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November 19, 2021

Via Federal eRulemaking Portal

The Honorable Alejandro Mayorkas
Secretary of the U.S. Department of Homeland Security
Washington, D.C. 20528

Director Ur M. Jaddou
U.S. Citizenship and Immigration Services
Department of Homeland Security
Attn: USCIS-2021-0006
5900 Capital Gateway Drive
Camp Springs, MD 20746

RE: Notice of Proposed Rulemaking: “Deferred Action for Childhood Arrivals”
[86 Fed. Reg. 53736, RIN: 1615-AC64; CIS No. 2691-21; DHS Docket No. USCIS-
2021-0006]

Dear Secretary Mayorkas and Director Jaddou:

We, the Attorneys General of California, New Jersey, New York, Colorado, Connecticut, Delaware, the District of Columbia, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington, and Wisconsin (“the States”) submit these comments to protect and promote the interests of our States—including our interests in the well-being of our residents, the vitality of our local businesses and communities, and the effectiveness of our regulatory systems and educational institutions. Because Deferred Action for Childhood Arrivals (“DACA”) benefits the States and our interests, we write in support of the Department of Homeland Security’s proposed rule continuing and fortifying DACA, *see* Deferred Action for Childhood Arrivals, 86 Fed. Reg. 53736, CIS No. 2691-21; DHS Docket No. USCIS-2021-0006 (published Sept. 28, 2021) (to be codified at 8 CFR Parts 106, 236, and 274a) (“Proposed Rule”).

Since 2012, DACA has protected from removal and extended work authorization to approximately 825,000 individuals—including 514,000 individuals in the States—who grew up in this country; most of these individuals have known no home other than the United States. DACA has allowed recipients to live, study, and work in the States (and throughout the country)

as contributors and leaders in their communities. DACA grantees attend public and private universities and are employed by companies, nonprofit organizations, and governmental agencies and institutions, all of which benefit from their skills and productivity. DACA grantees also provide financial support to their families (many of which include United States citizens and/or lawful permanent residents), help to grow the economy, and contribute significantly to State and local revenues and tax bases. DACA enables grantees to open bank accounts, obtain credit cards, start businesses, purchase homes and cars, and participate in other aspects of daily life that are otherwise often unavailable to undocumented immigrants. DACA has enabled hundreds of thousands of grantees “to enroll in colleges and universities, complete their education, start businesses that help improve our economy, and give back to our communities as teachers, medical professionals, engineers, and entrepreneurs—all on the books.”¹ These positive effects have rippled throughout the States’ economies. As the Department of Homeland Security (“DHS”) previously recognized, our Nation “continue[s] to benefit . . . from the contributions of those young people who have come forward and want nothing more than to contribute to our country and our shared future.”²

These contributions were especially highlighted during the last year and a half, as the deadly coronavirus pandemic swept through the Nation and thousands of DACA recipients were on the frontlines as essential workers. As of April 2020, “an estimated 27,000 health care workers and support staff depend on DACA for their authorization to work in the United States. Among those 27,000 are nurses, dentists, pharmacists, physician assistants, home health aides, technicians, and others. The number also includes nearly 200 medical students, medical residents, and physicians who depend on DACA for their eligibility to practice medicine. If those trainees and physicians retain their work eligibility, each will care for an average of between 1,533 and 4,600 patients a year. Together, over the course of their careers, they will touch the lives of 1.7 to 5.1 million U.S. patients.”³ DACA also advances public health and societal interests in another way: by giving its recipients the opportunity to procure health insurance. Access to health insurance improves public health.⁴ Lack of access to health insurance reduces the likelihood of individuals receiving testing or treatment for COVID-19, materially impeding the States’ efforts to stem the disease.⁵

¹ See Letter from DHS Sec’y Jeh Charles Johnson to U.S. Representative Judy Chu (Dec. 30, 2016), <https://chu.house.gov/sites/chu.house.gov/files/documents/DHS.Signed%20Response%20to%20Chu%2012.30.16.pdf>.

² *Id.*

³ Br. for Ass’n of Am. Med. Colls. as Amicus Curiae Supporting Resp’ts at 2-3, *Dep’t of Homeland Sec. v. Regents of Univ. of Cal.*, 140 S. Ct. 1891 (2020) (Nos. 18-587, 18-588, and 18-589).

⁴ See *The Importance of Health Coverage*, Am. Hospital Ass’n (Oct. 2019), https://www.aha.org/system/files/media/file/2019/10/report-importance-of-health-coverage_1.pdf.

⁵ Decls. of Eden Almasude, Bitta Mostofi, Pedro Moreno, Aaron Coskey Voit, Rachel Pryor, and Dana Kennedy, *New York v. Dep’t of Homeland Sec.*, 140 S. Ct. 599 (2020) (No. 19A785).

The States have benefitted from the presence of DACA recipients in their capacities as employers and educators, and DACA has contributed to building the States' economies; increased the skills and talents of the States' workforces; provided the States with thousands of essential workers, including healthcare workers; and increased the diversity of the States' postsecondary education institutions. These benefits would only increase if DACA-eligible individuals were once again able to make initial DACA requests. And these benefits are not offset by any significant costs to the States stemming from DACA. For the reasons stated herein, the States urge DHS to issue a final rule that continues and fortifies DACA.

I. BACKGROUND

A. The Core Components of DACA are Legally and Historically Well-Established.

The Proposed Rule and its continuation of DACA are grounded in legal and historical precedent. Deferred action is a well-established form of prosecutorial discretion under which the federal government forbears from taking removal action against an individual for a designated period of time. Indeed, as Justice Antonin Scalia recognized in a 1999 opinion, the Executive has a long history of “engaging in a regular practice . . . of exercising [deferred action] for humanitarian reasons or simply for its own convenience.”⁶ Consistency and administrative convenience have often led the government to exercise its discretion programmatically. Since at least 1956, across several presidential administrations, the government has implemented numerous forms of “discretionary relief,” including parole, temporary protected status, deferred enforced departure, extended voluntary departure, and deferred action. Prior to DACA there had been 17 deferred action policies, none of which were judicially challenged.⁷

Deferred action has been offered to many different classes of people to respond to an array of global events and domestic policy objectives, and often, as with DACA, out of concern for immigrants' age and their long-term presence in, and ties to, the United States.⁸ For example, President Reagan's “Family Fairness” program shares several similarities with DACA. It provided deferred action for children under 18 whose parents were eligible for legal status under the Immigration Reform and Control Act of 1986.⁹ Three years later, the Family Fairness program was expanded under President George H.W. Bush. That executive program made 1.5 million people eligible for relief out of a total undocumented population of 3.5 million.¹⁰ Just like DACA grantees, Family Fairness grantees were allowed to apply for employment

⁶ *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483-84 (1999).

⁷ See Pls.' Mem. in Supp. of Mot. for Provisional Relief, *Regents of Univ. of Cal. v. U.S. Dep't of Homeland Sec.*, 279 F. Supp. 3d 1011 (N.D. Cal. 2018) (No. 17-05211).

⁸ See, e.g., Memorandum from Andorra Bruno et al., Congressional Research Service, to Multiple Congressional Requestors (July 13, 2012), at 5, 8, <https://www.ilw.com/immigrationdaily/news/2012,0720-crs.pdf>.

⁹ *Id.* at 9-10.

¹⁰ *Id.*

authorization. Eventually, Congress acted to provide a permanent solution for many of these individuals.¹¹

During a period of deferred action, longstanding federal regulations allow recipients to obtain work authorization upon demonstrating economic necessity.¹² In addition, recipients do not accrue time for “unlawful presence” for purposes of the immigration law’s bars on re-entry.¹³ These benefits—including receiving a social security card, as well as being able to seek gainful employment and obtain health insurance—allow recipients to legally integrate themselves into society during the pendency of their deferred action. DACA was built upon these historically and legally long-established components: deferred action, employment authorization, and non-accrual of unlawful presence.

B. Establishment and Impact of DACA.

Consistent with legal precedent and this country’s long history of deferring immigration enforcement for humanitarian and other reasons, DHS established DACA in 2012. On June 15, 2012, then-Secretary of Homeland Security Janet Napolitano issued a memorandum establishing DACA (the “2012 DACA Memorandum”).¹⁴ Under DACA, “certain young people who were brought to this country as children and know only this country as home” could request deferred action for a period of two years, subject to renewal.¹⁵ DACA grantees also were eligible for work authorizations so that they could work legally in the United States during the deferred action period, pursuant to long-standing federal regulation.¹⁶

The 2012 DACA Memorandum provided that requestors could be considered for an exercise of prosecutorial discretion only if they: a) came to the United States before the age of sixteen; b) continuously resided in the United States for at least five years preceding June 15, 2012, and were present in the United States on that date; c) were enrolled in school on the date of their request, had graduated from high school, had obtained a general education development certificate, or were an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; d) had not been convicted of a felony offense, a significant misdemeanor offense,

¹¹ See Immigration Act of 1990, S. 358, 101st Cong. § 301.

¹² See 8 C.F.R. § 274a.12(c)(14).

¹³ See 8 U.S.C. § 1182(a)(9)(B)–(C); 8 C.F.R. § 1.3(a)(4)(vi); see also 42 C.F.R. § 417.422(h) (permitting enrollment in HMOs and competitive medical plans by lawfully present individuals).

¹⁴ Memorandum from Janet Napolitano, Sec’y of Homeland Sec., to David V. Aguilar, Acting Comm’r, U.S. Customs & Border Prot., et al., *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>.

¹⁵ *Id.* at 1-2.

¹⁶ See *id.*; 8 C.F.R. § 274a.12(c)(14) (providing that a non-citizen “who has been granted deferred action” may obtain work authorization upon demonstrating economic necessity).

or multiple misdemeanor offenses, and did not otherwise pose a threat to national security or public safety; and e) were not over the age of 30 on June 15, 2012.

United States Citizenship and Immigration Services (“USCIS”) described DACA as follows: “Deferred action is a discretionary determination to defer a removal action of an individual as an act of prosecutorial discretion. For purposes of future inadmissibility based upon unlawful presence, an individual whose case has been deferred is not considered to be unlawfully present during the period in which deferred action is in effect. An individual who has received deferred action is authorized by DHS to be present in the United States and is therefore considered by DHS to be lawfully present during the period deferred action is in effect. However, deferred action *does not* confer lawful *status* upon an individual, nor does it excuse any previous or subsequent periods of unlawful presence.”¹⁷

Through DACA, DHS exercised discretion to grant deferred action, on a case-by-case basis and after review of an extensive request and criminal background check, to select individuals—specifically, individuals who arrived in the United States as children, grew up here, and were actively engaged in higher education, employment, or military service. By postponing removal proceedings, granting employment authorization, and preventing the accrual of unlawful presence for eligible individuals, DACA allowed approximately 825,000 individuals to legally work, pursue education, and participate in their communities without constant fear of removal, at great benefit to the States’ treasuries and institutions. According to a 2020 estimate, DACA recipients in the States pay \$2.1 billion in State and local taxes annually.¹⁸ As a result, the States have adjusted their regulatory schemes to account for DACA recipients. For example, the Board of Regents in New York permanently adopted regulations to allow DACA grantees to apply for teacher certification and professional licenses and the Illinois General Assembly has passed laws allowing DACA grantees to receive law licenses and prohibiting the denial of teacher and other professional licenses based on citizenship or immigration status.¹⁹

¹⁷ See U.S. Citizenship and Immigr. Servs., *Frequently Asked Questions*, Q 1 under *What is Deferred Action for Childhood Arrivals?*, <https://www.uscis.gov/humanitarian/consideration-of-deferred-action-for-childhood-arrivals-daca/frequently-asked-questions> (last updated Aug. 31, 2021) (emphasis added).

¹⁸ See Nicole Frchal Svajlenka & Philip E. Wolgin, *What We Know About the Demographic and Economic Impacts of DACA Recipients: Spring 2020 Edition*, Ctr. for Am. Progress (Apr. 6, 2020), <https://www.americanprogress.org/issues/immigration/news/2020/04/06/482676/know-demographic-economic-impacts-daca-recipients-spring-2020-edition/>.

¹⁹ See New York State Bd. of Regents, *Board of Regents Permanently Adopts Regulations to Allow DACA Recipients to Apply for Teacher Certification and Professional Licenses* (May 17, 2016), <http://www.nysed.gov/news/2016/board-regents-permanently-adopts-regulations-allow-daca-recipients-apply-teacher>; 705 Ill. Comp. Stat. 205/2(a), (b); 20 Ill. Comp. Stat. 2105/2105-140; 105 Ill. Comp. Stat. 5/21B-15(f).

In addition, DACA has contributed positively to important sovereign and quasi-sovereign interests of the States, including the States' interest in promoting family integrity, ensuring education equity, and protecting their residents from discrimination.

C. Litigation Involving DACA.

The 2012 DACA Memorandum remained operational until September 5, 2017, when DHS and the U.S. Department of Justice announced the rescission of that memorandum and thereby the termination of DACA. The rescission memorandum stated that DHS would no longer accept new requests and that DACA would wind down for existing recipients over the course of two years. Several groups of plaintiffs, including many of the States, challenged the rescission of DACA as violating the Administrative Procedure Act (“APA”) and the U.S. Constitution.²⁰ Preliminary injunctions against the rescission were issued in the Northern District of California and the Eastern District of New York. The district court for the District of Columbia granted partial summary judgment for the plaintiffs in that case, finding that the rescission was inadequately explained. In November 2018, the Ninth Circuit affirmed the injunction entered by the California district court. The Supreme Court then granted certiorari in the Ninth Circuit case, and granted certiorari before judgment to review the decisions of the New York district court and the District of Columbia district court.

On June 18, 2020, the Supreme Court held that DHS's 2017 rescission of DACA was arbitrary and capricious under the APA because it did not consider certain alternatives to the termination and did not account for the reliance interests of DACA grantees, their families, their employers, and state and local governments.²¹

On July 28, 2020, then-Acting Secretary of Homeland Security Chad Wolf issued a memorandum directing DHS to make interim changes to DACA while Wolf considered whether to fully rescind DACA (the “2020 DACA Memorandum”).²² That memorandum ordered DHS to reject all new initial DACA requests, to change the renewal period for current beneficiaries from two years to one year, and to reject all advance parole applications absent exceptional circumstances.²³ On November 14, 2020, the district court in the Eastern District of New York found that Wolf's appointment violated the Homeland Security Act, and therefore the 2020

²⁰ See *Regents of Univ. of Cal. v. U.S. Dep't of Homeland Sec.*, 279 F. Supp. 3d 1011, 1027-28, 1048 (N.D. Cal. 2018); *Batalla Vidal v. Nielsen*, 279 F. Supp. 3d 401, 407, 437 (E.D.N.Y. 2018); *Nat'l Ass'n for the Advancement of Colored People v. Trump*, 298 F. Supp. 3d 209, 215-16 (D.D.C. 2018).

²¹ See *Dep't of Homeland Sec. v. Regents of Univ. of California*, 140 S.Ct. 1891, 1912-15 (2020).

²² Mem. from Chad F. Wolf, Acting Sec'y of Homeland Sec., to Mark Morgan, Senior Official Performing the Duties of Comm'r of U.S. Customs & Border Prot., et al., *Reconsideration of the June 15, 2012 Memorandum Entitled “Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children”* (July 28, 2020),

https://www.dhs.gov/sites/default/files/publications/20_0728_s1_daca-reconsideration-memo.pdf.

²³ *Id.* at 7-8.

DACA Memorandum was not legally promulgated.²⁴ On December 4, 2020, that court ordered DHS to return DACA to the terms of the 2012 DACA Memorandum and begin accepting initial DACA requests.²⁵

In response to the nationwide injunctions preventing the federal government from rescinding the 2012 DACA Memorandum, on May 1, 2018, Texas and seven other states challenged the legality of DACA. New Jersey and a number of individual DACA recipients intervened as defendants to protect their interests in DACA. In August 2018, the district court in the Southern District of Texas denied the *Texas* plaintiffs' motion for a preliminary injunction, noting that preliminarily enjoining DACA during the pendency of the *Texas* suit would harm New Jersey and other states and cities—who “could lose residents whom they consider to be valuable members of their communities or employees who are integral to various schools, municipalities, and industries”—as well as depriving individual DACA recipients of the right to work and exposing them to a risk of removal.²⁶ On July 16, 2021, the court concluded that the 2012 DACA Memorandum violated the APA's notice and comment requirements and conflicted with certain provisions of the Immigration and Nationality Act.²⁷ The court vacated the 2012 DACA Memorandum and prohibited the federal government from granting DACA to first-time requestors, but stayed its order as to current DACA recipients and those seeking renewal. That decision is on appeal at the Fifth Circuit.²⁸

The undersigned States incorporate by reference their arguments from the above litigations regarding the legality and importance of DACA.

D. The States Support the Proposed Rule.

On September 28, 2021, DHS published the Proposed Rule regarding DACA. The Proposed Rule attempts to address the issues raised in the litigations discussed above while preserving the benefits of DACA that grantees, their communities, and the States have come to rely on. The Proposed Rule codifies a definition of deferred action consistent with the longstanding legal and historical practice detailed above, continues DACA with the same eligibility criteria as the 2012 DACA Memorandum, and codifies procedures for restrictions on the use of information provided by DACA grantees. In addition, the Proposed Rule allows eligible DACA requestors to apply for and receive employment authorization through a new DACA-specific regulation that includes the economic necessity requirement applicable to deferred action recipients generally. Finally, the Proposed Rule reaffirms that it is USCIS policy to grant lawful *presence*, but not lawful status, to grantees. These components of the Proposed

²⁴ *Batalla Vidal v. Wolf*, 501 F. Supp. 3d 117, 132 (E.D.N.Y. 2020).

²⁵ Order at 4, *Batalla Vidal v. Wolf*, 501 F. Supp. 3d 117 (E.D.N.Y. 2020) (Nos. 16-4756 and 17-5228).

²⁶ *Texas v. United States*, 328 F. Supp. 3d 662, 741 (S.D. Tex. 2018).

²⁷ *Texas v. United States*, 2021 WL 3025857 (S.D. Tex. July 16, 2021), appeal filed (5th Cir. Sept. 16, 2021).

²⁸ *Id.*

Rule allow DACA grantees to safely attend school, seek employment, open bank accounts, and fully participate in, and contribute to, their communities.

The Proposed Rule also considers alternative formulations of the rule that do not provide a pathway to employment authorization or lawful presence. These alternative formulations would treat DACA recipients less favorably than any other deferred action recipient and would not allow DACA recipients to reach their full potential, thus also depriving the States of the full measure of the benefits and contributions that DACA grantees have to offer.

While congressional action is needed to permanently address the treatment of individuals who arrived in the United States as children, have grown up and gone to school here, and know only the United States as home, the Proposed Rule is an important step to address the pressing needs of grantees, their families, their communities, and their States pending such legislation. Because the Proposed Rule is based on well-established historical precedents, is lawful, seeks to preserve DACA and its concomitant benefits, and imposes no substantiated harms, the States support the Proposed Rule.

II. THE STATES DERIVE ECONOMIC, EDUCATIONAL, HEALTH, AND SAFETY BENEFITS FROM DACA AND HAVE RELIED ON THE EXISTENCE OF DACA

The States derive significant benefits from DACA. DACA recipients have lent their skills and talents to the States' workforces, including as state employees, leading to economic growth and increased state and local tax revenues. The States' higher education systems have benefitted from the presence of DACA recipients, both as students and employees. DACA recipients are public health workers in the States, whose contributions are all the more vital in the face of the global COVID-19 pandemic. And DACA has improved public health and safety by allowing DACA recipients access to employer-sponsored health insurance and by removing a barrier to the reporting of crime. In addition, the States have created laws, regulations, and programs in reliance on the existence of DACA. Were DACA to be ended, not only would the States lose these important benefits, but their reliance interests would also be harmed.

A. The States Benefit Economically from DACA and from DACA Recipients.

The States derive significant economic benefit from the existence of DACA, and would continue to benefit should the Proposed Rule become effective. The States together are home to approximately 358,520 current DACA recipients, representing approximately 61 percent of the total population of DACA recipients.²⁹ In addition, the States are home to an estimated 798,000

²⁹ Dep't of Homeland Sec., U.S. Citizenship & Immigr. Servs., *Count of Active DACA Recipients By Month of Current DACA Expiration As of June 30, 2021* (June 30, 2021), <https://www.uscis.gov/sites/default/files/document/data/Active%20DACA%20Recipients%20%E2%80%93%20June%2030%2C%202021.pdf>; Dep't of Homeland Sec., U.S. Citizenship & Immigr. Servs., *Number of Form I 821D, Consideration of Deferred Action for Childhood Arrivals - Requests by Intake and Case Status, by Fiscal Year* (Aug. 15, 2012–Jun. 30, 2021),

potentially DACA-eligible individuals, representing approximately 60 percent of the total population of such individuals.³⁰ The State of California, by itself, is home to 168,800 DACA recipients and 366,600 potentially DACA-eligible individuals, more by far than any other state in the Nation.³¹

These DACA recipients are vital members of their communities, and their talents enrich the States in myriad ways. DACA recipients are workers—in many cases, essential workers—who have made significant contributions to the States’ economies.³² According to a 2020 survey of current DACA recipients, 91.7 percent of respondents reported that they were employed or in school.³³ An estimated 222,000 DACA recipients are employed in the States.³⁴ Obtaining DACA status has not only allowed recipients to work legally, but also to improve their earnings prospects and working conditions. The 2020 survey further revealed that after receiving DACA, 63.2 percent of respondents reported moving to a new job with better pay; 59 percent reported moving to a job with health insurance or other benefits; and 52.8 percent reported moving to a job with better working conditions.³⁵ Because DACA provides an incentive for recipients to further their education, DACA has led to greater productivity, more opportunities for high-skilled work, and greater lifetime earnings for DACA recipients—as discussed in further detail below.³⁶ DACA recipients are also entrepreneurs, starting businesses at a rate that exceeds that

https://www.uscis.gov/sites/default/files/document/data/DACA_performancedata_fy2021_qtr3.pdf (“DACA Q3 Report”).

³⁰ Migration Pol’y Inst., *Deferred Action for Childhood Arrivals (DACA) Data Tools* (as of June 2021), <https://www.migrationpolicy.org/programs/data-hub/deferred-action-childhood-arrivals-daca-profiles>.

³¹ California is home to approximately 29 percent of active DACA recipients. *Id.* As of June 30, 2021, USCIS had accepted 283,051 initial DACA requests from California, and, of those, had approved 240,668. DACA Q3 Report, *supra* note 29.

³² New Am. Econ., *Overcoming the Odds: The Contributions of DACA-Eligible Immigrants and TPS Holders to the U.S. Economy* (June 3, 2019), <https://research.newamericaneconomy.org/report/overcoming-the-odds-the-contributions-of-daca-eligible-immigrants-and-tps-holders-to-the-u-s-economy/>.

³³ Tom K. Wong, et al., *New DHS Policy Threatens to Undo Gains Made by DACA Recipients*, Ctr. for Am. Progress (Oct. 5, 2020), <https://www.americanprogress.org/issues/immigration/news/2020/10/05/491017/new-dhs-policy-threatens-undo-gains-made-daca-recipients/>. In 2017, prior to the attempted rescission of DACA and the COVID-19 pandemic, 93.3 percent of DACA recipients were actively employed. New Am. Econ., *supra* note 32.

³⁴ Migration Pol’y Inst., *MPI National and State Estimates of Employed Workers among Current Deferred Action for Childhood Arrivals (DACA) Recipients* (as of March 31, 2020), <https://www.migrationpolicy.org/sites/default/files/datahub/DACA-MPIEstimates-Employment-March2020.xlsx>.

³⁵ Wong, *supra* note 33.

³⁶ Ike Brannon & M. Kevin McGee, *The Costs of Closing DACA Initial Enrollments*, REGULATION, Winter 2020-2021, at 32, <https://www.cato.org/sites/cato.org/files/2020-12/cpr-v43n4-6.pdf>; Democrats of the Comm. on Small Bus., *Economic Impact of DACA: Spotlight on Small Business*,

of the U.S.-born population.³⁷ In fact, 8 percent of DACA recipients over the age of 25 have started small businesses, many of which create jobs for the States' residents.³⁸

Because of these contributions to the States' economies, ensuring that individuals eligible for DACA are able to continue to apply for and access deferred action and employment authorization is vital to the States. The potential effects of any limitation to DACA are substantial; it is estimated that failing to allow initial requests from individuals who have become eligible for DACA but have not yet been able to apply (which is the current situation for thousands of individuals due to the Southern District of Texas injunction) would result in a \$26.1 billion loss in income for these individuals over 20 years.³⁹ A full rollback of DACA would result in a loss of an estimated \$280 billion in national economic growth over the course of a decade.⁴⁰

The increased earning power of DACA recipients is economically beneficial to the States. DACA recipients' estimated spending power is approximately \$24 billion.⁴¹ Because the service sector represents approximately 80 percent of the U.S. GDP and 86 percent of total employment, and the service sector relies on consumer spending, this purchasing power is critical to the overall economic health of the States.⁴² Due to the economic stability and ability to make long-term plans provided by DACA's grant of deferred action and employment authorization, approximately a quarter of DACA recipients aged 25 and older have been able to purchase homes, creating jobs and boosting spending in the States.⁴³ In California alone, DACA recipients own nearly 11,000 homes and make yearly mortgage payments totaling \$184.4 million.⁴⁴ Home purchases, in turn, create jobs and new spending in local economies, a positive feedback loop that amplifies the benefits to the States.⁴⁵

at 4 (Feb. 2018),

<https://smallbusiness.house.gov/sites/democrats.smallbusiness.house.gov/files/documents/economic%20impact%20of%20daca%20report.pdf>.

³⁷ New Am. Econ., *supra* note 32.

³⁸ Democrats of the Comm. on Small Bus., *supra* note 36, at 7.

³⁹ Brannon, *Costs of Closing*, *supra* note 36.

⁴⁰ Ike Brannon & Logan Albright, *The Economic and Fiscal Impact of Repealing DACA*, Cato Inst. (Jan. 18, 2017), <https://www.cato.org/blog/economic-fiscal-impact-repealing-daca>.

⁴¹ *Id.*

⁴² Patricia Buckley & Rumki Majumdar, *The Services Powerhouse: Increasingly Vital to World Economic Growth*, Deloitte Insights, at 3-4 (July 2018),

<https://www2.deloitte.com/us/en/insights/economy/issues-by-the-numbers/trade-in-services-economy-growth.html>; New Am. Econ., *supra* note 32.

⁴³ Wong, *supra* note 33.

⁴⁴ Nicole Prchal Svajlenka, *What We Know About DACA Recipients, by State*, Ctr. for Am. Progress (Sept. 12, 2019),

<https://www.americanprogress.org/issues/immigration/news/2019/09/12/474422/know-daca-recipients-state/>.

⁴⁵ Nat'l Assoc. of Realtors, *Jobs Impact of an Existing Home Purchase*, <https://www.nar.realtor/jobs-impact-of-an-existing-home-purchase>; see also Lisa Sturtevant, *Home in*

DACA recipients' economic contributions include federal, state, and local taxes.⁴⁶ DACA recipients and their households pay an estimated \$5.6 billion in federal taxes and an estimated \$3.1 billion in state and local taxes annually.⁴⁷ These tax contributions are significant to the States, which receive an estimated \$2.1 billion in state and local tax revenue from DACA recipients each year.⁴⁸ An increase in the number of DACA recipients would lead to concomitant increases in overall tax revenue. Permitting new initial DACA requests would lead to estimated increases in federal tax revenue of \$10.19 billion and state and local tax revenue of approximately \$2.5 billion over the next 20 years.⁴⁹ By contrast, ending DACA, or closing it to new requestors, would result in significant losses in tax revenue for the States and would negatively impact the States' residents. If DACA is not reopened to new requestors, California alone will lose more than \$260 million in state and local tax revenue over the next decade and nearly \$1 billion over the next 20 years.⁵⁰ Ending DACA would lead to an estimated loss of \$33.1 billion in Social Security contributions and \$7.7 billion in Medicare contributions—funds that are critical to ensuring the financial health of these programs, upon which residents of the States depend.⁵¹

Given these significant economic contributions by DACA recipients, it is not surprising that hundreds of employers—large and small—have lent public support to DACA. For example, in July 2020, more than 140 employers and trade associations from a variety of American industries signed on to a letter under the banner of an organization called Coalition for the American Dream, calling on then-President Trump to “leave DACA in place and refrain from taking any additional administrative actions that would negatively impact the DACA program,” which they stated would both “disrupt the economic recovery of our companies and communities, [and] jeopardize the health and safety of these vulnerable individuals.”⁵² These employers have benefitted from the skills and talents of DACA recipients, and have made investments in the hiring and training of these workers; prospectively, businesses in the States would benefit from being able to access the skills and talents of individuals who may be eligible for DACA but who have been unable to file initial requests. The need for access to these

America: Immigrants and Housing Demand, Urban Land Institute (2017), <https://americas.uli.org/immigrants-housing-demand-report/> (finding that immigration is a critical driver of a strong housing market).

⁴⁶ Brannon, *Costs of Closing*, *supra* note 36, at 33-34; New Am. Econ., *supra* note 32.

⁴⁷ Svajlenka, *What We Know by State*, *supra* note 44.

⁴⁸ Svajlenka & Wolgin, *supra* note 18.

⁴⁹ Brannon, *Costs of Closing*, *supra* note 36, at 33-34.

⁵⁰ *Id.*

⁵¹ Jose Magaña-Salgado, *Draining the Trust Funds: Ending DACA and the Consequences to Social Security and Medicare*, Immigrant Legal Resource Ctr., at 1 (Oct. 2017), https://www.ilrc.org/sites/default/files/resources/2017-09-28_draining_the_trust_funds.pdf.

⁵² Letter from Coalition for the American Dream to President Donald J. Trump (July 11, 2020), https://www.coalitionfortheamericandream.us/wp-content/uploads/2020/07/C4AD-Letter-July-2020_721Update.pdf.

potential employees is particularly pressing given the current shortage of labor in the States and across the Nation.⁵³

The States, too, have an interest in ensuring that they have access to the best possible employees—including current and prospective DACA recipients—as well as fully realizing their investments in the employees they recruit, hire, and train. A number of the States currently employ DACA recipients. For example, as of July 2020, California employed at least 288 DACA recipients across 26 agencies and departments, many of whom were hired because of their specialized skills and qualifications.⁵⁴ These state employees help further California’s priorities to ensure, *inter alia*: public safety at the Department of Corrections and Rehabilitation and the Department of Forestry and Fire Protection; public health at the Departments of Health Care Services, State Hospitals, and Developmental Services; infrastructure at the Departments of Transportation and Water Resources; and support for veterans at the Department of Veterans’ Affairs.⁵⁵ Other States likewise employ DACA recipients in a variety of roles.⁵⁶ School districts also employ DACA recipients as teachers, with approximately 15,000 DACA recipients working as teachers around the country.⁵⁷

Were DACA to be eliminated, the States would both lose the critical skills of these employees and incur costs associated with terminating their employment—as well as the additional costs of recruiting, hiring, and training their replacements. States would also lose their considerable investments in these employees. For example, New Jersey’s Department of Children and Families, Division of Child Protection and Permanency employs DACA grantees as part of a prestigious program for students graduating with undergraduate social work degrees, in which participants receive a full scholarship for their senior year of college in exchange for participating in a year-long internship and a two-year contract to work as full-time social workers upon graduation.⁵⁸ If DACA were terminated, the time, money and resources that New Jersey

⁵³ Caroline Valetkevich, *No end in sight for labor shortages as U.S. Companies fight high costs*, Reuters (Oct. 26, 2021), <https://www.reuters.com/business/no-end-sight-labor-shortages-us-companies-fight-high-costs-2021-10-26/>. The need for skilled workers is particularly pressing; as discussed above, DACA provides an incentive for recipients to obtain education and improve their skills and could help to fill this shortfall. Anneken Tappe, *Nearly half of American companies say they are short of skilled workers*, CNN (Oct. 25, 2021), <https://www.cnn.com/2021/10/25/economy/business-conditions-worker-shortage/index.html>.

⁵⁴ Second Decl. of Julie Lee (Oct. 19, 2020).

⁵⁵ *Id.*

⁵⁶ See Decls. of Rossana Rosado, Enola Kaplan, Rich Jones, and Sarah Conly, *New York v. Trump*, 291 F. Supp. 3d 260 (E.D.N.Y. 2018) (No. 17-05228) (discussing DACA recipients employed by the States of New York and Washington).

⁵⁷ Nicole Prechal Svajlenka, *A Demographic Profile of DACA Recipients on the Frontlines of the Coronavirus Response*, Ctr. for Am. Progress (Apr. 6, 2020), <https://www.americanprogress.org/issues/immigration/news/2020/04/06/482708/demographic-profile-daca-recipients-frontlines-coronavirus-response>.

⁵⁸ Decl. and Deposition of Rose Arackathara, *Texas v. United States*, 328 F. Supp. 3d 662, 741 (S.D. Tex. 2018) (No. 18-68).

has invested in participants who are DACA grantees would be lost. State and local government agencies also would be hampered in their efforts to recruit strong candidates for open positions. This is particularly problematic for the States given the overall shortage in well-qualified workers due to the COVID-19 pandemic. For example, in California, the current vacancy rate for state employment is 16.4 percent, a 2.1 percent increase from the 2019 pre-pandemic vacancy rate. In the current employment environment, DACA recipients are an important part of the labor pool which the States cannot afford to lose.

B. DACA and DACA Recipients are Important to the States' Higher Education Institutions.

DACA recipients have invested enormous effort and financial resources in building their lives and careers in this country, including pursuing educational opportunities at public and private postsecondary institutions within the States. DACA has allowed these students to participate fully as members of academic and campus communities in ways that likely would not be possible otherwise.⁵⁹ These students have enriched the educational experiences of all students and faculty by contributing their diverse life experiences and perspectives, while building their upward career mobility. They contribute to research expertise, the exchange of ideas, and the cultural vitality that is central to these institutions' academic missions.⁶⁰

Thousands of DACA recipients attend the States' public universities and colleges. In California, the University of California system has over 4,000 undocumented students, including approximately 1,700 DACA recipients.⁶¹ It is estimated that between 75,000 and 156,000 undocumented students attend California's community colleges, and 10,063 attend the California State Universities; a significant number of these students are DACA recipients. Up to 37,000

⁵⁹ See Decls. of Lars Peter Knoth Madsen, Mary R. Jeka, Eric. R. Jensen, and Bidy Martin, *New York v. Trump*, 291 F. Supp. 3d 260 (E.D.N.Y. 2018) (No. 17-05228); see also Decls. of Viridiana Chabolla Mendoza, Angela Chuan-Ru Chen, Miriam Feldblum, Miriam Gonzalez Avila, Jirayut Latthivongskorn, Dr. Thomas Parham, Norma Ramirez, Mitchell Santos Toledo, Joel Sati, Evelyn Valdez-Ward, and Tom K. Wong, *Regents of Univ. of Cal. v. U.S. Dep't of Homeland Sec.*, 279 F. Supp. 3d 1011 (N.D. Cal. 2017) (No. 17-05211).

⁶⁰ Decls. of Philip A. Ballinger, Lucila Loera, Deirdre Heatwole, Rick Miranda, Brenda J. Allen, Dr. Dimitrios Pachis, Susan Herbst, Melissa L. Rakes, Karen M. Hardwick, Donald Straney, Dr. Larry H. Dietz, Ellen Kennedy, Alfred Mathewson and Sergio Pareja, Lacy Karpilo, Alice Cuprill-Comas, Charlene Alexander, Christina Ridder, Marjorie Trueblood-Gamble, Dennis Galvan, Ryan James Hagemann, Frank Sánchez, Robyn Linde, Tom Sullivan, and W. Taylor Reveley III, *New York v. Trump*, 291 F. Supp. 3d 260 (E.D.N.Y. 2018) (No. 17-05228); see also Decls. of Kathryn Abrams, David R. Anderson, Ron Anderson, Dr. Clarence Braddock III, Miriam Feldblum, Ralph J. Hexter, Dr. Robin Holmes-Sullivan, Bradford S. Jones, Tuajuanda C. Jordan, Christopher Kutz, Calvin Morrill, Janet Napolitano, Eloy Ortiz Oakley, Dr. Thomas Parham, John P. Pelissero and Margaret Faut Callahan, Paul Pribbenow, Brian Rosenberg, Kathleen Treseder, Geoffrey H. Young, and Brad Wells, *Regents of Univ. of Cal. v. U.S. Dep't of Homeland Sec.*, 279 F. Supp. 3d 1011 (N.D. Cal. 2017) (No. 17-05211).

⁶¹ Plaintiff State of California's First Amended Complaint at ¶ 26, *Regents of Univ. of Cal. v. U.S. Dep't of Homeland Sec.*, (N.D. Cal. Nov. 2, 2020) (No. 17-05235).

students in the California Community Colleges system are individuals who may be DACA-eligible. In New York, an estimated 19,084 DACA recipients are in post-secondary schools, and 13,645 are currently pursuing a bachelor's degree or higher.⁶² As of 2020, there were an estimated 9,000 DACA recipients or DACA-eligible individuals enrolled in post-secondary education in New Jersey.⁶³ Thousands of DACA recipients are enrolled in public universities and colleges in other States as well.⁶⁴

⁶² Decl. of Tom K. Wong, *New York v. Trump*, 291 F. Supp. 3d 260 (E.D.N.Y. 2018) (No. 17-05228).

⁶³ Presidents' Alliance on Higher Education and Immigration and New American Economy, *Undocumented Students in Higher Education* (April 2020), <https://www.presidentsimmigrationalliance.org/wp-content/uploads/2020/04/2020-04-16-NAE-PA-Report-Undocumented-Students-in-Higher-Education.pdf>.

⁶⁴ The University of Connecticut has an estimated 140 undergraduate students who are undocumented, DACA-eligible, and/or DACA recipients; 17 graduate students who are undocumented, DACA-eligible and/or DACA recipients; and 6 DACA recipients who are employed by the University. At Southern Connecticut State University, there are an estimated 80 undocumented students enrolled at the University, with an estimated 928 course credit hours between them for Fall 2021. An estimated 167 students at Eastern Connecticut State University are DACA-eligible and/or DACA recipients. And between the 12 Connecticut Community Colleges, there are an estimated total of 739 students who are potential DACA recipients, with an estimated 6227 course credit hours between them for Fall 2021.

The Massachusetts State Universities, which comprise one of three segments of the public college and university system in Massachusetts, have over 70 students known to be DACA recipients.

Hawaii has a combined estimate of 37 undocumented students, including DACA recipients, enrolled in various state colleges and universities for Spring and Fall 2021.

Pennsylvania, as of 2017, had approximately 1,176 DACA recipients enrolled in post-secondary education.

In Washington State, at Washington's flagship universities and the satellite campuses of at least one system, there are up to 882 undocumented students, including DACA recipients, enrolled.

In Illinois, at Eastern Illinois University, there are a combined 46 undocumented students (including DACA recipients) for Spring, Summer, and Fall 2021.

In Nevada, the College of Southern Nevada has awarded 22 Alternative Scholarships for undocumented students, including DACA recipients, in the 2021-2022 school year. Nevada State College is currently providing scholarships to 115 undocumented students. Truckee Meadows Community College has an estimated 42 DACA recipient students; Western Nevada College has 4 students who have self-identified as DACA recipients; and the University of Nevada, Reno has an estimated 150 to 200 students who are DACA recipients.

As a land-grant research university, the University of Minnesota's five campuses are home to over 67,000 students and 26,000 employees. DACA recipients can be found at all levels of the institution, including undergraduate students studying family social science and public health, PhD candidates researching Chemistry and Engineering, and University staff working in Student Services and Communications.

The States' public universities and colleges rely on students who are DACA recipients for significant tuition revenue.⁶⁵ Undocumented students enrolled in the California Community Colleges in 2019-2020 had accumulated between 3.4 million and 7 million attempted credits and between 485,000 and 1.4 million noncredit course enrollments. Further, in 2019-2020, the California Community Colleges provided undocumented students between 300,000 and 635,000 noncredit enrollments, which are designed for students working toward credentials that support students attaining or maintaining DACA eligibility. Undocumented students and those with DACA have earned 10,253 course credits and noncredit course enrollments at Eastern Connecticut State University.

The States and their public universities and colleges have made significant investments in financial aid and other programs to support students with DACA, consistent with their interests in ensuring diversity and nondiscrimination and in developing a well-educated workforce that can contribute to the States' overall economies. Many States have chosen to extend benefits to DACA recipients, including eligibility for resident tuition rates and state grants, aid, and scholarships. For example, DACA recipients who are residents of Connecticut, Delaware, the District of Columbia, Hawaii, Illinois, Nevada, New Mexico, Massachusetts, Oregon, Virginia and Washington, among others, receive in-state tuition at the States' public universities and/or are eligible for other financial assistance.⁶⁶ Maryland and New Jersey have passed laws allowing undocumented students who arrived in the United States as children, or "Dreamers," to receive in-state tuition breaks at the States' public institutions.⁶⁷ Dreamers who attended a New York high school and meet certain other criteria have access to state-administered student grants and scholarships to support higher education costs.⁶⁸ In 2019 academic year, approximately 500 Dreamers were enrolled in Maryland public colleges at in-state tuition rates.⁶⁹ Minnesota's

⁶⁵ See Decls. of Paul Pribbenow, Brian Rosenberg, and Brad Wells, *Regents of Univ. of Cal. v. U.S. Dept. of Homeland Sec.*, 279 F. Supp. 3d 1011 (N.D. Cal. 2017) (No. 17-05211); see also Decls. of Lucy Loera, Rick Miranda, Susan Herbst, Lacy Karpilo, Alice Cuprill-Comas, Charlene Alexander, Christina Ridder, Marjorie Trueblood-Gamble, Ryan James Hagemann, *New York v. Trump*, 291 F. Supp. 3d 260 (E.D.N.Y. 2018) (No. 17-05228).

⁶⁶ See Decls. of Brenda J. Allen, Rick Miranda, Susan Herbst, Deirdre Heatwole, Massachusetts State University Presidents, Dr. Dimitrios Pachis, Melissa L. Rakes, Karen M. Hardwick, Chaouki Abdallah, W. Taylor Reveley III, Allyson Suria, Donald Straney, Christina Ridder, and Milton Eduardo Ramirez Cuevas and Ex. 7 (Mass. Dep't of Higher Educ. Mem., *Residency Status for Tuition Classification Purposes – Deferred Action for Childhood Arrivals*, Nov. 21, 2012), *New York v. Trump*, 291 F. Supp. 3d 260 (E.D.N.Y. 2018) (No. 17-05228); Conn. Gen. Stat. § 10a-29; 110 Ill. Comp. Stat. 305/7e-5(a); Or. Rev. Stat. § 352.287.

⁶⁷ 2011 Md. Laws, Ch. 191; N.J. Stat. Ann. 18A:62-4.4.

⁶⁸ N.Y. Educ. Law §§ 661(5)(a), 355(2)(h)(10), 6206(7)(e).

⁶⁹ Ovetta Wiggins & Erin Cox, *Maryland Lawmakers Move Closer to Expanding the State's Dream Act for Undocumented Immigrants*, Wash. Post (Apr. 4, 2019), https://www.washingtonpost.com/local/md-politics/maryland-lawmakers-move-closer-to-expanding-the-states-dream-act-for-undocumented-immigrants/2019/04/04/47a40a74-56ea-11e9-8ef3-fbd41a2ce4d5_story.html.

Dream Act has made DACA recipients eligible for state grants, aid, and scholarships,⁷⁰ and the State has invested in the education of individuals receiving DACA by extending student child care grants, teacher candidate grants, and student loan programs to DACA recipients.⁷¹ California also allows Dreamers who meet certain criteria to receive in-state tuition, as well as state-funded financial aid.⁷² And at Central Connecticut State University, 31 students currently enrolled have received aid under the Aid Application for CT Undocumented Students program.

Employment authorization issued after a grant of deferred action under DACA has allowed many DACA recipients to pursue higher education at the States' public universities and colleges and improved educational outcomes for these individuals. The ability to work legally in the United States has enabled DACA recipients to pay tuition and other education-related expenses and has given them assurance that they can put their talents and education to use in the United States job market after graduation, benefitting the States and the Nation as a whole.⁷³ The ability to work legally has also allowed DACA recipients to enroll in programs at public universities and colleges that require employment authorization or entail licensing requirements to complete elements of the programs, such as paid internships, clinical placement, residency training, and programs that require significant lab or field work.⁷⁴

The States' public universities and colleges, as well as their primary and secondary schools, have also relied on DACA to employ DACA recipients in a variety of roles, including as professors, teachers, teaching assistants, administrators, research assistants, post-doctoral researchers, and healthcare providers.⁷⁵ DACA recipients often possess valuable skills as employees, including fluency in foreign languages. The California State University system

⁷⁰ See Minn. Stat. § 135A.043; Ch. 136A.

⁷¹ Minn. Stat. §§ 136A.125, .1275, .15-.1795.

⁷² Cal. Educ. Code §§ 66021.7, 68130.5(a).

⁷³ See Decls. of Lars Peter Knoth Madsen, Richard M. Locke, Bidy Martin, and Sonya Stephens, *New York v. Trump*, 291 F. Supp. 3d 260 (E.D.N.Y. 2018) (No. 17-05228); see also Decls. of Roberto Gonzales, Miriam Gonzalez Avila, Dr. Robin Holmes-Sullivan, Tuajuanda C. Jordan, Christopher Kutz, Janet Napolitano, Eloy Ortiz Oakley, Dr. Thomas Parham, John P. Pelissero and Margaret Faut Callahan, Jeanne Roe Smith, Mitchell Santos Toledo, Joel Sati, Thomas S. Sayles, and Evelyn Valdez-Ward, *Regents of Univ. of Cal. v. U.S. Dep't of Homeland Sec.*, 279 F. Supp. 3d 1011 (N.D. Cal. 2017) (No. 17-05211).

⁷⁴ See Decls. of James B. Milliken, Deirdre Heatwole, Melissa L. Rakes, Karen M. Hardwick, Tom Sullivan, Susan Herbst, Brenda J. Allen, Rick Miranda, Ellen Kennedy, and Cesar Andrade, *New York v. Trump*, 291 F. Supp. 3d 260 (E.D.N.Y. 2018) (No. 17-05228); see also Decls. of Dr. Clarence Braddock III, Miriam Feldblum, Roberto Gonzales, Jirayut Latthivongskorn, Dr. Catherine Lucey, Norma Ramirez, Lisseth Rojas-Flores, Dr. John D. Stobo, and Geoffrey H. Young, *Regents of Univ. of Cal. v. U.S. Dep't of Homeland Sec.*, 279 F. Supp. 3d 1011 (N.D. Cal. 2017) (No. 17-05211).

⁷⁵ See Decls. of Jorge A. Aguilar, Viridiana Carrizales, Nick Melvoin, Janet Napolitano, and Brad Wells, *Regents of Univ. of Cal. v. U.S. Dep't of Homeland Sec.*, 279 F. Supp. 3d 1011 (N.D. Cal. 2017) (No. 17-05211). A Washington State university has employed approximately 12 employees who are DACA recipients.

estimates that it currently employs 500 DACA recipients, and the California Community Colleges system estimates that it employs between 2,000 and 4,400 employees who obtained work authorizations through DACA.

C. DACA has Public Safety and Public Health Benefits for the States.

In addition to these important economic and educational benefits flowing to the States, DACA has improved health and safety for the States' residents. The States have a strong interest in ensuring public safety within their borders and in protecting the rights of their residents by maintaining an effective law enforcement system. Like many local law enforcement agencies in the States and throughout the Nation, the States have concluded that public safety is best protected when all members of the community—regardless of immigration status—are encouraged to report crimes and participate in policing efforts without fear of immigration consequences.⁷⁶ As described in further detail below, the interests of public safety are best served by promoting trust between law enforcement and residents, including members of the immigrant community.⁷⁷ By deferring the possibility of immediate removal, DACA ameliorates a significant constraint on immigrants approaching law enforcement when they have been victimized or have witnessed crimes. Ending the protections of DACA would make the States' communities less safe by re-imposing this constraint on hundreds of thousands of individuals. In fact, a 2020 survey of DACA recipients demonstrated that DACA recipients would be 30.6 percent less likely to report a crime committed against them, and nearly 50 percent less likely to report wage theft by an employer, without the protection of DACA.⁷⁸

⁷⁶ See, e.g., Br. Amici Curiae of Current and Former Law Enforcement Leaders in Supp. of Pls.' Mot. for Summ. J. and/or Prelim. Inj. at 2-3, *Trustees of Princeton Univ. v. United States*, 298 F. Supp. 3d 209 (D.D.C. 2018) (No. 17-02325).

⁷⁷ See *infra*, Section III.A.

⁷⁸ Tom K. Wong et al., *Amid Changes to the DACA Program and COVID-19, DACA Recipients are Fired Up and Civically Engaged*, United We Dream (Oct. 2, 2020), <https://unitedwedream.org/2020/10/amid-changes-to-the-daca-program-and-covid-19-daca-recipients-are-fired-up-and-civically-engaged/>. A reluctance to report crimes, including wage theft, among immigrants is particularly concerning. Studies have shown that the immigrant community is especially vulnerable to crime, including wage theft. See, e.g., Stefano Comino et al., *Silence of the Innocents: Undocumented Immigrants' Underreporting of Crime and Their Victimization*, 39 J. OF POL'Y ANALYSIS & MGMT. 1214, 1216 (2020), available at <https://onlinelibrary.wiley.com/doi/full/10.1002/pam.22221>; Rebecca B. Galemba, "They Steal Our Work": Wage Theft and the Criminalization of Immigrant Day Laborers in Colorado, USA, 27 EUROPEAN J. ON CRIM. POL'Y & RES. 91, 92 (2020), available at https://www.researchgate.net/publication/348161860_They_Steal_Our_Work_Wage_Theft_and_the_Criminalization_of_Immigrant_Day_Laborers_in_Colorado_USA/link/609a934f299bflad8d936f24/download; Alexandra Ricks, *Latinx immigrant crime victims fear seeking help*, The Urban Institute (Sept. 25, 2017), <https://www.urban.org/urban-wire/latinx-immigrant-crime-victims-fear-seeking-help>; Associated Press, *Wage Theft Hits Immigrants—Hard*, U.S. News & World Report (Oct. 14, 2021), <https://www.usnews.com/news/politics/articles/2021-10-14/wage-theft-hits-immigrants-hard>. Importantly, DACA recipients themselves do not present an elevated risk to public safety in the States; to the contrary. A 2017 study by the Cato Institute found that the potentially DACA-eligible population is

DACA has also contributed to the States' public health. This contribution has been particularly critical during the global COVID-19 pandemic. Across the country, an estimated 202,500 DACA recipients have been employed as "essential critical infrastructure workers" as defined by DHS, including 127,600 in the States.⁷⁹ An estimated 29,000 DACA recipients are currently employed as healthcare workers,⁸⁰ and DACA recipients currently studying in the States' post-secondary institutions are preparing to increase those numbers.⁸¹ Retaining qualified healthcare workers and ensuring a robust pipeline into the healthcare professions is critical to the States, which are facing both acute current shortages in healthcare workers due to the COVID-19 pandemic and longer-term shortfalls in the pipeline to meet the healthcare needs of the States' residents.⁸² States' efforts to expand the healthcare worker pipeline have included DACA recipients. For example, in Illinois, DACA grantees have participated in a loan program, through the Illinois Finance Authority, in which students receive interest-free loans so long as they

less likely to be incarcerated than the native-born population of the same age and education level. Michelangelo Landgrave & Alex Nowrasteh, *The DREAMer Incarceration Rate*, Cato Institute (Aug. 30, 2017), <https://www.cato.org/publications/immigration-research-policy-brief/dreamer-incarceration-rate>.

⁷⁹ Svajlenka, *A Demographic Profile*, *supra* note 57. The "essential critical infrastructure workers" categories included in this estimate are workers in healthcare, education, and food-related industries and occupations. *Id.*

⁸⁰ *Id.* Other sources estimate that as many as 57,465 DACA-eligible individuals are employed in health care. Higher Ed Immigration Portal, *Immigrants Fill Critical Skill and Career Needs*, <https://www.higheredimmigrationportal.org/national/national-data/>.

⁸¹ Julio C. Ramos et al., *The Impact of Deferred Action for Childhood Arrivals (DACA) Medical Students—A Scarce Resource to US Health Care*, 109 AM. J. PUB. HEALTH 429 (2019), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6366484/>.

⁸² See, e.g., U.S. Dep't of Lab., Bureau of Lab. Statistics, *The Employment Situation—September 2021*, at 4 (Oct. 8, 2021), <https://www.bls.gov/news.release/pdf/empsit.pdf> (national decline in healthcare workforce of 524,000 between February 2020 and September 2021); Laura Romero & Jay Bhatt, *Pandemic has made shortage of health care workers even worse, say experts*, ABC News (May 21, 2021), <https://abcnews.go.com/US/pandemic-made-shortage-health-care-workers-worse-experts/story?id=77811713> (long-term nursing shortage exacerbated by COVID-19 pandemic); Joanne Spetz et al., *California's Primary Care Workforce: Forecasted Supply, Demand, and Pipeline of Trainees, 2016-2030*, Healthforce Center at UCSF, at 4 (Aug. 15, 2017), https://healthforce.ucsf.edu/sites/healthforce.ucsf.edu/files/publication-pdf/UCSF%20PCP%20Workforce%20Study_Rpt%20%20-%20Final_081517.pdf (research finding that California could face "a substantial shortage of primary care clinicians" over the next decade); Mem. from Christopher J. Howard, Deputy Dir. of Cal. Office of Statewide Planning and Dev., to Cal. Healthcare Workforce Pol'y Comm'n, *Registered Nurse Shortage Areas Report* (June 25, 2020), <https://hcai.ca.gov/wp-content/uploads/2020/10/Registered-Nurse-Shortage-Areas-Report.pdf> (58 of 72 California areas have a shortage of registered nurses, including 19 areas with high-severity shortages); Griffin Stockford, *Maine plans to address health care worker shortage via initiatives aimed at recruitment, advancement*, NewsCenter Maine (Oct. 25, 2021), <https://www.newscentermaine.com/article/news/health/maine-plans-to-address-shortage-of-health-care-workers-via-initiatives-aimed-at-recruitment-advancement-maine-governor-janet-mills-jobs-recovery-plan/97-c62ab66c-3e05-485d-8ea0-7f3f367ac78a> (shortage of healthcare workers in Maine, exacerbated by COVID-19, has led to scaling back of services in hospitals).

commit to four years of work in an underserved Illinois community following their graduation.⁸³ Were DACA to be terminated, Illinois would lose the benefit of these investments in training and education.⁸⁴ In light of these shortages and the urgent public health needs occasioned by the COVID-19 pandemic, it is vitally important to the States not only that healthcare workers who are DACA recipients retain their employment authorization and deferred action protections, but also that potentially DACA-eligible individuals who are or will be in the pipeline to fill these critical roles have access to these protections and opportunities.

Beyond increasing the supply of healthcare workers in the States, DACA has improved, and would continue to improve, public health outcomes and reduce healthcare costs in the States. Studies have repeatedly shown that DACA improves mental health not only among DACA recipients, but also among their children.⁸⁵ Conversely, should DACA-eligible individuals be barred from filing DACA requests, or should DACA recipients lose DACA's protections, they would face an increased risk of experiencing mental health conditions like depression, anxiety, and suicide attempts as they face an uncertain future, which in turn will impact the States' healthcare systems.⁸⁶

DACA also improves grantees' access to care, lowering the States' public health costs. Work authorization allows DACA grantees to access employer-sponsored health benefits. In fact, an estimated 59 percent of DACA recipients obtained a job with health insurance or other benefits after the granting of their DACA request.⁸⁷ Their access to employer-sponsored health benefits results in decreased healthcare costs for the States, and the States' costs would further decrease were DACA-eligible individuals again permitted to make initial DACA requests. Without these benefits, however, more of the States' residents would be likely to forgo needed health care, including preventive care, which will create more costly health problems in the long run.⁸⁸ It also would cause more people to rely on state-funded and/or state-administered public

⁸³ Joint Decl. of John P. Pelissero & Margaret Faut Callahan, *New York v. Trump*, 291 F. Supp. 3d 260 (E.D.N.Y. 2018) (No. 17-05228).

⁸⁴ *Id.* at ¶ 8.

⁸⁵ Atheendar S. Venkataramani et al., *Health Consequences of the US Deferred Action for Childhood Arrivals (DACA) Immigration Programme: A Quasi-Experimental Study*, 2 LANCET PUB. HEALTH 175, 178-79 (2017), available at <https://pubmed.ncbi.nlm.nih.gov/29253449/>; Jens Hainmueller et al., *Protecting Unauthorized Immigrant Mothers Improves Their Children's Mental Health*, *Science*, at 6 (Sept. 8, 2017), <https://www.science.org/doi/abs/10.1126/science.aan5893>.

⁸⁶ See Br. of Amici Curiae New Jersey Hospital Ass'n and Individual Health Care Professionals at 6-8, *Texas v. United States*, 328 F. Supp. 3d 662, 741 (S.D. Tex. 2018) (No. 18-68); cf. Decl. of Thomas G. Ambrosino & Mary M. Borque, *New York v. Trump*, 291 F. Supp. 3d 260 (E.D.N.Y. 2018) (No. 17-05228) (DACA-eligible students will experience higher levels of anxiety about their futures and their families' futures, and will require additional counseling and support from guidance counselors and other school personnel).

⁸⁷ Tom K. Wong, et al., *Results from National DACA Study*, at 2, <https://cdn.americanprogress.org/content/uploads/2020/10/02131657/DACA-Survey-20201.pdf>.

⁸⁸ Jennifer Tolbert et al., *Key Facts About the Uninsured Population*, Kaiser Family Foundation (Nov. 6, 2020), <https://www.kff.org/uninsured/issue-brief/key-facts-about-the-uninsured-population/>.

health care and other benefits and thus impose additional costs on the States.⁸⁹ Moreover, were DACA recipients to lose employment authorization, their dependents, including their U.S. citizen children, could also lose access to employer-sponsored health insurance, limiting access to care and increasing costs to the States. The increased costs to the States may be substantial. It is estimated that if DACA had been rescinded as the prior Administration attempted, public health care costs to New Jersey in 2018 alone would have risen by \$7.6 million, including \$2.5 million in emergency healthcare costs and \$5.1 million in uncompensated community-based care costs.⁹⁰ New York and Illinois would have incurred an estimated \$18.5 million and \$20.2 million, respectively, in additional public health costs had DACA's rescission not been reversed.⁹¹

Recognizing the importance of providing healthcare access to individuals residing in the States, a number of the States have structured healthcare access programs in reliance on the existence of DACA, and would incur costs to amend these programs should DACA be terminated or otherwise limited. For example, New York currently funds Medicaid coverage for low-income undocumented immigrants who have received deferred action.⁹² Undocumented immigrants in New York who are not DACA grantees may only qualify for Medicaid coverage of care and services necessary to treat an emergency condition. Terminating or limiting DACA would require New York to either seek a State legislative change to maintain current Medicaid

⁸⁹ *Id.* A number of States provide state-funded and/or state-administered public healthcare services which DACA recipients would likely access should they lose employment authorization and, concomitantly, access to employer-sponsored health insurance, increasing costs to the States. *See, e.g.,* Pls.' First Am. Comp., Exh. 78, *New York v. Trump*, 291 F. Supp. 3d 260 (E.D.N.Y. 2018) (No. 17-05228) (Colorado provides emergency Medicaid regardless of immigration status, including labor and delivery); Decl. of Stephen M. Groff, *New York v. Trump*, *supra* (Delaware provides limited emergency and labor/delivery services to residents whose immigration status otherwise keeps them from accessing healthcare benefits and services); Decl. of Jesse M. Caplan, *New York v. Trump*, *supra* (DACA grantees in Massachusetts may become eligible for MassHealth, a state-funded health insurance program, or otherwise access state-funded medical services).

⁹⁰ Decl. of Leighton Ku at ¶ 57, *Texas v. United States*, 328 F. Supp. 3d 662, 741 (S.D. Tex. 2018) (No. 18-68). In New Jersey, undocumented immigrants who do not have private health insurance can receive state-funded health care through the Medical Emergency Payment Program for Aliens, which pays for medical care (including labor and delivery services and ambulance services) for immigrants who experience a medical emergency and who meet the requirements for Medicaid eligibility except for immigration status. *See* N.J. Admin. Code § 10:49-5.4. New Jersey also runs an "innovative Charity Care-Hospital Care Payment Assistance Program that helps subsidize uncompensated care costs due to inpatient and outpatient hospital care for uninsured patients." *Id.* Some of the \$5.1 million in increased uncompensated care costs would be borne by New Jersey through this program. *Id.*

⁹¹ *Id.*

⁹² Off. of Health Insurance Program, *Children's Health Insurance Program Reauthorization Act (CHIPRA) Expanded Coverage for Certain Qualified and PRUCOL Aliens* (May 7, 2013), https://www.health.ny.gov/health_care/medicaid/publications/gis/13ma011.htm.

coverage for formerly DACA-eligible immigrants, with state dollars only, or limit Medicaid coverage to treatment of emergency conditions for some or all of these individuals.⁹³

D. The States Have Adopted Laws, Regulations, and Programs in Reliance on DACA.

Because of the numerous benefits that DACA generates for the States, and because DACA grantees are important members of the States' communities, the States have enacted laws, promulgated regulations, and established programs in response to, and in reliance on, DACA. For example, California has long supported DACA requestors by providing fee payment assistance for DACA requests; as of October 2020, California had invested approximately \$14.8 million in providing such assistance. The California Department of Social Services is also authorized to provide, and has provided, millions of dollars in grants to organization to assist with DACA initial and renewal requests.⁹⁴

DACA recipients have been integrated into many States' professional licensing schemes. Illinois has enacted laws to enable DACA grantees to participate in the economy professionally. These include providing that no person in Illinois shall be prohibited from receiving a law license solely because he or she is not a citizen and explicitly allowing DACA grantees to apply for a license to practice law.⁹⁵ Similarly, the Board of Regents in New York has permanently adopted regulations to allow DACA grantees to apply for teacher certification and professional licenses, including nursing licenses.⁹⁶

As described in further detail above, other States have extended in-state tuition and eligibility for financial assistance to DACA recipients or potentially DACA-eligible individuals in post-secondary institutions, in recognition of the important benefits the States glean from having an educated workforce and from having DACA recipients as members of their school communities.⁹⁷

⁹³ Decl. of Rossana Rosado, *New York v. Trump*, 291 F. Supp. 3d 260 (E.D.N.Y. 2018) (No. 17-05228).

⁹⁴ Cal. Welf. & Inst. Code § 13303. In 2020, the California Department of Social Services offered approximately \$42.7 million in funding to nonprofits providing immigration services, including services to DACA requestors. Cal. Dep't of Soc. Servs., *Immigration Services Funding Award Announcement Fiscal Year 2019-20* (Feb. 14, 2020), <https://www.cdss.ca.gov/Portals/9/Immigration/FY%202019-20-ISF-Funding-Award-Announcement-2.14.20.pdf>.

⁹⁵ See 705 Ill. Comp. Stat. 205/2(a), (b); 20 Ill. Comp. Stat. 2105/2105-140; 105 Ill. Comp. Stat.5/21B-15(f).

⁹⁶ New York State Bd. of Regents, *supra* note 19.

⁹⁷ See, e.g., Conn. Gen. Stat. § 10a-29; Univ. of Haw. Bd. of Regents Pol'y 6.209; Md. Code Ann., Educ. § 15-106.8; Minn. Stat. § 135A.043; Or. Rev. Stat. § 352.287; Wash. Rev. Code §§ 28B.118.010(4)(a), 28B.15.012(2)(e).

The States, which have created these legal, regulatory, and policy frameworks in reliance on the existence of DACA, have a strong interest in preserving these frameworks and the benefits they secure to the States and in avoiding the costs attendant upon adjusting or revoking these frameworks should DACA be terminated.

III. DACA’S OPPONENTS ARE UNABLE TO SUBSTANTIATE ANY ALLEGED HARMS

Not only does DACA have positive benefits for recipients and states alike, but in the nine years in which DACA has existed, opponents have been unable to establish harms, let alone harms that would justify DACA’s termination. Opponents of DACA have repeatedly alleged that DACA increases states’ healthcare, education, and law enforcement costs, and that it distorts the labor market.⁹⁸ But these claims are unsupported by facts. Instead, nine years of experience have proven that DACA benefits law enforcement; reduces health care costs; does not impose additional educational burdens; and strengthens, rather than harms, the labor market.

A. DACA Does Not Increase States’ Healthcare, Law Enforcement, or Education Costs, and If Anything, Reduces Such Costs.

In litigation seeking to invalidate DACA, opponents of the policy have repeatedly failed to identify significant costs to state governments directly associated with DACA recipients. That failure should weigh heavily on the approach DHS chooses to adopt here.

First, contrary to opponents’ claims, DACA does not impose additional law enforcement costs, and instead benefits the work of law enforcement. In their ongoing lawsuit in *Texas v. United States*, the opponents of DACA have repeatedly failed to demonstrate a single law enforcement cost attributable to the policy; the record is devoid of evidence that DACA will interfere with any law enforcement prerogatives, and the district court did not cite any. To the contrary, the law enforcement community is heavily in agreement that DACA is a benefit, and myriad police chiefs, prosecutors, and law enforcement professionals have advocated for its continuation.⁹⁹

That makes sense: a significant contemporary challenge for law enforcement is how to work effectively in communities where mistrust is high, and where individuals are less likely to

⁹⁸ See Def.-Intervenors’ Opp’n to Pls.’ Mot. for Prelim. Inj. at 30, *Texas v. United States*, 328 F. Supp. 3d 662, 741 (S.D. Tex. 2018) (No. 18-68) (referring to “attendant changes in ‘healthcare, education, and law enforcement costs’”); Def.-Intervenors’ Br. in Support of their Mot. for Summ. J. and in Opp’n to Pls.’ Mot. for Summ. J. at 6, *Texas v. United States*, 2021 WL 3025857 (S.D. Tex. July 16, 2021).

⁹⁹ Georgetown Law, *Law Enforcement Leaders and Prosecutors Defend DACA* (Mar. 20, 2018), <https://www.law.georgetown.edu/news/law-enforcement-leaders-and-prosecutors-defend-daca/>.

report that they are witnesses to, or victims of, a crime.¹⁰⁰ That includes immigrant communities, in particular communities with undocumented immigrants who fear interactions with law enforcement will lead to their removal or to the removal of their loved ones.¹⁰¹ One recent study found that “in neighborhoods where 65 percent of residents are immigrants, there is only a 5 percent chance that a victim will report a violent crime, compared with a 48 percent chance in a neighborhood where only 10 percent of residents are born outside the United States.”¹⁰²

DACA helps to mitigate that dilemma. Multiple studies have indicated that DACA reduces fear of removal and, consequently, increases the willingness of recipients to interact with the police when they are victims of, or witnesses to, a crime. In one survey, 59 percent of DACA recipients confirmed that they would report crimes they would not previously have reported in the absence of DACA,¹⁰³ and other studies confirm the same.¹⁰⁴ By reducing the fear of law enforcement among recipients, DACA has allowed for increased cooperation between immigrant communities and law enforcement personnel, and has increased DACA recipients’ confidence in reporting crimes. It is not clear how precisely opponents believe DACA hinders law enforcement, but it *is* clear that any such alleged concerns are far outweighed by the real-world benefits of the policy.

Second, again contrary to opponents’ claims, there is little, if any, proof that DACA imposes significant healthcare costs on the states, let alone costs sufficient to overcome the strong benefits and healthcare cost savings of the policy. The opponents of DACA claim that because DACA mitigates the fear of removal, DACA recipients will remain in the country and use state healthcare resources. But for one, opponents’ claims rest on the false premise that DACA recipients will depart the United States if the policy ends. The evidence instead indicates that DACA recipients have overwhelmingly created full, permanent lives in the United States, and are especially *unlikely* to leave the country even if they lose DACA protections. Indeed, by definition, DACA recipients have not lived adult lives outside the United States, because they must have arrived in the United States in childhood and lived here continuously to be eligible.¹⁰⁵ Thousands of DACA recipients are enrolled in school in the United States or have graduated

¹⁰⁰ See, e.g., Br. of Amici Curiae Current and Former Prosecutors and Law Enforcement Leaders In Supp. Of Resp’ts at 6-13, *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891 (2020) (Nos. 18-587, 18-588, and 18-589).

¹⁰¹ *Id.*

¹⁰² *Id.* at 6 (citing Min Xie & Eric P. Baumer, *Neighborhood Immigrant Concentration and Violent Crime Reporting to the Police: A Multilevel Analysis of Data from the National Crime Victimization Survey*, 57 CRIMINOLOGY 237, 249 (2019), available at <https://perma.cc/QS5RK867>).

¹⁰³ See Br. for the States of Nevada, Michigan, Wisconsin, Governor Laura Kelly of Kansas, and Governor Steve Bullock of Montana as Amici Curiae In Supp. of Resp’ts at 17, *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891 (2020) (Nos. 18-587, 18-588, and 18-589).

¹⁰⁴ See Br. of Amici Curiae Current and Former Prosecutors, *supra* note 100, at 13-14.

¹⁰⁵ Deferred Action for Childhood Arrivals, 86 Fed. Reg. 53,739 (proposed Sept. 28, 2021).

from secondary school here.¹⁰⁶ About 1.5 million individuals in the United States live with at least one DACA recipient.¹⁰⁷ And over 254,000 children who are U.S. citizens have at least one DACA recipient parent.¹⁰⁸ Studies demonstrate that immigrants who are younger, who remain in the United States for longer periods of time, or who have family and economic ties to the United States—a description that fits DACA recipients perfectly—are less likely to migrate to their country of origin.¹⁰⁹ The claim that people with familial, educational, and work ties to the United States, most of whom have never called another country home, would voluntarily leave—let alone in numbers significant enough to have a material impact on state healthcare expenses—is unrealistic.¹¹⁰

For another, as discussed in detail above, DACA actually *reduces* state healthcare expenses, which DHS can and must take into account when evaluating the relevant costs and benefits to the states of DACA’s continuation. As discussed above, DACA saves states money by allowing DACA recipients to receive employer-sponsored health insurance; many recipients with health insurance have coverage through an employer-sponsored plan.¹¹¹ Still others purchase insurance directly from carriers.¹¹² Without DACA, those individuals would have to rely more on emergency services, as opposed to preventative services, in order to meet their

¹⁰⁶ Jie Zong et al., *A Profile of Current DACA Recipients by Education, Industry, and Occupation*, Migration Pol’y Inst., at 4 (Nov. 2017), <https://www.migrationpolicy.org/research/profile-current-daca-recipients-education-industry-and-occupation>.

¹⁰⁷ Am. Immigr. Council, *Deferred Action for Childhood Arrivals (DACA): An Overview*, at 2 (Sept. 2021), https://www.americanimmigrationcouncil.org/sites/default/files/research/deferred_action_for_childhood_arrivals_daca_an_overview_0.pdf.

¹⁰⁸ Svajlenka, *What We Know by State*, *supra* note 44.

¹⁰⁹ Patricia B. Reagan & Randall J. Olsen, *You Can Go Home Again: Evidence from Longitudinal Data*, 37 DEMOGRAPHY 339, 349 (2000), <https://read.dukeupress.edu/demography/article/37/3/339/170397/You-can-go-home-again-Evidence-from-longitudinal>; Jennifer Van Hook & Weiwei Zhang, *Who Stays? Who Goes? Selective Immigration Among the Foreign-Born*, POPULATION RES. AND POL’Y REV. 30(1), 1-24, 10–14 (2011), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3367327/>.

¹¹⁰ Moreover, as the rule proposal acknowledges, DHS is unlikely to take enforcement action against every noncitizen, and children entrants who pose no security threat would unquestionably not be prioritized for enforcement. Deferred Action for Childhood Arrivals, 86 Fed. Reg. 53,752 (proposed Sept. 28, 2021). Most DACA recipients, therefore, will also not be placed in removal proceedings by DHS. Instead, they will remain in the United States, but in a more precarious legal position than before. *See id.* at 53,802 (“[M]ost noncitizens who otherwise would be DACA recipients likely would remain in the country, but without the additional measure of security, employment authorization, and lawful presence that this proposed rule would provide.”).

¹¹¹ Jamie Lee Nicolas & Heather Koball, *Access to Health Insurance for DACA Recipients with Disabilities*, Nat’l Ctr. for Children in Poverty, at 2 (June 2021), https://www.nccp.org/wp-content/uploads/2021/07/DACA-Health-Insurance_7.6.21.pdf.

¹¹² Osea Giuntella & Jakub Lonsky, *The Effects of DACA on Health Insurance, Access to Care, and Health Outcomes*, IZA Inst. of Lab. Econ., at 3 (Apr. 2018), <https://ftp.iza.org/dp11469.pdf>.

healthcare needs, increasing the costs to both the states themselves and their healthcare systems.¹¹³ DACA also reduces healthcare costs because, as experts acknowledge, its positive population-level mental health consequences “rival those of any large-scale health or social policies in recent history.”¹¹⁴ DACA recipients report significantly fewer psychological problems and a net decrease in distress and worry, along with attendant health benefits.¹¹⁵ Positive health outcomes and improved mental health reduce, rather than increase, state healthcare costs. Given the strong unlikelihood that any large exodus of DACA recipients would occur even were DACA terminated, the need to reduce healthcare expenses by making recipients eligible for money-saving forms of insurance and by improving health outcomes becomes paramount. In that way, DACA ultimately benefits all states.

Third, DACA does not increase the states’ educational costs. It is settled law that states are required to educate children regardless of immigration status.¹¹⁶ DACA’s opponents point to this obligation as purported proof that DACA imposes some amount of additional education costs on states, again relying on the simplistic theory that DACA causes its recipients to stay in the country when they would otherwise leave. This reasoning is deeply flawed. As explained above, the population affected by DACA is especially unlikely to leave, and DACA-eligible secondary school students with established and deep ties in the United States and who have yet to graduate from high school would be particularly unlikely to emigrate in DACA’s absence.¹¹⁷ And importantly, *Plyler* requires that states educate students irrespective of their status—that is, every state has the same responsibility for educating DACA-eligible students regardless of whether the policy exists. Not surprisingly then, DACA’s opponents have repeatedly failed to identify any state education costs attributable to DACA.¹¹⁸

¹¹³ Shamsher Samra et al., *Undocumented Patients in the Emergency Department: Challenges and Opportunities*, 20 WEST J. EMERG. MED. 791, 792 (2019), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6754205/> (“[D]espite lower rates of healthcare utilization and expenditures compared to U.S. citizens, undocumented U.S. residents remain uniquely dependent on the ED for care.”).

¹¹⁴ Br. of Amici Curiae New Jersey Hospital Ass’n and Individual Health Care Professionals, *supra* note 86, at 4.

¹¹⁵ *Id.* at 6-8.

¹¹⁶ *Plyler v. Doe*, 457 U.S. 202 (1982).

¹¹⁷ Patricia B. Reagan & Randall J. Olsen, *supra* note 109, at 349; Jennifer Van Hook & Weiwei Zhang, *supra* note 109, at 10-14.

¹¹⁸ Decl. of Andy Craig at ¶¶ 7-8, *Texas v. United States*, 2021 WL 3025857 (S.D. Tex. July 16, 2021) (Alabama does not track students’ immigration status and cannot calculate “specific past or future costs”); Decl. of Robert Gregory Roberts at ¶ 3, *Texas v. United States*, *supra* (Arkansas “cannot determine the amount of state or federal funds spent on any student by immigration status”); Decl. of Brian L. Halstead at ¶ 4, *Texas v. United States*, *supra* (Nebraska “cannot calculate specific past or future costs spent on specific students” without additional information); Decl. of Molly M. Spearman at ¶ 4, *Texas v. United States*, *supra* (“South Carolina does not track immigration status for students enrolled in public schools”); Decl. of Leonardo R. Lopez at ¶ 4, *Texas v. United States*, *supra* (the Texas Education Agency “cannot calculate specific past or future costs spent on specific DACA-recipient students” without additional information); Decl. of Steven L. Paine at ¶¶ 4-5, *Texas v. United States*, *supra* (the

In fact, rather than imposing additional educational costs, DACA benefits state and local governments by eliminating a major source of challenges for undocumented students and those with mixed-status families, allowing them to thrive and contribute to their communities and state economies, to the benefit of the entire community and to the States themselves. Immigration-related stress due to the threat of deportation leads to mental and physical health problems.¹¹⁹ Children who are undocumented or have an undocumented parent exhibit poorer educational outcomes¹²⁰ and increased absenteeism.¹²¹ Research shows DACA significantly increased both school attendance and high school graduation rates, closing the gap between citizen and non-citizen graduation rates by more than forty percent.¹²²

Overall, contrary to opponents' assertions, DACA does not impose costs on states. Instead, it benefits law enforcement by spurring cooperation, cuts healthcare costs by allowing

West Virginia Department of Education “cannot track the past or future costs” spent on DACA recipient students “without first obtaining their personal identifying information”).

¹¹⁹ Lisa M. Edwards & Jacki Black, *Stress Related to Immigration Status in Students: A Brief Guide for Schools*, <https://www.marquette.edu/education/news/stress-related-to-immigration-status-guide.php>.

¹²⁰ Hirokazu Yoshikawa, Carola Suárez-Orozco, & Roberto G. Gonzales, *Unauthorized status and youth development in the United States: Consensus statement of the Society for Research on Adolescence*, 27 J. OF RES. ON ADOLESCENCE 4, 5-6 (2017), available at <https://pubmed.ncbi.nlm.nih.gov/28498536/>.

¹²¹ Patricia Gándara & Jongyeon Ee, *U.S. Immigration Enforcement Policy and Its Impact on Teaching and Learning in the Nation's Schools*, The Civil Rights Project at UCLA at 2, 12-14 (Feb. 2018), <https://www.civilrightsproject.ucla.edu/research/k-12-education/immigration-immigrant-students/u.s.-immigration-enforcement-policy-and-its-impact-on-teaching-and-learning-in-the-nations-schools> (“[C]hildren of undocumented parents on average, perform more poorly in school, have higher absenteeism, and graduate high school at lower rates.”); see also Caroline Scown, *Countering the Effects of Trump's Immigration Policies in School*, Ctr. for Am. Progress (May 3, 2018), <https://www.americanprogress.org/issues/education-k-12/news/2018/05/03/450274/countering-effects-trumps-immigration-policies-schools/>.

¹²² Elira Kuka, Na'ama Shenhav, & Kevin Shih, *Do Human Capital Decisions Respond to the Returns to Education? Evidence from DACA*, 12(1) AMERICAN ECON. J.: ECON. POL'Y, 293, 295 (2020), available at <https://pubs.aeaweb.org/doi/pdfplus/10.1257/pol.20180352>. Moreover, deferred action actually saves local governments money by increasing attendance and preserving critical sources of funding to public school districts across the United States. School districts in many states receive funding based on primary and secondary school attendance; poor attendance rates jeopardize that funding. Laura Baams et al., *Economic Costs of Bias-Based Bullying*, 32 SCH. PSYCHOL. Q. 422 (2017), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5578874/pdf/nihms882256.pdf>; Chandra Kring Villanueva, *Texas Schools at Risk of Significant Funding Cuts due to Pandemic-Related Attendance Loss*, EVERY TEXAN (Feb. 22, 2021), <https://everytexan.org/2021/02/22/keeping-schools-whole-through-crisis/>. In California, for example, student absenteeism costs public schools an estimated \$1 billion per year. Laura Baams et al., *supra*, at 3.

recipients to access employer-based and other health care, and inflicts no additional education costs.

B. DACA Does Not Distort the Labor Market.

DACA opponents claim that the policy increases competition for jobs and results in fewer opportunities and lower wages for other workers; no claim is more central to their theory (and the theory of the district court in *Texas v. United States*) that DACA causes harm. But that view is unsupported by evidence. Instead, economic studies show that DACA recipients fill critical labor shortages; that DACA recipients expand the number of jobs generally available; and that there is no demonstrable wage depression that results from DACA. DACA recipients do not distort the labor market; they enhance it.¹²³

It is a fallacy that DACA recipients simply substitute for jobs that would have been filled by other, non-DACA workers. Instead, DACA recipients actually fill critical labor gaps that would otherwise remain unfilled. As a threshold matter, there are far more job openings in the U.S. than individuals available to fill them, which undercuts the premise that DACA recipients displace other workers. As of September 2021, there were 10 million job openings nationwide, but only 8.4 million people looking for work.¹²⁴ Without DACA recipients' participation in the labor market, the U.S. would face an even greater labor supply shortfall. That shortfall would be especially acute because there are currently severe shortages of healthcare, education and food preparation workers due to the COVID-19 pandemic¹²⁵—areas in which significant numbers of

¹²³ Matthew Denhart, *America's Advantage: A Handbook on Immigration and Economic Growth*, George W. Bush Inst. 118-19 (3d ed. Sept. 2017), <http://gwbccenter.imgix.net/Resources/gwbi-americas-advantage-immigration-handbook-2017.pdf>; Ryan D. Edwards & Mao-Mei Liu, *Recent Immigration Has Been Good for Native-Born Employment*, Bipartisan Pol'y Ctr. (June 2018), <https://bipartisanpolicy.org/download/?file=/wp-content/uploads/2019/03/Recent-Immigration-Has-Been-Good-for-Native-Born-Employment.pdf>; Gretchen Frazee, *4 Myths About How Immigrants Affect the U.S. Economy*, PBS NewsHour (Nov. 2, 2018), <https://www.pbs.org/newshour/economy/making-sense/4-myths-about-how-immigrants-affect-the-u-s-economy>; Alex Nowrasteh, *Three Reasons Why Immigrants Aren't Going to Take Your Job*, Cato Inst. (Apr. 22, 2020), <https://www.cato.org/blog/three-reasons-why-immigrants-arent-going-take-job>.

¹²⁴ Heather Long et al., *Why America Has 8.4 million Unemployed when There Are 10 million Job Openings*, Wash. Post (Sept. 4, 2021), <https://www.washingtonpost.com/business/2021/09/04/ten-million-job-openings-labor-shortage>. Analysts estimate that 83 percent of DACA recipients are in the labor force, and from this pool, 95 percent are employed. Daniela Alulema, *DACA and the Supreme Court: How We Got to This Point, a Statistical Profile of Who Is Affected, and What the Future May Hold for DACA Beneficiaries*, Ctr. for Migration Studies, at 6 (Nov. 2019), <https://cmsny.org/wp-content/uploads/2019/11/DACA-in-the-Supreme-Court-PDF.pdf>.

¹²⁵ Brett Anderson, *As Diners Return, Restaurants Face a New Hurdle: Finding Workers*, N.Y. Times (Apr. 10, 2021), <https://www.nytimes.com/2021/04/08/dining/restaurant-worker-shortage.html>; Jocelyn Gecker, *Money Isn't the Problem. COVID-19 Creates a Dire U.S. Shortage of Teachers and School Staff*, L.A. Times (Sept. 22, 2021), <https://www.latimes.com/world-nation/story/2021-09-22/covid-19-creates-shortage-of-teachers-school-staff>; Madeleine Ngo, *No Veggies, No Buns, Few Forks:*

DACA recipients work.¹²⁶ Thus, DACA recipients' workforce participation—particularly in these understaffed industries—remains crucial to the country's economic recovery from the pandemic.

Even without a general labor shortage, DACA recipients are unlikely to pose significant competition to other workers because they are uniquely qualified for skilled labor jobs for which there has been and will continue to be a persistent labor shortage. Forty-six percent of DACA recipients have a bachelor's degree or higher, and as a group they tend to be better educated; as a result, they are poised to contribute to the worker pool for higher-skilled jobs.¹²⁷ These are the precise types of jobs that U.S. employers have reported having difficulty filling with other workers;¹²⁸ for example, employers have reported a shortfall of millions of employees in the STEM fields over the next few years.¹²⁹ In fact, businesses have warned that without DACA, they will lose key employees who make critical contributions in those areas.¹³⁰

Additionally, a range of empirical studies have shown that increasing the pool of immigrant workers has not led to decreases in employment opportunities for others.¹³¹ For

Schools Scramble to Feed Students Amid Shortages, N.Y. Times (Sept. 30, 2021), <https://www.nytimes.com/2021/09/27/us/politics/schools-labor-supply-shortages.html>; Deepa Shivaram, *The Federal Government Pledges \$100 Million to Address Health Care Worker Shortages*, NPR (Oct. 15, 2021), <https://www.npr.org/2021/10/15/1046338577/100-million-health-care-worker-burnout-shortage>.

¹²⁶ Svajlenka, *A Demographic Profile*, *supra* note 57.

¹²⁷ Tom K. Wong, et al., *DACA Recipients' Livelihoods, Families, and Sense of Security Are at Stake This November*, Ctr. for Am. Progress (Sept. 19, 2019), <https://www.americanprogress.org/issues/immigration/news/2019/09/19/474636/daca-recipients-livelihoods-families-sense-security-stake-november>; Brannon, *Economic and Fiscal*, *supra* note 40.

¹²⁸ William C. Dunkelberg & Holly Wade, *Small Business Economic Trends*, Nat'l Fed'n of Indep. Bus. at 1 (Oct. 2021), <https://www.nfib.com/surveys/small-business-economic-trends> (Forty-two percent of small business owners have job openings for skilled workers); Tappe, *supra* note 53.

¹²⁹ Emerson, *Emerson Survey: 2 in 5 Americans Believe the STEM Worker Shortage Is at Crisis Levels* (Aug. 21, 2018), <https://www.emerson.com/en-us/news/corporate/2018-stem-survey> (“[T]he National Association of Manufacturing and Deloitte predict the U.S. will need to fill about 3.5 million STEM job openings by 2025; yet as many as 2 million of those jobs may go unfilled, due to difficulty finding people with the skills in demand.”); New Am. Econ., *Sizing Up the Gap in our Supply of STEM Workers: Data & Analysis* (Mar. 29, 2017), <https://research.newamericaneconomy.org/report/sizing-up-the-gap-in-our-supply-of-stem-workers>.

¹³⁰ Br. of 143 U.S. Business Associations and Companies as Amici Curiae Supporting Resp'ts at 13-14, *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891 (2020) (Nos. 18-587, 18-588, and 18-589); America's Voice, *Hundreds of Business Leaders Write Letter in Support of DACA, Dreamers* (Sept. 1, 2017), <https://americasvoice.org/blog/business-leaders-support-daca>.

¹³¹ Nor is there evidence to support the argument that the Affordable Care Act (ACA) incentivizes businesses to hire DACA recipients over other workers. Critics of DACA argue that because businesses are not required to provide health insurance to DACA recipients under the ACA, DACA recipients are, therefore, less costly to employ. But even assuming there are comparable other workers for the jobs at issue, businesses often have no idea which candidates plan to claim employer-provided health insurance, and which are simply ineligible or have another source of insurance. Inquiring about a prospective

example, in a 1990 study of Cuban immigrants from the 1980 Mariel boatlift, Nobel laureate David Card found that the resulting 7 percent increase in the Miami workforce had no effect on the likelihood of employment of lower-skilled, non-Cuban workers.¹³² More recent studies have reached similar results.¹³³ And on the other side of the ledger, there is no evidence that *removing* a pool of workers from the economy will lead to increased opportunities for the remaining workers. In fact, research shows the opposite. For example, after Arizona passed the Legal Arizona Workers Act in 2007 to prohibit businesses from knowingly or intentionally hiring undocumented workers, the state's population of undocumented workers declined by 40 percent. Yet the legislation did *not* increase job opportunities for the remaining workers. Instead, the state's total employment was 2.5 percent less than what it would have been without the laws, and the departure of undocumented workers alone caused Arizona's GDP to decrease by 2 percent per year on average between 2008 and 2015.¹³⁴

DACA recipients also contribute to the creation of additional jobs overall. They do so in two ways: by stimulating economic growth and through direct job creation. First, as “a breadth of research” has shown, “immigration can be complementary to native born employment, as it spurs demand for goods and services.”¹³⁵ DACA recipients and their households are key examples of this, given their significant spending power as discussed above.¹³⁶ By buying goods and services, DACA recipients create a ripple effect by increasing demands for those economic

employee's eligibility for health insurance would expose a business to scrutiny and likely violate the law. *See, e.g.*, 29 C.F.R. § 1630.13. And any incremental benefit is likely offset by other paperwork and compliance barriers that firms face in hiring DACA workers. *See, e.g.*, David S. Jones & Otieno B. Ombok, *DACA and the Challenges Faced by Employers in Workplace Compliance (United States)*, Assoc. Corp. Counsel (May 20, 2015), <https://www.acc.com/resource-library/daca-and-challenges-faced-employers-workplace-compliance-united-states>.

¹³² David Card, *The Impact of the Mariel Boatlift on the Miami Labor Market*, 43 INDUS. & LAB. REL. REV. 245, 255 (1990).

¹³³ *See* Gianmarco I. P. Ottaviano & Giovanni Peri, *Rethinking the Effect of Immigration on Wages*, 10 J. EUR. ECON. ASS'N 152, 191 (2012); Giovanni Peri & Chad Sparber, *Task Specialization, Immigration, & Wages*, 1 AM. ECON. J.: APPLIED ECON. 135,136-137 (2009); Giovanni Peri et al., *How Highly Educated Immigrants Raise Native Wages*, VoxEU (May 29, 2014), <https://voxeu.org/article/how-highly-educated-immigrants-raise-native-wages>.

¹³⁴ Bob Davis, *The Thorny Economics of Illegal Immigration*, Wall St. J. (Feb. 9, 2016), <https://www.wsj.com/articles/the-thorny-economics-of-illegal-immigration-1454984443>; *see also* Sarah Bohn et al., *Do E-Verify Mandates Improve Labor Market Outcomes of Low-Skilled Native and Legal Immigrant Workers?*, at 17-18, 21, 24-25 (May 2014), <https://gspp.berkeley.edu/assets/uploads/research/pdf/p82.pdf> (finding that employment rates of U.S.-born men—both Hispanic and non-Hispanic white men—dropped post-LAWA).

¹³⁵ Kenneth Megan, *Immigration and the Labor Force*, Bipartisan Pol'y Ctr., (Aug. 25, 2015), <https://bipartisanpolicy.org/blog/immigration-and-the-labor-force>.

¹³⁶ Bipartisan Pol'y Ctr., *Top 10 Facts: DACA and DREAMers* (Mar. 9, 2021), <https://bipartisanpolicy.org/blog/top-10-facts-daca-and-dreamers> (estimating that DACA recipients have \$24 billion in after-tax spending power).

outputs, which leads to more jobs for others.¹³⁷ Second, DACA recipients also *directly* create jobs for U.S. residents. Eight percent of DACA recipients over the age of 25 are business owners.¹³⁸ Businesses headed by DACA recipients employ on average 4.5 other workers.¹³⁹ DACA business owners therefore create thousands of additional jobs for U.S. residents that otherwise would not exist.

Finally, the evidence is clear that DACA itself does not lead to decreased wages for other workers.¹⁴⁰ To the contrary, the empirical economic data shows that there are net modest “*positive* effects of immigration to the United States on the average wages and employment of the native-born,” with “[m]ost scholars find[ing] that the effects of unauthorized immigration on native wages in particular are likely modest, though still positive, given the very large differences, including in average educational attainment, between these particular immigrants and native-born U.S. workers.”¹⁴¹ The Mariel study, for example, found that average wages for workers *rose* by 0.6 percent in Miami following the influx of immigrants. And a 2015 empirical report by the Council of Economic Advisers, reflecting a number of contemporary studies, showed that “encouraging high-skilled immigration would raise the real annual earnings of native college graduates by 0.5 percent by 2024” and of native high-school graduates by 0.4 percent.¹⁴²

DACA recipients make essential contributions to the economy—as workers in important and underserved industries, business owners creating jobs, and consumers who drive the demand for goods and services. Their labor force participation benefits the U.S. economy and is not a justification for termination of the nearly decade-old DACA policy.

¹³⁷ Alex Nowrasteh, *Don’t End DACA: The Immigration Program Trump Must Save*, N.Y. Post (Aug. 31, 2017), <https://nypost.com/2017/08/31/dont-end-daca-the-immigration-program-trump-must-save>; Giovanni Peri, *The Effect of Immigrants on U.S. Employment and Productivity*, Fed. Reserve Bank of S.F. Econ. Letter (Aug. 30, 2010), <https://www.frbsf.org/economic-research/publications/economic-letter/2010/august/effect-immigrants-us-employment-productivity>.

¹³⁸ Democrats of the Comm. on Small Bus., *supra* note 36, at 7.

¹³⁹ Wong, *Livelihoods*, *supra* note 127.

¹⁴⁰ Francisc Ortega et al., *The Economic Effects of Providing Legal Status to DREAMers* 18, IZA Inst. of Lab. Econ. Discussion Paper No. 11281 (Jan. 2018), <https://ftp.iza.org/dp11281.pdf>.

¹⁴¹ Br. for Professional Economists and Scholars in Related Fields as Amici Curiae in Supp. of Pet’rs at 34, *United States v. Texas*, 136 S. Ct. 2271 (2016) (No. 15-674); *see also* Adriana Kugler & Mutlu Yuksel, *Do Recent Latino Immigrants Compete for Jobs with Native Hispanics and Earlier Latino Immigrants?* in *LATINOS AND THE U.S. ECONOMY: A LABOR ECONOMICS PERSPECTIVE* 213 (David Leal & Stephen Trejo, eds. 2011) (analyzing influx of Central American immigrants after Hurricane Mitch to southern United States and finding positive impacts on skilled native U.S. workers and small negative impact on unskilled previous immigrants).

¹⁴² Council of Econ. Advisers, *The Economic Effects of Administrative Action on Immigration*, at 10 (Feb. 2015), https://obamawhitehouse.archives.gov/sites/default/files/docs/economic_effects_of_immigration_ea_february_2015_update_final_v2.pdf.

DACA recipients in the States are small-business owners, employees, students, healthcare workers, and, perhaps most importantly, valued community members, friends, and family. Their presence, and the presence of DACA-eligible individuals, has enriched the States in countless ways. The States urge DHS and USCIS to finalize regulations codifying DACA and ensuring that the States can continue to benefit from their DACA-eligible populations. Such a rule would be consistent with the public interest and help the States in their efforts to protect the health, safety, and well-being of their residents.

Sincerely,



Rob Bonta
California Attorney General



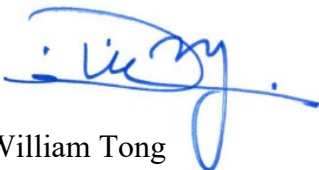
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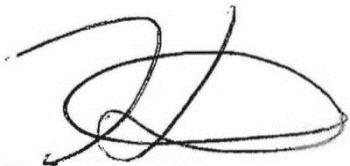
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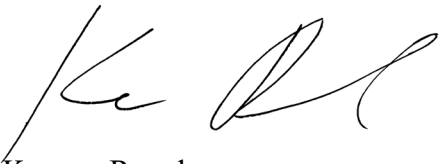
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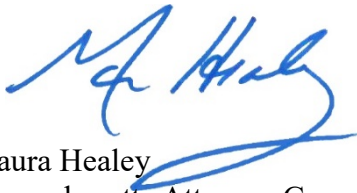
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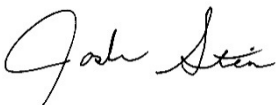
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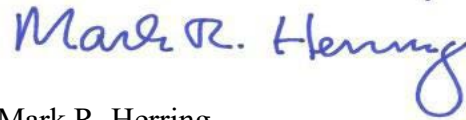


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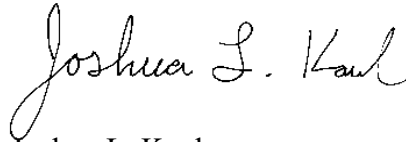
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