

No. 15-40238

United States Court of Appeals
for the
Fifth Circuit

STATE OF TEXAS, et al.
Plaintiffs-Appellees,

- v. -

UNITED STATES OF AMERICA, et al.
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS, BROWNSVILLE
(CASE NO. 1:14-CV-00254)

**BRIEF OF EDUCATORS AND CHILDREN'S ADVOCATES
AS AMICI CURIAE IN SUPPORT OF DEFENDANTS-APPELLANTS**

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

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<i>S-1 v. Turlington</i> , 635 F.2d 342 (5th Cir. 1981)	20
<i>Southdown, Inc. v. Moore McCormack Res., Inc.</i> , 686 F. Supp. 595 (S.D. Tex. 1988)	9
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<i>Texas v. United States</i> , No. B-14-254, 2015 U.S. Dist. LEXIS 18551 (S.D. Tex. Feb. 16, 2015)....	10, 11
<i>Weinberger v. Romero-Barcelo</i> , 456 U.S. 305 (1982).....	9
<i>Winter v. Natural Res. Def. Council, Inc.</i> , 555 U.S. 7 (2008).....	9
OTHER AUTHORITIES	
Ajay Chaudry, et al., <i>Facing Our Future: Children in the Aftermath of Immigration Enforcement</i> , The Urban Institute (Feb. 2, 2010).....	14
Am. Psychological Ass’n, <i>Crossroads: The Psychology of Immigration in the New Century</i> (2012).....	1, 18
Brianna Lee, <i>Authorities No Longer Shielding DAPA-Eligible Immigrants from Deportation Cases</i> , International Business Times (Feb. 27, 2015)	14
Dr. Raul Hinojosa-Ojeda, North American Integration and Development Center, <i>From the Shadows to the Mainstream: Estimating the Economic Impact of Presidential Administrative Action and Comprehensive Immigration Reform</i> (Dec. 24, 2014)	26, 28
Elly Yu, <i>As Courts Fight Over Immigration, Georgia Family Faces Father’s Deportation</i> , WABE, Atlanta’s NPR Station (Mar. 18, 2015).....	15
Erica Pearson, <i>Millions of Undocumented Immigrants in Limbo During Court Battle over Deferred Action for Parental Accountability</i> , New York Daily News (Mar. 20, 2015).....	20
Frank D. Bean et al., <i>Mexican Immigrant Political and Economic Incorporation</i> , Perspectives on Politics, 4(2): 309 (June 2006).....	20
Gordon Dahl & Lance Lochner, <i>The Impact of Family Income on Child Achievement: Evidence from the Earned Income Tax Credit</i> , Working Paper 14599, National Bureau of Economic Research (Dec. 2008)	23
Greg J. Duncan & Richard J. Murnane, Russell Sage Foundation, <i>Whither Opportunity? Rising Inequality, Schools, and Children’s Life Chances</i> (July 2011)	21

Hansi Lo Wang, <i>Immigrants Worry They'll Face Deportation After Deferred Action Delay</i> , NPR (Mar. 4, 2015)	20
Health Policy Research, <i>Health Insurance and Demographics of California Immigrants Eligible for Deferred Action</i> (Mar. 2015)	23
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Homeland Sec., ICE, <i>Deportation of Aliens Claiming U.S.-Born Children: First Semi-Annual, Calendar Year 2013</i> (Apr. 28, 2014)	12
Homeland Sec., ICE, <i>Deportation of Aliens Claiming U.S.-Born Children: Second Half, Calendar Year 2013 Report to Congress</i> (Apr. 28, 2014).....	12
Jennifer Cheeseman Day & Eric C. Newburger, <i>The Big Payoff: Educational Attainment and Synthetic Estimates of Work-Life Earnings</i> , U.S. Census Bureau (July 2002).....	26
Joydeep Roy, <i>Low Income Hinders College Attendance for Even the Highest Achieving Students</i> , Economic Policy Institute (Oct. 12, 2005).....	22
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Nancy S. Landale, Jessica Halliday Hardie, R.S. Oropesa, and Marianne M. Hillemeier, <i>Behavioral Functioning among Mexican-origin Children: Does Parental Legal Status Matter?</i> , 56 Journal of Health and Social Behavior 2-18 (Mar. 2015)	16

National Center for Statistics, <i>Percentage of Recent High School Completers Enrolled in 2-Year and 4-Year Colleges, by Income Level: 1975 through 2013</i>	22
Perla Trevizo, <i>200 Freed from Immigration Custody in Arizona</i> , Arizona Daily Star (Dec. 30, 2014).....	18
Roberto G. Gonzales, Veronica Terriquez, and Stephen P. Ruszczyk, <i>Becoming DACAmended: Assessing the Short-Term Benefits of Deferred Action for Childhood Arrivals</i> , American Behavioral Scientist (Oct. 1, 2014)	26
Roberto Suro et al., Tomás Rivera Policy Institute at USC and the Institute for Immigration, Globalization, and Education at UCLA, <i>Removing Insecurity: How American Children Will Benefit from President Obama’s Executive Action on Immigration</i> (2015).....	17
Roque Planas, <i>DAPA-Eligible Immigrants Face Threat of Deportation</i> , Advocates Say, Huffington Post (Feb. 27, 2015).....	14
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Seth Freed Wessler, <i>Primary Data: Deportations of Parents of U.S. Citizen Kids</i> , Colorlines (Dec. 17, 2012)	12
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Susan E. Mayer, <i>Revisiting an Old Question: How Much Does Parental Income Affect Child Outcomes?</i> , Focus, Vol. 27, No. 2 (Winter 2010).....	22
Texas House Research Organization, <i>Bill Analysis of HB 1403</i> (April 18, 2001)	28

The Advisory Committee on Student Financial Assistance: Report to Congress and the Secretary of Education, <i>The Rising Price of Inequality: How Inadequate Grant Aid Limits College Access and Persistence</i> (June 2010)	27
<i>The Condition of Education</i> , National Center for Education Statistics (May 28, 2009)	26
<i>The Economic Effects of Administrative Action on Immigration</i> , Report of the Executive Office of the President of the United States (Dec. 24, 2014) 20, 28	
Thomas P. DiNapoli & Kenneth B. Bleiwas, <i>The New York State DREAM Act</i> , New York State Comptroller (May 2013).....	28
<i>Tuition Equity for Undocumented Students and DACA Grantees: Access by State</i> , United We Dream (Feb. 2014)	24
U.S. Courts, Federal Judicial Caseload Statistics 2014, <i>Table C-5</i>	22
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Victoria Kline, <i>Where Do We Go From Here? Challenges Facing Transnational Migrant Families Between the US and Mexico</i> , Instituto para las Mujeres en la Migracion, A.C. (IMUMI) (2013).....	15

STATEMENT OF INTEREST

The American Federation of Teachers, First Focus, the National Education Association, ASPIRA, Educators for Fair Consideration, The Hispanic Association of Colleges and Universities, Pomona College, and the Scholarship Foundation of St. Louis submit this Brief of *Amici Curiae* in support of Defendants-Appellants.¹

The parties have consented to the filing of this brief.

Amici include educators, children's rights advocates, universities, and advocates for access to education that have an interest in ensuring the psychological, emotional, and physical well-being of all children in the United States, particularly by ensuring that these children have meaningful access to education and are not forced to live apart from their parents. This interest extends to the one-quarter of school-age children, including U.S. citizens and lawful permanent residents, whose parents are immigrants.²

This sizable population of children living in the United States faces substantial barriers to educational success under existing laws and policies. The

¹ Pursuant to Fed. R. App. P. 29, *amici curiae* state that: (a) no party's counsel authored any part of this brief in whole or in part; (b) no party or party's counsel contributed money that was intended to fund preparing or submitting this brief; and (c) no person other than the amici curiae, their members and their counsel contributed money that was intended to fund preparing or submitting this brief.

² Am. Psychological Ass'n, *Crossroads: The Psychology of Immigration in the New Century* at 53, Report of the APA Presidential Task Force on Immigration (2012).

introduction of Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) and the expansion of Deferred Action for Childhood Arrivals (DACA) are likely to alleviate those barriers and advance the public interest. *Amici* are committed to ensuring that children have all the tools they need to succeed in and out of school and therefore have an interest in the immediate implementation of the expanded deferred action programs that the District Court enjoined.

The **American Federation of Teachers (AFT)**, an affiliate of the AFL-CIO, was founded in 1916 and today represents 1.6 million members in more than 3,400 local affiliates nationwide. Since its founding, the AFT has been a major force for America's democracy and for preserving and strengthening America's commitment to public education and to educational opportunity for all. Approximately one million AFT members (teachers, PSRPs and school nurses) work in traditional public schools. Every day, AFT members interact with students, parents and others, many of whom fear disclosing their immigration status when they seek public services. The AFT understands the beneficial impact of the DACA program. The AFT serves thousands of students who have been granted DACA, and AFT membership now includes hundreds of formerly undocumented students who, solely because of DACA, were able to achieve a college degree and work as teachers or paraprofessionals in public schools. AFT is

uniquely situated to comment on the potential benefits of the DAPA program and DACA expansion.

First Focus is a bipartisan advocacy organization dedicated to making children and families the priority in federal policy and budget decisions. One of First Focus' priority issues is to ensure that federal policies, including immigration policies, promote the health, safety, and well-being of children in immigrant families. First Focus and its partner organization, the First Focus Campaign for Children, have been working to advance both legislative and administrative solutions to keep families together and minimize the harm of immigration enforcement policies on children, including expansion of deferred action programs like DACA and DAPA.

The National Education Association (NEA) is a nationwide employee organization with nearly three million members, the vast majority of whom serve as educators and education support professionals in our nation's public schools, colleges, and universities. NEA has a strong and longstanding commitment to ensuring that every child has the opportunity to obtain a high-quality public education, as well as to promoting students' well-being more broadly. Additionally, NEA supports access to higher education, including financial aid and in-state tuition, regardless of immigration status. NEA members teach millions of students who stand to benefit educationally and psychosocially from DAPA and

expanded DACA, and NEA is therefore well-positioned to comment on the public benefit of these programs.

ASPIRA is the largest national Latino organization in the country and the only one dedicated exclusively to education. Founded in 1961, it operates education programs nationwide with over 45,000 mostly Latino youth each year. It operates 13 schools with 7,500 students. ASPIRA serves thousands of students and parents who would benefit from DAPA and expanded DACA. It has strongly supported DAPA and DACA and the potential benefits these programs have for thousands of the students and families it serves.

Founded in 2006, **Educators for Fair Consideration (E4FC)** empowers undocumented young people to pursue their dreams of college, career, and citizenship in the United States. E4FC's programming is designed by and for undocumented young people with support from committed allies. Because E4FC has witnessed up-close the tremendous progress that many DACA beneficiaries have been able to make towards achieving their educational and career aspirations as well as the enormous contributions they have been able to make to the well-being of their families, communities, and society overall, and because it works with many similarly aspiring undocumented young people who are eligible for expanded DACA and could make similar contributions, E4FC believes it is well-

suited to comment on the potential public benefits of the expanded DACA program.

The Hispanic Association of Colleges and Universities (HACU), founded in 1986, represents more than 400 colleges and universities committed to Hispanic higher education success in the U.S. and Puerto Rico. HACU is the only national educational association that represents Hispanic-Serving Institutions (HSIs). Today HSIs represent only 12% of all higher education institutions nationwide, but enroll more than 58% of all Hispanics in postsecondary education. HACU sees a vital connection between DACA and its extension under DAPA and the opportunity for many students, both documented and undocumented, to pursue their education in the U.S. without fear of deportation for themselves or immediate family members.

Located in Claremont, California, **Pomona College** is a highly selective, private liberal arts college that provides a comprehensive education in the liberal arts and sciences to a student body of about 1,600 undergraduates, awarding bachelor of arts and bachelor of science degrees to approximately 400 students each year. The college fully reviews undocumented and DACA students who graduate from a U.S. high school both for need-blind admission and for every type of private full-need financial aid the college offers. Pomona College is well positioned to comment on the already powerful benefits of DACA for college

students and the potential benefits of the DAPA program and DACA expansion. As DACA recipients, numerous Pomona College students have now been able to further their educational experiences through study abroad, research assistantships, internships, and work on campus as student leaders, future scholars and leaders of our communities. Pomona College alumni who are DACA recipients have gone on to medical school, teaching and graduate school, as well as work in the high tech industry, business and community organizations.

The Scholarship Foundation of St. Louis was founded in 1920 in direct response to Eastern European immigrants who were arriving in the area without marketable skills. At the time, and today, The Scholarship Foundation is based upon the conviction that an educated citizenry is essential to democracy. Further, a core principle of the Foundation's work is to create and support educational opportunity for those without economic means. DACA and DAPA have created pathways for the Foundation to support students who have the potential to succeed and to contribute to the regional economy and enrich the community. Imperiling DACA and DAPA will make it extremely difficult, if not impossible, for the Foundation to contribute to a sufficient financial aid system of supports for these students.

PRELIMINARY STATEMENT

On February 16, 2015, the District Court granted a nationwide preliminary injunction preventing implementation of the DAPA³ and expanded DACA⁴ programs that were about to take effect. These programs would have provided security from removal for millions of parents of U.S. citizen and lawful permanent resident (LPR) children (under the DAPA program), as well as individuals who came to the United States as children (under the expanded DACA program). In enjoining these programs, the District Court failed to adequately assess the harms to the public interest that these programs were designed to mitigate—and that the injunction therefore perpetuates.

Most importantly, the District Court failed to consider the harms to U.S. citizen and LPR children that would result from its injunction of the DAPA program. When implemented, DAPA would have removed the threat of deportation for millions of parents of U.S. citizen and LPR children. Due to the

³ A person is eligible under the DAPA program if he/she (1) had a U.S. citizen or LPR son or daughter as of November 20, 2014; (2) had resided continuously in the United States since before 2010; (3) was physically present in the United States on November 20, 2014 (and when making the DAPA request); (4) had no lawful immigration status on November 20, 2014; and; (5) does not fall within an enforcement priority or otherwise present a factor making DAPA inappropriate. See Dep't of Homeland Sec. Memorandum at 4, Dkt. No. 38, Ex. 7 (Dec. 24, 2014).

⁴ The expanded DACA program lifted certain age and date restrictions from the government's existing program of making deferred action available to young people who were brought to the United States as children. See *id.*

District Court’s injunction, these parents will continue to face the threat of removal, and their children will face the prospect of either being separated from their parents, or being forced to leave their U.S. homeland for a country that is not their own.

This serious harm to U.S. citizen and LPR children should have been considered by the District Court – yet it was entirely ignored. As detailed below, children whose parents face removal from the United States are more likely to suffer a host of harms, particularly to their educational opportunities and psychosocial well-being. The District Court also failed to adequately account for the benefits to the public interest of work authorization for the eligible population and the enhanced educational opportunities that expanded DACA would facilitate.

In short, because the District Court failed properly to weigh the public interest, this Court should vacate the District Court’s preliminary injunction.

ARGUMENT

I. THE PUBLIC INTEREST MUST BE PROPERLY CONSIDERED BEFORE ISSUING A PRELIMINARY INJUNCTION

To be entitled to injunctive relief, a plaintiff must show that “granting the preliminary injunction will not disserve the public interest.” *Canal Auth. v. Callaway*, 489 F.2d 567, 572 (5th Cir. 1974). A preliminary injunction should be denied when it would “adversely affect a public interest for whose impairment, even temporarily, an injunction bond cannot compensate,” even though a delay in

resolution may be burdensome to the plaintiff. *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982) (quoting *Yakus v. United States*, 321 U.S. 414, 440 (1944)).

Reversal may be warranted on “[the public interest] factors alone” when the district court “significantly understate[s] the burden” on the public interest, for instance by addressing those factors “in only a cursory fashion.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 23-26 (2008); accord *Miss. Power & Light Co. v. United Gas Pipe Line Co.*, 760 F.2d 618, 623 (5th Cir. 1985) (describing public interest as “the central issue in this case”).

As this Court has recognized, a district court’s decision to exercise equitable discretion “always must be [based] on prevention of injury by a proper order, not merely on preservation of the status quo.” *Callaway*, 489 F.2d at 576. Thus, this Court has previously considered the irreparable harm facing non-parties when weighing the public interest. See *Miss. Power*, 760 F.2d at 624-25; see also *Southdown, Inc. v. Moore McCormack Res., Inc.*, 686 F. Supp. 595, 596 (S.D. Tex. 1988) (movant must show injunction will cause “no disservice to unrepresented third parties”).

These principles are particularly salient when the injunction at issue applies nationwide to a federal government program that concerns millions of individuals across the country. Cf. *Am. Radio Ass’n v. Mobile S.S. Ass’n*, 483 F.2d 1, 6 (5th

Cir. 1973) (affirming injunction limited to one state because resulting harm was “relatively insubstantial” in relation to defendant’s nationwide conduct).

II. THE DISTRICT COURT DID NOT WEIGH THE HARMS TO U.S. CITIZEN AND LPR CHILDREN BEFORE ENJOINING DAPA

The District Court’s public interest analysis was cursory and erroneous.⁵ While it considered the public interest in assuring compliance with the notice-and-comment procedures of the Administrative Procedure Act, as well as in the federal government’s execution of the law – thereby treating the public interest essentially as redundant of the merits – it failed to consider the impact of its ruling on the individuals affected by it. In dismissing such considerations, the District Court suggested there was “no reason to believe” DAPA- and DACA-eligible parents would be removed if the injunction were granted, *Texas v. United States*, No. B-14-254, 2015 U.S. Dist. LEXIS 18551, at *208 (S.D. Tex. Feb. 16, 2015), and that, in fact, the affected individuals would actually be better off if an injunction were granted, because the programs might later be reversed, *see id.*

This analysis was erroneous. The injunction leaves the DAPA-eligible population at material risk of removal, and that risk of removal causes substantial harm not only upon the beneficiaries of DAPA, but also upon their U.S. citizen and

⁵ This brief focuses on the District Court’s consideration of the public interest and does not address other flaws in the District Court’s decision.

LPR children. That harm is irreversible and manifestly contrary to the public interest.⁶

A. The DAPA Eligible Population Faces a Substantial Risk of Deportation

A key flaw in the District Court’s analysis was the assumption that parents of U.S. citizen and LPR children face no real risk of removal. Specifically, the Court found “no indication that these individuals will . . . be removed or prosecuted.” *Texas*, 2015 U.S. Dist. LEXIS 18551 at *208.

In fact, recent statistics show that parents of U.S. citizen and LPR children face a significant risk of removal.⁷ United States Immigration and Customs

⁶ The interests of children of DAPA-eligible individuals were presented to the District Court but ignored. Specifically, the Office of Legal Counsel explained that DAPA would “serve an important humanitarian interest in keeping parents together with children who are lawfully present in the United States, in situations where such parents have demonstrated significant ties to the community and family in this country.” Dkt. No. 38, Ex. 2, at 26 (Dec. 24, 2014); *id.* at 54. Additionally, the legislative history of the Immigration and Nationality Act—the primary statute defining the contours of federal immigration law—was “concerned with the problem of keeping families of United States citizens and immigrants united.” *INS v. Errico*, 385 U.S. 214, 220 n.9 (1966) (internal quotations omitted).

⁷ The Court may take judicial notice of the material relied upon in this brief. *See, e.g., Terrebonne v. Blackburn*, 646 F.2d 997, 1003 n.4 (5th Cir. 1981) (governmental reports and statistical findings), *Ashcroft v. ACLU*, 535 U.S. 564, 567 n.2 (2002) (newspaper articles), *Brown v. Bd. of Educ.*, 347 U.S. 483, 494 n.11 (1954) (academic articles), *Kitty Hawk Aircargo, Inc. v. Chao*, 418 F.3d 453, 457 (5th Cir. 2005) (website contents). The Court also may consider new developments affecting the public interest since the injunction. *Aria Diagnostics, Inc. v. Sequenom, Inc.*, 726 F.3d 1296, 1305 (Fed. Cir. 2013) (taking judicial notice of post-injunction report from expert organization).

Enforcement (ICE) reported to Congress that, in 2013, it removed 72,410 immigrants who said they had one or more U.S.-born children.⁸ In an approximately two-year period between 2010 and 2012, ICE removed 204,810 immigrants who said they had one or more U.S.-born children.⁹ Further, the record before the District Court reflected that, without DAPA and expanded DACA, the federal government could not assure that the eligible population would be safe from removal.¹⁰

⁸ See U.S. Dep't of Homeland Sec., ICE, *Deportation of Aliens Claiming U.S.-Born Children: First Semi-Annual, Calendar Year 2013* (Apr. 28, 2014), available at <http://big.assets.huffingtonpost.com/2013report1.pdf> (reporting 39,410 removals of parents of U.S. citizens in first half of 2013); U.S. Dep't of Homeland Sec., ICE, *Deportation of Aliens Claiming U.S.-Born Children: Second Half, Calendar Year 2013 Report to Congress* (Apr. 28, 2014), available at <http://big.assets.huffingtonpost.com/2013report2.pdf> (reporting 33,000 removals of parents of U.S. citizens in second half of 2013). While these statistics do not correlate precisely with the continuing removal of DAPA-eligible parents (which encompasses parents of both U.S. citizen and LPR children, disqualifies certain parents on other grounds, and depends upon the federal government's discretion), they support the conclusion that U.S. citizen and LPR children remain at material risk of harm from the deportation of their parents.

⁹ Seth Freed Wessler, *Primary Data: Deportations of Parents of U.S. Citizen Kids*, Colorlines (Dec. 17, 2012) (ICE statistics obtained through Freedom of Information Act request), available at http://colorlines.com/archives/2012/12/deportations_of_parents_of_us-born_citizens_122012.html.

¹⁰ See Policies for the Apprehension, Detention and Removal of Undocumented Immigrants at 6, Dkt. No. 38, Ex. 5 (Dec. 24, 2014) (expressly *permitting* the removal of non-priority immigrants, such as DAPA-eligible parents, and noting that memorandum is not intended “to prohibit or discourage the apprehension, detention or removal of aliens unlawfully in the United States who are not identified as priorities herein”); Transcript of Oral Argument at Preliminary

More recently, news reports suggest that, following the District Court's injunction, DAPA-eligible parents continue to be deported or otherwise subject to actions that increase their likelihood of deportation.¹¹ In short, parents of U.S. citizen and LPR children remain at risk of deportation.

B. The Deportation of DAPA-Eligible Parents Leaves U.S. Citizen and LPR Children with a Horrible Dilemma: Parental Abandonment or Leaving Their Home Country

When parents are deported, entire families are affected. Children face the harsh dilemma of either remaining behind without parental support or leaving with their parents to a foreign and unknown country. Either option is harmful to children.

Injunction Hearing at 42, Dkt. No. 106 (Jan. 20, 2015) (noting that new deferred action programs intended to preserve resources that would otherwise be expended in pursuing removal); *accord* Declaration of Karl Eschbach, Dkt. No. 64, Ex. 14 ¶ 17 (declaration of Plaintiff's expert affirming that, without DAPA, parents "would otherwise have been identified by [DHS] and subject to deportation").

¹¹ Lomi Kriel, *Qualified Immigrants Still Face Threat of Deportation*, Houston Chronicle (Mar. 8, 2015) (reporting on ICE's deportation of father of three U.S. citizen children after the injunction, who had previously been told he could be eligible for DAPA and would be released); Brianna Lee, *Authorities No Longer Shielding DAPA-Eligible Immigrants from Deportation Cases*, International Business Times (Feb. 27, 2015) (reporting on threatened deportation of father of four U.S. citizen children); Roque Planas, *DAPA-Eligible Immigrants Face Threat of Deportation, Advocates Say*, Huffington Post (Feb. 27, 2015) (reporting that ICE required undocumented mother of two U.S. citizen children, who would apparently be eligible for DAPA, to install an ankle monitor, a possible signal of potential removal).

The first option results in substantial and well-recognized psychosocial harms that accompany parental abandonment. Research shows that children who have had a parent detained or deported – or who fear having a parent detained or deported, *see infra* Part II.C – experience increased occurrences of post-traumatic stress disorder; the negative consequences of a sudden loss of parental income, such as housing and food insecurity; and increased risk of entering the child welfare system.¹²

The removal of parents can also force children to interrupt or curtail their educations, as illustrated by a recent example. Following the District Court’s injunction, two teenage brothers in Georgia, Alex and Jonathan, witnessed the deportation of their father. Their father had no criminal convictions and should have been eligible for DAPA prior to the injunction, as Jonathan is a U.S. citizen. Because their father is diabetic, their mother will return to Mexico to care for him. The brothers will remain in the United States without their parents so they can

¹² In one recently reported example, a mother described the effects on her three U.S. citizen children after the deportation of their father: “Our four-year-old son misses his dad and is going through a depression. Our thirteen-year-old daughter’s grades are going down, and I’m going to have to close our business. When you deport one person, you leave behind three broken hearts.” Maria Perez, *My Husband was Deported*, The Hill (Mar. 24, 2014), *available at* <http://thehill.com/blogs/congress-blog/foreign-policy/201388-my-husband-was-deported>. *See also* Ajay Chaudry, et al., *Facing Our Future: Children in the Aftermath of Immigration Enforcement*, The Urban Institute (Feb. 2, 2010), *available at* <http://www.urban.org/publications/412020.html>.

continue to attend high school. Jonathan had planned to attend college next year but without parental support, he now plans to look for work instead.¹³

The second option effectively visits the penalty of removal on U.S. citizen and LPR children. Apart from being forced to leave their home, U.S. citizen children who accompany their deported parents often have difficulty integrating to a new one, and face limited access to education and health care, as well as difficulties in integrating due to language and cultural barriers.¹⁴

In short, as a result of the District Court's injunction, an estimated four million U.S. citizen and lawful permanent resident children – whose parents would have been eligible for deferral from removal under DAPA – remain at risk of facing this horrible dilemma.¹⁵

¹³ See Elly Yu, *As Courts Fight Over Immigration, Georgia Family Faces Father's Deportation*, WABE, Atlanta's NPR Station (Mar. 18, 2015), <http://wabe.org/post/courts-fight-over-immigration-georgia-family-faces-fathers-deportation>.

¹⁴ Victoria Kline, *Where Do We Go From Here? Challenges Facing Transnational Migrant Families Between the US and Mexico*, Instituto para las Mujeres en la Migracion, A.C. (IMUMI) (2013), available at http://uf.imumi.org/recursos/where_challenges.pdf.

¹⁵ Mem. Op. for the Secretary of Homeland Sec. and the Counsel to the President at 31, Dkt. No. 38, Ex. 2 (estimating that approximately four million parents would be eligible for DAPA).

C. The Threat of Removal Facing Parents Causes U.S. Citizen and LPR Children Enduring Emotional and Psychological Harm

Beyond the harm inflicted by removal itself, children whose parents face *threatened* removal suffer other significant harms that the District Court did not consider. Children whose parents are at risk of deportation are more likely to suffer emotional and psychological harm linked to the fear of losing a loved one. For example, one recent study found that, when compared to Mexican-origin children whose parents are either documented or naturalized citizens, Mexican-origin children with undocumented mothers are more likely to exhibit a variety of social and behavioral issues, including anxiety, depression, low self-esteem, irritability and rule breaking.¹⁶ These traits correlate with worse educational and social outcomes for children down the road, including poor school performance and greater risk of substance abuse.¹⁷ Strikingly, the negative effects of parental

¹⁶ Nancy S. Landale, Jessica Halliday Hardie, R.S. Oropesa, and Marianne M. Hillemeier, *Behavioral Functioning among Mexican-origin Children: Does Parental Legal Status Matter?*, 56 *Journal of Health and Social Behavior* 2-18 (Mar. 2015).

¹⁷ Mark A. Leach, Susan K. Brown, Frank D. Bean and Jennifer Van Hook, *Unauthorized Immigrant Parents: Do Their Migration Histories Limit Their Children's Education* (Oct. 2011), available at <http://www.s4.brown.edu/us2010/Data/Report/report101811.pdf> (finding that the undocumented status of a child's mother typically reduces that child's schooling by one and a quarter years); Kalina Brabeck et. al, *The Psychosocial Impact of Detention and Deportation on U.S. Migrant Children and Families: A Report for the Inter-American Human Rights Court* 13 (Aug. 2013) (finding that parental legal vulnerability to deportation is linked to their children's emotional well-being and academic performance).

undocumented status can be observed at a very young age: as early as age two, children of undocumented parents are more likely to have lower cognitive skills than comparable children in families without immigration issues.¹⁸

In addition, children living with undocumented parents are more likely to face burdens like economic hardship, limited English proficiency, and lack of health insurance.¹⁹ Although there are many reasons for these discrepancies, several are critical here. For instance, undocumented parents are more likely to hold jobs with poor working conditions, including longer hours and lower wages, leading to less time and less resources available for their children; undocumented parents may be cautious about general social interactions or allowing their children to participate in extracurricular or recreational programs for fear of exposing their status, leading to more limited social connections that could otherwise help child-rearing and development; and, finally, undocumented parents are often afraid to interact with the government, so their children may not benefit from public programs for which they are eligible.²⁰

¹⁸ Roberto Suro et al., Tomás Rivera Policy Institute at USC and the Institute for Immigration, Globalization, and Education at UCLA, *Removing Insecurity: How American Children Will Benefit from President Obama's Executive Action on Immigration* 10 (2015).

¹⁹ Brabeck, *supra* n. 17, at 2.

²⁰ Suro, *supra* n. 18, at 11.

Together, the consequences visited on the U.S. citizen and LPR children of undocumented parents at risk of deportation lead to an unmistakable result: these children risk becoming something less than full members of society. These “qualities which are incapable of objective measurement” threaten the attainment of a basic education and undermine the children’s long-term prospects for self-actualization and educational and economic success. *Cf. Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954) (quoting *Sweatt v. Painter*, 339 U.S. 629, 634 (1950)).²¹ In sum, denying a secure role in our society to U.S. citizen and LPR children of undocumented parents imposes a “lifetime hardship on a discrete class of children not accountable for their disabling status.” *Plyler v. Doe*, 457 U.S. 202, 223 (1982).

D. The DAPA Program Would Have Alleviated These Harms

In addition to evidence that children of undocumented parents suffer a multitude of harms, there is also evidence of the positive effect of the now-enjoined programs. Within the first month after the issuance of the Johnson Memorandum in November 2014, ICE released more than 600 people nationwide.²² Families were reunited and the psychic burden of children and

²¹ Suro, *supra* n. 18, at 3; Am. Psychological Ass’n, *Crossroads: The Psychology of Immigration in the New Century*, Report of the APA Presidential Task Force on Immigration (2012).

²² See U.S. Dep’t of Homeland Sec., ICE, *Deferred Action for Childhood Arrivals (DACA) and Deferred Action for Parents of Americans and Lawful Permanent*

students was temporarily lifted.²³ Numerous testimonials suggest that feelings of anxiety were ameliorated after issuance of the Johnson Memorandum in the expectation that parents could soon come out of the shadows – only to have the anxiety not only return, but intensify, after the injunction was issued.²⁴

Studies have concluded that the harms to children of undocumented parents can be significantly mitigated and educational outcomes significantly improved when parents are provided with some form of legal recognition.²⁵ By reinstituting

Residents (DAPA): DACA Statement, <http://www.ice.gov/daca>) (ICE policy enabling the release of DACA- and DAPA-eligible persons from detention after issuance of Johnson Memorandum); Perla Trevizo, *200 Freed from Immigration Custody in Arizona*, *Arizona Daily Star* (Dec. 30, 2014), http://tucson.com/news/local/border/freed-from-immigration-custody-in-arizona/article_3d78d44f-95fb-5cc4-82a6-ba4886a0d4f4.html (reporting that 618 people nationwide were released from immigration custody following case reviews of their potential eligibility for DAPA or DACA).

²³ Erica Pearson, *Millions of Undocumented Immigrants in Limbo During Court Battle over Deferred Action for Parental Accountability*, *New York Daily News* (Mar. 20, 2015), <http://www.nydailynews.com/new-york/ruling-blocking-deferred-action-program-hurts-immigrants-article-1.2152878> (describing release and reunification of DAPA-eligible father with five-year-old son after issuance of Johnson Memorandum, following nine months in ICE custody).

²⁴ Hansi Lo Wang, *Immigrants Worry They'll Face Deportation After Deferred Action Delay*, *NPR* (Mar. 4, 2015), <http://www.npr.org/2015/03/04/390475592/immigrants-worry-they-ll-face-deportation-after-deferred-action-delay> (reporting that parent of five-year-old U.S. citizen son who had lived in U.S. for ten years was detained by ICE in 2014 but released after DHS issued the Johnson Memorandum; he “cried tears of joys to be with my son again, to be able to hug him and kiss him and play with him”).

²⁵ Frank D. Bean et al., *Mexican Immigrant Political and Economic Incorporation*, *Perspectives on Politics*, 4(2): 309–13 at 311 (June 2006) (reporting that 52% of survey respondents whose father became a U.S. citizen and 43% of respondents

the threat of deportation, the injunction did not advance the public interest, but instead perpetuated psychological harm and restricted educational outcomes for more than four million children of DAPA-eligible parents. Because mere months are critical to children’s development, withholding the advantages of the program—including security from deportation and improved educational access—for even a short period of time works significant harm on a sizable vulnerable population, many of whom are U.S. citizens or LPRs. *S-1 v. Turlington*, 635 F.2d 342, 345 (5th Cir. 1981) (affirming irreparable harm finding where “two years of education had been irretrievably lost”).

E. The District Court Failed to Properly Weigh the Benefits of Work Authorization Under DAPA

The preliminary injunction also detrimentally and irreparably affects the well-being and prospects for educational success of millions of U.S. citizen and LPR children by preventing their DAPA-eligible parents from obtaining work authorization. Families that include children with undocumented parents eligible for DAPA are among the segments of the American population suffering from the highest poverty rates.²⁶ The educational success and well-being of U.S. citizen and

whose father became a legal permanent resident received a college degree or some college education compared to 14% of children of undocumented fathers).

²⁶ The average annual income for undocumented workers is \$22,029, placing a family of four relying on an undocumented worker’s wage under the poverty level. See *The Economic Effects of Administrative Action on Immigration*, Report of the

LPR children of undocumented parents directly correlate to their parents' opportunities for enhanced income, adequate working conditions, and job mobility.²⁷ Accordingly, the District Court should have considered the impact of depriving this population of federal work authorization and the substantial irreparable harm that will immediately result from the injunction.

This Court's decision in *Mississippi Power*, 760 F.2d 618, highlights the need for judicial recognition of immediate non-monetary harms to third parties when exercising equitable discretion. In that case, a power company challenged a gas supplier's overcharges for utility services. In upholding an injunction, this Court found irreparable harm, even when money damages might later be available, because the harmed non-party population – utility customers in Mississippi – suffered high rates of poverty. The Court explained: “[a] refund of overcharges sometime in the future could never adequately compensate families living at or close to the poverty line for hardships they would endure as a result of overcharges

Executive Office of the President of the United States, Dkt. No. 38, Ex. 20, at 10 (Dec. 24, 2014).

²⁷ Sean F. Reardon, *The Widening Academic Achievement Gap Between the Rich and the Poor: New Evidence and Possible Explanations*, in Greg J. Duncan & Richard J. Murnane, Russell Sage Foundation, *Whither Opportunity? Rising Inequality, Schools, and Children's Life Chances* at 3 (July 2011), available at <http://cepa.stanford.edu/sites/default/files/reardon%20whither%20opportunity%20-%20chapter%205.pdf> (reporting that the “socioeconomic status of a child's parents has always been one of the strongest predictors of the child's academic achievement and educational attainment”).

they would have to pay at present and during the course of litigation.” *Id.* at 624-25.

Here, the harms caused by the injunction are likewise incapable of being remediated after final resolution of this case. As noted above, the educational harms to children resulting from family separation can be irreparable if only for mere months—let alone the year and a half that can be expected to finally resolve this case.²⁸ The educational benefits of having a parent with additional income is similarly critical: Children raised in higher-income families are far more likely to finish high school,²⁹ attend and graduate from college,³⁰ and achieve success while

²⁸ The median time from filing to trial in the Southern District of Texas is 19.7 months. U.S. Courts, Federal Judicial Caseload Statistics 2014, *Table C-5*, available at <http://www.uscourts.gov/Viewer.aspx?doc=/uscourts/Statistics/FederalJudicialCaseloadStatistics/2014/tables/C05Mar14.pdf>.

²⁹ Susan E. Mayer, *Revisiting an Old Question: How Much Does Parental Income Affect Child Outcomes?*, Focus, Vol. 27, No. 2 at 21 (Winter 2010) (reporting that low-income children are more likely to drop out of high school than more well-off children).

³⁰ In 2013, only 45.5% of low income students who completed high school in the previous year were enrolled in college, as compared to 63.8% of middle income students and 78.5% of high income students. *Percentage of Recent High School Completers Enrolled in 2-Year and 4-Year Colleges, by Income Level: 1975 through 2013*, National Center for Statistics, http://nces.ed.gov/programs/digest/d14/tables/dt14_302.30.asp. Even when controlling for academic performance, a family’s low socioeconomic status impacts children’s subsequent educational outcomes. Joydeep Roy, *Low Income Hinders College Attendance for Even the Highest Achieving Students*, Economic Policy Institute (Oct. 12, 2005), http://www.epi.org/publication/webfeatures_snapshots_20051012/ (showing that

doing so.³¹ Deferred action can be expected to increase parents' wages by six to ten percent.³² Children whose parents are eligible for work also benefit from non-monetary benefits afforded their parents, including greater access to their parents' employer-sponsored health coverage.³³ And children nationwide will suffer these harms, a sweeping impact well beyond that to residents of selected counties in a single state whose interests this Court considered central to the outcome in *Mississippi Power*, see 760 F.2d at 624. In granting the preliminary injunction, the District Court failed to consider these harms to the children of potential DAPA recipients.

only 29% of low-income, high-performing eighth grade students went on to earn a bachelor's degree, as compared to 74% of high-income, high-performing eighth graders).

³¹ Gordon Dahl & Lance Lochner, *The Impact of Family Income on Child Achievement: Evidence from the Earned Income Tax Credit*, Working Paper 14599, National Bureau of Economic Research (Dec. 2008), available at <http://www.nber.org/papers/w14599> (reporting that \$1,000 increase in parental income raised children's math and reading scores by six percent of a standard deviation, with the largest increases seen in children from disadvantaged families).

³² See *The Economic Effects of Administrative Action on Immigration*, Report of the Executive Office of the President of the United States at 20, Dkt. No. 38, Ex. 20 (Dec. 24, 2014).

³³ Laurel Lucia *et al.*, UC Berkeley Center for Labor Research and Education and UCLA Center for Health Policy Research, *Health Insurance and Demographics of California Immigrants Eligible for Deferred Action* 3 (Mar. 2015), available at <http://healthpolicy.ucla.edu/publications/Documents/PDF/2015/immigrants-policy-brief-mar2015.pdf> (reporting that DAPA will increase access to private health insurance based on 21% increase in health coverage for DACA grantees).

III. THE DISTRICT COURT FAILED TO WEIGH THE PUBLIC INTEREST IN ENHANCING EDUCATIONAL OPPORTUNITIES BEFORE ENJOINING EXPANDED DACA

The District Court also did not adequately assess whether the public interest would be served – or disserved – by issuing the preliminary injunction because it failed to consider the substantial benefits of the enhanced educational opportunities for long-time U.S. residents under expanded DACA.

The preliminary injunction prevents an estimated 290,000 people who arrived in this country as children from applying for DACA. This delay works a substantial harm on this population because it deprives them of immediate access to educational opportunities available to DACA recipients. The public interest favors access to educational opportunities for young people who “know only this country as a home.”³⁴

In two states, DACA recipients can enroll in public colleges and universities, but other undocumented students may not.³⁵ At least six states have determined that students granted DACA can establish state residency for tuition purposes

³⁴ Complaint, Ex. C at 1, Dkt. No. 1 (Dec. 3, 2014).

³⁵ See *Tuition Equity for Undocumented Students and DACA Grantees: Access by State*, United We Dream (Feb. 2014), available at http://www.unitedwedream.org/wp-content/uploads/2014/05/deep_education_map.pdf.

under their existing rules,³⁶ significantly increasing the chances those students will complete high school and attend college.³⁷ The long-term economic benefits to recipients of a college education are substantial.³⁸

In addition, DACA recipients are eligible for federal work authorization documents, which significantly improves their chances of obtaining a new job and increased earnings.³⁹ Increased wages for students significantly expands the

³⁶ States as diverse as Alabama, Maryland, Massachusetts, Ohio, New Hampshire, and Virginia have determined that students granted DACA can establish state residency for tuition purposes under their existing rules. *See id.* And at least 18 states, including Texas, have elected to provide in-state tuition rates to all students who meet certain criteria, regardless of their status. *See Undocumented Student Tuition: Overview*, National Conference of State Legislatures (Feb. 10, 2015), <http://www.ncsl.org/research/education/undocumented-student-tuition-overview.aspx>.

³⁷ *See, e.g.,* Stephanie Potochnick, *How States Can Reduce the Dropout Rate for Undocumented Immigrant Youth: The Effects of In-State Resident Tuition Policies* 24, paper presented at the Population Association of America Conference (Apr. 2011), available at <http://paa2011.princeton.edu/papers/110491> (finding that adoption of in-state tuition rates reduces overall dropout rate by 7% and by 16% among Mexican foreign born non-citizens).

³⁸ Jennifer Cheeseman Day & Eric C. Newburger, *The Big Payoff: Educational Attainment and Synthetic Estimates of Work-Life Earnings*, U.S. Census Bureau (July 2002), available at <https://www.census.gov/prod/2002pubs/p23-210.pdf> (reporting that, over a 40 year full-time work life, individuals with a bachelor's degree earn on average a cumulative total of \$2.1 million, more than double what a high school dropout earns); *The Condition of Education*, National Center for Education Statistics (May 28, 2009), available at <http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2009081> (reporting median earnings of \$45,000 for people between age 25 and 34 with a bachelor's degree but only \$29,000 for those with a high school diploma or equivalent).

³⁹ DACA has increased recipients' wages by more than 240% on average. Dr. Raul Hinojosa-Ojeda, North American Integration and Development Center, *From*

opportunity to pursue an education for any population – but especially so for a population that continues to lack access to federal financial aid and in-state tuition in many states, thereby hampering economic mobility.⁴⁰ *Cf. Doe v. Plyler*, 628 F.2d 448, 451 (5th Cir. 1980) (“[D]enying a person a basic education is tantamount to ensuring that the person remains at the lowest socio-economic level of modern society.”), *aff’d* 457 U.S. 202 (1982).

Further, the injunction of expanded DACA delays implementation of a policy that has proven to result in further educational attainment. DACA is unique among immigration policies because it makes educational attainment a condition for eligibility. Eligible applicants must have a high school diploma or its equivalent or be enrolled in school, including K-12 education, adult education, literacy, or career-training programs). Thus, DACA’s expansion encourages more

the Shadows to the Mainstream: Estimating the Economic Impact of Presidential Administrative Action and Comprehensive Immigration Reform at 3, Dkt. No. 38, Ex. 21 (Dec. 24, 2014); *see also* Roberto G. Gonzales, Veronica Terriquez, and Stephen P. Ruszczyk, *Becoming DACAmented: Assessing the Short-Term Benefits of Deferred Action for Childhood Arrivals*, American Behavioral Scientist, <http://abs.sagepub.com/content/early/2014/10/01/0002764214550288.abstract> (Oct. 1, 2014) (reporting that 59% of recent DACA recipients obtained a new job and 45% increased their earnings).

⁴⁰ The Advisory Committee on Student Financial Assistance: Report to Congress and the Secretary of Education, *The Rising Price of Inequality: How Inadequate Grant Aid Limits College Access and Persistence* at 23 (June 2010), <http://www2.ed.gov/about/bdscomm/list/acsfa/rpijune.pdf> (finding that only 58% of students who were “very concerned” about finances enrolled in a four-year college compared to 84% of students who were not concerned about finances).

individuals to remain in or return to school, improving rates of educational attainment among the eligible population.⁴¹

Because enhanced educational attainment confers substantial economic benefits on both expanded DACA recipients and states and communities as a whole, the harm from the injunction of expanded DACA should have been considered by the District Court.⁴² For example, the State of Texas has itself recognized the benefits of providing expanded access to education to the eligible population. In enacting legislation providing in-state tuition to all Texas residents, the State recognized that “every dollar invested in our state’s higher education system pumps more than five dollars into our Texas economy” and “higher levels of education correlate to higher median earnings, lower unemployment, and lower

⁴¹ Approximately 426,000 individuals met all requirements for the initial DACA program except for the educational requirement, and countless more would have been similarly encouraged to pursue educational attainment for deferred action if not for the injunction. *From the Shadows to the Mainstream* at 3, Dkt. No. 38, Ex. 21 (Dec. 24, 2014). Further, DACA recipients are more likely to invest in additional education or vocational training because of certainty in their ability to remain in the U.S. *The Economic Effects of Administrative Action on Immigration* at 6, *Id.* at Ex. 20.

⁴² Because DACA and DAPA recipients receive only a temporary reprieve from deportation, have no path to citizenship, and remain ineligible for federal student financial aid and in-state college tuition in the majority of states, *amici* contend that deferred action, while overwhelmingly in the public interest, does not adequately address the needs of undocumented youth and school-age children whose parents are undocumented. *Amici* continue to advocate for legislative action on immigration to holistically address the needs of students and children.

poverty rates.”⁴³ Of the appellee States, Texas has the most to gain from expanded deferred action, with nearly 500,000 eligible residents.⁴⁴ Other states similarly stand to gain substantial economic benefits from undocumented students’ enhanced access to education.⁴⁵ These benefits were not adequately considered by the District Court.

CONCLUSION

For the reasons stated above, *amici* submit that the preliminary injunction – which delays the immediate implementation of the DAPA and expanded DACA programs for children nationwide – should be reversed.

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⁴³ Texas House Research Organization, Bill Analysis of HB 1403 (April 18, 2001), *available at* <http://www.hro.house.state.tx.us/pdf/ba77r/hb1403.pdf>.

⁴⁴ Dkt. No. 64, Declaration of Karl Eschbach, Ex. 14 ¶ 15; Declaration of Joe Peters, Ex. 24 ¶ 6 (Jan. 7, 2015).

⁴⁵ See, e.g., Thomas P. DiNapoli & Kenneth B. Bleiwas, *The New York State DREAM Act*, New York State Comptroller (May 2013), *available at* <https://www.osc.state.ny.us/osdc/rpt1-2014.pdf> (reporting that increased college attendance of undocumented students would be mitigated by economic benefits, including \$60,000 in additional state tax revenue for each new person earning a bachelor’s degree); *Massachusetts Public Colleges Would Gain Millions of Dollars from Undocumented Immigrants*, Massachusetts Taxpayers Foundation (Jan. 5, 2006).

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FRAP 32(a)(7) CERTIFICATE OF COMPLIANCE

I certify that this brief has been prepared in Microsoft Word using a 14-point, proportionally spaced font, and that based on word processing software, the brief contains 6,969 words.

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CERTIFICATE OF SERVICE

I certify that on April 6, 2015, I electronically filed the foregoing Brief of Educators and Children's Advocates as Amici Curiae in Support of Defendants-Appellants using the Court's CM/ECF system, which constitutes service under the Court's rules.

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