

18-485, 18-488

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

Case Nos. 16-CV-4756 (NGG) (JO) (E.D.N.Y.), 17-CV-5228 (NGG) (JO) (E.D.N.Y.)

MARTÍN JONATHAN BATALLA VIDAL; MAKE THE ROAD NEW YORK, on behalf of itself, its members, its clients, and all similarly situated individuals; ANTONIO ALARCON; ELIANA FERNANDEZ; CARLOS VARGAS; MARIANO MONDRAGON; CAROLINA FUNG FENG, on behalf of themselves and all other similarly situated individuals, STATE OF NEW YORK, STATE OF MASSACHUSETTS, STATE OF WASHINGTON, STATE OF CONNECTICUT, STATE OF DELAWARE, DISTRICT OF COLUMBIA, STATE OF HAWAII, STATE OF ILLINOIS, STATE OF IOWA, STATE OF NEW MEXICO, STATE OF NORTH CAROLINA, STATE OF OREGON, STATE OF PENNSYLVANIA, STATE OF RHODE ISLAND, STATE OF VERMONT, STATE OF VIRGINIA, STATE OF COLORADO;

Plaintiffs-Appellees,

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, Attorney General of the United States;

Defendants-Appellants.

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

**BRIEF FOR *AMICI CURIAE* INSTITUTIONS OF HIGHER EDUCATION
IN SUPPORT OF PLAINTIFFS-APPELLEES**

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CORPORATE DISCLOSURE STATEMENT

The following institutions of higher education do not have any parent corporation, and there is no publicly-held corporation that has a 10% or greater ownership interest in any of the institutions: Adler University, Alamo Community College District, American University, Amherst College, Arizona State University, Augustana College, Barnard College, Bates College, Bennington College, Board of Regents of the Nevada System of Higher Education on Behalf of the University of Nevada, Reno, Boston University, Brandeis University, Bryn Mawr College, Bucknell University, California Institute of Integral Studies, California State University System, Carleton College, Christian Brothers University, Clark University, Colby College, DePauw University, Drexel University, Elon University, Emerson College, Franklin & Marshall College, Frostburg State University, Goucher College, Guilford College, Hamilton College, Hampshire College, Haverford College, Kalamazoo College, Lewis & Clark College, Los Angeles Community College District, Los Rios Community College District, Macalester College, Manhattanville College, Mills College, Mount Holyoke College, Northeastern University, Pace University, Pacific Lutheran University, Pacific Oaks College, Pomona College, Rhode Island School of Design, Rice University, Roosevelt University, Rutgers University – Camden, Rutgers University – Newark, Salisbury University, San Mateo County Community College District, Sarah Lawrence College, Saybrook University, Seattle Pacific University, Southeastern University, St. Norbert College, TCS Education System, The College of Wooster, The New School, Towson University, Trinity Washington

University, Truckee Meadows Community College, Tufts University, University of Baltimore, University of Maryland, Baltimore, University of Maryland, College Park, University of Maryland University College, University of Maryland, Baltimore County, University of New England, University of Puget Sound, University of Utah, Washington University in St. Louis, Wellesley College, Wesleyan University, Western Washington University, Wheaton College (Massachusetts), Whitman College, Whittier College, and Williams College (collectively “Institutions of Higher Education”).

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INTEREST OF *AMICI CURIAE*

Amici Institutions of Higher Education, by their attorneys, Jenner & Block LLP, submit this amicus brief in support of Plaintiffs-Appellees.¹

Amici are institutions of higher education from across the country. *Amici* include large public universities, private research universities and liberal arts colleges, and community colleges. We are located in urban centers and rural farm areas, and throughout states that span the political spectrum. Collectively, *amici* teach and employ millions of people.

Amici have seen firsthand the positive effects of the Deferred Action for Childhood Arrivals (“DACA”) program on their campuses. DACA has facilitated the pursuit of higher education by undocumented youth in unprecedented numbers. And it has ensured that once enrolled, these students are positioned to succeed. As a result of DACA, thousands of these talented and hard-working young people have made significant and wide-ranging contributions to *amici*’s campuses. They form a key part of our campus life and as institutions we benefit greatly from the energy and academic excellence they bring. And, *amici* have made substantial investments in the education of undocumented youth in reliance on DACA. Although these students unquestionably benefit from being able to attend our institutions—and this is something DACA certainly facilitates—we as institutions

¹ This brief has not been authored, in whole or in part, by counsel to any party in this appeal. No party or counsel to any party contributed money intended to fund preparation or submission of this brief. No person, other than the *amici*, its members, or its counsel, contributed money that was intended to fund preparation or submission of this brief.

also benefit significantly from the many contributions this remarkable group of young people make to our schools.

We believe the perspective we bring as institutions is relevant to this case because it will demonstrate to the Court another group—beyond DACA recipients themselves—that will be harmed by the Defendants-Appellants’ actions. *Amici* Institutions of Higher Education share the Plaintiffs-Appellees’ interest in a diverse student body, and this brief demonstrates that Defendants-Appellants’ arbitrary and capricious actions will impact institutions large and small throughout the nation.

INTRODUCTION

Amici are institutions of higher education from across the country: Adler University, Alamo Community College District, American University, Amherst College, Arizona State University, Augustana College, Barnard College, Bates College, Bennington College, Board of Regents of the Nevada System of Higher Education on Behalf of the University of Nevada, Reno, Boston University, Brandeis University, Bryn Mawr College, Bucknell University, California Institute of Integral Studies, California State University System, Carleton College, Christian Brothers University, Clark University, Colby College, DePauw University, Drexel University, Elon University, Emerson College, Franklin & Marshall College, Frostburg State University, Goucher College, Guilford College, Hamilton College, Hampshire College, Haverford College, Kalamazoo College, Lewis & Clark College, Los Angeles Community College District, Los Rios Community College District, Macalester College, Manhattanville College, Mills College, Mount Holyoke College, Northeastern University, Pace University, Pacific Lutheran University, Pacific Oaks College, Pomona College, Rhode Island School of Design, Rice University, Roosevelt University, Rutgers University – Camden, Rutgers University – Newark, Salisbury University, San Mateo County Community College District, Sarah Lawrence College, Saybrook University, Seattle Pacific University, Southeastern University, St. Norbert College, TCS Education System, The College of Wooster, The New School, Towson University, Trinity Washington University, Truckee Meadows Community College, Tufts University, University of Baltimore, University of Maryland, Baltimore, University

of Maryland, College Park, University of Maryland University College, University of Maryland, Baltimore County, University of New England, University of Puget Sound, University of Utah, Washington University in St. Louis, Wellesley College, Wesleyan University, Western Washington University, Wheaton College (Massachusetts), Whitman College, Whittier College, and Williams College (collectively “Institutions of Higher Education”).

American institutions of higher education benefit profoundly from the presence of immigrant students on our campuses. Whether they attend large public universities, private research universities and liberal arts colleges, or community colleges, these students contribute a perspective and experience that is unique and important. That is especially true of Dreamers—that is, undocumented young people who were brought to the United States as children.

Through no choice of their own, Dreamers were raised and educated in this country as Americans. They have worked and studied in American schools; have prepared and trained for all manner of careers; and have strived to innovate, achieve, and serve their communities. Yet, until the government announced the Deferred Action for Childhood Arrivals (“DACA”) program in 2012, they lived under the threat that the government might one day come calling, to remove them from the country that has become their home. Though they might have dreamed of bright futures, for many their undocumented status stood as an impenetrable roadblock to one of the most fundamental tools for a successful future: Of the

65,000 undocumented youth who graduate from U.S. high schools each year, historically only approximately 5 to 10 percent were able to enroll in college.²

DACA changed all of this and has provided up to 2 million Dreamers with an opportunity to apply for temporary protection from removal, an opportunity to pursue their education, and the authorization to work legally. To qualify for DACA, Dreamers are required to meet strict conditions, including having completed high school or a GED in the United States, or being currently enrolled in school. In addition, Dreamers are required to pay a significant application fee and provide detailed personal information to the government—a significant request given the hesitancy of undocumented persons to have any interaction with the government whatsoever. But the students who have signed up and placed their trust in the government received, in exchange, the opportunity to pursue higher education. They have done so in unprecedented numbers.

On September 5, 2017, Appellants announced they were rescinding DACA. This misguided, arbitrary and capricious decision will harm millions of remarkable young people. But, critically, it will also harm the country, which will be deprived of the many contributions Dreamers would otherwise be able to make. On February 13, 2018, the district court in this case ordered and enjoined the government to maintain the DACA program on a nationwide basis on the same terms and conditions as they were in effect before the rescission, subject to certain

² Inst. for Immigration, Globalization, & Educ., *In the Shadows of the Ivory Tower: Undocumented Undergraduates and the Liminal State of Immigration Reform 1* (2015), <http://www.undocuscholars.org/assets/undocuscholarsreport2015.pdf>; Immigration Policy Center, *The DREAM Act: Creating Opportunities for*

exceptions. *Batalla Vidal v. Nielsen*, 279 F. Supp. 3d 401 (E.D.N.Y. 2018). In addition to the instant suit, three other lawsuits have been filed challenging the government's decision to rescind DACA. In *Regents of the Univ. of Cal. v. U.S. Dep't of Homeland Sec.*, 279 F. Supp. 3d 1011 (N.D. Cal. 2018), the court granted preliminary injunction, and the defendants' appeal to the Court of Appeals for the Ninth Circuit is pending; in *Casa De Maryland v. United States Department of Homeland Security*, No. CV RWT-17-2942, --- F. Supp. 3d ---, 2018 WL 1156769 (D. Md. Mar. 5, 2018), the court enjoined the defendants from using or sharing information provided by DACA recipients for enforcement or deportation purposes but granted summary judgment in favor of defendants with regard to all other claims; in *The Trustees of Princeton University v. United States*, No. 1:17-cv-2325 (D.D.C. filed Nov. 3, 2017), the plaintiffs' motion for summary judgment and/or preliminary injunction is pending.

Amici collectively have educated thousands of DACA beneficiaries, and we have benefited from their talents and the passion they bring to our campuses. Even those *amici* who have no DACA beneficiaries currently on campus view DACA as core to their educational missions. In this brief, *amici* explain how we will be harmed if DACA is rescinded. For that reason, *amici* support Plaintiffs-Appellees and respectfully urge the Court to affirm the judgment of the district court.

ARGUMENT

Immigrant Students and Supporting the U.S. Economy (2010),

I. DACA Has Allowed Tens of Thousands of Previously Undocumented Youth To Pursue Higher Education.

DACA has enabled previously undocumented students to pursue higher education in several important ways.

First, in order to qualify for deferred action under DACA, an applicant must generally obtain a high school diploma or GED certificate. The possibility of securing deferred action provides a powerful incentive for students to stay in school, increasing the likelihood that they will pursue postsecondary education, and become taxpayers and significant contributors to our society.

Second, prior to DACA, undocumented students felt the need to hide their status from others, which constrained their access to academic resources and their desire to apply to college.³ Not surprisingly, undocumented students who felt the need to hide their status from school personnel or peers during high school are significantly less likely even to think college is a possibility.⁴

Third, DACA enables students to secure social security numbers and photo identification. Something as simple as flying on an airplane was previously all but impossible for undocumented youth. With DACA, they can fly across the country to visit campuses, attend school and academic conferences, and even obtain authorization to study abroad. Likewise, with a social security number, they can apply for financial aid and fee waivers that were previously unobtainable and

http://www.mygreencard.com/downloads.php?file=Dream_Act_January2011.pdf.

³ Caitlin Patler & Jorge A. Cabrera, *From Undocumented to DACAmented: Impacts of the Deferred Action for Childhood Arrivals (DACA) Program Three Years Following its Announcement* at 15 (June 2015), http://www.chicano.ucla.edu/files/Patler_DACA_Report_061515.pdf.

⁴ *Id.* at 16.

secure credit to fund other education-related expenses. Given that DACA students come from families whose parents lack legal status—and thus frequently are unable to secure high-paying jobs—the availability of financial aid is all the more crucial to their ability to attend college or university.

Fourth, DACA enables students to secure work authorization. With the ability to work part-time jobs and participate in work-study programs, undocumented students can better afford school—something previously made difficult or impossible by the inability to work lawfully.⁵ Likewise, the ability to secure a legitimate job following graduation from college provides a powerful incentive to pursue a college education; and the inability to secure such a job likewise dissuades promising students from pursuing higher education. DACA thus increases the value of higher education itself for undocumented students.

Fifth, DACA has enabled students to overcome state laws that impede their ability to pursue higher education. For example, DACA recipients may enroll in public colleges and universities in states where they would otherwise be barred from attending,⁶ and may apply for in-state tuition in others, making it far easier for them to afford a college education.⁷ *Sixth*, DACA enables students to envision a future for themselves in this country, providing the incentive to pursue a degree, develop skills and expertise, and invest in their future here.

⁵ See Zenén Jaimes Pérez, Center for American Progress, *How DACA Has Improved the Lives of Undocumented Young People*, at 5 (Nov. 19, 2014), <https://cdn.americanprogress.org/wp-content/uploads/2014/11/BenefitsOfDACABrief2.pdf>; Patler, *supra*, at 18.

⁶ See, e.g., Ala. Code § 31-13-8; S.C. Code Ann. § 59-101-430.

⁷ See Pérez, *supra*, at 4.

Finally, because of DACA, *amici* have made extensive investments in the education of DACA beneficiaries, facilitating their access to higher education like never before. Among other things, *amici* have provided DACA students with financial aid, housing benefits, counseling, faculty time and attention, and graduate and research assistant positions, all in reliance on the DACA program. Some *amici* even provide legal services. *Amici* made these investments with the expectation that those students would be able to pursue their education and career in this country, in furtherance of *amici*'s educational missions, and the public interest.

DACA has accomplished what it was intended to do: In a 2017 survey of more than 3,000 DACA recipients, 45% are currently in school.⁸ And, among those who are in school, 94% said that, because of DACA, they “[p]ursued educational opportunities that I previously could not.”⁹ In a different study, nearly four-fifths of DACA recipients (78%) reported that DACA made it easier to pay for school.¹⁰ Three-quarters of current students said DACA made it easier to attend school and to stay in school.¹¹ These studies and *amici*'s experience confirm what should be obvious: once young people are able to come out of the shadows and avail themselves of programs available to countless other American youth, they seize and benefit from the opportunity.

But, while Dreamers and their families have benefited greatly from the DACA program, colleges and universities have benefited as well.

⁸ Tom K. Wong, 2017 National DACA Study, <https://cdn.americanprogress.org/content/uploads/2017/08/27164928/Wong-Et-Al-New-DACA-Survey-2017-Codebook.pdf>.

⁹ *Id.* at 7.

¹⁰ Patler, *supra*, at 5 or 18.

II. DACA Students Contribute Immeasurably to Our Campuses.

American colleges and universities have benefited immeasurably from DACA. As *amicus* Amherst's President, Bidy Martin, wrote in a letter to the President, "[o]ur classrooms at Amherst are enriched by the academic talent, hard work, and perspectives of DACA students who go on to become doctors, teachers, engineers, and artists."¹² And President Martin is far from alone. Hundreds of other university presidents have echoed those sentiments, issuing public statements on DACA's importance to American colleges and universities, including many whose institutions have signed this brief.¹³

¹¹ *Id.* at 18.

¹² Letter from Bidy Martin, Amherst College to Donald J. Trump, President (Aug. 30, 2017), <https://www.amherst.edu/amherst-story/president/statements/node/689036>.

¹³ See Pomona College: Statement in Support of the Deferred Action for Childhood Arrivals (DACA) Program and Our Undocumented Students, <https://www.pomona.edu/news/2016/11/21-college-university-presidents-call-us-uphold-and-continue-daca> (last visited Oct. 30, 2017) (letter opposing the nonrenewal of DACA signed by over 700 university and college presidents and chancellors); see also, e.g., Letter from Andrew D. Hamilton, New York University to Donald J. Trump, President (Sept. 1, 2017), <http://www.nyu.edu/content/dam/nyu/president/documents/09-01-17-daca-letter.pdf>; Letter from Vincent E. Price, President Duke University, to Donald J. Trump, President (Aug. 30, 2017), <https://today.duke.edu/2017/08/duke-university-letter-support-daca>; Letter from Drew Gilpin Faust, Harvard, to Donald J. Trump, President (Aug. 28, 2017), <https://www.harvard.edu/president/news/2017/letter-to-president-trump-regarding-daca>; Letter from Ron Liebowitz, President, Brandeis University, to Donald J. Trump, President (Sept. 5, 2017), <http://www.brandeis.edu/president/letters/2017-09-05.html>; Statement on DACA from President, University of Michigan, Mark Schlissel (Sept. 3, 2017), <https://president.umich.edu/news-communications/statements/statement-on-daca-from-president-mark-schlissel/>; U-M Remains Committed to Helping All Students Succeed (Mar. 2, 2018), <https://president.umich.edu/news-communications/statements/u-m-remains-committed-to-helping-all-students-succeed/>; Letter from Adam Falk, President, Williams, to the Williams Community, <https://president.williams.edu/writings/caring-for-our-undocumented-students/>

a. DACA Students Have Had Great Academic and Extra-Curricular Success At Our Schools.

Dreamers are invaluable members of our academic communities. DACA recipients serve as the president¹⁴ and vice-president¹⁵ of student government, publish research in top academic journals,¹⁶ innovate and apply for patents,¹⁷ earn inclusion on the Dean's List¹⁸ and graduate *summa cum laude*,¹⁹ and serve as tutors

(last visited Oct. 29, 2017); Statement of Kathleen McCartney, President, Smith College, to Students, Staff and Faculty (Sept. 5, 2017), <https://smith.edu/president-kathleen-mccartney/letters//2017-18/responding-to-daca-decision>; Letter from Lee Pelton, President, Emerson College, to Emerson Community (Sept. 6, 2017) <http://www.emerson.edu/news-events/emerson-college-today/pelton-reaffirms-support-emerson-daca-students#.We5Ui2you70>; Resolutions of the Board of Governors, California Community Colleges, Nos. 2017-04 (Sept. 18, 2017), 2017-01 (Jan. 18, 2017) http://extranet.cccco.edu/Portals/1/ExecutiveOffice/Board/2017_agendas/September/2.2-Resolution-DACA.pdf; Statement of Susan Herbst, President, University of Connecticut (Sept. 5, 2017), <https://today.uconn.edu/2017/09/president-herbst-responds-daca-decision/>; Letter from David W. Leebron, President, Rice University (Sept. 5, 2017), <https://president.rice.edu/presidents-office/remarks/DACA-announcement>; Letter of Joseph E. Aoun, President, Northeastern University, to all members of the Northeastern Community (Sept. 4, 2017), <http://www.northeastern.edu/president/2017/09/04/turning-ideals-into-action/>; Association of Vermont Independent Colleges, Statement on the Revocation of the Deferred Action for Childhood Arrivals (DACA) Program, <http://www.vermont-icolleges.org/Documents/DACAFinal2017.pdf>.

¹⁴ See Jose Herrera, *DACA student leads by example*, Los Angeles Pierce College Roundup (Sept. 13, 2017), <http://theroundupnews.com/2017/09/13/daca-student-leads-example/>.

¹⁵ Monica Scott, *Undocumented: One immigrant's story of life under DACA*, MLive (Aug. 29, 2017), <http://www.mlive.com/news/grand-rapids/index.ssf/2017/08/one+daca+students+story+about.html>.

¹⁶ America's Voice Online (Oct. 3, 2017), <https://americasvoice.org/blog/name-denisse-rojas-marquez-28-years-old-old-proud-undocumented-american-soon-doctor/>.

¹⁷ *American Dreamers: Kok-Leong Seow*, N.Y. Times, <https://www.nytimes.com/interactive/projects/storywall/american-dreamers/stories/kok-leong-seow> (last visited Oct. 29, 2017).

¹⁸ E.g., *American Dreamers: Anayancy Ramos*, N.Y. Times, <https://www.nytimes.com/interactive/projects/storywall/american-dreamers/stories/anayancy-ramos> (last visited Oct. 29, 2017).

and research assistants.²⁰ They have won Soros Fellowships²¹ and been named Gates Cambridge Scholars and Schwarzman Scholars.²² They have graduated with honors and received admission to serve others in the Teach for America²³ and AmeriCorps VISTA²⁴ programs. They have founded national organizations to assist other undocumented youth.²⁵ They have pursued careers in a wide variety of fields, including health care²⁶ and service to low-income veterans.²⁷ The following

¹⁹ *American Dreamers: Carlos Adolfo Gonzalez Sierra*, N.Y. Times, <https://www.nytimes.com/interactive/projects/storywall/american-dreamers/stories/carlos-adolfo-gonzalez-sierra> (last visited Oct. 29, 2017).

²⁰ *E.g., American Dreamers: Gargi Y. Purohit*, N.Y. Times, <https://www.nytimes.com/interactive/projects/storywall/american-dreamers/stories/gargiy-purohit> (last visited Oct. 29, 2017).

²¹ *American Dreamers: Denisse Rojas Marquez, 2016*, N.Y. Times, <https://www.pdsoros.org/meet-the-fellows/denisse-rojas-marquez> (last visited Oct. 29, 2017).

²² *American Dreamers: Carlos Adolfo Gonzalez Sierra*, N.Y. Times, <https://www.nytimes.com/interactive/projects/storywall/american-dreamers/stories/carlos-adolfo-gonzalez-sierra> (last visited Oct. 29, 2017).

²³ *American Dreamers: Julia Verzbickis*, N.Y. Times, <https://www.nytimes.com/interactive/projects/storywall/american-dreamers/stories/julia-verzbickis> (last visited Oct. 29, 2017).

²⁴ *American Dreamers: Brisa E. Ramirez*, N.Y. Times, <https://www.nytimes.com/interactive/projects/storywall/american-dreamers/stories/brisa-e-ramirez> (last visited Oct. 29, 2017).

²⁵ America's Voice (Oct. 3, 2017), <https://americasvoice.org/blog/name-denisse-rojas-marquez-28-years-old-old-proud-undocumented-american-soon-doctor/>; *see also American Dreamers: Jin Park*, N.Y. Times, <https://www.nytimes.com/interactive/projects/storywall/american-dreamers/stories/jin-park> (last visited Oct. 29, 2017); Penny Schwartz, *A Jewish 'Dreamer' is scared, but refuses to despair*, Jewish Telegraphic Agency (Sept. 6, 2017), <https://www.jta.org/2017/09/06/news-opinion/united-states/a-jewish-dreamer-is-scared-but-refuses-to-despair>.

²⁶ America's Voice (Oct. 3, 2017), <https://americasvoice.org/blog/name-denisse-rojas-marquez-28-years-old-old-proud-undocumented-american-soon-doctor/>; *American Dreamers: Belsy Garcia*, N.Y. Times, <https://www.nytimes.com/interactive/projects/storywall/american-dreamers/stories/belsy-garcia> (last visited Oct. 29, 2017).

are but a few examples of current and past DACA students at *amici* and other institutions of higher education who are brave enough to share their stories, and whose remarkable achievements serve as a reminder of why DACA benefits *both* students and the institutions lucky enough to have them:

- Elias Rosenfeld, now a sophomore at Brandeis University, was brought to the United States at age 6 from Venezuela by his mother who was a media executive and came on an L1 visa. His mother died when he was in fifth grade, and it was only in high school when he tried to apply for a driver's license that he learned he was undocumented because his mother's death voided her (and his) visas. Elias excelled in high school, completing 13 AP classes and ranking in the top 10% of his class. At Brandeis he is studying political science, sociology and law. When asked what America means to him, he responded: "It means my country. It's my home. There's a connection. I want to contribute."²⁸
- Anayancy Ramos is a student at Eastern Connecticut State University who will graduate with a double major in Biology and Computer Science and a minor in Bioinformatics. Before matriculating at ECSU, she attended a community college where she was a Dean's List scholar, was inducted into the Phi Theta Kappa honor society, was the president of the Alpha Beta Gamma chapter, and worked full time at an animal hospital. She notes that through DACA she's been able to achieve an education and a future she never thought possible, but that those dreams will die if DACA forces her to retreat once more into the shadows.²⁹
- Carlos Adolfo Gonzalez Sierra came to the United States from the Dominican Republic when he was eleven. Carlos graduated *summa*

²⁷ *American Dreamers: Isabelle Muhlbauer*, N.Y. Times, <https://www.nytimes.com/interactive/projects/storywall/american-dreamers/stories/isabelle-muhlbauer> (last visited Oct. 29, 2017).

²⁸ See Penny Schwartz, *A Jewish 'Dreamer' is scared, but refuses to despair*, Jewish Telegraphic Agency (Sept. 6, 2017), <https://www.jta.org/2017/09/06/news-opinion/united-states/a-jewish-dreamer-is-scared-but-refuses-to-despair> (last visited Oct. 29, 2017).

²⁹ See *American Dreamers: Anayancy Ramos*, N.Y. Times, <https://www.nytimes.com/interactive/projects/storywall/american-dreamers/stories/anayancy-ramos> (last visited Oct. 29, 2017). *Amicus* Eastern Connecticut State University has provided updated details about Ramos's course of study, with her consent.

cum laude from Amherst and studied as a Gates Scholar at Cambridge University and a Schwarzman Scholar in China. Carlos emphasizes that his desire to stay is not economic: “The United States is my home. It is where I feel the most comfortable.” Moreover, given the education he’s received, he expresses an “inconsolable desire to contribute to the country that has given me so much.”³⁰

- Eduardo Solis was brought to the United States when he was 1-month old from Mexico. He is a student at UCLA, aspiring to major in either psychology or sociology. At the age of 11 he founded a blog to help fellow children deal with bullying. He has gained over 30,000 followers, from all over the world, and has won awards recognizing his role as a teen activist. Although worried about the end of DACA, Eduardo says that “[f]or now, I will continue on pledging allegiance to the only flag I know and love; the American Flag.”³¹
- Nancy A. was brought to the United States from Togo as a child. When she entered high school at 13 she realized she was undocumented and, shortly thereafter both she and her parents were put in deportation proceedings. Despite being in these proceedings, she graduated as the valedictorian of her high school class and then became the youngest graduate of her masters programs. She is currently due to graduate with her Doctorate at age 27 and is a professor of Political Science and Education at a university and community college. She describes receiving DACA at age 23 as being “finally forgiven for a sin I had no control over when I was a child.”³²
- Alfredo Avila was brought to the U.S. when he was just a child, and despite neither of his parents being able to speak English, they managed to send Alfredo and his siblings to school where they all learned English. Despite having to move around a number of times out of a fear of deportation, Alfredo excelled in school and is now a student in the Honors College at the University of Texas at San Antonio, majoring in Electrical Engineering. Alfredo works part-time as a math and science tutor and is involved with many student

³⁰ See *American Dreamers: Carlos Adolfo Gonzalez Sierra*, N.Y. Times, <https://www.nytimes.com/interactive/projects/storywall/american-dreamers/stories/carlos-adolfo-gonzalez-sierra> (last visited Oct. 29, 2017).

³¹ See *American Dreamers: Eduardo Solis*, N.Y. Times, <https://www.nytimes.com/interactive/projects/storywall/american-dreamers/stories/eduardo-solis> (last visited Oct. 29, 2017).

³² See *American Dreamers: Nancy A.*, N.Y. Times, <https://www.nytimes.com/interactive/projects/storywall/american-dreamers/stories/nancy-a> (last visited Oct. 29, 2017).

organizations, including serving as the President of the professional engineering student organization. His dream is to one day build and manage his own technology company that thrives off diversity and inclusion.³³

- Dalia Larios is an Arizona State University alum who was born in Mexico and raised in the United States. In high school, Dalia graduated within the top 1% of her class. Despite her desire to use her studies to help communities in need, her longing to earn a college degree was threatened by her status as an undocumented immigrant. Nonetheless, she remained determined and graduated from Arizona State University with a major in Biological Sciences (Genetics, Cell and Developmental Biology) and a 4.0 GPA. Presently, Dalia is a fourth-year medical student at Harvard Medical School where she has continued to advocate for equitable access to education and healthcare in vulnerable populations.³⁴
- Gaby Gil is a senior at Whittier College. DACA has made her dreams of going to college possible and enabled her to pursue her passion for higher education. Two weeks after receiving her DACA work permit, she began working in order to pay for college; she became a full time student and full time employee at the same time. Despite the difficulties of working full time while in college, she no longer feared deportation thanks to DACA and possessed a work permit that she could use to achieve her goals and advocate for the millions of people that were left out of the program.

The success of DACA students in college and university should come as no surprise. These students have overcome innumerable hardships simply to be able to apply and enroll in an institute of higher education. For many of our students (whether U.S. citizens or from other countries), matriculation in college or university is a natural progression after attending high school and taking standardized tests. But this is not the case for DACA students. Those students must perform well in school and on tests while at the same time living under the

³³ See *American Dreamers: Alfredo Avila*, N.Y. Times, <https://www.nytimes.com/interactive/projects/storywall/american-dreamers/stories/alfredo-avila> (last visited Oct. 29, 2017).

constant threat that they and their families may be deported. Moreover, until DACA these students could not get work authorization, and most of their parents still cannot.³⁵ Thus, DACA students frequently have had to work multiple, poorly-paid jobs in order to help put food on the table while at the same time trying to maintain their focus and performance in school and apply to college. The sacrifices these students and their families have had to make simply to enroll as students at our institutions are legion, and their commitment to bettering themselves and getting the most out of their education is unwavering. These extraordinary young people should be cherished and celebrated, so that they can achieve their dreams and contribute to the fullest for our country. Banishing them once more to immigration limbo—a predicament they had no part in creating—is not merely cruel, but irrational. DACA students are the ideal candidates for prosecutorial discretion, which the government formerly recognized and exercised for those who applied and were accepted. DACA’s rescission is not based on any different conclusion about those eligible; rather, it appears to reflect an arbitrary and capricious policy shift for which talented young people will bear the brunt of the harm. If such an unlawful decision is allowed to stand—and these young people take their tremendous talent, enthusiasm, and skills elsewhere—we (both *amici* and the country as a whole) will be the losers.

³⁴ See *DREAMzone – DACA Alumni Success Stories*, Arizona State University, <https://eoss.asu.edu/access/dreamzone> (last visited Apr. 2, 2018).

³⁵ Most DACA students are raised in households with incomes well below the federal poverty line. See Inst. for Immigration, Globalization, & Educ., *supra*, 7 (in a survey of undocumented students, 61.3% had annual household incomes below \$30,000 and 29% had annual household incomes between \$30,000 and \$50,000).

b. DACA Students Contribute to Campus Diversity, A Key Component of the Educational Experience.

The Supreme Court has time and again noted the myriad benefits that a diverse student body yields for institutes of higher education. *First*, the Court has recognized “the educational benefits that flow from student body diversity,” *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411, 2419 (2013) (*Fisher I*) (quotation marks omitted), namely the deeper understanding students and professors achieve when an issue or problem is analyzed by individuals who bring differing perspectives and backgrounds to the question. *See also Grutter v. Bollinger*, 539 U.S. 306, 330 (2003) (noting that the “educational benefits that diversity is designed to produce . . . [are] substantial”). *Second*, “enrolling a diverse student body ‘promotes cross-racial understanding, helps to break down racial stereotypes, and enables students to better understand persons of different races.’” *Fisher v. Univ. of Texas at Austin (Fisher II)*, 136 S. Ct. 2198, 2210 (2016) (quoting *Fisher I*, 133 S. Ct. at 2427; *see also Grutter*, 539 U.S. at 328, 330). While this obviously has a direct benefit to students, it also is a key component in creating a dynamic and integrated campus environment. *Third*, and “[e]qually important, student body diversity promotes learning outcomes, and better prepares students for an increasingly diverse workforce and society.” *Fisher II*, 136 S. Ct. at 2210 (internal quotation marks omitted).

The Supreme Court’s observations in this respect are well taken. Diversity on campus is amongst the highest priorities for *amici*, and we have seen the benefits in practice that the Supreme Court has highlighted in theory. For example, *amicus* Rice University’s mission statement notes that it seeks to fulfill its mission

“by cultivating a diverse community of learning and discovery that produces leaders across the spectrum of human endeavor.”³⁶ Likewise, *amicus* Middlebury College explains its commitment to “full and equal participation for all individuals and groups” by noting evidence that “groups of people from a variety of backgrounds and with differing viewpoints are often more resilient and adaptive in solving problems and reaching complex goals than more homogenous groups.”³⁷ These are but two examples of many.³⁸

The DACA students attending our schools play a significant role in fostering the inclusive and diverse on-campus atmosphere we strive to create. As reported by the United States Citizenship and Immigration Services, the 689,900 DACA recipients as of September 2017 come from over 150 countries spanning every continent except Antarctica.³⁹ And, this diversity of backgrounds and ethnicities is reflected in the thousands of DACA recipients, and undocumented students, who study on our campuses.⁴⁰ Indeed, in many ways DACA students bring a special

³⁶ Rice University, Statement of Office of Diversity and Inclusion, <http://diversity.rice.edu/> (last visited Oct. 29, 2017).

³⁷ Middlebury College, Diversity and Inclusion, <http://www.middlebury.edu/student-life/community-living/diversity-inclusivity> (last visited Oct. 29, 2017).

³⁸ See, e.g., Vision, Mission, & Equity, Folsom Lake College, <http://www.flc.losrios.edu/about-us/vision-mission-and-equity> (last visited Oct. 29, 2017); Mission & Diversity Statements, Brandeis University, <http://www.brandeis.edu/about/mission.html> (last visited Oct. 29, 2017).

³⁹ See DACA Population Data, USCIS (Sept. 4, 2017), https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/daca_population_data.pdf.

⁴⁰ See Jerome Dineen, *If Trump Ends DACA, Here's How Many Students Could Be Affected*, USA Today College (Feb. 8, 2017), <http://college.usatoday.com/2017/02/08/if-trump-ends-daca-heres-how-many->

form of diversity to our campuses in that they are neither traditionally domestic nor traditionally international students. They have an entirely different perspective and they bring that in addition to their compelling life stories to our schools.

III. The Rescission of DACA Will Harm American Colleges and Universities.

If DACA's rescission is allowed to stand, the greatest harm will of course be suffered by DACA recipients and their families. But American colleges and universities will be harmed as well.

First, and foremost, we will lose important members of our academic communities. The few examples cited above are not anomalous; rather, they exemplify the talent and accomplishment of the thousands of DACA students we have on our campuses. As many students may be forced to withdraw, *amici* will be deprived of some of our most accomplished students. These students contribute not only to the diversity of perspectives in our classrooms but also to the student leadership of social action initiatives in our communities. Our campuses will be noticeably poorer places without those substantial contributions.

Second, the education we provide our students is a valuable commodity, and we have finite resources to provide it. If DACA students lose their status and, with it, the ability to pay for tuition or living expenses, they may well not be able to continue with their education. And, even for those students who have saved enough money to continue, the value of an education may decrease if they will be unable to secure lawful employment upon graduation. As a result, *amici* will

students-could-be-affected/ (estimating that 10,000 undocumented students graduate from undergraduate institutions in the United States annually).

almost certainly lose students mid-way through their degree programs, and the retention rate for this population will drop dramatically and beyond what institutions are prepared to accommodate through normal attrition cycles. *Amici* have devoted valuable, and in many cases limited, enrollment spaces to this student population that will not continue in their education and cannot be replaced during a mid-point of their progression in their degree program.

Third, some of our DACA students work in a variety of positions on campus, and many are already trained for these positions and performing well. With the loss of employment authorization, *amici* will lose these valuable contributions. The cost of refilling and retraining for these roles, if we can even find adequate replacements, represents measurable harm to the institutions. More broadly, the loss of work authorization will also mean that our DACA students will be unable to secure stable jobs upon graduation. While of course this is primarily a harm to them, given that our DACA students are among the most committed of our alumni, we too will lose an important source of support (both financial and otherwise).

Fourth, DACA's rescission has already required *amici* to dedicate valuable resources to counsel students who are negatively impacted by rescission. Many of these students have required mental health counseling to deal with the stress and anxiety induced by the government's sudden shift in position, as well as legal assistance to determine their range of possibilities.⁴¹ As institutions of higher

⁴¹ See, e.g., Eleanor J. Bader, *As End of DACA Looms, Colleges and Organizers Ramp Up Efforts to Protect Undocumented Students*, NACLA (Jan. 27, 2017),

education, we believe we should be spending our resources on educating our students for the bright futures they will have, not defending and counseling them against unfair and adverse actions by their government for a situation in which they have no blame whatsoever.

Finally, even for those schools without many or even any DACA students, supporting DACA is central to our mission as educators. *Amici* are devoted to the education of people to help them realize their ambitions and potential, and to contribute to their communities, to this country, and to the world. We pursue that mission on behalf of our students, regardless of national origin. Indeed, core to that mission is our commitment to equal opportunity. The rescission of DACA devalues that mission without any rational basis. In that respect, it harms all *amici*.

CONCLUSION

DACA is an enlightened and humane policy, and it represents the very best of America. It provides legal certainty for a generation of high-achieving young people who love this country and were raised here. Once at college or university, DACA recipients are among the most engaged both academically and otherwise. They work hard in the classroom and become deeply engaged in extracurricular activities. Moreover, our DACA students are deeply committed to giving back to their communities and, more broadly, the country they love. These are not the types of individuals we should be pushing out of the country, or returning to a life in the shadows. As institutions of higher education, we see every day the achievement and potential of these young people, and we think it imperative that

<https://nacla.org/news/2017/01/27/end-daca-looms-colleges-and-organizers-ramp->

they be allowed to remain here and live out their dreams. Indeed, it defies rationality to prevent the government from utilizing its discretion to protect this set of young people from removal. For these reasons, we urge the Court to affirm the district court's order in favor of Plaintiffs-Appellees.

Dated: April 11, 2018

Respectfully submitted,

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efforts-protect-undocumented-students.

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the requirements of Fed. R. App. P. 32(a)(7)(B) and Local Rules 32.1 and 29.1(c) because it contains 5,563 words, excluding the parts of the brief exempted by Fed. R. App. P. 32. The brief also complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using 14-point Times New Roman style.

Date: April 11, 2018

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CERTIFICATE OF SERVICE

I hereby certify that on April 11, 2018, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

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