

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

MARTÍN BATALLA VIDAL, *et al.*,

Plaintiffs,

v.

CHAD WOLF, Acting Secretary, Department of
Homeland Security, *et al.*,

Defendants.

Case No. 1:16-cv-04756-NGG-JO

STATE OF NEW YORK, *et al.*,

Plaintiffs,

v.

DONALD TRUMP, President of the United States, *et
al.*,

Defendants.

Case No. 1:17-cv-05228-NGG-JO

September 4, 2020

**BRIEF OF *AMICI CURIAE* 55 LOCAL GOVERNMENTS AND THE U.S.
CONFERENCE OF MAYORS IN SUPPORT OF PLAINTIFFS' MOTIONS FOR
PARTIAL SUMMARY JUDGMENT**

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STATEMENT OF INTEREST¹

Amici Curiae are 55 local governments from every corner of the country and the United States Conference of Mayors.² *Amici* come from a wide range of economic, political, and social diversity, and all agree that our communities are stronger—and our future is brighter—because of the Deferred Action for Childhood Arrivals (DACA) program. The program has encouraged the 324,290 DACA recipients who call *Amici*'s metropolitan areas home—more than 50% of all current recipients—to fully participate in civic life without fear.³ These young people have lifted our communities and directly benefited the health, safety, and welfare of *all* of our residents. In short, *Amici* are stronger and safer because of DACA.

Before the program was instituted, many DACA recipients feared the basic tasks of everyday life, like going to work, attending school and church, or simply buying groceries. Many recipients with American citizen children stuck Post-it notes to their refrigerators before they left for the day, instructing their children whom to call in case “Mom” or “Dad” did not come home. These fears are precisely why DACA was created: to both focus limited

¹ The parties have consented to the filing of this brief. No party's counsel authored this brief in whole or in part, and no person or entity other than *Amici* or their counsel made a monetary contribution intended to fund the preparation or submission of this brief. See Fed. R. App. P. 29(a)(4).

² *Amici Curiae* are located across the United States and include the County of Los Angeles, California; the City of Los Angeles, California; the City of Albuquerque, New Mexico; the City of Alexandria, Virginia; Anne Arundel County, Maryland; the City of Austin, Texas; the City of Berkeley, California; the City of Boston, Massachusetts; the County of Boulder, Colorado; the City of Cambridge, Massachusetts; Cameron County, Texas; the City of Chicago, Illinois; the City of Cleveland Heights, Ohio; the City of College Park, Maryland; Cook County, Illinois; the City of Cupertino, California; the City of Dallas, Texas; the County of Dallas, Texas; the City of Dayton, Ohio; the City and County of Denver, Colorado; the City of Durham, North Carolina; the City of Fresno, California; the City of Gaithersburg, Maryland; the City of Hartford, Connecticut; the City and County of Honolulu, Hawaii; the City of Houston, Texas; the City of Iowa City, Iowa; King County, Washington; the City of Las Cruces, New Mexico; the City of Lawrence, Massachusetts; the City of Long Beach, California; the City of Madison, Wisconsin; the City of Miami Beach, Florida; the City of Minneapolis, Minnesota; Montgomery County, Maryland; the City of Morgan Hill, California; the City of New Rochelle, New York; the City of New York, New York; the City of Oakland, California; the City of Philadelphia, Pennsylvania; the City of Pittsburgh, Pennsylvania; the City of Portland, Oregon; the Municipality of Princeton, New Jersey; the City of Providence, Rhode Island; the City of Sacramento, California; the City of Saint Paul, Minnesota; the City of Salinas, California; the City of San Diego, California; the City and County of San Francisco, California; the City of Santa Monica, California; the City of Seattle, Washington; the City of Somerville, Massachusetts; the City of South Bend, Indiana; the City of Stamford, Connecticut; the City of Tacoma, Washington; and the United States Conference of Mayors. A complete list of *Amici* is provided at the end of this brief.

³ Figures are based on recipients' residency in a Core Based Statistical Area, as defined by the U.S. Office of Management and Budget, at the time of their most recent DACA application. See Notice of Filing of Quarterly Summary Reports, *Regents of the Univ. of Cal. v. U.S. Dep't of Homeland Sec.*, No. 3:17-cv-05211-WHA (N.D. Cal. July 1, 2020), ECF No. 299.

immigration enforcement resources on the removal of serious criminals and to enable young people to contribute to their communities.

With disregard for the recent ruling by the United States Supreme Court, Defendants again seek to dismantle the DACA program through Acting Secretary Chad Wolf's July 28, 2020 Memorandum (Wolf Memorandum) and the directive issued by Defendant Edlow on August 21, 2020 (Edlow Memorandum) that purports to implement it.⁴ Although Defendants downplay this latest assault by casting it as only "interim changes" pending a "full reconsideration of the DACA policy," Wolf Memorandum at 1, 4, Defendants' memoranda deny DACA for approximately 300,000 new applicants and severely restrict the rights and privileges of the nearly 650,000 current DACA recipients.

In *Regents*, the Supreme Court held that Defendants had violated the Administrative Procedure Act (APA) when attempting to rescind DACA in 2017. *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891 (2020). As Chief Justice Roberts explained, Defendants acted arbitrarily and capriciously by refusing to consider recipients' reliance interests, as well as the "consequences of the rescission, [which] would 'radiate outward'" to recipients' families, schools, employers, and communities. *Id.* at 1914. The Court vacated Defendants' attempted rescission, returning the program to its pre-rescission status quo. *See id.* at 1916; *see also* Order at 2, *Casa de Md. v. U.S. Dep't of Homeland Sec.*, No. 8:17-cv-02942-PWG, (D. Md. July 17, 2020), ECF No. 97 (vacating Defendants' 2017 attempted rescission and "restor[ing] [DACA] to its pre-September 5, 2017 status" pursuant to *Regents*). Fast forward to today, the Wolf and Edlow Memoranda would eviscerate the DACA program by (1) refusing to

⁴ The Wolf Memorandum is publicly available on the Department of Homeland Security's website. *See* Mem. from Chad Wolf, to Mark Morgan, Matthew Albence, Joseph Edlow, *Reconsideration of the June 15, 2012 Memorandum Entitled "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children"* (July 28, 2020), https://www.dhs.gov/sites/default/files/publications/20_0728_s1_daca-reconsideration-memo.pdf (hereinafter, "Wolf Memorandum"). The Edlow Memorandum is available on U.S. Citizenship and Immigration Services's (USCIS) website. *See* Mem. from Joseph Edlow, *Implementing Acting Secretary Chad Wolf's July 28, 2020 Memorandum, "Reconsideration of the June 15, 2012 Memorandum 'Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children'"* (Aug. 21, 2020), <https://www.uscis.gov/sites/default/files/document/policy-alerts/dacamemo.pdf> (hereinafter, "Edlow Memorandum").

accept new applications for first-time applicants and (2) shortening the renewal period to one year instead of two.⁵ Both of these changes harm communities like *Amici*.

First, the Wolf Memorandum shuts the door on hundreds of thousands of young people who are potential first-time applicants for DACA, and who are eligible under the Supreme Court's directive in *Regents*. See Wolf Memorandum at 7; Edlow Memorandum at 1. Because USCIS required new applicants to be, as a general rule, 15 years of age in order to apply for DACA, there are new applicants who still "age in" to DACA eligibility every single day. In fact, many of *Amici*'s DACA-eligible residents are being punished by Defendants' latest actions, simply because they were not old enough to apply in 2017.

DACA offers these individuals—many of them high school students looking to plan their lives—a path toward pursuing higher education, obtaining better paying jobs, and building on their dreams, all of which are critical economic drivers for *Amici*. By not permitting new DACA applications, Defendants are depriving these brave individuals of their future and denying *Amici* the benefits of their cultural and economic contributions.

Second, the Wolf Memorandum diminishes the value of the DACA program for the hundreds of thousands of current DACA recipients by cutting the renewal period to only one year. For the last eight years, DACA recipients were granted deferred action and work authorization for two-year periods, which were renewable for additional two-year periods subject to approval and payment of a renewal fee. By now limiting renewal periods to one year, Defendants will force recipients to spend more time and resources to maintain their grants of deferred action and the resulting work authorization. For many recipients who already struggle to afford renewal fees, these new requirements can create insurmountable burdens. Fewer DACA renewals, in turn, negatively impacts *Amici*'s communities, which depend on the countless contributions DACA recipients have made over the years. The potential harm is

⁵ The Wolf and Edlow Memoranda also direct that Defendants should reject all pending and future applications for advance parole by DACA recipients "absent exceptional circumstances." See Wolf Memorandum, *supra* n.4 at 1–2; Edlow Memorandum, *supra* n.4 at 2. *Amici* assert that the Defendants' denial of advance parole for DACA recipients is arbitrary and can cause inhumane family separation at critical moments in a recipient's life, including prohibiting travel to visit family members facing terminal illness.

particularly acute during the COVID-19 pandemic for the many *Amici* with DACA recipients who work as frontline medical and essential workers.

The Wolf and Edlow Memoranda represent Defendants' latest attempt to fundamentally undermine DACA. Although Defendant Wolf appears to recognize that his new directives will implicate various reliance interests, *see* Wolf Memorandum at 5–6 (noting Supreme Court's reference to certain reliance interests "raised by individuals, organizations, and state and local governments"), neither the Wolf nor Edlow Memorandum pay more than lip service to the likely impacts of the new changes to DACA, despite the clear directive provided by the Supreme Court in *Regents*. 140 S. Ct. at 1914. *Amici*, on behalf of their tens of millions of residents, write to inform this Court of what is at stake if Defendants' unlawful changes to DACA are not set aside.

ARGUMENT

I. DACA Recipients Have Made *Amici*'s Communities Prosperous and Safe.

Since its inception in 2012, DACA has advanced our best interests by allowing recipients to live without fear in the communities they have chosen to call home. *Amici* have witnessed hundreds of thousands of young people rely on the DACA program for deferred immigration enforcement action and concurrent work authorization to go to college, get better jobs, reinvest in their communities by buying homes and paying taxes, and in every way contribute to the communities in which they live. *Amici* have also experienced firsthand the benefit to their economies and public safety programs because hundreds of thousands of resident recipients can participate openly in the economy and interact with government and law enforcement without fear of removal from the country that has been the only home many of them have ever known.

DACA has drastically improved recipients' lives. DACA recipients are not only granted deferred action from removal, but are afforded the building blocks of modern life. They receive work authorization and a social security card, allowing them to receive credit cards and build their credit. In many states, they can receive a driver's license, and those choosing to pursue higher education can take advantage of tuition levels afforded to in-state residents. Buoyed by the safety afforded by deferred action and these benefits, countless recipients have pursued

higher education, enhancing their economic productivity and enriching their futures.⁶ For example, Jin Kyu Park, who arrived in New York City at the age of seven from South Korea, took advantage of DACA to reach the heights of academic accomplishment and help his community by studying medicine in the midst of the current COVID-19 pandemic.⁷ After studying at Harvard, where he founded a nonprofit to help other undocumented students, Park was accepted to study at Oxford on a prestigious Rhodes Scholarship.⁸ In addition to fighting to protect DACA,⁹ Park is now completing his studies to become a medical doctor at Harvard Medical School. Without DACA, he may have never been able to treat patients as a medical student.¹⁰

The benefits to individual DACA recipients also benefit *Amici*. As Park recently wrote, not only did his reliance on the DACA program for the last several years allow him to plan for and achieve amazing accomplishments, but it also allowed American communities to rely on him and other DACA recipients, including in these challenging times:

For example, I am a medical student, and without DACA, I would be unable to treat patients. The same is true for nearly 30,000 other DACA recipients, who now, as health-care professionals, actively contribute to the country's fight against the coronavirus pandemic. DACA has allowed us to heal the nation, take care of our elderly, educate our young people, and more.¹¹

⁶ Tom K. Wong et al., *Results from Tom K. Wong et al., 2017 National DACA Study* 3, 7 (2017), <https://perma.cc/R2J8-D57W>.

⁷ Morgan Winsor, *Harvard student makes history as 1st DACA recipient to be awarded Rhodes Scholarship*, ABC News (Nov. 23, 2018), <https://abcnews.go.com/US/harvard-student-makes-history-1st-daca-recipient-awarded/story?id=59374627>.

⁸ *Jin Kyu Park*, Rhodes Trust, <https://www.rhodeshouse.ox.ac.uk/scholars/rhodes-scholars-class-of-2019/jin-kyu-park/>.

⁹ In 2018, Park and other current DACA recipients intervened in the State of Texas's pending lawsuit to invalidate DACA. *See Order, State of Texas v. United States*, No. 1:18-cv-68 (S.D. Tex. May 5, 2018), ECF No. 22.

¹⁰ Jin K. Park, *DACA Isn't What Made Me an American Being a Dreamer is.*, The Atlantic (June 23, 2020), https://www.theatlantic.com/ideas/archive/2020/06/daca-activism/613213/?utm_content=edit-promo&utm_term=2020-06-23T10%3A15%3A42&utm_medium=social&utm_source=twitter&utm_campaign=the-atlantic; Scott Simon & Sophia Alvarez Boyd, *Meet Jin Park, The First DACA Recipient Awarded a Rhodes Scholarship*, NPR (Nov. 24, 2018), <https://www.npr.org/2018/11/24/670513643/first-daca-recipient-awarded-a-rhodes-scholarship>.

¹¹ Park, *supra* n.10; *see also* Nicole Prchal Svajlenka, *A Demographic Profile of DACA Recipients on the Frontlines of the Coronavirus Response*, Ctr. for Am. Progress (Apr. 6, 2020), <https://www.americanprogress.org/issues/immigration/news/2020/04/06/482708/demographic-profile-daca-recipients-frontlines-coronavirus-response/>.

Other DACA recipients working as health care workers on the front line of the current pandemic include Dr. Manuel Bernal, a second-year emergency medicine resident at Advocate Christ Medical Center in Oak Lawn, Illinois, and Dr. Jirayut New Latthivongskorn, a first-year medical resident at Zuckerberg San Francisco General Hospital and Trauma Center, both of whom are treating their neighbors infected with COVID-19.¹² Another 15,000 recipients are teachers, like Chicagoan Cynthia Sanchez and Austinite Karen Reyes, who have worked to educate students at schools, often in underserved communities of color, and have had to shift from the physical to the digital classroom.¹³ More than 142,000 DACA recipients classified as essential workers in food-related occupations work tirelessly to ensure that food makes it to tables in every community throughout the country.¹⁴ All told, nearly one-third of current DACA recipients are working on the front lines to safeguard the health and safety of their neighbors during this pandemic.¹⁵

These stories show how in good times and difficult ones, DACA recipients add to the economic and social strength of their communities. According to one representative survey, 69% of employed DACA recipients moved to a higher-paying job when receiving deferred action, and 5% of recipients started a new business.¹⁶ DACA recipients reinvest their increased earnings in local businesses and commerce, and their businesses create jobs. In Los Angeles alone, recipients are responsible for approximately \$5.5 billion of the annual GDP.¹⁷ Nationally,

¹² Bridget Balch, *DACA physicians serve on COVID-19 front lines*, AAMC (June 18, 2020), <https://www.aamc.org/news-insights/daca-physicians-serve-covid-19-front-lines>.

¹³ Svajlenka, *supra* n.11. See also George White, *Teachers Who Are DACA Recipients Help Ease Anxiety of Undocumented Students*, EdSource (Sept. 15, 2017), <https://perma.cc/PPJ2-KR3P>; Erica L. Green, *With DACA in Limbo, Teachers Protected by the Program Gird for the Worst*, The N.Y. Times (Feb. 1, 2018), <https://www.nytimes.com/2018/02/01/us/politics/daca-teachers-trump.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=first-column-region®ion=top-news&WT.nav=top-news>; see also Rob D'Amico, *Texas teachers union cheers DACA decision impacting thousands of educators*, Texas AFT (June 18, 2020), <https://www.texasaft.org/releases/texas-teachers-union-cheers-daca-decision-impacting-thousands-of-educators/>. Although the exact number of DACA recipients employed as teachers is unknown, the Migration Policy Institute estimates that 20,000 "DACA eligible" individuals are teachers, although some may have attained lawful status by other means.

¹⁴ Svajlenka, *supra* n.11.

¹⁵ *Id.*

¹⁶ Wong, *supra* n.6 at 3.

¹⁷ Julia Wick, *L.A.-Area DACA Recipients Contribute Approximately \$5.5 Billion Annually to Economy*, Chamber Estimates, LAist (Sept. 21, 2017), <https://perma.cc/9VDJ-HEDB>.

the nearly 650,000 current DACA recipients are estimated to contribute more than \$433 billion to the national GDP over the next decade.¹⁸ DACA has also helped generate tax revenue necessary to support state and local programs. In the Los Angeles metro area, DACA recipients pay nearly \$785 million in federal taxes, and close to \$400 million in taxes to state and local governments.¹⁹ In New York, recipient tax contributions are approximately \$540 million and \$320 million, respectively.²⁰ DACA recipients nationwide collectively pay an estimated \$5.6 billion in federal taxes, as well as \$3.1 billion in state and local taxes every year that go to fund critical programs administered by *Amici*.²¹ These economic contributions have never been more critical than in this time of shrinking state and local budgets.

Hundreds of DACA recipients have protected our country by serving in the military as part of a Pentagon pilot program.²² Others have made lasting impacts in the arts, like Yehimi Cambron, an arts teacher and artist from Atlanta who has used her own immigrant experience to teach her high school students to find expression and empowerment in art, or Bambadjan Bamba, an actor who grew up in the South Bronx, who worked to put himself through drama school, and now claims credits including NBC's *The Good Place* and Disney's *Black Panther*.²³

In addition to making *Amici*'s communities more prosperous and more vibrant, DACA has also made them safer because recipients are able to cooperate more freely and effectively with law enforcement. Community policing strategies in *Amici* cities and counties call for trust

¹⁸ Silva Mathema, *Ending DACA Will Cost States Billions of Dollars*, Ctr. for Am. Progress (Jan. 9, 2017), <https://perma.cc/7NSZ-Y2L7>.

¹⁹ Nicole Prchal Svajlenka, *What We Know About DACA Recipients, by Metropolitan Area*, Ctr. for Am. Progress (Spring 2020), <https://www.americanprogress.org/issues/immigration/news/2020/04/30/484225/know-daca-recipients-metropolitan-area-2/>.

²⁰ *Id.*

²¹ *Id.*; see also *State & Local Tax Contributions of Young Undocumented Immigrants*, Inst. on Taxation & Econ. Policy (Apr. 30, 2018), <https://perma.cc/WKL6-U2HJ>.

²² Gregory Korte et al., *Trump Administration Struggles with Fate of 900 DREAMers Serving in the Military*, USA Today (Sept. 7, 2017), <https://perma.cc/EH4W-2DSL>.

²³ See Maya Torres, *Muralist Yehimi Cambrón speaks of immigration reform and social justice*, The Signal (Nov. 19, 2019), <https://georgiastatesignal.com/muralist-yehimi-cambron-speaks-of-immigration-reform-and-social-justice/>; Stephanie Griffith, *For Actor Bambadjan Bamba, the Battles for DACA and Racial Justice Are One and the Same*, Ctr. for Am. Progress (July 10, 2020), <https://www.americanprogress.org/issues/immigration/news/2020/07/10/487498/actor-bambadjan-bamba-battles-daca-racial-justice-one/>; Michel Martin, *Actor Who Came Out As Undocumented Is Fighting for Hollywood To Stand With DACA*, NPR (Dec. 2, 2017), <https://www.npr.org/2017/12/02/567785978/actor-who-came-out-as-undocumented-is-fighting-for-hollywood-to-stand-with-daca>.

and engagement between law enforcement and the people they protect.²⁴ Police agencies report that trust is undermined when immigration enforcement and the threat of deportation increases.²⁵ Extensive evidence confirms that undocumented immigrants are less likely to report crimes, including violent crimes, when they fear turning to the police will bring adverse immigration consequences.²⁶

DACA supports *Amici*'s efforts to strengthen trust between law enforcement and communities—nearly eight in ten recipients reported that they were less afraid of removal, and 60% reported that they were less afraid of law enforcement and more willing to report a crime than they would have been without DACA.²⁷ Trust and cooperation with local law enforcement is particularly important for the young people. A study by the Bureau of Justice Statistics noted that the percent of young people aged 18 to 34 that have been victims of violent crime—a population encompassing most current DACA recipients—has increased in recent years, with the prevalence rate of victimization higher for those groups than older individuals.²⁸

²⁴ *E.g.*, Hr'g Before the S. Comm. on the Judiciary, 114th Cong. 2 (2015) (statement of Tom Manger, Chief, Montgomery Cty., Md., Police Dep't & President, Major Cities Chiefs Ass'n), <https://perma.cc/SKM2-QKV9>; Anita Khashu, *The Role of Local Police: Striking a Balance Between Immigration Enforcement and Civil Liberties*, Police Found. (Apr. 2009), <https://perma.cc/KL5A-EQWR>.

²⁵ John Burnett, *New Immigration Crackdowns Creating 'Chilling Effect' on Crime Reporting*, NPR (May 25, 2017), <https://perma.cc/3VJ3-Q8NK>.

²⁶ *See, e.g.*, Nik Theodore, Dep't of Urban Planning & Policy, Univ. of Ill. at Chi., *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement* 5–6 (2013), <https://perma.cc/4B5R-7JL4> (finding that 67% of undocumented individuals are less likely to offer information to law enforcement as a witness and 70% are less likely to contact law enforcement even if they were victims of a crime); Randy Capps et al., Migration Policy Inst., *Delegation and Divergence: A Study of 287(g) State and Local Immigration Enforcement* 43 (2011), <https://perma.cc/T3PR-X4LG> (finding in multiple counties that increased local-federal law enforcement cooperation meant “community respondents were especially likely to report that immigrants were venturing into public places with less frequency, failing to report crimes or interact with police, interacting less with schools and other institutions, patronizing local businesses less often, and changing their driving patterns”) (footnotes omitted).

²⁷ Zenén Jaimes Pérez, United We Dream, *A Portrait of Deferred Action for Childhood Arrivals Recipients: Challenges and Opportunities Three-Years Later* 23 (Oct. 2015), <https://perma.cc/AGE7-X5UH>; Roberto G. Gonzales & Angie M. Bautista-Chavez, Am. Immigration Council, *Two Years and Counting: Assessing the Growing Power of DACA* 9 (June 16, 2014), <https://perma.cc/6UBEZ9AK>; Roberto G. Gonzales, *Here's How DACA Changed the Lives of Young Immigrants, According to Research*, Vox Media (Feb. 16, 2018), <https://perma.cc/PB6B-9S9L>.

²⁸ U.S. Dep't of Justice, NCJ 253043, *Criminal Victimization, 2018* 16, 19, 31 (Sept. 2019), <https://www.bjs.gov/content/pub/pdf/cv18.pdf>.

A strong rapport between young people and law enforcement is critical to protecting these young people and solving crimes. Because DACA increases trust in law enforcement, it bolsters *Amici*'s public safety initiatives and makes communities safer.

II. The Wolf Memorandum Will Harm *Amici*'s Young People and Communities.

Defendants' current assault on DACA again fails to consider the beneficial impact of the program, and the resulting harm to DACA recipients and *Amici* from Defendants' new restrictions. The changes to the DACA program in the Wolf and Edlow Memoranda will have a direct, immediate impact on hundreds of thousands of young people across the country by affecting their ability to work, pursue an education, and support their families. The effects will also reverberate through *Amici*'s communities, which depend on the contributions of DACA recipients and applicants to drive innovation and economic prosperity. Although Defendants again failed to thoughtfully consider these effects, the Court certainly should, as they make clear just how much is at stake—for Plaintiffs, *Amici*, and the broader population.

A. The Exclusion of New DACA Applicants Harms *Amici*'s Interests By Preventing Some 300,000 Young People From Fully Participating in the Economic, Social, and Civic Life of Their Communities.

The Wolf Memorandum's restrictions on first-time DACA applicants will shut out approximately 300,000 people who are eligible for DACA or who have been waiting for DACA status during the court challenges to the program's rescission.²⁹ The harm to these new applicants will be severe, and the impact of Defendants' unjustified new restrictions will likewise reach *Amici* and communities throughout the country that benefit from the contributions of DACA recipients.

Nearly 300,000 young people—close to 50% of the existing DACA grantee population—are eligible to submit initial applications for DACA benefits.³⁰ Each of these individuals was

²⁹ Nicole Prchal Svajlenka et al., *The Trump Administration Must Immediately Resume Processing New DACA Applications*, Ctr. for Am. Progress (July 13, 2020), <https://www.americanprogress.org/issues/immigration/news/2020/07/13/487514/trump-administration-must-immediately-resume-processing-new-daca-applications/>.

³⁰ *Id.*

brought to the United States as a child and knows no other home. They have spent decades growing up in and becoming members of *Amici*'s communities. And now, many are at critical junctures in their lives where they are making decisions about the future. Indeed, some 55,500 would-be applicants are high school students or recent graduates who became eligible for DACA during the course of this litigation.³¹ Those shut out from the program face severely-restricted options and longer odds for their future, through no fault of their own.

Take for example Jack and Owen, two brothers from Milwaukee who were brought to the United States from Mexico as children.³² Though both excelled at school, they find themselves on significantly different paths because of Defendants' relentless assault on DACA. Jack aged into DACA eligibility in 2014, and with the opportunities that the DACA program afforded him was able to get a job with benefits and to study to become a mechanical engineer. Jack's younger brother, Owen, was less fortunate: Defendants attempted to rescind DACA just days before he became eligible to apply, and initial DACA applications were put on hold. Owen had to abandon his plans to attend college. Instead, he is training to be a mechanic and working at a job where he works twice as long as his brother for half the pay and no benefits.³³ Owen's story of opportunities denied and prosperity forgone is not uncommon. Daniela Sigala of Chicago, for example, has also had to put her dream of becoming a nurse on hold after Defendants' attempted to repeal DACA, while her older brother has enjoyed the benefits and protections of the DACA program.³⁴

³¹ *Id.*

³² Miriam Jordan, *One Brother Got DACA, One Didn't. It Made All the Difference.*, The N.Y. Times (July 3, 2020), <https://www.nytimes.com/2020/07/03/us/immigration-daca-applications.html>.

³³ *Id.*

³⁴ Abdel Jimenez, *The Supreme Court kept DACA alive, but the future remains uncertain for immigrants. 'It feels like we have a target on our backs.'*, Chicago Tribune (Aug. 27, 2020), <http://www.chicagotribune.com/business/ct-biz-immigrant-community-daca-supreme-court-20200827-6ycxs3qp75f4fkifxh2rqi7gte-story.html>.

These illogical consequences of Defendants' actions do not benefit these young people, their families, or *Amici*. *Amici* benefit economically when more individuals are given opportunities to study, work, and reinvest in their communities. Even expanding the DACA recipient population by one-quarter—an increase of 160,000 recipients (approximately half of the current DACA-eligible population)³⁵—could produce hundreds of millions of dollars in new tax revenue and spending for localities,³⁶ contributions that help fund public benefits and that will be sorely needed as local economies fight to bounce back from COVID-19 and the current economic crisis. The work authorization that comes with DACA status also enables many recipients to obtain insurance through an employer.³⁷ Thus, granting DACA to new applicants would likely increase the rate of health insurance,³⁸ which in turn would improve public health outcomes,³⁹ and lessen the strain on *Amici*'s health care and safety net programs, which are currently overburdened from COVID-19.

B. A One-Year Renewal Period Undermines Current Recipients' Ability to Contribute to Their Families and *Amici*.

Defendants' decision to limit grants of deferred action and work authorization to one year will also create substantial barriers for the nearly 650,000 immigrants who are current DACA recipients. This abrupt and unjustified change will effectively double a recipient's cost to participate in the program. More frequent renewal periods will also impact DACA recipients' ability to enjoy the full benefits of the program by injecting the possibility of disruptions in work

³⁵ Svajlenka et al., *supra* n.29; Sarah Pierce & Jessica Bolter, *Dismantling and Reconstructing the U.S. Immigration System: A Catalog of Changes under the Trump Presidency*, Migration Policy Inst. 4 (July 2020), <https://www.migrationpolicy.org/research/us-immigration-system-changes-trump-presidency>.

³⁶ *Cf.* State & Local Tax Contributions of Young Undocumented Immigrants, *supra* n.21.

³⁷ Kaiser Family Found., *Key Facts on Individuals Eligible for the Deferred Action for Childhood Arrivals (DACA) Program 2* (Feb. 2018), <https://tinyurl.com/yxtmxwr>.

³⁸ Osea Guintella & Jakub Lonsky, *The effects of DACA on health insurance, access to care, and health outcomes*, 72 J. of Health Econ., (July 2020), <https://www.sciencedirect.com/science/article/abs/pii/S0167629618307902> (finding an increase in private healthcare coverage in certain states among DACA recipients).

³⁹ Inst. of Med., *Care Without Coverage Too Little, Too Late* 47 (2002), <https://www.ncbi.nlm.nih.gov/books/NBK220636/>.

authorization. These burdens on DACA harm *Amici* because *Amici* suffer when fewer recipients renew or when their careers and plans are interrupted because of the uncertainty that Defendants' restrictions are reinjecting into their lives.

First, by shortening the renewal period and keeping the renewal fee unchanged, Defendants impose a new, significant financial burden on recipients. While DACA recipients enjoy increased earnings over undocumented immigrants without DACA,⁴⁰ the \$495 renewal fee, and the often accompanying legal fees,⁴¹ pose a high hurdle. Approximately 35% of DACA eligible individuals live in families with incomes less than 100% of the federal poverty level, with two-thirds living in households with incomes less than 200% of the federal poverty level.⁴² As a study by the Migration Policy Institute concluded, the fee “remains a barrier to DACA renewal” for many individuals, with nearly half of recipients seeking financial assistance and over one-third delaying submitting their application to save funds to pay the fee.⁴³ This financial barrier to renewal is likely even more significant for the nearly 100,000 recipients likely to see

⁴⁰ Wong, *supra* n.6.

⁴¹ Tom K. Wong with Carolina Valdivia, In Their Own Words: A Nationwide Survey of Undocumented Millennials, Ctr. for Comparative Immigration Studies 5 (May 2014), <https://escholarship.org/uc/item/1db6n1m2> (reporting that 40% of DACA recipients paid for legal assistance when submitting their initial applications); María Inés Zamudio et al., *Homeland Security Rejects New DACA Applications And Shortens Renewal Period for 'Dreamers,'* WBEZ (July 28, 2020), <https://www.wbez.org/stories/homeland-security-rejects-new-daca-applications-and-shortens-renewal-period-for-dreamers/6915918d-3814-4162-b50a-ed34f0f1e684> (one DACA recipient spends \$700-\$800 each renewal period, which includes legal fees).

⁴² Jeanne Batalova et al., *Deferred Action for Childhood Arrivals at the One-Year Mark: A Profile of Currently Eligible Youth and Applicants* 8, Migration Policy Inst. (Aug. 2013), <https://www.migrationpolicy.org/research/deferred-action-childhood-arrivals-one-year-mark-profile-currently-eligible-youth-and>; see also Claire D. Brindis et al., *Realizing the Dream for Californians Eligible for Deferred Action for Childhood Arrivals (DACA): Demographics and Health Coverage* 5, UC Berkeley Labor Ctr., UCSF Inst. for Health Policy Studies, UCLA Ctr. for Health Policy Research (Feb. 2014), https://laborcenter.berkeley.edu/pdf/2014/DACA_health_coverage.pdf (in California, nearly two-thirds of DACA-eligible young adults have household income below \$16,000 a year for a single individual and qualified for Medi-Cal).

⁴³ Angelo Mathay & Margie McHugh, *DACA at the Three-Year Mark: High Pace of Renewals, But Processing Difficulties Evident* 8, Migration Policy Inst. (Aug. 2015), <https://www.migrationpolicy.org/research/daca-three-year-mark-high-pace-renewals-processing-difficulties-evident>.

their DACA authorization expire before the end of the year,⁴⁴ many of whom have likely suffered a loss of income as a result of the pandemic.⁴⁵

Second, recipients who do not find the increased frequency of fees a disqualifying prerequisite for renewal will be harmed by the constant uncertainty around their work authorization. There have been reports of companies being less willing to invest in training and professional development for DACA recipients, even with the two-year work authorization granted under DACA.⁴⁶ Indeed, recipients have reported difficulty in obtaining, or maintaining, a job when DACA status is seen as uncertain,⁴⁷ a problem likely to be exacerbated if the renewal period is shortened to one year. And given USCIS's recent "drastic cuts" that will "increase backlogs and wait times across the board,"⁴⁸ DACA recipients who submit timely renewal applications may well see lapses in their status, further harming their job prospects.

The negative impacts of Defendants' decision to shorten renewal periods will also fall on *Amici*. Hardship from more frequent renewal fees can lead recipients to put their higher education on hold,⁴⁹ which in turn negatively impacts the communities that benefit from an

⁴⁴ Notice of Filing of Quarterly Summary Reports, *The Regents of the Univ. of Cal. v. U.S. Dep't of Homeland Sec.*, 3:17-cv-05211-WHA (N.D. Cal. July 1, 2020), ECF No. 299.

⁴⁵ For example, one recent study of DACA recipients observed that nearly 80% of recipients pursuing higher education have suffered a loss of income as a result of the pandemic. See TheDream.US, *In Their Own Words: The Impact of Covid19 on DREAMers 3* (2020), <https://www.thedream.us/wp-content/uploads/2020/04/TheDream.US-In-Their-Own-Words-Impact-of-Covid-19-on-DREAMers.pdf>.

⁴⁶ See Miriam Jordan, *Immigrant 'Dreamers' in Search of a Job Are Being Turned Away*, The N.Y. Times (Aug. 20, 2020), www.nytimes.com/2020/08/20/us/immigration-daca-dreamers-employers.html; see also Fourth Am. Comp. ¶¶ 8–9, 16, 20–23, 30, 34, *Batalla Vidal v. Wolf*, No. 1:16-cv-04756-NGG-JO (E.D.N.Y. Aug. 28, 2020), ECF No. 308; Exhibits F, G, J to Second Mot. to Certify Class, *Batalla Vidal v. Wolf*, No. 1:16-cv-04756-NGG-JO (E.D.N.Y. Aug. 28, 2020), ECF No. 309-5.

⁴⁷ Jordan, *supra* n.46.

⁴⁸ U.S. Citizenship & Immigration Servs., *USCIS Averts Furlough of Nearly 70% of Workforce* (Aug. 25, 2020), <https://www.uscis.gov/news/news-releases/uscis-averts-furlough-of-nearly-70-of-workforce>.

⁴⁹ This is particularly true at a time when DACA recipients and their classmates are experiencing the collateral effects of the COVID-19 pandemic and economic downturn. Recipients and other undocumented students not eligible for benefits under the federal CARES Act have reported plans to disenroll from college in order save for basic necessities for themselves and their families. See, e.g., Viviann Anguiano, *Undocumented Students Generated Up to \$132 Million in Relief to Colleges—But They Won't Receive a Dime From the Stimulus*, Ctr. for Am. Progress (May 5, 2020), <https://www.americanprogress.org/issues/education-postsecondary/news/2020/05/05/484505/undocumented-students-generated-132-million-relief-colleges-wont-receive-dime-stimulus/>; Adolfo Guzman-Lopez,

educated workforce and increased taxes and spending from recipients with better paying jobs.⁵⁰ Similarly, uncertainty about recipients' long-term ability to work has a ripple effect through local economies, particularly in the current pandemic. For the thousands of DACA recipients serving as front line medical workers, an interruption in work authorization can impact their ability to render life-saving care to their neighbors. For example, Chicagoan Jazmin Ruiz, who works as a nurse, was laid off in early August when her work authorization expired, despite the fact that she submitted a renewal application five months before her DACA authorization ended.⁵¹ Now, rather than caring for patients with COVID-19, she is living with her parents and worrying about paying her bills. And this is not just an isolated concern for Ms. Ruiz. The Edlow Memorandum makes this a systemic problem by imposing a policy on USCIS that renewal applications submitted more than 150-days prior to expiration will generally be denied (until now, there has been no such timing policy, only a recommendation to applicants about when to file). Edlow Memorandum at 4-5. Despite forecasting increased backlogs and wait times across all USCIS applications, the Edlow Memorandum now imposes limits on how early DACA recipients can apply to renew, making it even more likely that they will suffer lapses in employment authorization.

In short, Defendants' unexplained decision to shorten periods for DACA renewals and work authorization will unjustifiably force current recipients out of the program and needlessly

As Emergency Relief Funds Arrive, California Community Colleges Sue To Include More Students, LAist (May 12, 2020), https://laist.com/2020/05/12/stimulus_checks_college_students_lawsuit_california.php; Abigail Hess, *Some students are considering dropping out of college because of coronavirus*, CNBC (Apr. 30, 2020), <https://www.cnbc.com/2020/04/28/students-are-dropping-out-of-college-because-of-coronavirus.html#:~:text=Some%20students%20are%20considering%20dropping%20out%20of%20college%20because%20of%20coronavirus,-Published%20Wed%2C%20Apr&text=Colleges%20around%20the%20world%20have,stem%20the%20spread%20of%20coronavirus.&text=Other%20students%20are%20deciding%20if,%2C%20or%20permanently%2C%20drop%20out.>

⁵⁰ *E.g.*, Wong, *supra* n.6; Wick, *supra* n.17; State & Local Tax Contributions of Young Undocumented Immigrants, *supra* n.21.

⁵¹ Jimenez, *supra* n.34.

inject uncertainty into local economies at a time when communities are being strained and fighting to rebound from the recent economic downturn.

CONCLUSION

For the foregoing reasons, the Wolf and Edlow Memoranda undermine *Amici*'s interests in fostering safe, prosperous communities where all individuals—including the hundreds of thousands of residents currently receiving deferred action and work authorization under DACA and the tens of thousands of others eligible for such benefits—are given an opportunity to participate and grow. The Court should reject Defendants' latest attempt to dismantle DACA and grant Plaintiffs' motions for partial summary judgment.

Dated: September 4, 2020

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