. Zayas & Laurie Cook Heffron, *Disrupting young lives: How detention and deportation affect US-born children of immigrants*, Am. Psych. Ass’n (Nov. 2016), <https://tinyurl.com/l6ro2ql>.

As the American Academy of Pediatrics recently explained, “[t]he immigration status of children and their parents relates directly to their subsequent access to and use of health care, perceived health status, and health outcomes. Family immigration status is intertwined with other social determinants of health, including poverty, food insecurity, housing instability, discrimination, and health literacy.” Julie M. Linton et al., *Providing Care for Children in Immigrant Families*, 144 Pediatrics 1, 4 (Sept. 2019), <https://tinyurl.com/y6ghwfrk>.

## ARGUMENT

### I. Rescinding DACA Places Children At Risk Of Immediate Harm.

The Rescission Memo reaches far into the homes, schools, churches, and communities of hundreds of thousands of children across the country. Although the nearly 700,000 DACA recipients arrived in the United States as children, many of them are now adults and have children of their own. According to recent estimates, more than 250,000 U.S.-born children have at least one parent who is a DACA recipient, and about 1.5 million people in the United States live with a DACA recipient. Nicole Prchal Svajlenka, *What We Know About DACA Recipients in the United States*, Ctr. for Am. Progress (Sept. 5, 2019), <https://tinyurl.com/y4xc6sf4>.

Once DACA protections are rescinded, these children's parents will be eligible for detention and deportation, and they will also be forced out of the lawful labor market. DHS's position is clear: "Recipients of DACA are currently unlawfully present in the U.S. with their removal deferred. When their period of deferred action expires or is terminated, their removal will no longer be deferred and they will no longer be eligible for lawful employment." U.S. Dep't of Homeland Security, *Frequently Asked Questions: Rescission of Deferred Action for Childhood Arrivals (DACA)*, <https://tinyurl.com/y9ptpepg> (last visited Oct. 2, 2019).

In its opening brief, the government states that “a decision to abandon an existing nonenforcement policy will not, by itself, bring to bear the agency’s coercive power over any individual; that will occur only if any resulting enforcement proceeding leads to a final adverse order.” Pet. Br. 19. This is an empty assurance for DACA recipients and their children, for several reasons.

To begin, DHS holds extensive identifying information for every DACA recipient. While DHS states that for the time being it will not “proactively” use this information for deportation purposes, U.S. Dep’t of Homeland Security, *Frequently Asked Questions*, *supra*, reports of recent detentions suggest otherwise. See, e.g., Carlos Ballesteros, *She’s a DACA recipient. ICE agents still arrested her. Then they went after her parents*, Chicago Sun Times (May 21, 2019), <https://tinyurl.com/y2x3x7cd>; Reis Thebault, *How a flight attendant from Texas ended up in an ICE detention center for six weeks*, Washington Post (Mar. 23, 2019), <https://tinyurl.com/yxar27pu>.

Moreover, although DHS does not keep robust data on DACA revocations and does not track DACA detentions, advocates report that numerous DACA recipients have been detained and issued Notices to Appear. DHS officials have then asserted that these Notices to Appear automatically cancel DACA status, even though advocates argue that this contradicts the government’s own rules. Rep. Marc Veasey (D-Texas), who has called for an investigation of the Administration’s enforcement actions against DACA recipients, reported that post-rescission, many of his DACA constituents began living in fear and had been held at

border checkpoints for prolonged periods. Nicole Rodriguez, *Trump Administration Has Illegally Attempted to Deport DACA Recipients, Advocates Say*, Newsweek (Dec. 2, 2017), <https://tinyurl.com/y69w92ya>.

Given the Administration's current immigration priorities, it appears likely these detention and deportation efforts will intensify. On January 25, 2017, President Trump issued an Executive Order expanding the priority list of noncitizens subject to deportation to anyone charged with even minor criminal offenses and to anyone who may have misrepresented their status to obtain work. Exec. Order No. 13768, *Enhancing Public Safety in the Interior of the United States*, 82 Fed. Reg. 8799 (Jan. 30, 2017). A July 2019 analysis of Immigration and Customs Enforcement (ICE) data by the American Immigration Council shows that ICE has cast a wider deportation net under the current administration than under previous administrations. Rather than prioritizing individuals who may present a threat to public safety, "the administration has issued policies that treat all infractions of the law as equally deserving of enforcement action." Guillermo Cantor et al., *Changing Patterns of Interior Immigration Enforcement in the United States, 2016-2018*, Am. Immigration Council (July 1, 2019), <https://tinyurl.com/y6ccpqwk>. As a result, "[i]ncreasingly, individuals with no criminal records have been apprehended, regardless of their social and economic ties to U.S. families, communities, and employers." *Id.*

The Administration is also taking steps to deport unauthorized immigrants faster, stoking widespread



fear in immigrant communities. In July 2019, it announced that it would expedite the removal of undocumented immigrants who cannot prove that they have been in the United States continuously for two years or more. “The change dramatically expands the ability of the Department of Homeland Security to quickly deport certain immigrants without any of the due-process protections granted to most other people, including the right to an attorney and to a hearing before a judge ... and is the latest escalation of the Trump administration’s immigration crackdown.” Vanessa Romo, *Trump Administration Moves To Speed Up Deportations With Expedited Removal Expansion*, NPR (July 22, 2019), <https://tinyurl.com/y4lrblfm>.

The Administration has also increased the number of major raids targeting undocumented immigrants. In July 2019, for example, immigration officials targeted more than 2,000 people who were in the United States illegally in widely publicized raids (called Operation Border Resolve) that took place in over a dozen U.S. cities. Caitlin Dickerson & Zolan Kanno-Youngs, *Thousands Are Targeted as ICE Prepares to Raid Undocumented Migrant Families*, N.Y. Times (July 11, 2019), <https://tinyurl.com/y5nggr9p>. And in August 2019, more than 600 Latino workers were detained at poultry plants in Mississippi. Lauren Camera, *ICE Raids Send Schools Scrambling*, U.S. News & World Report (Aug. 8, 2019), <https://tinyurl.com/yymuf33f>. This raid followed other large-scale immigration raids that took place last year in Ohio and Tennessee. John Minchillo & Elliot Spagat, *Immigration agents arrest 114 at Ohio landscaper*, AP (June 5, 2018), <https://tinyurl.com/y5pwhhb>.

In sum, whether DACA recipients are detained immediately, sometime in the future, or not at all, the Rescission Memo inflicts fear and anxiety not only on the recipients, but also their children, at significant cost to their long-term health and well-being. Loss of DACA protection also subjects recipients to immediate job loss and the risk factors associated with unauthorized status, potentially impacting parents' ability to provide and care for their children.

## **II. Ending DACA Protection Will Likely Damage Children's Mental And Physical Health.**

### **A. Even the threat of detention and deportation can cause children to suffer symptoms of traumatic stress and post-traumatic stress disorder and impacts birth outcomes.**

The deportation of a parent is devastating for a child and can cause severe trauma. As a result, children may experience anxiety, depression, and insomnia, and exhibit signs of fear. They also may suffer from social isolation, self-stigma, and aggression, and may experience separation anxiety, attachment disorders, and post-traumatic stress disorders. Zayas & Heffron, *supra*, at 3. For young children, these impacts are even greater because they are more physically and emotionally dependent on their caregivers and because they are at a crucial developmental stage where interactions with their primary caregiver provide the framework for health and well-being. See Ajay Chaudry et al., *Facing Our Future: Children in the Aftermath of Immigration Enforcement*, Urban

Inst. (Feb. 2010), <https://tinyurl.com/y2vv8aro>; Randy Capps et al., *Implications of Immigration Enforcement Activities for the Well-Being of Children in Immigrant Families: A Review of the Literature*, Migration Policy Inst. (Sept. 2015), <https://tinyurl.com/ybm62mqa>.

“[T]he children of the unauthorized live under constant threat that their parents might be arrested and deported, leaving them vulnerable to family separation, instability, economic hardship, dramatic changes in their life courses, and potentially severe psychological and behavioral impacts.” Chaudry, *supra*, at 1. The arrest, detention, and deportation of a parent often accumulates on top of children’s other stress and can “detrimentally impact their mental health.” Zayas & Heffron, *supra*, at 1. And these children will likely suffer from depression, negative self-esteem, and anxiety, whether they accompany their parents out of the country or stay behind in the United States. *Id.* at 3.

Moreover, research shows that this trauma is not limited to children whose parents are ultimately deported. Even the *threat* of deportation is highly traumatic for children. “As parents’ risk of deportation rises, so too does the stress of their children. The lingering possibility of deportation of parents leaves children with constant anxiety and vigilance about the potential becoming real.” *Id.* at 2 (citations omitted). A 2013 study of family unity and health among mixed-status families (families with at least one undocumented parent and at least one U.S.-citizen child) found that almost 75% of undocumented par-

ents reported signs of PTSD in their children, compared with 40% of documented parents. Sara Satinsky et al., *Family Unity, Family Health: How Family-Focused Immigration Reform Will Mean Better Health for Children and Families* 2, 8 (2013), <https://tinyurl.com/y437qu3s>. A 2017 study across six states found that children as young as three years old are expressing fear about losing a parent to deportation and demonstrating those fears through words and troubling behaviors. Wendy Cervantes et al., *Our Children's Fear: Immigration Policy's Effects on Young Children*, CLASP 8 (Mar. 2018), <https://tinyurl.com/yas57ql2>.

High levels of anxiety and stress experienced by young children during the early formative years can have serious and lasting effects on their physical and emotional development. Persistent and substantial exposure to fear and anxiety—sometimes called “toxic stress”—can do immense damage to children’s health. This level of stress can interfere with young children’s physical brain development, altering how they learn and their ability to manage their emotions. It can also lead to physical and mental health problems that last into adulthood. See Jack P. Shonkoff & Andrew S. Garner et al., *The Lifelong Effects of Early Childhood Adversity and Toxic Stress*, 129 *Pediatrics* e232-46 (Jan. 2012), <https://tinyurl.com/y38kyr9y>; Nat’l Sci. Council on the Developing Child, *Persistent Fear and Anxiety Can Affect Young Children’s Learning and Development* (Feb. 2010), <https://tinyurl.com/y2lw82qa>.

A child's earliest years are a critical period for influencing their healthy development, with implications for lifelong physical and emotional well-being. Experiences during a child's earliest years affect the development of their brain—including the cognitive, linguistic, social, and emotional abilities—and build a healthy foundation for life. The well-being of the parents has an important impact on children's social-emotional, physical, and economic well-being. See Shonkoff & Garner, *supra*; Nat'l Sci. Council on the Developing Child, *The Science of Early Childhood Development: Closing the Gap Between What We Know and What We Do* (Jan. 2007), <https://ti.nyurl.com/y3x43yvr>.

A key reason why even the threat of rescission damages child health is because family instability and parental stress can undermine parent-child attachment and child well-being. Further, if families experience increased housing and economic instability due to avoidance of immigration enforcement actions, children can suffer great harm to their developing minds and bodies. Sharon H. Bzostek & Audry N. Beck, *Familial instability and young children's physical health*, 73 Soc. Sci. & Med. 282-92 (July 2011). Children's mental health and social-emotional development is inextricably linked to that of their parents and caregivers, and their parents' stress has a collateral impact on them. There is "strong consensus on the central importance of child-caregiver relationships," and "[e]motional problems such as depression, economic stress, and marital conflict can interfere with sensitive and responsive parenting, be disruptive of secure attachments, and constitute a significant source of instability over time in attachment

security.” Nat’l Research Council & Inst. of Med., *From Neurons to Neighborhoods: The Science of Early Childhood Development* 234, 353 (Jack P. Shonkoff & Deborah A. Phillips eds., Nat’l Acad. Press 2000).

The fear of deportation and exposure to immigration raids negatively impacts birth outcomes, putting babies at risk for adverse health outcomes. In one study, infants born to Latina mothers had a 24 percent greater risk of low birthweight after an immigration raid when compared with the same period one year earlier, Novak, *supra*, increasing the risk for subnormal growth, illnesses, and neurodevelopmental problems. Maureen Hack et al., *Long-Term Developmental Outcomes of Low Birth Weight Infants*, 5 *The Future of Children* 176-96 (1995). In another study of women in New York City pre- and post-inauguration in 2017, the relative risk of preterm birth among Hispanic women increased 1.15% due to severe sociopolitical stressors such as heightened fear of deportation. Nancy Krieger et al., *Severe sociopolitical stressors and preterm births in New York City: 1 September 2015 to 31 August 2017*, 72 *J. Epidemiology & Cmty. Health* 1147 (2018), <https://ti-nyurl.com/y5gv7mxk>.

**B. DACA rescission will likely cause income and food insecurity.**

Without DACA protection, recipients will lose their work authorizations, which means that they will no longer be able to work legally and likely will lose income from employment. As a result, their children and families will face poverty and food insecurity.

Poverty has a significantly corrosive impact on child development and well-being. It causes negative outcomes across numerous health, mental health, and other indicators during childhood, as well as lower educational attainment and earnings into adulthood. Nat'l Acad. of Scis., Eng'g, & Med., *A Roadmap to Reducing Child Poverty* 20 (Greg Duncan & Suzanne Le Menestrel eds.), Nat'l Acads. Press 2019, <https://tinyurl.com/yyvwcu9z>. Poverty also affects children by stressing their parents, which impairs their ability to effectively parent their children. Caroline Ratcliffe & Signe-Mary McKernan, *Child Poverty and Its Lasting Consequence*, Urban Inst. (Sept. 2012), <https://tinyurl.com/y254aa6x>.

“Regardless of legal status, children of undocumented immigrants more often suffer from food insecurity than children of US citizens.” Zayas & Heffron, *supra*, at 2. Unauthorized immigrant parents “also may not use social services and public programs such as food stamps and child care subsidies, for which their citizen-children are eligible.” *Id.* Moreover, the actual detention of a family member can leave a household without enough food. According to one study, more than 80% of households ran out of food six months after the detention of a family member and did not have the money to get more. Satinsky, *supra*, at 32-33.

Unauthorized parents often experience poor or exploitative work conditions, such as extended work hours without overtime pay, pay below the minimum wage, and little-to-no benefits, such as paid sick leave—all conditions that could negatively impact their children’s lives. Research has found that the

above conditions result in high levels of parental stress and increased economic insecurity. Children living in households under these stresses often experience poor cognitive development, which can be seen as early as age two. Hirokazu Yoshikawa, *Immigrants Raising Citizens: Undocumented Parents and Their Young Children* (Russell Sage Found. 2011).

**C. DACA rescission threatens to cut off access to reliable health care.**

Access to reliable health care is critical to child health and development. Although unauthorized immigrants, including DACA recipients, are not eligible for Affordable Care Act coverage, many DACA recipients have obtained health insurance through their employers or through college or university health plans. One survey found that about 60% of individuals eligible for DACA had health insurance, mostly through their employers. Kaiser Family Found., *Key Facts on Individuals Eligible for the Deferred Action for Childhood Arrivals (DACA) Program 2* (Feb. 2018), <https://tinyurl.com/yxtnmxwr>. Rescinding DACA will cut off much of this access to health insurance—former recipients will no longer be authorized to work, and their access to higher education will be significantly reduced. “Employers would likely terminate individuals as they lose work authorization, leading to job loss along with loss of health coverage. Job losses may also result in coverage losses for their children, who are often U.S.-born citizens.” *Id.* at 3.

In addition to losing health insurance coverage, parents no longer protected by DACA may be too fear-



ful of deportation to seek medical care for their children. “In spite of the fact that citizen-children have the right to health care, their parents may avoid encounters with providers for fear of discovery.” Zayas & Heffron, *supra*, at 2. As a result, “undocumented immigrants make fewer visits to health care providers than citizens with authorized immigrant status.” *Id.* “Increased fears about the use of public programs and immigration status has deterred immigrants from accessing programs regardless of eligibility. In addition, immigration enforcement activities that occur at or near sensitive locations, such as hospitals, may prevent families from accessing needed medical care.” Linton, *supra*, at 8. Indeed, one study found that one-seventh of all adults in immigrant families reported avoiding non-cash public benefits during the past year because of fear that their legal immigration status would be harmed. Hamutal Bernstein et al., *One in Seven Adults in Immigrant Families Reported Avoiding Public Benefit Programs in 2018*, Urban Inst. 2 (May 2019), <https://tinyurl.com/y2fhwgg3>. Low-income members of immigrant families reported even higher rates of avoidance. *Id.* Of this group that avoided benefits, 46% avoided nutrition benefits (SNAP), 42% avoided medical benefits (Medicaid and CHIP), and 33% avoided public housing subsidies. *Id.* at 8.

Even though doctors and health care providers are required by law to protect patient information, many people in immigrant communities avoid visiting clinics or hospitals for fear of being reported to immigration officials. In a 2018 survey of health care providers in California, for example, 67% noted an increase in parents’ concerns about enrolling their

children in public health and nutritional programs, and 42% reported an increase in skipped scheduled health care appointments. The Children’s P’ship, *California Children in Immigrant Families: The Health Provider Perspective* (2018), <https://tinyurl.com/y2rdf4fp>. As one policy analyst explained, “[m]any undocumented immigrants ‘say fear of deportation for themselves or family members is a barrier in terms of signing up for coverage and accessing healthcare services.’” Lisa Zamosky, *Health care options for undocumented immigrants*, L.A. Times (Apr. 27, 2014), <https://tinyurl.com/huvcp1j>.

In fact, the number of children without health insurance increased to 5.5% in 2018, an increase of 0.6% from the previous year, largely because of a decline in children’s Medicaid and CHIP coverage rates. Edward R. Berchick et al., *Health Insurance Coverage in the United States: 2018*, U.S. Census Bureau 2-3 (Sept. 2019), <https://tinyurl.com/y53cpsvt>. “Hispanic children were more likely to be uninsured than children from other races and non-Hispanic origin groups,” and “the uninsured rate increased 1.0 percentage point for Hispanic children” between 2017 and 2018. *Id.* at 9.

In addition, “a political climate that tolerates migration criminalization rhetoric has served to create what’s been called a *chilling effect*—reduction, due to fear rather than eligibility changes, in the number of undocumented immigrants willing to interact with staff at public agencies or enroll themselves or their children in health plans or other benefits.” Isha Marina Di Bartolo, *Immigration, DACA, and Health*

*Care*, 21 *AMA J. of Ethics* 1, E4 (Jan. 2019), <https://tinyurl.com/y394f85p>.

Children will lose health coverage—whether due to chilling effects or their households being directly affected by the rescission of DACA—to potentially disastrous effects. Michael Karpman & Genevieve M. Kenney, *Health Insurance Coverage for Children and Parents: Changes Between 2013 and 2017*, Urban Inst. (Sept. 7, 2017), <https://tinyurl.com/yy2xn87s>. One study found that disenrollment of children in need of medical care would likely contribute to child deaths and future disability. Leah Zallman et al., *Implications of Changing Public Charge Immigration Rules for Children Who Need Medical Care*, 173 *JAMA Pediatrics* E4-E5 (July 1, 2019). Foregoing regular treatment for such children will likely lead to increased health care costs and disastrous outcomes. *See id.* For these vulnerable children, the loss of health coverage would be catastrophic.

While the loss of health coverage by parents has a significant negative impact on their children's health coverage, the converse is also true. When parents gain access to health coverage, their children also gain access to health coverage. Julie L. Hudson & Asako S. Moriya, *Medicaid Expansion For Adults Had Measurable 'Welcome Mat' Effects On their Children*, 36 *Health Affairs* 1643-51 (Sept. 2017). When parents have health insurance coverage, children are more likely to access routine and preventative health care. Maya Venkataramani et al., *Spillover Effects of Adult Medicaid Expansions on Children's Use of Preventive Services*, 140 *Pediatrics* 1, 6 (Dec. 2017), <https://tinyurl.com/yxwv5v2x>.

**D. DACA rescission puts children at risk of parental separation and reduced access to educational opportunities.**

Of course, parental separation itself causes significant psychological and emotional harm to children. Separations are especially difficult for children when they do not know where their parents are, whether they are safe, or when they will return. “Chronic separation from a caregiver can be extremely overwhelming to a child. Depending on the circumstances and their significance, the child can experience these separations as traumatic. They may be sudden, unexpected, and prolonged, and can be accompanied by additional cumulative stressful events.” Nat’l Child Traumatic Stress Network, *Children with Traumatic Separation: Information for Professionals* 1 (2016), <https://tinyurl.com/y2k2sqq7>.

With DACA rescinded, the children of recipients will also face more barriers to educational opportunities as the result of prolonged exposure to highly stressful situations without the buffering support of a parent, also known as toxic stress. The anxiety, depression, and other symptoms that children will experience interfere with cognitive ability and focus, and behavioral issues like aggression that results from experiencing trauma can interfere with concentration and attendance. “Children in families under the threat of detention or deportation will achieve *fewer years of education* than children of citizens, and they face challenges in focusing on schoolwork, potentially translating into less income as adults.” Satinsky, *supra*, at 17.

Finally, children face additional risks from the revived practice of large-scale immigration raids, including worksite raids. In August 2019, on the first day of school for children in Mississippi's Scott County, U.S. immigration officials raided seven Mississippi chicken processing plants and arrested 680 workers. Camera, *supra*. The superintendent for the Scott County School District said that some longtime teachers told him that the raid in their community "was by far the worst day they have ever spent as educators." Jeff Amy & Rogelio V. Solis, *Immigration raids to have long-term effects on poultry towns*, *Journal Gazette* (Aug. 9, 2019), <https://tinyurl.com/yx9x4gjl>. The raids affected 15 families and about 30 to 35 students in Scott County. "[T]he overall chilling effect of the event meant 150 students were absent from school" the next day. Camera, *supra*; see also, e.g., Minchillo & Spagat, *supra* (immigration raid of a landscaping company in northern Ohio and a meatpacking plant in eastern Tennessee).

These immigration raids have an effect throughout communities, including on children's education. "Immigration policies create a climate of fear that affects children's academic performance, even if their family is not directly impacted by detention and deportation." Satinsky, *supra*, at 16. One study of immigration raids in six different locations found that about 20% of children had difficulty keeping up in school after the raids. *Id.*

Moreover, although ICE currently maintains a policy of avoiding enforcement actions at "sensitive locations," such as schools, churches, and hospitals, see U.S. Imm. & Customs Enforcement, *FAQ on Sensitive*

*Locations and Courthouse Arrests*, <https://tinyurl.com/y9ul6mfo> (last visited Oct. 2, 2019), parents have been arrested while taking their children to school. See, e.g., Gary Klein, *Marin man arrested in ICE bust while dropping off child at school*, *Marin Indep. J.* (Mar. 15, 2018), <https://tinyurl.com/y38xje2n>; Amy B. Wang, *US immigration authorities arrest chemistry professor after he finishes getting his children ready for school*, *The Independent* (Feb. 5, 2018), <https://tinyurl.com/y38dzfeu>; Andrea Castillo, *Immigrant arrested by ICE after dropping daughter off at school, sending shockwaves through neighborhood*, *L.A. Times* (Mar. 3, 2017), <https://tinyurl.com/j26ws wx>.

In a 2010 study of immigration-related parental arrests, researchers found that “[i]n the short term, six months or less after a raid or other arrest, about two-thirds of children experienced changes in eating and sleeping habits.” Chaudry, *supra*, at ix. “More than half of children in our study cried more often and were more afraid, and more than a third were more anxious, withdrawn, clingy, angry, or aggressive. A majority of children experienced four or more of these behavior changes.” *Id.* “Younger children experienced greater difficulties eating and sleeping, excessive crying, and clinging to parents, while aggressive and withdrawn behavior was more common among the older children.” *Id.*

**E. DACA rescission puts children at risk of traumatic stress, causing immediate and long-term damage.**

As described above, the risk of parental detention and deportation puts children at serious risk of harm, including increased risk to their mental and physical health, income and food security, and separation from their parents. Each of these experiences contributes to the development of child traumatic stress. Beginning with a landmark study published by Kaiser Permanente and the Centers for Disease Control and Prevention in 1998, numerous studies have confirmed that “adverse childhood experiences” can significantly impact physical and mental health well into the adult years, especially when the stress is chronic. *See* Centers for Disease Control & Prevention, *Adverse Childhood Experiences*, <https://tinyurl.com/y8fc6qok>.

As the American Academy of Pediatrics explained in response to executive orders calling for tougher immigration enforcement:

Far too many children in this country already live in constant fear that their parents will be taken into custody or deported, and the message these children received today from the highest levels of our federal government exacerbates that fear and anxiety. No child should ever live in fear. When children are scared, it can impact their health and development. Indeed, fear and stress, particularly prolonged exposure to serious stress—known as toxic stress—can harm the developing brain and

negatively impact short- and long-term health.

Am. Academy of Pediatrics, *AAP Statement on Protecting Immigrant Children* (Jan. 25, 2017), <https://tinyurl.com/y526he2n>.

Without a network of supportive relationships, toxic stress can disrupt normal development and negatively affect the immune system and other biological functions in children—potentially for life. Pediatrician Alan Shapiro notes the amplified effect of toxic stress for children with unauthorized immigrant parents: “In this bio-ecological framework, parental deportation becomes a double whammy for children, compounding the negative effect on a child’s health and well-being by increasing their risk for exposure to stressors and removing a key buffer to that stress, their parent.” Alan Shapiro, *Immigration: deporting parents negatively affects kids’ health*, The Hill (May 13, 2016), <https://tinyurl.com/y5np9s83>.

The long-term, disruptive effects of toxic stress on the developing brains of children are particularly concerning. “Toxic stress damages developing brain architecture, which can lead to life-long problems in learning, behavior, and physical and mental health.” Center on the Developing Child at Harvard University, *InBrief: The Science of Early Childhood Development*, <https://tinyurl.com/y6n3g894>. The stress is cumulative, such that “[t]he more adverse experiences in childhood, the greater the likelihood of developmental delays and other problems.” Center on the Developing Child at Harvard University, *InBrief: The*



*Impact of Early Adversity on Children's Development*,  
<https://tinyurl.com/yyjxt72b>.

Children who experience toxic stress are at significant risk for negative consequences that can last a lifetime. Rescinding DACA will cause the children of recipients unrelenting fear of losing either their country or their parents and will also create additional hardships for their economic and social well-being. And the cumulative effect of that fear and additional hardships can lead to worse health outcomes, lower productivity, and less quality of life for hundreds of thousands of American children.

#### **F. DACA protection benefits children's health.**

While DACA rescission has devastating consequences for children, DACA protection affirmatively helps them. Recent evidence demonstrates the health-promoting effects of DACA protection. For example, a 2016 survey of immigrant young adults showed that DACA status predicted psychological wellness. Caitlin Patler & Whitney Laster Pirtle, *From undocumented to lawfully present: Do changes to legal status impact psychological wellbeing among latino immigrant young adults?*, 199 Soc. Sci. & Med. 39 (2017), <https://tinyurl.com/y6f85wdm>. DACA lowered the likelihood of psychological distress, and recipients reported "better health" and "reduced fear." *Id.* at 44. Specifically, "[r]eceiving DACA reduced the odds of distress, negative emotions, and worry about self-deportation by 76-87%, compared to respondents without DACA." *Id.*

Likewise, a 2017 study found significant mental health benefits among DACA-eligible individuals. Atheendar S. Venkataramani et al., *Health consequences of the US Deferred Action for Childhood Arrivals (DACA) immigration programme: a quasi-experimental study*, 2 *Lancet Public Health* e175 (Apr. 2017), <https://tinyurl.com/yyj5nhgk>. Researchers found that the “effects on mental health were large and clinically significant, with the DACA programme significantly reducing the odds of individuals reporting moderate or worse psychological distress.” *Id.* at e179. The authors further noted that these results should be expected, given other studies that show an increase in anxiety and depression symptoms when immigration policies raise the risk of deportation. *Id.* The American Academy of Pediatrics agrees: “Policies that offer protection from deportation, such as DACA, may confer large mental health benefits for youth and for the children of parenting youth.” Linton, *supra*, at 8.

Another recent study showed that the DACA eligibility of mothers had a positive impact on the physical and mental health of their children. By evaluating their health information, researchers found that adjustment and anxiety disorders were significantly reduced among the children of DACA-eligible mothers. Hainmueller, *supra*, at 1041. The authors chose to study mental health disorders because the effects were immediately observable after DACA was established. “Moreover, examining mental health disorders that originate in childhood is important because they are associated with long-term health issues, low education, and welfare dependence,

which generate considerable private and social costs.” *Id.* at 1042.

In sum, “favorable immigration policies can have a ‘warming effect’ on vulnerable children’s access of critical social services,” and “rolling back DACA or instituting policies which raise the threat of deportation could result in a ‘chilling effect’ that could adversely affect child health.” Rebecka Rosenquist, *The ‘Warming Effect’ of DACA on American Children*, Penn LDI, Leonard Davis Inst. of Health Econ. 2 (June 4, 2018), <https://tinyurl.com/yys7sbj7>.

### **III. It Is In Society’s Interest To Protect Children From Harm.**

As the Court has recognized, it is in “the interests of society to protect the welfare of children.” *Prince v. Massachusetts*, 321 U.S. 158, 165 (1944). “It is the interest of youth itself, and of the whole community, that children be both safeguarded from abuses and given opportunities for growth into free and independent well-developed men and citizens.” *Id.*; see generally *Brown v. Board of Educ. of Topeka, Shawnee Cty., Kan.*, 347 U.S. 483, 494 (1954) (holding that racial segregation in schools deprived children of equal educational opportunities); *Ginsberg v. New York*, 390 U.S. 629, 640 (1968) (“The State also has an independent interest in the well-being of its youth.”); *Brown v. Entm’t Merchants Ass’n*, 564 U.S. 786, 794 (2011) (recognizing that a state “possesses legitimate power to protect children from harm”).

The Court has also recognized the importance of family. “Our decisions establish that the Constitution

protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition. It is through the family that we inculcate and pass down many of our most cherished values, moral and cultural." *Moore v. East Cleveland*, 431 U.S. 494, 503-04 (1977).

Indeed, these principles of family unity and child protection have animated laws across the United States that make family preservation a priority of child welfare agencies. The U.S. Department of Health and Human Services notes that laws in all states "require that child welfare agencies make reasonable efforts to provide services that will help families remedy the conditions that brought the child and family into the child welfare system ... [such as] accessible, available, and culturally appropriate services that are designed to improve the capacity of families to provide safe and stable homes for their children." U.S. Dep't of Health and Human Servs., *Reasonable Efforts to Preserve or Reunify Families and Achieve Permanency for Children* 1 (Mar. 2016), <https://tinyurl.com/y4xgdygj>.

Acknowledging the vital importance of family unity, on February 9, 2018, President Trump signed into law the Family First Prevention Services Act, as part of Division E in the Bipartisan Budget Act of 2018. P.L. 115-123 (H.R. 1892). This law makes comprehensive changes to child welfare laws in an effort to keep families together: "The purpose of this subtitle is to enable States to use Federal funds ... to provide enhanced support to children and families and prevent foster care placements through the provision of mental health and substance abuse prevention and

treatment services, in-home parent skill-based programs, and kinship navigator services.” P.L. 115-123. As one of cosponsors of the legislation explained, “this new law has the power to better the lives of hundreds of thousands of children and their families. It will for the first time allow States to invest Federal foster care dollars in evidence-based services, like substance use treatment and mental health and parenting programs, to prevent the need for foster care by keeping families safely together.” 164 Cong. Rec. S1731 (daily ed. Mar. 14, 2018) (statement of Sen. Wyden). Family First represents an intentional shift to a more upstream system that can prevent unnecessary foster care through services for vulnerable families. The strain on child welfare systems resulting from DACA rescission will come at a time when those systems are moving toward an evidence-based model even more incongruous with addressing the needs of children of DACA recipients.

The United States is also a signatory to the United Nations Convention on the Rights of the Child. Although the United States has not ratified the Convention, its signature “creates an obligation to refrain, in good faith, from acts that would defeat the object and the purpose of the treaty.” United Nations, *What is the difference between signing, ratification and accession of UN treaties?* (citing Arts. 10 and 18, Vienna Convention on the Law of Treaties 1969), <https://tinyurl.com/y3j2c84l>. The Convention emphasizes the importance of protecting child safety and family unity and establishes that a child has “the right to know and be cared for by his or her parents.” Convention on the Rights of the Child, Arts. 7, 18. It also requires parties to “ensure that a child shall not

be separated from his or her parents against their will.” *Id.*, Art. 9.

The well-being of children and the importance of family preservation are fundamental values in our society. DACA recipients were brought here as children and given no other choice of home. Many of these recipients are now parents of U.S.-born children. Rescinding DACA puts these children at immediate risk and threatens their families with forced separation, in direct contravention of our nation’s core commitment to protect children. At a minimum, the government should weigh these concerns carefully in considering whether to rescind DACA.

### CONCLUSION

For the foregoing reasons, the Court should affirm the orders and judgments of the Ninth Circuit and the District Courts for the District of Columbia and the Eastern District of New York.

Respectfully submitted,

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