

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

STATE OF NEW YORK, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:17-cv-05228 (NGG) (JO)
	)	
DONALD TRUMP, et al.,	)	
	)	
Defendants.	)	
MARTÍN JONATHAN BATALLA VIDAL, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:16-cv-04756 (NGG) (JO)
	)	
KIRSTJEN M. NIELSEN, et al.,	)	
	)	
Defendants.	)	

**AMICUS BRIEF OF PARTNERSHIP FOR EDUCATIONAL JUSTICE,
DELAWARECAN: THE DELAWARE CAMPAIGN FOR ACHIEVEMENT NOW,
HAWAIIKIDSCAN, NEWMEXICOKIDSCAN, AND VIRGINIA EXCELS IN SUPPORT
OF PLAINTIFFS’ MOTION FOR A PRELIMINARY INJUNCTION**

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
STATEMENT OF INTEREST	1
PRELIMINARY STATEMENT	1
ARGUMENT	3
I. ENDING DACA WILL CAUSE IRREPARABLE EDUCATIONAL INJURY TO K-12 STUDENTS WHO HAVE ALREADY RECEIVED DACA OR WHO WOULD HAVE BEEN ELIGIBLE TO RECEIVE DACA.....	3
A. If the Rescission Memorandum Is Not Enjoined, Barriers to Higher Education and Legal Employment Will Decrease Motivation and Academic Engagement Among K-12 Students Who Have Already Received DACA or Who Would Have Been Eligible to Receive DACA.....	4
B. If the Rescission Memorandum is Not Enjoined, K-12 Students Who Have Already Received DACA or Who Would Have Been Eligible to Receive DACA Will Be Forced Out of Mainstream American Society, Irreparably Impairing Their Educational Opportunities	8
C. If the Rescission Memorandum is Not Enjoined, K-12 Students Who Have Already Received DACA or Who Would Have Been Eligible to Receive DACA Will Suffer from Mental and Physical Health Issues That Negatively Affect Academic Performance	10
II. ENDING DACA WILL IRREPARABLY HARM K-12 STUDENTS WHOSE PARENTS ARE DACA RECIPIENTS OR WHOSE PARENTS WOULD HAVE BEEN ELIGIBLE TO RECEIVE DACA.....	14
A. If the Rescission Memorandum is Not Enjoined, Adult DACA Recipients Will Have Greater Difficulty Providing for Their U.S.-Born Children, Leading to Poorer Academic Performance	15
B. If the Rescission Memorandum is Not Enjoined, U.S.-Born Children of Adult DACA Recipients Will Experience Health Issues That Negatively Affect Academic Performance.....	17
III. ENDING DACA WILL IRREPARABLY HARM K-12 STUDENTS WHOSE TEACHERS ARE DACA RECIPIENTS	18
CONCLUSION.....	20

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Brown v. Board of Education</i> , 347 U. S. 483 (1954).....	2, 3
<i>Plyler v. Doe</i> , 457 U.S. 202 (1982).....	1, 3
Other Authorities	
Caitlin Patler & Whitney Laster Pirtle, <i>From Undocumented to Lawfully Present: Do Changes to Legal Status Impact Psychological Wellbeing Among Latino Immigrant Young Adults?</i> Social Science & Medicine (2017).....	11
<i>DACA – Federal Policy and Examples of State Actions</i> , National Conference of State Legislatures (Sept. 5, 2017)	10
Emily Greenman & Matthew Hall, <i>Legal Status and Educational Transitions for Mexican and Central American Immigrant Youth</i> , 91 Social Forces (2013).	5, 6
Ginette Magana, <i>DACAmented Teachers: Educating and Enriching Their Communities</i> , The Obama White House (Aug. 4, 2015)	19
Grace Chen, <i>Parental Involvement is Key to Student Success</i> , Public School Review (July 2, 2017)	17
Hedy N. Change and Mariajosé Romero, <i>Present, Engaged, and Accounted For: The Critical Importance of Addressing Chronic Absence in the Early Grades</i> , National Center for Children in Poverty (Sept. 2008).	15
Hirokazu Yoshikawa, et al., <i>Unauthorized Status and Youth Development in the United States</i> , 27 Journal of Research on Adolescence (2016).	5
Hirokazu Yoshiwaka, <i>Immigrants Raising Citizens: Undocumented Parents and Their Young Children</i> (2011).....	15, 16, 17
Jens Hainmueller et al., <i>Protecting Unauthorized Immigrant Mothers Improves Their Children’s Mental Health</i> , 357 Science, 1042 (2017)	11
Jie Zong, et al., <i>A Profile of Current DACA Recipients by Education, Industry, and Occupation</i> , MPI Fact Sheet, 4 (Nov. 2017).	3
Joanna Dreby, <i>Everyday Illegal: When Policies Undermine Immigrant Families</i> (2015).....	passim

Jonathan Blitzer, <i>After an Immigration Raid, a City's Students Vanish</i> , The New Yorker (March 23, 2017)	8
Jonathan Blitzer, <i>Undocumented Immigrants Brace for the Trump Administration</i> , The New Yorker (Dec. 19, 2016)	14
Laura Bornfreund, <i>Study Finds Drop in Preschool Enrollment for Latino Children</i> , New America (April 14, 2011)	16
Maggie Fox, <i>Pediatricians Speak Out Against President Trump's Immigration Orders</i> , NBC News (Jan. 26, 2017)	11
Matthew Ronfeldt et al., <i>How Teacher Turnover Harms Student Achievement</i> , Am. Educ. Res. J. 4 (2011)	20
Moriah Balingit, <i>As DACA Winds Down, 20,000 Educators are in Limbo</i> , The Washington Post (Oct. 25, 2017)	19
Olga Khazan, <i>The Toxic Health Effects of Deportation Threat</i> , The Atlantic (Jan. 27, 2017)	11, 17
Randy Capps, et al., <i>The Education and Work Profiles of the DACA Population</i> , MPI Issue Brief (Aug. 2017)	3
Robert Balfanz, et al., <i>Preventing Student Disengagement and Keeping Students on the Graduation Path in Urban Middle-Grades Schools</i> , 42 Educational Psychologist 224 (2007)	6
Robert Samuels, <i>With Hispanic Students on the Rise, Hispanic Teachers in Short Supply</i> , The Washington Post (Nov. 15, 2011)	19
Roberto G. Gonzales & Kristina Brant, <i>Analysis: DACA Boosts Young Immigrants' Well-Being, Mental Health</i> , NBC News (Jun. 15, 2017)	7
Roberto G. Gonzales & Sarah A. Rendon-Garcia, <i>Understanding the Deferred Action for Childhood Arrivals (DACA) Impact on Young Adults' Well-Being</i> , APA (Nov. 2016)	8
Roberto G. Gonzales, <i>DACA's Beneficiaries Landed Good Jobs, Enrolled in College, and Contributed to Society</i> , Vox (Sept. 5, 2017)	10
Roberto G. Gonzales, et al. <i>Becoming DACAmented: Assessing the Short-Term Benefits of Deferred Action for Childhood Arrivals</i> , 58 American Behavioral Scientist (2014)	4, 9
Roberto G. Gonzales, et al., <i>DACA at Year Three: Challenges and Opportunities in Accessing Higher Education and Employment</i> , American Immigration Council, 2 (Feb. 1, 2016)	7, 12

Roberto G. Gonzales, *Lives in Limbo: Undocumented and Coming of Age in America* (2016) *passim*

Samantha Michaels, *1 in 4 Dreamers are Parents of US Citizens*, Mother Jones (Sept. 7, 2017)..... 14

Stephanie Potochnik and Krista Perreira, *Depression and Anxiety among First-Generation Immigrant Latino Youth*, 198 *Journal of Nervous and Mental Disease* (2010). 11

Teachers Matter: Understanding Teachers’ Impact on Student Achievement, Rand Education 18

STATEMENT OF INTEREST

Amici are Partnership for Educational Justice, DelawareCAN: The Delaware Campaign for Achievement Now, HawaiiKidsCAN, NewMexicoKidsCAN, and Virginia Excels, each of which is a member of the education nonprofit 50CAN: 50-State Campaign for Achievement Now.¹ *Amici* advocate for a high-quality education for all children, regardless of their immigration status, home address, or economic background. *Amici* work to empower families and improve the quality of public schools by conducting research, surveying students, teachers, and school administrators, engaging in legal action, fostering grassroots organizing efforts, and advocating for policies and practices at the state and local level. Through their research and advocacy efforts, *amici* are uniquely situated to articulate the irreparable harm that will be experienced by kindergarten through twelfth grade (“K-12”) students if the September 5, 2017 DACA Rescission Memorandum² is enforced. Moreover, the work performed by *amici* will be impeded if the Rescission Memorandum is not enjoined, because undocumented students and their parents will be less willing to openly engage with nonprofit organizations if they are vulnerable to deportation.

PRELIMINARY STATEMENT

In *Plyler v. Doe*, the Supreme Court held that the Equal Protection Clause of the Fourteenth Amendment guarantees all children in the United States the right to a public elementary and secondary education, regardless of immigration status. 457 U.S. 202 (1982). Because it is “doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education . . . [s]uch an opportunity. . . is a right which must be

¹ The Court has granted *amici*’s motion for leave to file this brief. *See* Mot. for Leave to File *Amicus* Br., Dkt. 137 in 16-CV-4756; Dkt. 112 in 17-CV-5228; Order dated Dec. 20, 2017.

² Memorandum on Rescission Of Deferred Action For Childhood Arrivals from Acting Secretary Elaine C. Duke (Sept. 5, 2017) (“Rescission Memorandum”).

made available to all on *equal terms*.” *Id.* at 222-223 (citing *Brown v. Board of Education*, 347 U. S. 483, 493 (1954)) (emphasis added). If the Rescission Memorandum is enforced, hundreds of thousands of undocumented K-12 students will suffer irreparable educational injury and will be deprived of the ability to obtain a K-12 public education on equal terms with their U.S.-born peers.

Prior to the enactment of the “Deferred Action for Childhood Arrivals” (“DACA”) program, the educational prospects of undocumented children were significantly curtailed by their immigration status, which often prevented them from gaining access to many of the academic resources available to their U.S.-born peers. The implementation of DACA in 2012, however, rapidly expanded undocumented young people’s future opportunities, incentivizing them to work harder, complete high school, and gain admission to colleges and universities. DACA has also allowed undocumented adolescents to take part in many rites of passage, such as working legally and securing an internship, which position students to pursue long term educational and career goals. Critically, DACA has eliminated the daily fear of arrest and deportation among recipients. As a result, undocumented K-12 students have enjoyed better mental health, allowing them to focus on their studies rather than their worries and anxiety. If the Rescission Memorandum is not enjoined, undocumented students will be stripped of many resources that supported their academic success in recent years, and schools across the nation will face significant obstacles in educating and mentoring these students.

DACA has also provided significant educational benefits to U.S.-born children. DACA’s work authorization allows parents who are DACA recipients to better provide for their families, helping their children gain access to valuable educational resources. Additionally, parents who are not threatened with deportation are more likely than their undocumented counterparts to take

advantage of public benefits that help children thrive and succeed academically. DACA provides psychological relief to children who previously lived in constant fear that their parents would be deported, thereby improving their performance at school. Furthermore, thousands of K-12 students are currently taught by DACA-recipient teachers who bring unique skills to the classroom. If the Rescission Memorandum is not enjoined, U.S.-born children of DACA recipients will be more likely to live in poverty and to suffer from mental health problems, impairing their ability to succeed in school, and students who are taught by DACA-recipient teachers will be deprived of highly effective educators.

A preliminary injunction prohibiting the Government from enforcing the Rescission Memorandum is necessary to prevent irreparable harm to K-12 students and is in the public interest.

ARGUMENT

I. ENDING DACA WILL CAUSE IRREPARABLE EDUCATIONAL INJURY TO K-12 STUDENTS WHO HAVE ALREADY RECEIVED DACA OR WHO WOULD HAVE BEEN ELIGIBLE TO RECEIVE DACA

In *Plyler v. Doe*, the Court recognized that educating the next generation of adults is “perhaps the most important function of state and local governments.” 457 U.S. at 222-223 (citing *Brown*, 347 U.S. at 493). The Migration Policy Institute (“MPI”) estimates that at least 130,000 DACA recipients are currently in high school,³ and hundreds of thousands of elementary and middle school students will become eligible to receive DACA in coming years.⁴ If the Rescission Memorandum is not enjoined, these students will lose their motivation to succeed academically, be ostracized from mainstream society, and will experience increased

³ Jie Zong, et al., *A Profile of Current DACA Recipients by Education, Industry, and Occupation*, MPI Fact Sheet, 4 (Nov. 2017).

⁴ Randy Capps, et al., *The Education and Work Profiles of the DACA Population*, MPI Issue Brief, 3 (Aug. 2017).

mental health problems. As a result, public schools across the country will encounter significant challenges in fulfilling their duty to educate hundreds of thousands of K-12 students.

A. If the Rescission Memorandum Is Not Enjoined, Barriers to Higher Education and Legal Employment Will Decrease Motivation and Academic Engagement Among K-12 Students Who Have Already Received DACA or Who Would Have Been Eligible to Receive DACA

In the pre-DACA era, undocumented young people were discouraged from excelling academically because they faced substantial obstacles that foreclosed many of their post-high school opportunities. For example, federal law prohibits undocumented students from receiving federal financial aid, and state laws governing access to in-state tuition and state financial aid vary wildly.⁵ Forced to work at low-paying jobs, and ineligible for much of the financial aid and scholarship money available to their peers, undocumented college students often found it impossible to afford tuition.⁶ These students were also barred from participating in work-study programs that offset college costs and provide entry-level professional experience, and they were excluded from any college major or career that required “hands on” training in the form of internships or other programs.⁷

Even those undocumented students who did manage to obtain some form of higher education were often relegated to “low-end service sector work,” such as “light manufacturing, construction, and private businesses, such as landscaping, housekeeping, and cleaning.”⁸ These jobs, which rarely matched the education or skill level of undocumented high school graduates, seldom provided benefits, opportunities for advancement, or job security.⁹ As a result,

⁵ *I have DACA and I can Use the FAFSA? Say What?!*, United We Dream, 4-5 (2016).

⁶ ROBERTO G. GONZALES, *Lives in Limbo: Undocumented and Coming of Age in America*, 89, 124 (2016).

⁷ Roberto G. Gonzales, et al. *Becoming DACAmended: Assessing the Short-Term Benefits of Deferred Action for Childhood Arrivals*, 58 *American Behavioral Scientist*, 1854 (2014).

⁸ GONZALES, *supra* note 6, at 125.

⁹ *Id.*

undocumented high school and college graduates frequently expressed frustration with the “very narrow range of opportunities” available to them.¹⁰ As one young woman put it, “I graduated from high school and have taken some college credits. . . . Neither of my parents made it past fourth grade. . . . But I’m right where they are. . . . Why did I even go to school?”¹¹

Predictably, undocumented high school students in the pre-DACA era often became unmotivated as they confronted a severely limited set of educational and professional prospects.¹² Before DACA, undocumented high school students dropped out of school more and enrolled in college less than their peers.¹³ A 2013 study found that almost 84 percent of U.S.-born Hispanic high school students completed high school, whereas only 67 percent of undocumented immigrant high school students born in Mexico and Central America did so.¹⁴ Documented high school students were four times as likely as their undocumented peers to enroll in college.¹⁵ Undocumented students often found it difficult to believe that investing in their education would provide any significant long-term gains—one researcher who examined the daily lives of undocumented children prior to the enactment of DACA reported that her subjects spoke of legal status as “the most important factor in decisions related to future college attendance.”¹⁶

¹⁰ *Id.*

¹¹ *Id.* at 124.

¹² Hirokazu Yoshikawa, et al., *Unauthorized Status and Youth Development in the United States*, 27 *Journal of Research on Adolescence*, 10 (2016).

¹³ Emily Greenman & Matthew Hall, *Legal Status and Educational Transitions for Mexican and Central American Immigrant Youth*, 91 *Social Forces*, 1479 (2013).

¹⁴ *Id.* at 1486.

¹⁵ *Id.* at 1490.

¹⁶ JOANNA DREBY, *Everyday Illegal: When Policies Undermine Immigrant Families*, 178-179 (2015); GONZALES, *supra* note 6, at 125.

The threat of deportation deprived undocumented students of key educational resources in the pre-DACA era. Undocumented students were often barred from participating in college preparation programs that required applicants to provide Social Security numbers.¹⁷ Undocumented students were less willing than their U.S.-born peers to seek support from teachers and guidance counselors because the “risks of disclosure [of their immigration status] were judged too great.”¹⁸ Lacking mentors to help them navigate the college application process, many undocumented young people did not learn about the limited opportunities for scholarships and financial aid that were available to them.¹⁹ These students missed out on educational and cultural experiences due to fear of deportation. One young man recalled telling his classmates that his parents would not let him take part in a senior class trip, when in reality he could “not risk going through the freeway immigration checkpoints.”²⁰

Students who are vulnerable to deportation are more likely to be chronically absent from school, especially during periods of increased enforcement efforts.²¹ Poor attendance jeopardizes students’ academic performance, with one study finding that ninth-graders who experienced prolonged absences dropped out of high school at higher rates.²² An 18 year-old student in Delaware²³ described feeling extremely anxious whenever family members picked her

¹⁷ GONZALES, *supra* note 6, at 98.

¹⁸ *Id.* at 109.

¹⁹ *Id.*

²⁰ *Id.* at 113.

²¹ DREBY, *supra* note 16, at 103.

²² Robert Balfanz, et al., *Preventing Student Disengagement and Keeping Students on the Graduation Path in Urban Middle-Grades Schools*, 42 *Educational Psychologist* 224 (2007).

²³ To provide the Court with a better understanding of how the DACA rescission will affect the educational prospects of K-12 students, DelawareCAN has shared the perspectives of a number of DACA-recipient students with whom the organization has worked. The names of these students have been withheld to protect their anonymity.

up or dropped her off at school before she received DACA because she worried that she or her relatives might be detained outside of the school entrance.²⁴

Almost overnight, DACA provided undocumented K-12 students with a remarkably expanded set of options. Encouraged by the prospect of working toward real careers, high school-aged DACA recipients reported “an immediate change in their motivation.”²⁵ Attending college and working in their “dream fields” suddenly became attainable goals.²⁶ As one young woman explained, “My freshman year and my sophomore year, I did really bad, mostly because I was just not motivated because . . . all of this is going to be worthless in the end. But then when DACA came out, I started doing a lot better. . . . I was super motivated.”²⁷ DACA has also allowed these students to come out of the shadows and take full advantage of the academic resources many U.S.-born students take for granted.

The release of the Rescission Memorandum has already led to decreased motivation and increased absenteeism among immigrant students. Dr. Marguerite Oetting, a pediatrician whose practice focuses on immigrant and low-income patients,²⁸ described treating a 17 year-old DACA recipient who had intended to enroll in a nursing program, but is now reconsidering her plan because she does not know whether she will be able to obtain a job after graduating.²⁹ Dr.

²⁴ Interview of 18 Year-Old Female DACA Recipient from Delaware, Dec. 19, 2017.

²⁵ Roberto G. Gonzales, et al., *DACA at Year Three: Challenges and Opportunities in Accessing Higher Education and Employment*, American Immigration Council, 2 (Feb. 1, 2016).

²⁶ *Id.*

²⁷ Roberto G. Gonzales & Kristina Brant, *Analysis: DACA Boosts Young Immigrants' Well-Being, Mental Health*, NBC News (Jun. 15, 2017), <https://www.nbcnews.com/news/latino/analysis-daca-boosts-young-immigrants-well-being-mental-health-n772431>.

²⁸ To provide the Court with a better understanding of how the DACA rescission will affect the health of K-12 students, we interviewed a number of medical professionals who treat immigrant youth. These doctors were interviewed in their individual capacities and did not speak on behalf of any organization with which they are affiliated. We did not solicit or receive any information that could be used to identify their patients.

²⁹ Interview of Dr. Marguerite Oetting, Dec. 18, 2017.

Oetting also reported that the aunt of one of her patients, a 15 year-old DACA recipient, refused to allow her nephew to go to school for weeks because she worried that the police would be called—and he would ultimately be deported—if he happened to get into a fight with another student.³⁰ Recently, after Immigration and Enforcement officers conducted a raid in Las Cruces, New Mexico, the town's public schools experienced a 60% increase in absences compared to the previous week.³¹

When students are afraid of being detained or deported, they are less likely to go to class, seek support from school officials, and apply for scholarships.³² If the Rescission Memorandum is enforced, the academic opportunities available to current DACA recipients, as well as those of children who planned to apply for DACA, will again be curtailed by their immigration status.

B. If the Rescission Memorandum is Not Enjoined, K-12 Students Who Have Already Received DACA or Who Would Have Been Eligible to Receive DACA Will Be Forced Out of Mainstream American Society, Irreparably Impairing Their Educational Opportunities

A guaranteed K-12 public school education ensures that undocumented children develop “identities, values, and aspirations that parallel their American born citizens and peers.”³³ Before the enactment of DACA, however, undocumented young people began to experience what Harvard professor Roberto Gonzales describes as a “transition to illegality” upon reaching adolescence. Undocumented teenagers found themselves left behind as their U.S.-born peers reached many of the milestones that mark growing up in the United States.³⁴

³⁰ *Id.*

³¹ Jonathan Blitzer, *After an Immigration Raid, a City's Students Vanish*, The New Yorker (March 23, 2017).

³² GONZALES, *supra* note 6, at 109; DREBY, *supra* note 16, at 103.

³³ Roberto G. Gonzales & Sarah A. Rendon-Garcia, *Understanding the Deferred Action for Childhood Arrivals (DACA) Impact on Young Adults' Well-Being*, APA (Nov. 2016), <http://www.apa.org/pi/families/resources/newsletter/2016/11/deferred-action.aspx>.

³⁴ *Id.*

Prohibited from obtaining driver's licenses in many states, these adolescents were forced to rely on public transit long after their friends had started driving. In areas lacking reliable public transportation, this could be tremendously isolating, making daily commutes to school difficult and time consuming.³⁵ Obtaining any official form of identification, in fact, posed a significant challenge for undocumented young people in the pre-DACA era, meaning visits to libraries and other educational institutions could be hampered by their immigration status.³⁶

As their friends strengthened their resumes and started saving for college through summer jobs and internships, undocumented young people in the pre-DACA era were frequently forced to perform unskilled labor for low wages.³⁷ Furthermore, because many financial institutions require customers to provide identification documents, young people without Social Security numbers were often prevented from opening bank accounts, making saving for higher education, and paying for college applications far more challenging.³⁸

DACA's work authorization allows undocumented young people to obtain jobs and internships that provide entry level work experience, build resumes, and strengthen college applications.³⁹ An 18-year old DACA recipient who is currently a freshman at her "dream" university described how DACA's work authorization allowed her to obtain an internship with a college preparation leadership program. Through this program, she was able to educate over 200

³⁵ *Becoming DACAmended*, *supra* note 7, at 1855.

³⁶ GONZALES, *supra* note 6, at 113.

³⁷ GONZALES, *supra* note 6, at 125.

³⁸ *Becoming DACAmended*, *supra* note 7, at 1855.

³⁹ Roberto G. Gonzales & Angie M. Bautista-Chavez, *Two Years and Counting: Assessing the Growing Power of DACA*, American Immigration Council (June 16, 2014), <https://www.americanimmigrationcouncil.org/research/two-years-and-counting-assessing-growing-power-daca>.

students, including a number of other DACA recipients, about the college application process, which she had successfully navigated herself despite her family's economic hardships.⁴⁰

DACA recipients' increased wages can now be deposited into interest-bearing bank accounts, and they can build credit by obtaining credit cards.⁴¹ Although 38 states, including New York and Virginia, currently bar undocumented individuals from acquiring driver's licenses, all 50 states allow DACA recipients to do so.⁴² DACA recipients have seized on the opportunity to join mainstream society—a 2015 survey of 2,700 DACA recipients found that approximately 60% of respondents had found a new job, 20% had gotten a paid internship, 50% had opened their first bank account, 33% had obtained a credit card, and 60% had gotten a driver's license.⁴³

If the Rescission Memorandum is not enjoined, current DACA recipients, along with children who planned to apply for DACA, will lose their ability to gain educational and professional experience through legal employment. Moreover, they will be forced to live in the shadows without access to driver's licenses, bank accounts, or credit cards, making the process of applying to, enrolling in, and paying for college far less manageable.

C. If the Rescission Memorandum is Not Enjoined, K-12 Students Who Have Already Received DACA or Who Would Have Been Eligible to Receive DACA Will Suffer from Mental and Physical Health Issues That Negatively Affect Academic Performance

Immigration status has a significant effect on children's mental health, with undocumented children experiencing higher rates of anxiety and depression than their U.S.-born

⁴⁰ Interview of 18 Year-Old Female DACA Recipient from Delaware, Dec. 19, 2017.

⁴¹ Gonzales & Bautista-Chavez, *supra* note 39.

⁴² *DACA – Federal Policy and Examples of State Actions*, National Conference of State Legislatures (Sept. 5, 2017), <http://www.ncsl.org/research/immigration/deferred-action.aspx>.

⁴³ Roberto G. Gonzales, *DACA's Beneficiaries Landed Good Jobs, Enrolled in College, and Contributed to Society*, Vox (Sept. 5, 2017), <https://www.vox.com/2017/9/2/16244380/daca-benefits-trump-undocumented-immigrants-jobs>.

peers.⁴⁴ These conditions impair children's performance in school by interfering with their ability to focus on course work and exacerbating behavioral problems.⁴⁵ Furthermore, children who are exposed to "unrelenting turmoil" over a prolonged period of time can experience significant cognitive delays.⁴⁶ The President of the American Academy of Pediatrics, Dr. Fernando Stein, has explained that, "[Fear] can impact [children's] health and development. . . . [P]rolonged exposure to serious stress—known as toxic stress—can harm the developing brain and negatively impact short- and long-term health."⁴⁷

In the pre-DACA era, the daily lives of undocumented young people were often defined by their perpetual fear of deportation, which in turn led to increased rates of anxiety-related disorders among undocumented youth. As these young people entered adolescence and began to face "disadvantage due to their . . . legal status," they experienced "worries about blocked mobility. . . anxiety, and fear of deportation."⁴⁸ For many undocumented adolescents, "fear of getting caught motivated decisions not to participate." One young woman explained, "Nothing, nowhere felt safe. . . . [I was] afraid of walking. . . or [being] outside [my] house"⁴⁹

⁴⁴ Stephanie Potochnick and Krista Perreira, *Depression and Anxiety among First-Generation Immigrant Latino Youth*, 198 *Journal of Nervous and Mental Disease*, 470 (2010).

⁴⁵ Jens Hainmueller et al., *Protecting Unauthorized Immigrant Mothers Improves Their Children's Mental Health*, 357 *Science*, 1042 (2017).

⁴⁶ Olga Khazan, *The Toxic Health Effects of Deportation Threat*, *The Atlantic* (Jan. 27, 2017).

⁴⁷ Maggie Fox, *Pediatricians Speak Out Against President Trump's Immigration Orders*, NBC News (Jan. 26, 2017), <https://www.nbcnews.com/storyline/immigration-border-crisis/pediatricians-speak-out-against-president-trump-s-immigration-orders-n712296>.

⁴⁸ Caitlin Patler & Whitney Laster Pirtle, *From Undocumented to Lawfully Present: Do Changes to Legal Status Impact Psychological Wellbeing Among Latino Immigrant Young Adults?* *Social Science & Medicine*, 2 (2017).

⁴⁹ GONZALES, *supra* note 6, at 102.

The “destabilizing” experience of being undocumented can also lead to depression and suicidal thoughts in undocumented youth.⁵⁰ Feelings of hopelessness were common in undocumented students who encountered barriers to educational and career goals in the pre-DACA era. One student explained:

When that whole college process started, it definitely hit me hard. It was just really frustrating. I felt like I had put so much work into school, into studying, into making good grades. I went into depression . . . I started thinking I’m never going to go anywhere and it’s all because of some paper I don’t have. It was really rough. I was angry all the time.⁵¹

Another young man described feeling despondent about his future after learning that he was undocumented, stating, “College and law school were definitely in my plans. But when my mom told me I wasn’t legal, everything turned upside down. I didn’t know what to do. I couldn’t see my future anymore.”⁵² Even middle school students experienced the psychological effects of being undocumented. An 18-year old young man recalled feeling discouraged in middle school because he worried that his immigration status would prevent him from attending college or having a career that interested him. Receiving DACA gave him renewed his hope for the future and inspired him to work harder in school.⁵³ Similarly, a seventh-grade boy who dreamed of being a chef told one researcher that he felt “[a] lot of stress, a lot of sadness” because of the educational and professional roadblocks he expected to encounter.⁵⁴ After this boy received DACA a few years later, his mother reported that he was acting like a “new person.”⁵⁵

⁵⁰ Rachel Siemons et al., *Coming of Age on the Margins: Mental Health and Wellbeing Among Latino Immigrant Young Adults Eligible for Deferred Action for Childhood Arrivals (DACA)*, 19 *Journal of Immigrant and Minority Health*, 543-544 (2016).

⁵¹ *DACA at Year Three*, *supra* note 25, at 8.

⁵² GONZALES, *supra* note 6, at 102.

⁵³ Interview of 18 year-old Male DACA Recipient from Delaware, Dec. 20, 2017.

⁵⁴ DREBY, *supra* note 16, at 104.

⁵⁵ *Id.* at 187.

The Rescission Memorandum has already had a substantial detrimental impact on the psychological well-being of DACA recipients and children who planned to apply for DACA. Dr. Oetting described treating a 16 year-old DACA recipient who attempted suicide after the Trump administration announced its plans to end DACA. She consistently earned good grades and had been excited to apply to colleges, but she became terrified of what was going happen to her if DACA ended. She told Dr. Oetting that she tried to end her own life she had listened to her mother cry herself to sleep every night for weeks, and she “did not know what else to do.”⁵⁶ Dr. Julie Linton, Co-Chair of the American Academy of Pediatrics Immigrant Health Special Interest Group, described treating a 13-year-old boy shortly after the DACA rescission was announced. The boy, who planned to apply for DACA when he turned 15, tearfully described his anxiety to Dr. Linton and told her that he “had no hope for the future.”⁵⁷ Dr. Janine Young, a pediatrician whose practice focuses on recent immigrants and refugees, described treating a 17-year-old female DACA recipient experiencing severe organ failure. In need of a life-saving surgery and extensive follow up care, the patient became terrified that she would lose her medical coverage when she turned 18 if DACA was rescinded. She stopped eating, and her already reduced weight plummeted. She became withdrawn in school and failed many of her classes. Dr. Young diagnosed her with severe anxiety and depression and ultimately prescribed anti-depressants.⁵⁸

The anxiety, stress, and depression associated with undocumented status can lead to physical health problems, such as stomach ailments, headaches, and sleeping issues, which

⁵⁶ Interview of Dr. Marguerite Oetting, Dec. 18, 2017.

⁵⁷ Interview of Dr. Julie Linton, Oct. 31, 2017.

⁵⁸ Interview of Dr. Janine Young, Nov. 30, 2017.

negatively affect academic performance and school attendance.⁵⁹ Since the DACA rescission was announced, doctors who treat immigrant children have reported increased complaints of such symptoms. Dr. Linton described treating a 16 year-old female DACA recipient who had planned to attend college and medical school. The patient explained that she was distressed because the end of DACA meant that she would no longer be able to “pursue her dreams.” She reported that she could not sleep and that she was having trouble concentrating in school.⁶⁰

DACA has provided significant psychological relief to current DACA recipients, along with children who planned to apply for DACA, by alleviating their daily fear of deportation and expanding their future opportunities. If the Rescission Memorandum is not enjoined, these students will experience significant health problems that will impair their academic performance.

II. ENDING DACA WILL IRREPARABLY HARM K-12 STUDENTS WHOSE PARENTS ARE DACA RECIPIENTS OR WHOSE PARENTS WOULD HAVE BEEN ELIGIBLE TO RECEIVE DACA

A quarter of DACA recipients are parents of U.S.-born children.⁶¹ If these parents lose their work authorization, they will be worse off financially and less equipped to provide their U.S.-born children with critical educational resources. Moreover, if DACA recipients lose their protection from deportation, their children will experience increased stress and anxiety due to fears that their parents will be detained or deported. Because poverty and psychological stress are significant causes of poor academic performance and behavioral issues in children, the educational prospects of U.S.-born children of DACA recipients will be irreparably harmed if the Rescission Memorandum is not enjoined.

⁵⁹ Jonathan Blitzer, *Undocumented Immigrants Brace for the Trump Administration*, The New Yorker (Dec. 19, 2016).

⁶⁰ Interview of Dr. Julie Linton, Oct. 31, 2017.

⁶¹ Samantha Michaels, *1 in 4 Dreamers are Parents of US Citizens*, Mother Jones (Sept. 7, 2017).

A. If the Rescission Memorandum is Not Enjoined, Adult DACA Recipients Will Have Greater Difficulty Providing for Their U.S.-Born Children, Leading to Poorer Academic Performance

No longer relegated to low wage, unskilled labor, DACA recipients have significantly increased their earnings since the policy was enacted, and many have obtained jobs that provide benefits such as health insurance and paid leave.⁶² If they lose their work authorization, these individuals will once again be consigned to low paying jobs that require them to work long hours away from their children.⁶³ As a result, these parents will be less capable of providing their children with critical resources that accelerate learning, such as educational toys and books, pre-kindergarten programs, technology, and tutors. Furthermore, being undocumented exacerbates the “economic stressors associated with parenting.”⁶⁴ One-third of children born to undocumented parents live in poverty, compared with 18 percent of children with U.S. citizen parents,⁶⁵ and the average income for families with at least one undocumented parent in 2007 was about 40% lower than that of U.S. citizen families.⁶⁶

Living in poverty puts children at a severe academic disadvantage. One study found that children who live in impoverished communities are four times more likely than their peers to be chronically absent from school.⁶⁷ As discussed above in Section II.A, erratic attendance is directly linked to poor academic performance. Additionally, low wages and a lack of identification documents make it incredibly difficult for undocumented parents to obtain

⁶² Gonzales & Bautista-Chavez, *supra* note 39.

⁶³ HIROKAZU YOSHIWAKA, *Immigrants Raising Citizens: Undocumented Parents and Their Young Children*, 17-18 (2011).

⁶⁴ DREBY, *supra* note 16, at 105.

⁶⁵ *Id.*

⁶⁶ GONZALES, *supra* note 6, at 64.

⁶⁷ Hedy N. Change and Mariajosé Romero, *Present, Engaged, and Accounted For: The Critical Importance of Addressing Chronic Absence in the Early Grades*, National Center for Children in Poverty, 13 (Sept. 2008).

adequate, safe housing for their families.⁶⁸ As a result, housing instability is common among undocumented families—one researcher reported that almost 90% of the mixed-status families (i.e. U.S.-born children with undocumented parents) she interviewed lived in rented homes.⁶⁹ Frequent relocation is “most consequential for children” and can negatively affect their behavioral patterns and academic performance.⁷⁰

Many undocumented parents are unwilling to take advantage of public benefits that are available to their U.S.-born children due to fears of government institutions.⁷¹ This avoidance results in “low rates of enrollment of citizen children in programs that could help foster their early learning”⁷² such as publicly funded pre-kindergarten programs.⁷³ Moreover, when children do not receive food benefits that they urgently need, they become vulnerable to hunger and nutritional deficiencies that can impair “thinking skills, behavior, and health, all factors that impact academic performance.”⁷⁴ Dr. Sarah Stelzner, a pediatrician whose practice focuses in large part on Latin American immigrants, reports that she has already witnessed a drop in the number of WIC and Medicaid renewals among her patients—even for children who are citizens.⁷⁵

Furthermore, undocumented parents frequently have to work longer hours to make ends meet, leaving little time to help children with their schoolwork.⁷⁶ Forced to hide their status and

⁶⁸ GONZALES, *supra* note 6, at 64.

⁶⁹ DREBY, *supra* note 16, at 105.

⁷⁰ GONZALES, *supra* note 6, at 64.

⁷¹ *Id.* at 63.

⁷² YOSHIWAKA, *supra* note 63, at 22.

⁷³ Laura Bornfreund, *Study Finds Drop in Preschool Enrollment for Latino Children*, New America (April 14, 2011) <https://www.newamerica.org/education-policy/early-elementary-education-policy/early-ed-watch/study-finds-drop-in-preschool-enrollment-for-latino-children/>.

⁷⁴ *Nutrition and Students' Academic Performance*, Wilder Research (Jan. 2014).

⁷⁵ Interview of Dr. Sarah Stelzner, Dec. 1, 2017.

⁷⁶ GONZALES, *supra* note 6, at 63.

relegated to the fringes of society, these parents often lack the confidence to navigate the bureaucracy of their children's educational systems, leading many undocumented parents to minimize their involvement in their children's schooling.⁷⁷ The academic prospects of children suffer when their parents disengage from their education—lack of parental involvement is a key factor in poor attendance and performance in school.⁷⁸

If the Rescission Memorandum is not enjoined, the U.S.-born children of DACA-recipient parents will suffer significant educational harms due to their families' economic struggles and the looming threat of deportation.

B. If the Rescission Memorandum is Not Enjoined, U.S.-Born Children of Adult DACA Recipients Will Experience Health Issues That Negatively Affect Academic Performance

Growing up poor has serious consequences for children's mental health and cognitive abilities—low-income children have less brain surface area on average than their more affluent peers, and “young adults who [grow] up in poverty have more activity in the brain's negative emotion centers and less in the self-regulation portions.”⁷⁹ A recent study found that children of undocumented Mexican parents are at a higher risk of developmental delays than children of U.S.-born caucasian parents.⁸⁰ Furthermore, when children fear that their parents will be deported, they experience increased stress and anxiety, which, as discussed above in Section II.C, can lead to poor academic performance, erratic attendance, and behavioral issues.⁸¹

Because undocumented parents must prepare their children for the possibility that one or both of their parents might be detained without warning, children often learn about their family's

⁷⁷ DREBY, *supra* note 16, at 84.

⁷⁸ Grace Chen, *Parental Involvement is Key to Student Success*, Public School Review (July 2, 2017), <https://www.publicschoolreview.com/blog/parental-involvement-is-key-to-tudentsuccess>.

⁷⁹ Khazan, *supra* note 46.

⁸⁰ YOSHIWAKA, *supra* note 63, at 17.

⁸¹ DREBY, *supra* note 16, at 39.

immigration status at a young age.⁸² Kay Holland, a Licensed Clinical Social Worker whose practice focuses on low-income and immigrant children, reports that a number of her patients' parents have submitted letters to school administrators instructing them to allow Ms. Holland to collect their children from school if they are unexpectedly detained. Predictably, Ms. Holland has noticed a significant uptick in anxiety-related disorders among her patients since the DACA rescission was announced. In particular, children and teenagers in mixed-status families are experiencing increased rates of anxiety and insomnia, impairing their performance in school.⁸³ Dr. Stelzner described treating a U.S.-born five year-old girl with Downs Syndrome whose older sisters are DACA recipients. Her family became extremely distressed after the Trump administration announced its plan to end DACA, and the five year-old picked up on the stress that was permeating her home life and began to have behavioral problems at school.⁸⁴

If the Rescission Memorandum is enforced, the U.S.-born children of DACA recipients will be more likely to experience poverty-related cognitive delays, and they will suffer from heightened stress and anxiety due to fears that their parents will be taken away, irreparably harming their educational opportunities.

III. ENDING DACA WILL IRREPARABLY HARM K-12 STUDENTS WHOSE TEACHERS ARE DACA RECIPIENTS

Access to quality teachers is the most important in-school factor affecting student achievement. Effective teachers lead to higher standardized test scores and improved graduation and college enrollment rates.⁸⁵ The MPI estimates that 20,000 DACA recipients are currently

⁸² *Id.* at 46.

⁸³ Interview of Kay Holland, LCSW, Dec. 1, 2017.

⁸⁴ Interview of Dr. Sarah Stelzner, Dec. 1, 2017.

⁸⁵ *Teachers Matter: Understanding Teachers' Impact on Student Achievement*, Rand Education, <https://www.rand.org/education/projects/measuring-teacher-effectiveness/teachers-matter.html>

working as teachers in public K-12 schools, including 2,000 in New York.⁸⁶ If these educators lose their work authorization, their classes will be disrupted and their students will be deprived of qualified educators and role models, irreparably harming these students' educational prospects.

DACA-recipient teachers bring a unique set of skills to the classroom. Many are bilingual, allowing them to effectively communicate with both U.S.-born and immigrant students. *See* Dkt. 55-11 (17-CV-5228) (Decl. of Viridiana Carrizales) at ¶ 11. Moreover, DACA-recipient teachers “serve as role models and navigators for students who face the intersecting challenges of poverty and undocumented status.” *Id.* While all children benefit when schools employ teachers from diverse backgrounds, children of color consistently perform better when taught by teachers of color, leading to “better attendance, fewer suspensions and higher test scores.”⁸⁷ One DACA-recipient teacher in New Mexico explained his approach to teaching:

I work to inspire my students to see themselves as agents of change, and to be proud of who they are. In my classroom, I work to create a welcoming space where my students can discuss their cultural heritage, feel valued and set goals for the impact they can make within their own communities.⁸⁸

Moreover, if DACA-recipient teachers lose their work authorization, the classroom environments of K-12 students will be destabilized as teachers abruptly leave at random points in the school year. Sudden teacher departures can impair students' academic performance while

⁸⁶ Moriah Balingit, *As DACA Winds Down, 20,000 Educators are in Limbo*, The Washington Post (Oct. 25, 2017).

⁸⁷ Robert Samuels, *With Hispanic Students on the Rise, Hispanic Teachers in Short Supply*, The Washington Post (Nov. 15, 2011).

⁸⁸ Ginette Magana, *DACAmented Teachers: Educating and Enriching Their Communities*, The Obama White House (Aug. 4, 2015), <https://obamawhitehouse.archives.gov/blog/2015/08/04/dacamented-teachers-educating-and-enriching-their-communities>.

increasing the workload on remaining teachers, impairing school-wide achievement.⁸⁹ If the Rescission Memorandum is not enjoined, K-12 students across the country will be deprived of stable learning environments and access to uniquely qualified educators, irreparably harming their educational opportunities.

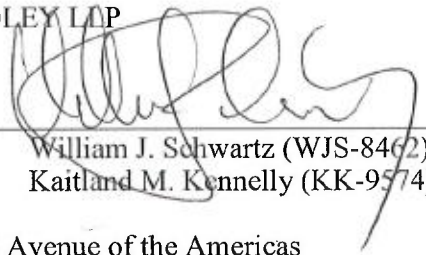
CONCLUSION

For the foregoing reasons, the Rescission Memorandum should be enjoined to ensure that public schools throughout the country fulfill their Constitutional obligation to provide a full and equal education to all K-12 students. A preliminary injunction prohibiting the Government from enforcing the Memorandum is in the public interest and is necessary to prevent irreparable educational injury to the K-12 population.

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⁸⁹ Matthew Ronfeldt et al., *How Teacher Turnover Harms Student Achievement*, Am. Educ. Res. J. 4, 31 (2011).