

EXHIBIT A

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7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA
9 SAN FRANCISCO DIVISION
10

11 THE REGENTS OF THE UNIVERSITY OF
12 CALIFORNIA and JANET NAPOLITANO, *in*
13 *her official capacity as President of the*
University of California,

14 Plaintiffs,

15 v.

16 U.S. DEPARTMENT OF HOMELAND
SECURITY and ELAINE DUKE, *in her official*
17 *capacity as Acting Secretary of the Department of*
Homeland Security,

18 Defendants.
19

Case No. 3:17-cv-05211-WHA

**BRIEF OF LEGAL SERVICES
ORGANIZATIONS AS *AMICI CURIAE* IN
SUPPORT OF PLAINTIFFS' MOTION
FOR PROVISIONAL RELIEF**

Date: December 20, 2017
Time: 8:00 a.m.
Dept. Courtroom 8
Judge: Hon. William H. Alsup

20 STATE OF CALIFORNIA, STATE OF MAINE,
21 STATE OF MARYLAND, and STATE OF
MINNESOTA,

22 Plaintiffs,

23 v.

24 U.S. DEPARTMENT OF HOMELAND
SECURITY, ELAINE DUKE, *in her official*
25 *capacity as Acting Secretary of the Department of*
Homeland Security, and the UNITED STATES
26 OF AMERICA,

27 Defendants.
28

Case No. 3:17-cv-05235-WHA

1 CITY OF SAN JOSE, *a municipal corporation*,
2
3 Plaintiff,
4
5 v.
6 DONALD J. TRUMP, *President of the United*
7 *States, in his official capacity*, ELAINE C.
8 DUKE, *in her official capacity*, and the UNITED
9 STATES OF AMERICA,
10
11 Defendants.12

Case No. 3:17-cv-05329-WHA

13 DULCE GARCIA, MIRIAM GONZALEZ
14 AVILA, SAUL JIMENEZ SUAREZ,
15 VIRIDIANA CHABOLLA MENDOZA,
16 NORMA RAMIREZ, and JIRAYUT
17 LATTHIVONGSKORN,18

Case No. 3:17-cv-05380-WHA

19
20 Plaintiffs,
21
22 v.
23 UNITED STATES OF AMERICA, DONALD J.
24 TURMP, *in his official capacity as President of*
25 *the United States*, U.S. DEPARTMENT OF
26 HOMELAND SECURITY, and ELAINE DUKE,
27 *in her official capacity as Acting Secretary of the*
28 *Department of Homeland Security*,
29
30 Defendants.31

32 COUNTY OF SANTA CLARA and SERVICE
33 EMPLOYEES INTERNATIONAL UNION
34 LOCAL 521,35

Case No. 3:17-cv-05813-WHA

36
37 Plaintiffs,
38
39 v.
40 DONALD J. TRUMP, *in his official capacity as*
41 *President of the United States*; JEFFERSON
42 BEAUREGARD SESSIONS, *in his official*
43 *capacity as Attorney General of the United States*;
44 ELAINE DUKE, *in her official capacity as*
45 *Acting Secretary of the Department of Homeland*
46 *Security*; and U.S. DEPARTMENT OF
47 HOMELAND SECURITY,
48
49 Defendants.50

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FRCP 7.1 STATEMENT OF CORPORATE DISCLOSURE

Pursuant to Federal Rule of Civil Procedure 7.1 (“FRCP”), the undersigned counsel of record for *amici* certify that *amici* are non-profit legal services organizations and therefore are not publicly held corporations that issue stock.

1 **INTEREST OF *AMICI CURIAE***

2 *Amici* are legal services organizations that provide immigration services.¹ *Amici* include the
 3 following twelve organizations: Asian Law Alliance, Canal Alliance, Centro Legal de la Raza,
 4 Community Legal Services in East Palo Alto (CLSEPA), Dolores Street Community Services, East
 5 Bay Sanctuary Covenant, Heartland Alliance’s National Immigrant Justice Center (NIJC),
 6 Immigrant Legal Resource Center (ILRC), Legal Aid Society of San Mateo County, Legal Services
 7 for Children (LSC), OneJustice, and Services, Immigrant Rights, and Education Network (SIREN).
 8 Many of *amici*’s clients are youth who were eligible for the recently rescinded Deferred Action for
 9 Childhood Arrivals (“DACA”) program. *Amici* provide legal counseling to these youth to guide
 10 them through the intricacies of the immigration system. As a result of their interaction with
 11 undocumented immigrants generally and DACA-eligible individuals in particular, *amici* understand
 12 the complex legal challenges now facing DACA grantees in light of the rescission of DACA and
 13 have observed the negative effects on their clients. They are well-positioned to articulate the nature
 14 of the irreparable harm at issue and the reasons an injunction serves the public interest.²

15 **SUMMARY OF ARGUMENT**

16 The rescission of the DACA program announced by the Department of Homeland Security
 17 (“DHS”) on September 5, 2017³ causes real and imminent harm to young people who were eligible
 18 for protection from deportation under DACA. More than half of these DACA-eligible individuals
 19 were six years old or younger when they first came to the United States; all were younger than
 20 sixteen years old. Results from Tom K. Wong *et. al.*, *2017 National DACA Study*, CENTER FOR
 21 AMERICAN PROGRESS at 9 (Aug. 28, 2017) (“*2017 National DACA Study*”).⁴ These young people
 22

23 ¹ Descriptions of each *amicus* organization are provided in the Motion of Legal Services
 Organizations for Leave to File Brief as *Amici Curiae*.

24 ² Counsel for *amici* have interviewed and received information from the legal services organizations
 25 that are filing this brief. Information throughout the brief that relates to these organizations’ clients
 was obtained through these interviews and related requests for information.

26 ³ Memorandum from Acting Secretary Elaine C. Duke, *Memorandum on Rescission of Deferred*
Action For Childhood Arrivals (DACA) (Sept. 5, 2017) (“Rescission Memorandum”),
 27 <https://www.dhs.gov/news/2017/09/05/memorandum-rescission-daca>.

28 ⁴ Available at [https://cdn.americanprogress.org/content/uploads/2017/08/27164928/Wong-Et-Al-](https://cdn.americanprogress.org/content/uploads/2017/08/27164928/Wong-Et-Al-New-DACA-Survey-2017-Codebook.pdf)
 New-DACA-Survey-2017-Codebook.pdf.

1 now face a frightening and uncertain future in the United States, despite prior assurances by the
2 government that by coming forward and applying for DACA, they would be protected from negative
3 immigration enforcement action.

4 The vast majority of DACA grantees will be left without any protection from deportation
5 when their current status expires. DACA grantees will also lose work authorization, leading them to
6 lose their jobs, health insurance, and countless other benefits. Losing DACA will force many of
7 them into a life of hiding and constant fear of removal from the only country they have ever known.

8 The decision to rescind DACA has intensified fear of accessing vital services in the
9 immigrant community. As their DACA status expires, DACA recipients will join the ranks of so
10 many immigrants who have no protection against deportation and are afraid that if they go to school
11 or work, access medical services, or report a crime, they will become targets for deportation. This
12 fear is not only harmful to those directly affected, but also dangerous for public health and safety.

13 A preliminary injunction prohibiting the government from enforcing the Rescission
14 Memorandum is necessary in order to prevent irreparable harm to this community of young
15 immigrants and is in the public interest.

16 ARGUMENT

17 **I. THE RESCISSION OF DACA CAUSES SIGNIFICANT HARM TO AMICI'S DACA CLIENTS, MOST** 18 **OF WHOM HAVE NO VIABLE OPTION TO OBTAIN LEGAL IMMIGRATION STATUS AND AVOID** 19 **DEPORTATION.**

20 The rescission of DACA will put DACA recipients at risk for deportation and strip them of
21 their eligibility for work permits. Without DACA, most DACA recipients are ineligible for any
22 protection from deportation under current law. Indeed, DACA was only necessary because
23 Congress failed to pass the Development, Relief, and Education for Alien Minors Act (“DREAM
24 Act”),⁵ which would have created a path to citizenship for many DACA-eligible individuals,
25 commonly referred to as “Dreamers.” The DREAM Act’s proponents sought to provide a much-
26 needed legal solution for undocumented young people who had been present in the United States
27 from childhood, and, in some cases were not aware until adulthood of their lack of status.

28 ⁵ H.R. 1184, 112th Cong. (2011); S. 952, 112th Cong. (2011).

1 Proponents recognized that Dreamers grew up in the U.S. but had no other option for staying legally
 2 in the United States. *Report and analysis of immigration and nationality law*, 2 Senate Judiciary
 3 Subcommittee Holds Hearing on the DREAM Act, 88 No. 25 Interpreter Releases 1594 (July 4,
 4 2011). Congress attempted (but failed) to pass legislation (including the DREAM Act) protecting
 5 this class of young immigrants approximately fourteen times since 2001, both as stand-alone
 6 legislation and as part of comprehensive immigration reform.⁶

7 In response to Congress's failed attempts to provide relief to these young immigrants,
 8 President Obama issued an Executive Order in June 2012 enacting DACA. *See* Memorandum from
 9 Secretary Janet Napolitano, *Exercising Prosecutorial Discretion with Respect to Individuals Who*
 10 *Came to the United States as Children* (June 15, 2012).⁷ DACA granted a renewable two-year
 11 period of deferred action (protection from deportation) and work authorization. *Id.* Although
 12 DACA does not offer a path to legal status or citizenship, "it provides tangible opportunities for
 13 young immigrants to participate more fully in our society and economy." *Deferred Action for*
 14 *Childhood Arrivals (DACA): Funding Opportunities for Philanthropy*, Grantmakers Concerned
 15 with Immigrants and Refugees (Oct. 29, 2017).⁸ The DACA program allowed recipients to live
 16 without fear of deportation and to overcome many of the hardships associated with undocumented
 17 status.

18 When their current period of deferred action expires, DACA recipients will be cast back into
 19 legal uncertainty, without any protection from deportation. Their loss is substantial and the
 20 consequences are dire: they will lose the ability to remain legally in the U.S. and will have no means
 21 of earning a living. Most DACA recipients do not qualify for any form of immigration relief, such

22 _____
 23 ⁶ *See, e.g.*, H.R. 1918, 107th Cong. (2001); S. 1291, 107th Cong. (2001); S. 1545, 108th Cong.
 24 (2003); S. 2075, 109th Cong. (2005); H.R. 5131, 109th Cong. (2005); S. 2205, 110th Cong. (2007);
 25 H.R. 1275, 110th Cong. (2007); S. 729, 111th Cong. (2010); S. 3992, 111th Cong. (2010); H.R.
 1842, 112th Cong. (2011); S. 952, 112th Cong. (2011); H.R. 1468, 115th Cong. (2017); H.R. 3591,
 115th Cong. (2017); S. 1615, 115th Cong. (2017).

26 ⁷ *Available at* <https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf>.

27 ⁸ *Available at*
 28 https://www.gcir.org/sites/default/files/resources/GCIR%20DACA%20Funding%20Opportunities_1.pdf.

1 as humanitarian-based forms of relief or family-based visas. And for the few who may qualify for
 2 other relief, successfully *obtaining* relief is nearly impossible under current immigration law. Thus,
 3 for the vast majority of DACA grantees, *there is no other option* and they will become
 4 undocumented when their deferred status expires.

5 **A. Most DACA Recipients Are Not Eligible for Humanitarian or Family-Based**
 6 **Forms of Immigration Relief.**

7 Very few DACA recipients are eligible for immigration relief under current law. *Amici*
 8 routinely screened DACA-eligible individuals for humanitarian and family-based forms of relief
 9 before providing assistance applying for DACA.⁹ But most DACA recipients have not suffered the
 10 requisite trauma to qualify for humanitarian forms of relief. Likewise, most DACA recipients do not
 11 have a qualifying relative or are barred from obtaining relief through a family-based petition.¹⁰ The
 12 majority of DACA recipients do not qualify for other immigration options, such as student or work
 13 visas, either. Indeed, a 2014 study found that only 14.3% of DACA-eligible young people
 14 potentially qualified for other forms of relief. Tom K. Wong, *et al.*, *Paths to Lawful Immigration*
 15 *Status: Results and Implications from the PERSON Survey*, 2 J. OF MIGRATION AND HUMAN
 16 SECURITY 4, 287-304 (2014). The rescission of DACA therefore leaves them without any protection
 17 from deportation.

18 Humanitarian-based options are narrowly tailored forms of relief that typically require that
 19 applicants suffered significant trauma in their country of origin or in the U.S. For example, asylum
 20 and its related forms of relief require that applicants suffered or will suffer extreme harm in their
 21 countries of origin.¹¹ 8 U.S.C. § 1101(a)(42); INA § 101(a)(42)(A).¹² Similarly, Special Immigrant

22 ⁹ Ruling out other forms of relief was a crucial part of the DACA application process, as many other
 23 forms of relief, unlike DACA, confer a path to legal permanent residence and citizenship.

24 ¹⁰ To qualify for family-based petitions, DACA recipients must be an *immediate relative*, defined as
 25 a spouse, unmarried child under 21, or a parent (if the child is 21 years or older) of a U.S. citizen or
 26 lawful permanent resident (“LPR”). INA § 201(b)(2)(A)(i).

27 ¹¹ Asylum applicants often seek withholding of removal and relief under the Convention Against
 28 Torture as well. INA § 241(b)(3); *Convention against Torture and Other Cruel, Inhuman or*
Degrading Treatment or Punishment, 1465 United Nations Treaty Series at 85 (Dec. 10, 1984),
https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-9&chapter=4&lang=en.

¹² The Immigration and Nationality Act (“INA”) is comprised of a series of sections of Title 8 of the

1 Juvenile Status (“SIJS”) confers status on young immigrants who have been abused, abandoned or
 2 neglected. INA § 101(a)(27); 8 C.F.R. § 204.11. “U” and “T” visas provide relief for victims of
 3 certain qualifying crimes and human trafficking, respectively, while the Violence Against Women
 4 Act (“VAWA”) allows certain battered spouses, children, and parents to petition for legal status
 5 without the involvement of their abusive spouse, parent, or child. INA § 101(a)(15)(U) (U Visas);
 6 INA § 101(a)(15)(T) (T visas); INA § 245 (VAWA).¹³ But individuals who spent most of their lives
 7 in the United States, attended school, worked, and have not experienced significant harm or violence
 8 in their lives simply do not qualify for these forms of relief.

9 Similarly, most DACA grantees are not eligible for family-based immigration relief. Among
 10 the few DACA recipients who have a qualifying relative, many are not eligible to apply to adjust
 11 status from within the country because they last entered the country without permission.¹⁴ As a
 12 result, these DACA recipients would have to leave the country to apply for a family-based visa, and
 13 would then face strict bars to re-entry, due to their previous “unlawful presence” in the United
 14 States.¹⁵ INA § 212(a)(9)(B)-(C). Undocumented immigrants who have accrued unlawful presence

15 _____
 16 United States Code (“USC”). Hereinafter, federal immigration statutes are only referenced to their
 17 INA classification.

18 ¹³ Even in the rare situation that a DACA-eligible individual qualifies for an alternative form of
 19 relief, the waiting time for that relief can be many years. For example, the current waiting time for a
 20 U visa is approximately five to ten years. Even an interim work permit through a U visa application
 21 currently takes about three years to process, and individuals waiting for U visa approval have been
 22 subjected to enforcement by Immigration and Customs Enforcement (“ICE”) during this waiting
 23 period. *Amicus* organization Dolores Street Community Services reports a client who, despite
 24 having a pending U visa application, was detained. *See also* Madeline Kenney, *Berwyn*
 25 *grandmother of 10 facing deportation sues DHS over visa delay*, Chicago Sun Times (Sept. 18,
 26 2017), <https://chicago.suntimes.com/chicago-politics/berwyn-grandmother-of-10-facing-deportation-sues-dhs-over-visa-delay/>.

27 ¹⁴ Family-based petitions also take years to process. Seventy-eight percent of DACA recipients are
 28 from Mexico. The government is currently processing visa petitions filed in March 1996 for
 unmarried Mexican sons and daughters of U.S. citizens. Visa Bulletin for October 2017, U.S. Dep’t
 of State, Bureau of Consular Affairs (Sept. 11, 2017), <https://travel.state.gov/content/visas/en/law-and-policy/bulletin/2018/visa-bulletin-for-october-2017.html>.

¹⁵ “Unlawful presence” is when an undocumented immigrant “is present in the United States after
 the expiration of the period of stay authorized . . . or is present within the United States without
 being admitted or paroled.” INA § 212(a)(9)(B)(ii). DACA recipients accrued “unlawful presence”
 between the time they turn 18 and the date they received protection from deportation, *i.e.*, the date
 their DACA application was approved. Once granted DACA, DACA recipients are not considered
 “unlawfully present” for purposes of the legal time bars. USCIS DACA FAQs, Question 1. But
 once their DACA status expires, they will again accrue unlawful presence.

1 are barred from re-entry for three years, ten years, or permanently, depending on their length of
2 unlawful presence and number of entries. INA §§ 212(a)(9)(B)(i)(I)-(II) and 212(a)(9)(C). Those
3 who entered the country more than once without inspection and have been unlawfully present for a
4 total of more than one year are *permanently* barred. INA § 212(a)(9)(C).

5 Most DACA recipients have accrued some unlawful presence and are subject to these time
6 bars. Because DACA was implemented in 2012 and the average age of a DACA grantee is 25, an
7 average DACA grantee who applied for DACA as soon as it was available would have accrued two
8 years of unlawful presence, from the time they were 18 in 2010 until they received the DACA grant
9 in 2012. *See 2017 National DACA Study* at 13. Even the three and ten year bars, in practice, are
10 complete barriers to relief, because applicants would need to leave their families, jobs, schools, and
11 for most, the only country they have ever known, in order to wait out the time-bar.

12 Before September 5, 2017, DACA recipients could apply for “advance parole” to leave the
13 country for work, education, or emergency family visits, and receive advance authorization to re-
14 enter the U.S. (*i.e.* to be “paroled” upon return). *See* U.S. Citizenship and Immigration Services
15 (“USCIS”) DACA FAQs at Question 57 (requirements for advance parole); USCIS Adjudicator’s
16 Field Manual, § 54.1.¹⁶ For some, this would hypothetically allow them to apply for some family-
17 based forms of relief to adjust status from within the country if they have a qualifying relative. *See*
18 INA § 212. However, when the administration rescinded DACA, it also abruptly ended eligibility
19 for advance parole for *all* DACA recipients, effective immediately. The Rescission Memorandum.

20 DACA recipients could still seek a “provisional unlawful presence waiver” (INA §
21 212(a)(9)(B)(v)) and 8 C.F.R. 212.7(e)), but the standard is demanding. To qualify, an applicant
22 must show that refusing to allow her to re-enter the country would result in “extreme hardship” to
23 her citizen or lawfully resident spouse or parent. INA § 212(a)(9)(B)(v); *In re Cervantes-Gonzalez*,
24 22 I. & N. Dec. 560, 565-66 (B.I.A. 1999). Thus, even for the very few DACA recipients who
25 might qualify for family-based adjustment of status, it is an illusory form of relief at best.

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28 ¹⁶ Available at <https://www.uscis.gov/ilink/docView/AFM/HTML/AFM/0-0-0-1/0-0-0-20442/0-0-0-20456.html#0-0-0-687>.

B. DACA Recipients Are Not Eligible for Relief Based on Their Length of Time in the U.S., No Matter How Well-Spent.

Contrary to popular perception, there is no form of relief available to young immigrants on the basis that they have lived in the United States for most of their lives, even if they have been exemplary members of the community and excelled academically. DACA also did not create a “loophole” by which eligible young people could “cut in line” for relief for which they would have had to wait longer if they had stayed in their home countries. Instead, DACA provided young people who were already here and had no viable recourse for immigration relief with temporary work permits and protection from deportation.

Prior to immigration reform in 1996, immigrants in deportation proceedings could ask an immigration judge to grant “suspension of deportation,” which took the “good moral character” of an immigrant into account.¹⁷ This form of relief was only available if an immigrant was in removal proceedings *and* would either endure extreme hardship if deported or had a qualifying relative who would endure extreme hardship if the applicant were deported. In 1996, Congress eliminated “suspension of deportation,” and replaced it with a form of cancellation of removal that imposed a higher burden on the applicant.¹⁸ INA § 240A(b); *see Hernandez v. Gonzalez*, 437 F.3d 341, 346-47 (3d Cir. 2006) (noting the “practical effect . . . [is] that a far larger number of immigrants are now removable under the new law, while a much smaller number are eligible for any form of relief from removal”). As with “suspension of deportation,” only immigrants in removal proceedings and with a

¹⁷ “Suspension of deportation” required: (1) continuous physical presence in the U.S. for at least seven years; (2) good moral character during those seven years; and (3) that deportation would result in extreme hardship to the applicant or the applicant’s citizen or lawful permanent resident spouse, parent, or child. INA § 244(a) (1994) (repealed 1996).

¹⁸ Most applicants are unable to avoid deportation through cancellation of removal unless they can show that deportation would result in “exceptional and extremely unusual hardship” to a U.S. citizen or LPR spouse, parent or child. INA § 240A. This standard is a very demanding one that generally requires a showing that a U.S. citizen or LPR family member suffers from a severe chronic medical condition and requires special medical attention and financial support. *See Ayeni v. Holder*, 617 F.3d 67, 67, 73 (1st Cir. 2010) (upholding lower court decision that even evidence of petitioner’s inability to provide medical care for his children’s chronic and serious health issues, which included severe asthma, migraine headaches, and attention deficit hyperactivity disorder, did not meet hardship standard). Merely demonstrating the emotional harm caused by the separation of family members or financial hardship is insufficient. *Tejado v. Holder*, 776 F.3d 965, 969 (8th Cir. 2015) (emotional harm); *Gomez-Perez v. Holder*, 569 F.3d 370, 373 (8th Cir. 2009) (financial hardship).

1 qualifying relative (hardship to the applicant is no longer sufficient) are able to seek cancellation of
 2 removal. Given that most young immigrants do not have a qualifying relative, this option is
 3 inapplicable to most DACA recipients.

4 As a result, for the vast majority of DACA recipients who do not qualify for humanitarian or
 5 family-based immigration relief, there is no procedure, other than DACA, to protect them from
 6 deportation.

7 **C. Without DACA, Most DACA Recipients Will Become Undocumented and Suffer**
 8 **Significant Related Harms.**

9 Given the small number of DACA recipients who actually qualify for immigration relief and
 10 the legal hurdles faced by the small minority of those that do qualify, the reality is that most DACA
 11 recipients will become undocumented as a result of the Rescission Memorandum. They will not be
 12 able to work legally and will not have any protection from deportation—and will suffer numerous
 13 harms as a result. The elimination of DACA “reverberate[s] far beyond th[e] privileges” of legally
 14 living and working in the United States. Caitlin Dickerson, *For DACA Recipients, Losing*
 15 *Protection and Work Permits Is Just the Start*, The New York Times (Sept. 7, 2017) (“*Losing*
 16 *Protection*”).¹⁹

17 The positive impact of the DACA program—both to its recipients and to American society
 18 more generally—should not be underestimated. “Since DACA began, thousands of Dreamers have
 19 been able to enroll in colleges and universities, complete their education, start businesses that help
 20 improve our economy, and give back to our communities as teachers, medical professionals,
 21 engineers, and entrepreneurs—all on the books.” Letter from Secretary Jeh Johnson, U.S. Dep’t of
 22 Homeland Sec., to Honorable Judy Chu, U.S. House of Rep. (Dec. 30, 2016).²⁰ After the
 23 implementation of DACA, approximately 80% of DACA grantees obtained driver’s licenses for the
 24 first time. *2017 National DACA Study* at 9. Many also obtained financial aid for higher education.
 25 See Dickerson, *Losing Protection*. Further, after receiving DACA, approximately 65% of DACA

26 ¹⁹ Available at <https://www.nytimes.com/2017/09/07/us/daca-losses-immigration.html>.

27 ²⁰ Available at
 28 <https://chu.house.gov/sites/chu.house.gov/files/documents/DHS.Signed%20Response%20to%20Chu%2012.30.16.pdf>.

1 grantees age 25 and under and approximately 54% of DACA grantees over age 25 pursued
 2 educational opportunities they previously could not pursue. *2017 National DACA Study* at 7.
 3 Approximately 70% of DACA recipients “earn[ed] more money, which . . . helped [them] become
 4 financially independent.” *Id.* at 3. As the result of their employment, many DACA recipients also
 5 obtained employer-based health insurance.²¹ See Jessica Ferger, *Rescinding DACA Could Spur a*
 6 *Public Health Crisis, from Lost Services to Higher Rates of Depression, Substance Abuse,*
 7 *Newsweek* (Sept. 6, 2017).²² All of these benefits will disappear with the rescission of DACA.

8 Many DACA recipients will be forced to make heart-breaking decisions about the future of
 9 their families, and in particular of their U.S. citizen children. DACA recipients who are parents must
 10 choose whether to take their U.S. citizen children with them if they are deported, or face years and
 11 even possibly permanent separation. Priscilla Alvarez, *Will DACA Parents Be Forced to Leave*
 12 *Their U.S.-Citizen Children Behind?*, *The Atlantic* (Oct. 21, 2017) (because of the rescission of
 13 DACA, an estimated 200,000 children are now at risk of losing their DACA recipient parents).²³ If
 14 they decide to leave their U.S. citizen children in the U.S., they need to make legal, practical, and
 15 financial arrangements for the care of their children. DACA recipients who may be subject to
 16 deportation must also spend time and resources to protect their property, assets, and finances in case
 17 they are deported. These harms are not speculative. A recent study profiled a DACA recipient who
 18 “was born in Mexico, but came to the U.S. at the age of nine. She received DACA when she was
 19 studying for a master’s degree at Stanford. She bought a house, married another DACA recipient,
 20 and has two children who are U.S. citizens.” Julia Carrie Wong, *Fear and uncertainty for Dreamers*
 21 *as DACA ends: “Where am I going to go?”*, *The Guardian* (Sept. 5, 2017). This DACA recipient is

22 _____
 23 ²¹ Rescinding DACA will also have a significant economic effect, as employers will have to terminate
 24 the employment of DACA grantees once their deferred status expires. This will result in a reduction
 25 in contributions made to Social Security and Medicare, both by the employee and employer, of
 26 approximately \$39.3 billion over 10 years. Jose Magaña-Salgado, et al., *Draining the Trust Funds:*
 27 *Ending DACA and the Consequences to Social Security and Medicare*, Immigrant Legal Resource
 28 Center at 2, 9 (Oct. 2017), https://www.ilrc.org/sites/default/files/resources/2017-09-29_draining_the_trust_funds_final.pdf.

²² Available at <http://www.newsweek.com/daca-immigration-health-care-access-mental-health-660539>.

²³ Available at <https://www.theatlantic.com/politics/archive/2017/10/donald-trump-daca/543519/>.

1 not eligible for immigration relief, so she and her partner are “looking at a plan to protect [their]
2 daughters in case [they] are deported.” *Id.* at 2. *Amici* are aware of countless similar situations
3 among their clients.

4 The rescission of DACA creates significant turmoil for DACA recipients and their families,
5 who have planned their futures around the promises of DACA. Now, most will once again become
6 undocumented immigrants, with all the uncertainty and anxiety that entails, and without the ability to
7 work legally, obtain health insurance, legally drive in many states, pay for college, purchase homes,
8 and make plans for their lives.²⁴

9 **II. THE RESCISSION OF DACA CAUSES FEAR IN THE COMMUNITY ABOUT ACCESSING PUBLIC**
10 **SERVICES, WHICH HARMS THE PUBLIC INTEREST.**

11 In light of a political climate increasingly hostile to immigrants, intensified by the rescission
12 of DACA, many in the immigrant community are understandably fearful of deportation and afraid to
13 access services. When DACA protections expire, *amici*’s DACA clients will no longer be protected
14 from deportation and, like other undocumented immigrants, may be afraid to access services. This
15 situation endangers public health and safety.

16 **A. DACA Recipients and Other Immigrants Are Afraid to Access Health and Other**
17 **Social Services, and to Attend School, Out of Fear of Deportation.**

18 In the wake of recent increasing immigration enforcement activity and the Rescission
19 Memorandum, there is evidence that anxiety is causing undocumented immigrants, including DACA
20 recipients, to decline utilizing health services and to refrain from reporting crimes. Some members
21 of the immigrant community are even avoiding school and work. For example, *amicus* organization
22 Centro de la Raza has a client whose family members stopped working because of fear of raids at

23 ²⁴ DACA recipients are at even more risk than other undocumented immigrants because they
24 provided personal and sensitive information to the government as part of the DACA application
25 process, including addresses, employers, photos, and fingerprints. Now, the government has stated
26 that although the personal information will not be “proactively provided” to other law enforcement
27 entities and ICE, that may change and be “rescinded at any time without notice.” *See* USCIS DACA
28 FAQs at Question 8; Richard Gonzales, *DACA Recipients Worry What The Government Will Do*
With Their Private Information, NPR (Sept. 9, 2017),
<http://www.npr.org/2017/09/09/549678003/daca-recipients-worry-what-the-government-will-do-with-their-private-information>.

1 their workplace. Several *amici* organizations have been providing “Know Your Rights”
2 presentations in order to alleviate these concerns in the community.

3 Many undocumented immigrants avoid visiting hospitals or clinics for fear of deportation.
4 See Anna North, *DACA helped some immigrants finally get health care. Now they could lose it*, Vox
5 (Sept. 28, 2017) (“*DACA helped get health care*”).²⁵ For example, undocumented immigrant women
6 may not access necessary prenatal health care, which can lead to a wide range of detrimental health
7 outcomes. North, *DACA helped get health care*. Anecdotal evidence demonstrates that avoidance
8 behavior, motivated by fear, abounds. For example, an undocumented immigrant woman in
9 Alameda, California stopped receiving cancer treatments because she was terrified of being
10 identified and detained if she continued using health services given reports of increased immigration
11 enforcement. Virginia Fay, *Back Into the Shadows: Immigrants Retreat From Needed Services as*
12 *Deportation Fears Loom*, KQED News (June 15, 2017) (“*Back Into the Shadows*”).²⁶ *Amici* have
13 observed this phenomenon in the immigrant community, as well. Medical professionals have
14 informed *amicus* organization ILRC that undocumented immigrants treated in emergency rooms
15 have failed to return to the hospital for critical follow-up treatment out of fear of deportation.

16 Undocumented immigrants are also increasingly afraid to report crimes to law enforcement,
17 fearing that any interaction with a governmental entity could lead to deportation. Local police
18 departments worry about how the increasingly fearful climate will affect their relationships with
19 immigrant communities and their ability to solve crime. As one police captain in Redwood City,
20 California explained, undocumented immigrants “will see law enforcement and the justice system as
21 something that is now less accessible . . . and potentially threatening . . . because they’re concerned
22 that the federal government will somehow get that information and use it to deport them.” *Id.* In
23 fact, police in Houston, Los Angeles, and San Francisco observed significantly decreased reporting
24 of sexual and domestic violence by Latina women during the first few months of 2017, compared to
25 the same time period in 2016. *Id.* Advocates report that many domestic violence survivors who are

26 ²⁵ Available at [https://www.vox.com/identities/2017/9/28/16351866/daca-health-care-reproductive-](https://www.vox.com/identities/2017/9/28/16351866/daca-health-care-reproductive-health-undocumented-immigrants)
27 [health-undocumented-immigrants](https://www.vox.com/identities/2017/9/28/16351866/daca-health-care-reproductive-health-undocumented-immigrants).

28 ²⁶ Available at [https://www.kqed.org/news/2017/06/15/back-into-the-shadows-immigrants-retreat-](https://www.kqed.org/news/2017/06/15/back-into-the-shadows-immigrants-retreat-from-needed-services-as-deportation-fears-loom/)
[from-needed-services-as-deportation-fears-loom/](https://www.kqed.org/news/2017/06/15/back-into-the-shadows-immigrants-retreat-from-needed-services-as-deportation-fears-loom/).

1 undocumented are too afraid of contact with police to seek life-saving restraining orders, report
 2 abuse, or seek U visas. *Id.* They further note that undocumented survivors are even afraid to stay at
 3 the shelters. *Id.* When “survivors do come in for help, they are often so scared that they won’t stay
 4 more than a few days or a week.” *Id.* Amicus organization Dolores Street Community Services
 5 reports having multiple clients who have endured horrific domestic violence that were too afraid to
 6 report the abuse due to their immigration status. Similarly, amicus organization Centro Legal de la
 7 Raza recently received a case involving a woman who fears she will be deported if she contacts the
 8 police to report abuse. Amicus organization Dolores Street Community Services spoke with a
 9 potential client who was a crime victim but did not report the crime and even refused to go to
 10 Dolores Street’s office for an assessment of potential relief due to his fear of ICE.

11 Fear in the community has led to increased absenteeism in schools among immigrant
 12 students, from elementary school through college. Carolyn Jones, *Immigration crackdown taking*
 13 *heavy toll on California students*, Mercury News (Oct. 5, 2017).²⁷ Educators have also observed that
 14 some students are having increased difficulty concentrating in the classroom as a result of recent
 15 anti-immigration policies. *Id.* Some immigrant parents have even expressed fear of sending their
 16 children to school, in case “they’re taken in an ICE raid during the day and their children have no
 17 one to return home to.” Fay, *Back Into the Shadows*.

18 Immigrant families are also reluctant to access social services due to fear of deportation.
 19 Social scientists have pointed out that “anti-immigrant sentiment and increased deportation activity
 20 has had a long history of causing eligible families to drop out and shy away” from safety net
 21 programs. Annie Lowrey, *Trump’s anti-immigrant policies are scaring families away from the*
 22 *safety net*, The Atlantic (Mar. 24, 2017) (“*Trump’s anti-immigrant policies*”).²⁸ In many cases,
 23 families eligible for these vital programs have mixed immigration status—for example,

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 26 ²⁷ Available at <http://www.mercurynews.com/2017/10/05/immigration-crackdown-taking-heavy-toll-on-california-students/?platform=hootsuite>.

27 ²⁸ Available at https://www.theatlantic.com/business/archive/2017/03/trump-safety-net-latino-families/520779/?utm_source=nl-atlantic-weekly-032417.

1 “undocumented parents with children with birthright citizenship.”²⁹ *Id.* Eligible mixed-status
 2 families are declining to enroll in, or even un-enrolling from programs such as the Supplemental
 3 Nutrition Assistance Program (“SNAP”)³⁰ and Women, Infants, and Children (“WIC”), out of fear
 4 that enrollment will put undocumented family members at risk of deportation.³¹ Lowrey, *Trump’s*
 5 *anti-immigrant policies*. Eligible families are withdrawing from other anti-poverty programs as
 6 well. *Id.* For instance, Eisner Health, a Los Angeles-based health care provider, compared monthly
 7 enrollment averages from December 2016 through February 2017 with data from 2016, and reported
 8 a 20% drop in food stamp enrollment, a 54% drop in Medicaid enrollment among children, and an
 9 82% drop in enrollment in a local health program. *Id.* Re-enrollment in these programs has declined
 10 by 40%. *Id.* The community’s avoidance of these crucial services will likely result in “long-term
 11 consequences on the health, nutrition, and school performance of the youngest members of these
 12 families,” many of whom are U.S. citizens. *Id.*

13 Even immigrants who have already received a form of relief from deportation, such as
 14 asylum, are experiencing an uptick in anxiety. *Amicus* organization Centro Legal de la Raza
 15 recently counseled an asylee who was anxious to adjust his status because of the DACA decision,
 16 even though he was not yet eligible and the rescission of DACA did not affect him at all, and another
 17 who was worried, after hearing about the DACA rescission, that her asylum grant could be
 18 rescinded. *Amicus* organization LSC similarly was contacted by an LPR client after the rescission of
 19 DACA to express concern for his own status.³² And *amicus* organization Dolores Street Community
 20 Services reports that eligible individuals are afraid to apply affirmatively for relief because they
 21 worry about what will happen if relief is denied or later rescinded, like DACA.

22 ²⁹ Such mixed immigration family status families are increasingly common—nearly six million citizen
 23 children live in such households. *Id.*

24 ³⁰ Supplemental Nutrition Assistance Program (SNAP), United States Department of Agriculture:
 25 Food and Nutrition Service, [https://www.fns.usda.gov/snap/supplemental-nutrition-assistance-](https://www.fns.usda.gov/snap/supplemental-nutrition-assistance-program-snap)
 26 [program-snap](https://www.fns.usda.gov/snap/supplemental-nutrition-assistance-program-snap).

27 ³¹ Women, Infants, and Children (WIC), United States Department of Agriculture: Food and Nutrition
 28 Service, <https://www.fns.usda.gov/wic/women-infants-and-children-wic>.

³² *Amicus* organization ILRC has even heard reports of naturalized citizens and legal permanent
 residents being hesitant or unwilling to access critical emergency services that they were eligible for,
 such as food assistance, following the recent fires in Sonoma, Napa, Lake and Mendocino counties.

1 Due to the rescission of DACA, many young people are now thrust into the precarious
 2 position of considering whether accessing medical care, reporting crimes, going to school, or
 3 enrolling in social services could negatively affect their ability to remain in the United States. And
 4 for the immigrant community at large, the rescission of DACA has only worsened anxiety, in an era
 5 already fraught with uncertainty and fear.

6 **B. When Immigrants Are Afraid to Access Services, Public Health, Safety, and**
 7 **Community Economic Interests Are Negatively Impacted.**

8 When individuals are too scared to seek essential services for fear of deportation, the risks for
 9 individual and public health safety increase significantly. Indeed, the “administration’s actions and
 10 directives ostensibly target the 11 million unauthorized immigrants who live in the United States, but
 11 they will also harm millions of American citizens all across the country who live and work beside
 12 these immigrants every day.” Lowrey, *Trump’s anti-immigrant policies* (emphasis added).

13 Considerable risks to individual and public health are associated with the community’s
 14 anxiety about accessing healthcare. When individuals do not seek preventive care (including
 15 vaccines), fill vital prescriptions, or care for acute conditions until they experience an emergency,
 16 both the risk of public health crises and the price of health care can rise. “Ultimately, keeping
 17 undocumented immigrants from getting necessary health care is bad for everyone . . . Health care is
 18 more expensive when people can’t get it until they’re very sick. And lack of health care increases
 19 the risk of chronic illness, which can make people unable to work or be active in their communities.”
 20 North, *DACA helped get health care; see also* Julianne Zuber, *Healthcare for the Undocumented:*
 21 *Solving a Public Health Crisis in the U.S.*, 28 J. CONTEMP. HEALTH L. & POLICY 350, 370 (2012)
 22 (“Placing barriers to accessing regular health care for undocumented immigrants threaten[s]
 23 community resilience because those with pre-existing health conditions are more vulnerable to . . .
 24 severe effects from a disease outbreak or public health emergency.”). Moreover, anxiety and fear of
 25 the consequences of being undocumented, including deportation and lack of future access to health
 26 care, could lead to acute mental health concerns. *See* David Becerra, *et al.*, *Fear vs. Facts:*
 27 *Examining the Economic Impact of Undocumented Immigrants in the U.S.*, 39 J. SOC. & SOC.
 28 WELFARE 111, 118 (2012); Leisy J. Abrego, *Legal Consciousness of Undocumented Latinos: Fear*

1 *and Stigma as Barriers to Claims-Making for First- and 1.5-Generation Immigrants*, 45 LAW &
2 SOC'Y REV. 337, 370 (2011) (risk of permanent anxiety for undocumented immigrants).

3 The public's safety is also put at risk. When victims of and witnesses to crime are afraid to
4 approach law enforcement, crime goes underreported. See Susana Martinez and Sheila Neville, *Help*
5 *for Undocumented Victims of Crime*, 44 CLEARINGHOUSE REV. 129, 141 (2010). The reluctance to
6 report crime is dangerous not only to undocumented immigrant victims, but to society as a whole.
7 See Bill Ong Hing, *Immigration Sanctuary Policies: Constitutional and Representative of Good*
8 *Policing and Good Public Policy*, 2 UC IRVINE L. REV. 247, 303 (2012) (noting that the entire
9 community is safer when the immigrant community trusts law enforcement). "When the community
10 and law enforcement are not engaged, we miss opportunities to interrupt current and future violence.
11 As a result, everyone's public safety is put at risk." Debra J. Robbin, *When Undocumented*
12 *Immigrants Don't Report Crime, We All Suffer*, WBUR (Sept. 22, 2017).³³

13 The decision to rescind DACA has increased fear in the immigrant community and added
14 thousands of young people to the group of people afraid of deportation. The resulting reduction in
15 use of public health, safety, educational, and social services is harmful to the public interest.

16 **CONCLUSION**

17 The rescission of DACA irreparably harms DACA recipients by depriving them of their only
18 real opportunity to pursue the American Dream. It also instills a fear among DACA recipients and
19 all immigrants alike that is harmful to American society as a whole. On behalf of their clients and
20 the communities they serve, *amici curiae* urge this Court to issue a declaratory judgment that the
21 Rescission Memorandum is unlawful and unconstitutional and to grant a nationwide injunction in
22 order to prevent further harm and damage to the public interest.

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27 _____
28 ³³ Available at <http://www.wbur.org/cognoscenti/2017/09/22/undocumented-immigrants-report-crimes-debra-j-robbin>.

