

Consolidated Case Nos. 18-15068, 18-15069, 18-15070,
18-15071, 18-15072, 18-15128, 18-15133, 18-15134

United States Court of Appeals
for the
Ninth Circuit

REGENTS OF THE UNIVERSITY OF CALIFORNIA, *et al.*,

Plaintiffs-Appellees,

v.

U.S. DEPARTMENT OF HOMELAND SECURITY, *et al.*,

Defendants-Appellants,

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

**BRIEF OF *AMICI CURIAE* THE LAWYERS' COMMITTEE FOR CIVIL
RIGHTS UNDER LAW, ANTI-DEFAMATION LEAGUE, AND SOCIAL
JUSTICE ORGANIZATIONS IN SUPPORT OF PLAINTIFFS-APPELLEES**

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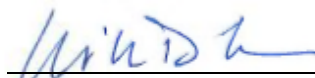
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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and 29(a)(4)(A), *amici curiae* the Lawyers' Committee for Civil Rights Under Law, the Anti-Defamation League, the Lawyers' Committee for Civil Rights and Economic Justice, the Mississippi Center for Justice, the Southern Poverty Law Center, the Washington Lawyers' Committee for Civil Rights and Urban Affairs, and the Leadership Conference on Civil and Human Rights certify that *amici* are not publicly held corporations, that *amici* do not have parent corporations, and that no publicly held corporation owns 10 percent or more of any *amicus'* respective stock.

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STATEMENT OF INTEREST OF *AMICI CURIAE*¹

Amici, the Lawyers' Committee for Civil Rights Under Law, the Anti-Defamation League, the Lawyers' Committee for Civil Rights and Economic Justice, the Mississippi Center for Justice, the Southern Poverty Law Center, the Washington Lawyers' Committee for Civil Rights and Urban Affairs, and the Leadership Conference on Civil and Human Rights are national and regional civil rights groups and social justice organizations, each committed to the promotion of civil liberties throughout the country and the elimination of discrimination in any form.² *Amici* are particularly well suited to offer *amicus* assistance to this Court based on their experience working on immigration issues. *Amici* have observed firsthand the ways in which DACA has improved the lives of undocumented young people and enabled them to make significant social and economic contributions that have made our country greater.

¹ *Amici* submit this brief without an accompanying motion for leave to file because all parties have consented to its filing. Fed. R. App. P. 29(a)(2). No counsel for a party has authored this brief in whole or in part, and no party or counsel for a party has made a monetary contribution intended to fund the preparation or submission of the brief. No person other than amici or their counsel has made a monetary contribution to the preparation or submission of this brief. Fed. R. App. P. 29(a)(4)(E).

² List of Individual *Amici Curiae* with Statements of Interest is set forth in Appendix at A-1.

INTRODUCTION

Amici submit this brief in support of Plaintiffs-Appellees to focus the Court's attention on an issue of overarching significance – the Department of Homeland Security's failure to consider substantial reliance interests when it terminated the Deferred Action for Childhood Arrivals (DACA) program. The DACA program, announced on June 15, 2012, provided eligible undocumented immigrants protection from deportation and granted them work authorization subject to approval of an initial application and renewal every two years thereafter. Imbued with the spirit of the American Dream, DACA enrollees have made substantial investments in themselves, for their families, and in our communities in reliance on DACA's promulgation. Without consideration for the reliance interests DACA engendered over the last five years, the government abruptly decided to pull the rug out from underneath hundreds of thousands of childhood arrivals who, in an effort to play by the rules, had come out of the shadows to enroll in the federal program.

The Administrative Procedure Act (APA)'s procedural safeguards and requirements were designed to protect against capricious reversals or terminations of policies and programs that induce substantial reliance interests of the type found here. DACA enrollees have invested in job-specific training programs, enrolled in universities, obtained jobs as educators, purchased homes, and enlisted in the

military in service of our country. In turn, educational institutions, local communities, and employers have extended already limited opportunities and resources to DACA enrollees. These personal, social, and institutional investments were made in reliance on the government's representations and the implied promise that the government would not, on the basis of some political whim, execute an about-face. Where, as here, the government has failed to take into account such significant reliance interests before abruptly axing a federal program, the decision to terminate should be viewed as nothing more than arbitrary and capricious.

ARGUMENT

I. THE GOVERNMENT WAS REQUIRED TO CONSIDER RELIANCE INTERESTS PRIOR TO TERMINATING DACA

In his thorough and well-reasoned opinion, Judge Alsup concluded that the rescission of DACA constituted an “agency action” under the APA. Opinion Below (“Op.”) at 18. Under Section 706(2)(A) of the APA, federal courts may review and set aside agency action found to be “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”

5 U.S.C. § 706(2)(A).

Distinguishing the DACA rescission as a policy decision rather than a mere non-enforcement decision, the lower court, quoting *Robbins v. Reagan*, 780 F.2d 37, 47 (D.C. Cir. 1985), noted:

In contrast to nonenforcement decisions, ‘rescissions of commitments, whether or not they technically implicate liberty and property interests as defined under the fifth and fourteenth amendments, exert much more direct influence on the individuals or entities to whom the repudiated commitments were made’.

Op. at 20. The lower court noted the undeniable reliance by DACA enrollees, employers, educational institutions, and state governments on the DACA program:

Through DACA, the government has invited undocumented aliens who meet threshold criteria to step forward, disclose substantial personal information, pay a hefty fee, and comply with ongoing conditions, all in the expectation of (though not a right to) continued deferred action. DACA allows enrollees to better plan their careers and lives with a reduced fear of removal. DACA work authorizations, for example, allow recipients to join in the mainstream economy (and pay taxes). DACA covers a class of immigrants whose presence, seemingly all agree, pose the least, if any, threat and allows them to sign up for honest labor on the condition of continued good behavior. This has become an important program for DACA recipients and their families, for the employers who hire them, for our tax treasuries, and for our economy. An agency action to terminate it bears no resemblance to an agency decision not to regulate something never before regulated.

Op. at 20–21. The Secretary in Homeland Security, in rescinding DACA, simply did not “weigh DACA’s programmatic objectives as well as the reliance interests of DACA recipients.” *Id.* at 40 (citing *Encino Motor Cars, LLC v. Navarro*, 136 S. Ct. 2117, 2126–27 (2016)). As the trial court noted, the administrative

record on the benefits of the program “is utterly silent in this regard.” In short, the agency failed to analyze whether the program was “worth fighting for.” Op. at 40.

The Department of Homeland Security (DHS) thereby violated two core principles governing its actions. First, it abused its discretion because it “entirely failed to consider an important aspect of the problem,” namely the impact of its policy change on the persons who would be directly affected by the decision. *See Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). DHS seeks to justify its deliberate decision to ignore those effects by claiming that its abuse of discretion is exempt from judicial review under *Heckler v. Chaney*, 470 U.S. 821 (1985), because there is no meaningful standard against which to judge the agency’s exercise of discretion. But that case is facially distinguishable because it dealt with an agency’s refusal to take an enforcement action requested by the plaintiffs, as opposed to the agency taking coercive enforcement action against DACA participants. Failure to consider the effects of its action on the targeted population violates a core principle of *State Farm*, and occurs in a statutory context in which Congress enacted express provisions when it wished to prohibit judicial review of specific agency decisions or agency exercise of discretion. *See* 8 U.S.C. § 1252.

The lower court’s reliance on *Encino Motor Cars* highlights the second core principle DHS violated. *See* Op. at 41. The Supreme Court noted in that case that

although agencies are free to change their existing policies, they are nonetheless required to state a reasoned explanation for a policy reversal:

In explaining its changed position, an agency must also be cognizant that longstanding policies may have engendered serious reliance interests that must be taken in account. In such cases it is not that further justification is demanded by the mere fact of policy change; but that a reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy. It follows that an unexplained inconsistency in agency policy is a reason for holding an interpretation to be an arbitrary and capricious change from agency practice.

Encino, 136 S. Ct. at 2125-2126. As the lower court noted, *Encino* stands for the proposition that where an agency gives “almost no reason at all” for its change in position, the agency fails to provide the sort of reasoned explanation required in light of the “significant reliance issues involved.” *Op.* at 41 (citing *Encino*, 136 S. Ct. at 2126–2127).

The Supreme Court’s opinion in *Perez v. Mortgage Bankers Association* is also instructive on the importance of reliance in APA cases. There the Court noted:

The APA contains a variety of constraints on agency decisionmaking—the arbitrary and capricious standard being among the most notable. . . . [T]he APA requires an agency to provide more substantial justification when ‘its new policy rests upon factual findings that contradict those which underlay its prior policy; or when prior policy has engendered serious reliance interests that must be taken

into account. It would be arbitrary and capricious to ignore such matters' (citations omitted).

135 S. Ct. 1199, 1209 (2015). The lower court decision here is crystal clear in concluding that there was a complete failure to consider interests compelling maintenance of the DACA program:

In terminating DACA, the administrative record failed to address the 689,800 young people who had come to rely on DACA to live and work in this country. These individuals had submitted substantial personal identifying information to the government, paid hefty fees, and planned their lives according to the dictates of DACA. The administrative record indicates no consideration to the disruption a rescission would have on the lives of DACA recipients, let alone their families, employers and employees, schools and communities.

Op. at 41–42. There are a variety of reliance interests that should have been, but were not, considered: the interests of educational institutions; the interests of employers; the interests of the military; the interests of state governments; and, of course, the reliance interests of the DACA enrollees themselves. We proceed to address a few of these significant interests that the government should have considered but instead ignored.

II. DACA ENGENDERED SUBSTANTIAL ECONOMIC RELIANCE INTERESTS THAT THE GOVERNMENT FAILED TO CONSIDER

Courts have long recognized that “[s]udden and unexplained change or change that does not take account of legitimate reliance on prior interpretation may

be arbitrary, capricious or an abuse of discretion.” *Smiley v. Citibank (South Dakota), NA*, 517 U.S. 735, 742 (U.S. 1996) (citations and quotations omitted). Reliance interests such as these may never find a clearer expression than in the economic activities of over 800,000 Americans who invested in their education and job training, purchased homes, and enlisted in the military in reliance on the understanding that their right to remain in the United States would not be rescinded on the basis of executive caprice.

The Department of Homeland Security is the responsible agency for adjudicating the right of human persons to remain on American soil, and “the rulings, interpretations and opinions of the responsible agency, while not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgment to which litigants may properly resort for guidance.” *U.S. v. Penn. Indus. Chem. Corp.*, 411 U.S. 655 (1973) (quotations omitted). It was around this guidance that the DACA recipients planned their lives moving forward in the United States.

Indeed, by explicitly targeting “productive young people,”³ the federal government implicitly contemplated that the DACA enrollees would be

³ See Memorandum from Janet Napolitano, Sec’y of Homeland Sec., Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children (June 15, 2012), <https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf>.

contributive members of our society and that the nation would benefit from their social and economic contributions. With the opportunity to invest in themselves and in the favorable business climate of the United States, DACA enrollees would be induced by the promise of being able to achieve financial security for themselves and their families. The States and the federal government, in turn, would benefit from an increased population of legally employable workers, who pay taxes and make significant contributions to the economy. While DACA has meant more than money to all its enrollees, it is the spontaneous renegeing of the mutual economic commitments without regard for the substantial reliance interests that belies the safeguarding principles of the APA.

A. Reliance Interests of DACA Students, Educators and Educational Institutions

There is no question that access to education is vitally important to all persons in the United States—whether citizens, lawful resident aliens, or undocumented persons. *See Plyler v. Doe*, 457 U.S. 202, 226 (1982). In *Plyler*, the Supreme Court ruled that undocumented school age children had a constitutional right to a free public education. *Id.* Because of *Plyler*, generations of undocumented persons have learned English, succeeded in school, and integrated into the American culture. The DACA program has had the practical effect of extending the rationale of *Plyler* to post-secondary education. By asserting rights granted by DACA, tens of thousands of undocumented persons

have gained access to college education. And many of those persons, once educated, have entered the education profession as teachers.

DACA enrollees have substantially relied on the government's representations in investing in their education, seeking job-specific training and enrolling as students in institutions of higher learning. Public schools and institutions of higher learning have extended opportunities and resources to individuals as students and educators on the basis of and in reliance on the applicants' DACA protected status. The devastating effect of the federal government's unreasoned departure and betrayal of these educational reliance interests is manifest.

DACA teachers are a significant asset to our nation's public schools, especially in cities with large, immigrant student populations. An estimated 20,000 DACA recipients are employed as educators throughout the U.S., and many of them possess in-demand bilingual language skills.⁴ There is currently a severe shortage nationally of teachers in the public education sector, estimated to be as

⁴ Moriah Balingit, *As DACA winds down, 20,000 educators are in limbo*, Wash. Post (Oct. 25, 2017), https://www.washingtonpost.com/local/education/as-daca-winds-down-20000-educators-are-in-limbo/2017/10/25/4cd36de4-b9b3-11e7-a908-a3470754bbb9_story.html (citing data provided by the Migration Policy Institute); *see also* Greg Toppo, *20,000 DACA teachers at risk — and your kids could feel the fallout, too* (Oct. 11, 2017, 7:00 AM), <https://www.usatoday.com/story/news/2017/10/11/thousands-daca-teachers-risk/752082001/>.

high as 327,000 public educators.⁵ The consequences of a shortage in public education employment are well known: larger class sizes, fewer teacher aides, fewer guidance counselors, and fewer extra-curricular activities.

Furthermore, in the past few decades, the racial makeup of the country's student population has drastically shifted, but the overwhelming majority of public school teachers continue to be white.⁶ Public schools have seen increased enrollment by students of color, especially by Latinos.⁷ By 2025, it is expected that a majority of high school graduates will be students of color.⁸ DACA has allowed schools to recruit qualified teachers with whom their students can identify.

In already resource-strapped school districts, DACA teachers do much more than just fill available positions, they also serve as mentors and role models to minority students. For many communities, DACA teachers mirror the experiences of their immigrant students, which informs their teaching with cultural competence, helps develop positive relationships with students and creates more

⁵ Elise Gould, *Local public education employment may have weathered recent storms, but schools are still short 327,000 public educators*, Econ. Pol'y. Inst. (Oct. 6, 2017), <http://www.epi.org/publication/teacher-employment-may-have-weathered-storms-but-schools-are-still-short-327000-public-educators/>.

⁶ The latest data shows that about 84 percent of public school teachers are white. C. Emily Feistritzer, *Profile of Teachers in the U.S. 2011*, Nat. Ctr. for Educ. Info. (July 2011), <https://www.edweek.org/media/pot2011final-blog.pdf>.

⁷ Alice Yin, *Education by the Numbers*, N.Y. Times (Sept. 8, 2017), <https://www.nytimes.com/2017/09/08/magazine/education-by-the-numbers.html>.

⁸ *Id.*

welcoming school environments.⁹ Recent research has demonstrated that when students of color have teachers from similar backgrounds, they are more likely to succeed. A recent study published by the Institute of Labor Economics found that “low-income black male students in North Carolina who have just one black teacher in third, fourth, or fifth grade are less likely to drop out of high school and more likely to consider attending college.”¹⁰ Viridiana Carrizales of Teach For America aptly noted that “[w]e cannot afford to lose so many teachers and impact so many students... [e]very time a student loses a teacher, that is a disruption in the student’s learning.”¹¹

As Vanessa Lina, a DACA recipient who taught as a Teach for America teacher and now serves as a recruiter, told *The New York Times*: “We’re going to lose leaders and lose teachers – it’s not only their presence, but having a teacher that can share the same experiences that you possibly had growing up. . . . Their

⁹ Lisette Partelow, *America Needs More Teachers of Color*, (September 14, 2017, 9:00 AM), <https://www.americanprogress.org/issues/education-k-12/reports/2017/09/14/437667/america-needs-teachers-color-selective-teaching-profession/>.

¹⁰ Seth Gershenson et al., *The Long-Run Impacts of Same-Race Teachers*, IZA Inst. of Lab. Econ., Mar. 2017, <http://ftp.iza.org/dp10630.pdf>

¹¹ Greg Toppo, *20,000 DACA teachers at risk — and your kids could feel the fallout, too* (Oct. 11, 2017, 7:00 AM), <https://www.usatoday.com/story/news/2017/10/11/thousands-daca-teachers-risk/752082001/>.

advocacy, their leadership, their resilience is extraordinary because of their own personal journey.”¹²

Diversity in teaching is critical to educational equity, and students of all racial and ethnic backgrounds, especially immigrant students benefit from having DACA educators. School environments that reflect the diversity of communities, the country, and the world help open students’ minds to new perspectives and actively engage them in learning. Prejudice and bias is countered in schools and communities when respect for diversity is taught, modeled, and experienced firsthand by children.¹³ The loss of 20,000 DACA teachers will cause severe and lasting harm to students and their educational trajectories, and more broadly our country which depends on the great talent of future generations.

In *Plyler*, the Supreme Court made an observation that is apt for the present DACA revocation:

In determining the rationality of § 21.031 [denying access to school to undocumented persons], we may appropriately take into account its costs to the Nation and to the innocent children who are its victims. In light of these countervailing costs, the discrimination contained in §21.031 can hardly be considered rational unless it furthers some substantive goal of the State.

¹² Liz Robbins, *For Teachers Working Through DACA, a Bittersweet Start to the School Year*, N.Y. Times (Sept. 7, 2017), <https://www.nytimes.com/2017/09/07/nyregion/daca-teachers.html>.

¹³ Anti-Defamation League (ADL), *Creating an Anti-Bias Learning Environment*, <https://www.adl.org/education/resources/tools-and-strategies/creating-an-anti-bias-learning-environment>

Here, as in *Plyer*, the federal government has not taken into account the costs to the nation or to DACA recipients and has offered no countervailing rationale. And the record from the trial court below is replete with evidence of the harm that would result from a DACA repeal.

The district court judge concluded that the University of California had established that it will suffer injury to its proprietary interests in a number of ways:

1. Because DACA recipients can no longer apply for and obtain “advance parole,” or permission to travel overseas with right of re-entry, these students are unable to travel outside the United States for research and educational conferences.
2. DACA recipients have also decided to cancel their enrollment in the University and additional recipients may be forced to drop out.
3. Significant investments made by the University in recruiting and retaining DACA recipients as employees would be lost once these recipients lose their ability to work.
4. The loss of DACA recipients as employees in the educational institution “will adversely impact the diversity of the talent pool of potential students.”

Op. at 24. On this record, then, the reliance interests of DACA recipients and educational institutions are profound. They should have been, but were not, considered by the federal government prior to rescission.

B. DACA Enrollees Purchased Homes and Lending Institutions Extended Loans in Reliance on DACA

Homeownership has long been recognized as an integral part of the American Dream. Indeed, the federal government and its agencies have developed programs and marketing around that well-accepted precept.¹⁴ DACA put that dream within reach for enrollees and provided them an opportunity to achieve financial security for themselves and their families and contribute to the economic stability of their communities through homeownership. They made these significant and life changing investments in reliance on DACA.

The online real estate database company Zillow estimates that 123,000 DACA enrollees are homeowners and, indeed, purchased their homes *after* their DACA applications had been approved.¹⁵ DACA made it possible for these individuals to establish roots and purchase homes thanks to access to credit, which was previously unavailable to them. Lending institutions extended this credit and

¹⁴ See e.g., U.S. Dep't of Housing and Urb. Dev., *The National Homeownership Strategy: Partners in the American Dream* (1995).

¹⁵ Alexander Casey, *An Estimated 123,000 'Dreamers' Own Homes and Pay \$380M in Property Taxes*, Zillow (Sept. 20, 2017), <https://www.zillow.com/research/daca-homeowners-380m-taxes-16629/>.

offered mortgages to enrollees in complete reliance on DACA. These transactions and their underlying commitments were based on the fundamental understanding that the government would not, without due consideration, terminate the program and upend the lives of tens of thousands of individuals.

According to a survey of DACA recipients conducted by the Center for American Progress, nearly 24 percent of respondents over the age of 25 purchased a home after their DACA application was approved.¹⁶ Through homeownership, DACA recipients “pay an estimated \$380 million a year in property taxes to their communities.”¹⁷ Communities that benefit, even depend, on the property tax revenues from these DACA recipient homeowners will, in turn, be financially upended.

Creating a pathway to homeownership is particularly important for communities of color who continue to suffer as a result of the widening racial and ethnic wealth gap in this country. Owning a home is often the largest investment families make. Yet, only 47 percent of Hispanics and 42 percent of African

¹⁶ Tom K. Wong, *Results from Tom K. Wong et al., 2017 National DACA Study*, Ctr. for Am. Progress (Oct. 7, 2017), https://cdn.americanprogress.org/content/uploads/2017/11/02125251/2017_DACA_study_economic_report_updated.pdf.

¹⁷ Alexander Casey, *An Estimated 123,000 ‘Dreamers’ Own Homes and Pay \$380M in Property Taxes*, Zillow (Sept. 20, 2017), <https://www.zillow.com/research/daca-homeowners-380m-taxes-16629/>.

Americans own a home compared to 73 percent of whites.¹⁸ DACA allowed undocumented immigrants who had previously faced barriers to homeownership because of their status to accumulate long-term wealth and security in reliance on the government’s representations and DACA’s promulgation. The government has abruptly stripped these individuals of their most invaluable investments without having considered their reliance interests.

C. Promises of “Expedited Citizenship” for DACA Enrollees Serving Vital Military Interests

DACA enrollees have also relied on a military program established in 2008 that provides the promise of “expedited citizenship” opportunities in exchange for service vital to the national interest. The Military Accessions Vital to the National Interest (MAVNI) program offers fast-tracked citizenship review for enrollees, “whose skills are considered to be vital to the national interest,” such as “physicians, nurses, and certain experts in language with associated cultural backgrounds.”¹⁹

The Defense Department’s MAVNI materials entice recruits with the “opportunity of early citizenship” to “recognize their contribution and sacrifice.”

¹⁸ U.S. Census Bureau, Quarterly Residential Vacancies And Homeownership, Fourth Quarter 2017 (Jan. 30, 2018 10:00 AM), <https://www.census.gov/housing/hvs/files/currenthvspress.pdf>.

¹⁹ See Dep’t of Def., Military Accessions Vital to National Interest (MAVNI) Recruitment Pilot Program, <https://www.defense.gov/news/MAVNI-Fact-Sheet.pdf>.

Id. at 2. According to a Defense Department MAVNI fact sheet, “[t]he Law ensures” that such contribution and sacrifice be recognized. *Id.* In testimony to Congress, the Defense Department made clear the benefit from service in the MAVNI program: “This program recruits legal non-citizens with critical foreign language and cultural skills, as well as licensed healthcare professionals, *and as an additional incentive*, they receive expedited U.S. citizenship processing in return for their service.”²⁰

Beginning in 2014, the Defense Department granted DACA enrollees eligibility to apply for the MAVNI program.²¹ The Defense Department estimates that up to 900 DACA recipients are either serving or have signed contracts to serve through MAVNI.²²

DACA enlistees in the MAVNI program have been left in limbo by the government’s decision to rescind DACA, not knowing whether they will be permitted to carry out their service or be deported, let alone receive early

²⁰ Statement of Nancy E. Weaver, Department of Defense Senior Language Authority, Before the House Armed Services Committee Subcommittee on Oversight and Investigations, June 29, 2010, <http://prhome.defense.gov/Portals/52/Documents/RFM/Readiness/DLNSEO/docs/Weaver%20Testimony%20062910.pdf> (emphasis added).

²¹ See MAVNI Fact Sheet, *supra* n. 18.

²² Alex Horton, *The military looked to ‘dreamers’ to use their vital skills. Now the U.S. might deport them.* (Sept. 7, 2017), <https://www.washingtonpost.com/news/checkpoint/wp/2017/09/07/the-military-looked-to-dreamers-to-use-their-vital-skills-now-the-u-s-might-deport-them/>.

citizenship review as promised. Moreover, DACA enlistees in MAVNI have provided extensive information to the federal government through the enrollment process and are in constant contact with the military (or are already in service), making them particularly vulnerable to deportation proceedings. Worse still, deportation could result in enrollees facing the most serious of consequences, including “harsh treatment or interrogation” by foreign adversaries.²³

The administrative record in this case is totally devoid of any consideration whatsoever of the military’s promises and the reliance thereon by DACA enrollees in the MAVNI program. Termination of the DACA program without consideration of these interests was arbitrary and capricious under the law recited above.

CONCLUSION

For the foregoing reasons, *amici* urge this Court to affirm the district court’s preliminary injunction order.


²³ *See id.*

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APPENDIX

List of *Amici Curiae* with Individual Statements of Interest

<p>The Lawyers' Committee for Civil Rights Under Law</p>	<p>The Lawyers' Committee for Civil Rights Under Law (the "Lawyers' Committee") is a nonpartisan, nonprofit civil rights organization formed in 1963, at the request of President John F. Kennedy, to enlist the American bar's leadership and resources in defending the civil rights of racial and ethnic minorities. Through the Lawyers' Committee, attorneys have represented thousands of clients in civil rights cases across the country challenging discrimination in virtually all aspects of American life. In furtherance of its commitment to challenge policies that discriminate against immigrants and refugees, the Lawyers' Committee has filed numerous lawsuits and submitted amicus briefs in cases involving issues similar to this one.</p>
<p>Anti- Defamation League</p>	<p>The Anti-Defamation League ("ADL") was founded in 1913 "to stop the defamation of the Jewish people, and to secure justice and fair treatment to all." Today, ADL is one of the world's leading civil rights organizations. As an organization founded by immigrants and sworn to protect the interests of religious and ethnic minorities, ADL believes that when our nation's values are threatened, we are duty-bound to return to the founding principles that propelled this nation of immigrants. As such, ADL has advocated for fair and just immigration policies for more than a century, including a pathway to citizenship for young undocumented immigrants brought to this country as children. As part of its commitment to create an ever-more just and inclusive society, ADL has filed amicus briefs in numerous cases challenging policies that undermine the ideal of America as a nation of immigrants. At stake in this case are the lives of 800,000 undocumented immigrants who were brought to the United States as children, their families, communities, and all of us who depend on a future that embraces diversity as a strength.</p>

<p>The Lawyers' Committee for Civil Rights and Economic Justice</p>	<p>The Lawyers' Committee for Civil Rights and Economic Justice (“LCCR”) fosters equal opportunity and fights discrimination on behalf of people of color and immigrants. LCCR engages in creative and courageous legal action, education, and advocacy, in collaboration with law firms and community partners. As part of this work, LCCR has long sought to further immigrant justice through impact litigation. Immigrant entrepreneurs also are assisted through LCCR’s Economic Justice Project. LCCR thus has a strong interest in ensuring that DACA recipients and DACA-eligible immigrants are not unlawfully deprived of economic, educational, and other opportunities through rescission of the DACA program.</p>
<p>The Leadership Conference on Civil and Human Rights</p>	<p>The Leadership Conference on Civil and Human Rights (“The Leadership Conference”) is the nation’s oldest, largest, and most diverse coalition of more than 200 national organizations committed to the protection of civil and human rights in the United States. The Leadership Conference was founded in 1950 by leaders of the civil rights and labor rights movements, grounded in the belief that civil rights would be won not by one group alone but through coalition. The Leadership Conference works to build an America that is inclusive and as good as its ideals by promoting laws and policies that promote the civil and human rights for all individuals in the United States.</p>
<p>Mississippi Center for Justice</p>	<p>The Mississippi Center for Justice, the Deep South Affiliate of the Lawyers Committee for Civil Rights Under Law, is a 501(c)(3) nonprofit public interest law organization founded in 2003 in Jackson, Mississippi and committed to advancing racial and economic justice. Supported and staffed by attorneys and other professionals, the Center develops and pursues strategies to combat discrimination and poverty statewide. One of amicus’ original areas of interest involved predatory loan practices directed at migrant poultry workers, and MCJ has remained concerned about the plight of Mississippi’s growing immigrant population for the last decade, particularly in the areas of access to healthcare, education, housing and fair lending. MCJ has signed on as Amicus for several cases challenging President Trump’s travel ban, and it has the same concerns regarding the termination of DACA.</p>

<p>Southern Poverty Law Center</p>	<p>Southern Poverty Law Center (“SPLC”) has provided pro bono civil-rights representation to low-income persons in the Southeast since 1971. SPLC has litigated numerous cases to enforce the civil rights of immigrants and refugees to ensure that they are treated with dignity and fairness. SPLC also monitors and exposes extremists who attack or malign groups of people based on their immutable characteristics. SPLC is dedicated to reducing prejudice and improving intergroup relations. SPLC has a strong interest in opposing discriminatory governmental action that undermines the promise of civil rights for all.</p>
<p>The Washington Lawyers’ Committee for Civil Rights and Urban Affairs</p>	<p>The Washington Lawyers’ Committee for Civil Rights and Urban Affairs is a non-profit civil rights organization established to eradicate discrimination and poverty by enforcing civil rights laws through litigation and public policy advocacy. In furtherance of this mission, the Washington Lawyers’ Committee represents some of the most vulnerable populations in Washington, D.C., Maryland and Virginia, including immigrants and non-English speakers, who are often discriminated against on the basis of their national origin, and who are often unaware of their legal rights and protections.</p>

CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it uses a proportionally spaced typeface (Times New Roman) in 14-point. It was prepared using Microsoft Word. It complies with the type-volume limits of Fed. R. App. P. 29(a)(5) because it contains 5040 words, which is less than half of the 13,000 words allowed for principal briefs under Fed. R. App. P. 32(a)(7)(B)(i).

Dated: March 20, 2018

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STATEMENT OF RELATED CASES

This proceeding is a consolidated case arising out of (a) the government's appeal of the district court's preliminary injunction, *Regents of the University of California v. United States of America, et al.*, Case Nos. 18-15068, 18-15069, 18-15070, 18-15071, 18-15072; (b) plaintiffs' petitions for interlocutory review of elements of the district court's ruling on the government's motion to dismiss, Case Nos. 18-15128, 18-15133, 18-15134; and (c) the government's petition for interlocutory review of different elements of that order, Case No. 18-80004. This Court also previously heard a petition for writ of mandamus against the district court order regarding the administrative record in this case. *In re United States of America, et al.*, Case No. 17-72917.

CERTIFICATE OF SERVICE

U.S. Court of Appeals Docket Numbers: 18-15068, 18-15069, 18-15070, 18-15071, 18-15072, 18-15128, 18-15133, 18-15134

I hereby certify that on March 20, 2018, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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