

No. 21-40680

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**United States Court of Appeals  
for the Fifth Circuit**

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STATE OF TEXAS; STATE OF ALABAMA, STATE OF ARKANSAS; STATE OF  
LOUISIANA, STATE OF NEBRASKA; STATE OF SOUTH CAROLINA; STATE OF WEST  
VIRGINIA; STATE OF KANSAS; STATE OF MISSISSIPPI,

*Plaintiffs-Appellees,*

v.

UNITED STATES OF AMERICA, ALEJANDRO MAYORKAS, SECRETARY, U.S.  
DEPARTMENT OF HOMELAND SECURITY; TROY MILLER, ACTING COMMISSIONER,  
U.S. CUSTOMS AND BORDER PROTECTION; TAE D. JOHNSON, ACTING DIRECTOR  
OF U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; UR M. JADDOU, DIRECTOR  
OF U.S. CITIZENSHIP AND IMMIGRATION SERVICES,

*Defendants-Appellants,*

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ELIZABETH DIAZ; JOSE MAGANA-SALGADO; KARINA RUIZ DE DIAZ; JIN PARK;  
DENISE ROMERO; ANGEL SILVA; MOSES KAMAU CHEGE; HYO-WON JEON;  
BLANCA GONZALEZ; MARIA ROCHA; MARIA DIAZ; ELLY MARISOL ESTRADA;  
DARWIN VELASQUEZ; OSCAR ALVAREZ; LUIS A. RAFAEL; NANCI J. PALACIOS  
GONDINEZ; JUNG WOO KIM; CARLOS AGUILAR GONZALEZ; STATE OF NEW  
JERSEY,

*Intervenor Defendants-Appellants.*

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Appeal from the United States District Court  
for the Southern District of Texas, Brownsville Division  
No. 1:18-cv-68

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**BRIEF FOR *AMICI CURIAE*  
TWENTY COLLEGES AND UNIVERSITIES**

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## CERTIFICATE OF INTERESTED PERSONS

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The undersigned counsel of record certifies that—in addition to the persons and entities in the Appellants’ Certificate of Interested Persons—the following listed persons and entities as described in the fourth sentence of 5th Cir. R. 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal:

1. O’Melveny & Myers LLP, Counsel for *Amici Curiae* (Anton Metlitsky, David Z. Cohen, Grace E. Leeper, Vanessa M. Guerrero);
2. Brown University
3. California Institute of Technology (“Caltech”)
4. Columbia University
5. Cornell University
6. Dartmouth College
7. Duke University
8. Emory University
9. Georgetown University
10. George Washington University
11. Harvard University
12. Massachusetts Institute of Technology (“MIT”)
13. New York University

14. Northwestern University
15. Princeton University
16. Stanford University
17. University of Chicago
18. University of Pennsylvania
19. Vanderbilt University
20. Washington University in St. Louis
21. Yale University

*/s/ Anton Metlitsky*  
*Counsel for Amici Curiae*  
Twenty Colleges and Universities

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## INTEREST OF *AMICI CURIAE*<sup>1</sup>

*Amici* are twenty distinguished American institutions of higher education. Though important differences exist among them, *amici* share a common mission to educate the next generation of leaders with the talent, creativity and drive to solve society's most pressing problems. In furtherance of that objective, *amici* have admitted undocumented students who benefitted from the protections and opportunities provided by the Deferred Action for Childhood Arrival (“DACA”) program. Like their classmates, the DACA students on *amici*'s campuses make enormous contributions to our educational institutions and our country.

The colleges and universities that are signatories to this brief have an interest in each of their undocumented students' welfare and ability to obtain a full and complete higher education. *Amici* also have an interest in ensuring that when these students graduate, they are able to put their education to its highest use. Since DACA was established nearly a decade ago, it has allowed *amici*'s students to do just that. The district court's decision permanently enjoining DACA jeopardizes *amici*'s interests by harming their students.

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<sup>1</sup> This brief is submitted under Federal Rule of Appellate Procedure 29(a), and all parties to this appeal have either consented to or do not oppose the filing of this brief. Undersigned counsel for *amici curiae* certify that this brief was not authored in whole or part by counsel for any of the parties; no party or party's counsel contributed money for the brief; and no one other than *amici* and their counsel have contributed money for this brief.

## INTRODUCTION AND SUMMARY OF ARGUMENT

*Amici* institutions have educated and helped launch the careers of many celebrated leaders and innovators in all fields, including more than 200 Nobel Prize recipients, half of the astronauts who have walked on the moon, dozens of Fortune 500 CEOs, and numerous Academy Award and Pulitzer Prize-winning artists and authors. Every day, *amici*'s alumni can be found teaching in our schools, performing cutting-edge research, discovering ground-breaking technology, healing patients in our hospitals, starting businesses, leading our armed forces, and reporting on current events for local and global news outlets. This is no coincidence, but rather a reflection of *amici*'s principal objective: To improve the human condition by educating the next generation of people with the talent, drive, and heart needed to identify and solve society's most pressing problems.

To further this mission, all *amici* institutions have admitted students who have applied for and been granted relief from removal under the DACA program. “[L]ike their peers,” the DACA students on *amici*'s campuses “are extraordinarily talented young people who . . . aspire to be leaders in public service, science, business, medicine, and the arts. They embody the drive and determination that has made the United States the most prosperous and innovative country in the

world.”<sup>2</sup> And by virtue of DACA—which protects certain undocumented immigrants from near-term deportation, allows them to work lawfully, and enables them to travel abroad—these students have been able for the first time to access educational and life opportunities on nearly equal terms with their peers.

If affirmed, the district court’s permanent injunction of the DACA program will preclude the remarkable students enrolled at *amici* institutions from obtaining the full benefit of their time on our campuses. It would also undermine *amici*’s educational missions by hindering their ability to attract and educate the most talented young people.<sup>3</sup> Indeed, ending DACA would force future scholars, innovators, and leaders to choose between withdrawing to the margins of our society and national economy or returning to countries that they have never called home.

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<sup>2</sup> Letter from Harvard University President Drew Gilpin Faust to President Donald J. Trump Regarding DACA (Aug. 28, 2017), <https://www.harvard.edu/president/news/2017/letter-to-president-trump-regarding-daca>. *See also, e.g.*, Letter from Cornell University President Martha E. Pollack to President Donald J. Trump (Aug. 31, 2017), <https://tinyurl.com/y4ufuhod> (“I believe that our DACA students are ‘incredible kids.’ . . . It would be more than a shame if you . . . extinguish so many bright and productive futures just as they are getting started.”); Letter from Washington University in St. Louis Chancellor Mark S. Wrighton to President Donald J. Trump (Sept. 1, 2017), <https://tinyurl.com/y48e7tof> (“I believe that abandoning DACA would not be in our national interest.”).

<sup>3</sup> Letter from Caltech President Thomas F. Rosenbaum to The Caltech Community (Sept. 5, 2017), <https://tinyurl.com/y3u5meyq> (ending DACA “cuts to the core of what we stand for as an educational institution: to identify, attract, and support talented individuals, and to create a community where students, staff, and faculty alike can learn from each other and thrive”).

Whatever they choose, their gifts and education will be lost to this nation. *Amici* therefore urge this Court to reverse the decision below.

*Amici* submit this brief to inform the Court about their experiences with the DACA students on their campuses and to warn of the consequences—to the students, *amici*, and the country—of ending DACA. At this time of profound challenges—from global pandemics and violent conflicts to climate change and income inequality—the importance of *amici*'s shared mission of advancing and improving the human condition through teaching and research comes into sharper focus. To achieve their ambitious goals of advancing knowledge and improving our society, schools must be able to identify and educate the very best students, and those students must be able to work after graduation. Ending DACA would unjustly sideline a discrete group of students. As one of *amici*'s Presidents put it, no student—*amici*'s or otherwise—should be forced to live in constant fear of “losing the opportunities they earned, the communities they think of as home, and the nation they love.”<sup>4</sup> Nor should the nation lose the benefits of any student's full participation in our society.

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<sup>4</sup> L. Rafael Reif, President of MIT, *Trump Should Not Repeal DACA*, BOSTON GLOBE (Aug. 31, 2017), <https://tinyurl.com/y6wyq239>.

## ARGUMENT

### I. DACA STUDENTS ENROLLED AT AMICI INSTITUTIONS ARE SOME OF THE MOST GIFTED AND MOTIVATED YOUNG PEOPLE IN THE WORLD

*Amici* are united in a core mission: to educate extraordinary students from diverse backgrounds and prepare them for leadership, active citizenship, and achievement in every field of human endeavor. Each of *amici*'s schools, to borrow from one, "educates the most promising students and prepares them for a lifetime of learning and of responsible leadership."<sup>5</sup> Whether pulled from *amici*'s founding charters<sup>6</sup> or their current websites,<sup>7</sup> these clearly stated educational objectives

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<sup>5</sup> Dartmouth College, *Liberal Arts at the Core*, <https://tinyurl.com/y5mku5ul> (last visited Dec. 7, 2021).

<sup>6</sup> See, e.g., Duke University, *Indenture of James B. Duke Establishing the Duke Endowment*, at 24 (1924), <https://tinyurl.com/y4dzoeq2> (calling for courses of instruction in areas that "can do most to uplift mankind" and "help to develop our resources, increase our wisdom and promote human happiness"); Stanford University, *The Founding Grant with Amendments, Legislation, and Court Decrees*, at 24 (1885), <https://tinyurl.com/y69s9ph7> (Stanford University's "chief object is the instruction of students with a view to producing leaders and educators in every field of science and industry"); Harvard University, *The Charter of the President and Fellows of Harvard College, Under the Seal of the Colony of Massachusetts Bay, and Bearing the Date May 31st A.D. 1650*, <https://tinyurl.com/yxdudz56t> (Harvard's mission includes "the advancement of all good literature arts and sciences").

<sup>7</sup> See, e.g., Cornell University, *University Mission*, <https://tinyurl.com/yymdtgkx> (last visited Dec. 7, 2021) (Cornell University's "mission is to discover, preserve and disseminate knowledge, to educate the next generation of global citizens, and to promote a culture of broad inquiry throughout and beyond the Cornell community"); MIT, *MIT Mission*, <https://tinyurl.com/yglcbj> (last visited Dec. 7, 2021) (MIT's goal "is to advance

govern how *amici* “determine for [themselves] on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study.” *Sweezy v. New Hampshire*, 354 U.S. 234, 263 (1957) (Frankfurter, J., concurring) (quotation omitted).

To fulfill their missions, *amici* devote substantial resources to identifying, recruiting, and retaining exceptional young people from around the globe. Of course, *amici* seek students with the scholarship record to excel in their classrooms, but given the great number of applications that *amici* receive—well in excess of the number of students they can admit—academic merit alone is insufficient for admission. *Amici* therefore undertake an intensive application review process to identify those students “who w[ill] make the most of the extraordinary resources” they have to offer, “those with a zest to stretch the limits of their talents, and those with an outstanding public motivation—in other words, applicants with a concern for something larger than themselves.”<sup>8</sup> Additionally,

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knowledge and educate students in science, technology, and other areas of scholarship that will best serve the nation and the world in the 21st century”).

<sup>8</sup> Yale Admissions, *What Yale Looks For*, <https://tinyurl.com/y2cxrqht> (last visited Dec. 7, 2021); see also Harvard College Admissions, *What We Look For*, <https://tinyurl.com/y86n5rv7> (last visited Dec. 7, 2021) (“We seek to identify students who will be the best educators of one another and their professors—individuals who will inspire those around them during their College years and beyond.”); Brown University, *Undergraduate Admission*, <https://tinyurl.com/y7syjs2m> (last visited Dec. 7, 2021) (“We will consider how

*amici* have worked to ensure that the most qualified students can enroll in their institutions, irrespective of their socioeconomic and immigration status.<sup>9</sup>

The DACA students who attend and have graduated from *amici* institutions were selected because they are outstanding students. Like their classmates, these young people were valedictorians, student government leaders, varsity athletes, inventors, academic award winners, accomplished artists, and role models for younger children in their communities. And like many of their classmates, they are the pride of the neighborhoods in which they grew up—“local kids who made good.” To take just a few examples:

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your unique talents, accomplishments, energy, curiosity, perspective and identity might weave into the ever-changing tapestry that is Brown University.”).

<sup>9</sup> Indeed, many of *amici* provide at least their undergraduate students complete, need-based financial aid. See, e.g., Harvard College Financial Aid Office, *How Aid Works*, <https://tinyurl.com/y3zylrq5> (last visited Dec. 7, 2021) (Harvard “meet[s] 100 percent of [the] students’ demonstrated financial need” of undergraduate education irrespective of citizenship status); MIT Student Financial Services, *Making MIT Affordable*, <https://tinyurl.com/y523kn2e> (last visited Dec. 7, 2021) (MIT promises its undergraduate applicants that once they are admitted, the university is “committed to meeting 100% of demonstrated financial need with our aid.”); Columbia Undergraduate Admissions, *Undocumented Students and DACA*, <https://tinyurl.com/yf2p7e5> (last visited Dec. 7, 2021) (Columbia is committed to “meet[ing] 100% of the demonstrated financial need of all students admitted as first-years, or transfer students pursuing their first degree, regardless of citizenship status”); New York University Admissions, *Undocumented Students*, <https://tinyurl.com/y3v8zmg3> (last visited Dec. 7, 2021) (“As an undocumented student at New York University you are eligible for the same scholarships and financial aid as fellow documented students.”).

- Santiago Tobar Potes, a 2020 cum laude graduate of Columbia University, was a straight-A student in high school, scored at the highest levels on state and national academic tests, speaks nine languages and is an accomplished violinist who gave free lessons to impoverished youth in his hometown of Miami, Florida.<sup>10</sup> Because of DACA, Santiago has been able to work as a physics teaching assistant for a string theorist, as an intern for a New York State Supreme Court Justice, and as a researcher for a journalist at The New Yorker. Following graduation, he was named a Rhodes Scholar and will attend Yale Law School in the fall of 2024, once he completes his graduate study at the University of Oxford.
- Luke Hwang graduated with a PhD in chemistry from the University of Chicago in June 2020, and is currently an associate manager for intellectual property and technology development at the Polsky Center for Entrepreneurship and Innovation at the University. Before attending the University of Chicago, Luke graduated from a competitive math and sciences magnet high school in Bergen County, New Jersey, where he

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<sup>10</sup> Santiago Tobar Potes, *DACA Student: Deporting Me and 800,000 Dreamers Is a Man-Made Disaster That Will Be Terrible for US*, FOX NEWS (Sept. 5, 2017), <https://tinyurl.com/y6sdxvsr>.

won a number of awards at regional science fairs and volunteered as an Emergency Medical Technician in his local ambulance corps. Luke was next accepted as a University Scholar in the Macaulay Honors College at the City College of New York, from which he received a Bachelor's of Science in Chemistry. In addition to graduating *summa cum laude*, Luke received an award for obtaining the highest grade point average of any chemistry major.<sup>11</sup>

- Johan Villanueva graduated from MIT in 2020 with a major in chemical engineering after graduating second in his class from the largest public high school in Chicago. Johan now works in an operations role for a quantitative hedge fund, managing complicated math systems. His fund has plans to expand internationally, and Johan's DACA status will allow him to travel abroad and represent his workplace on the global stage.
- Maria De La Cruz Perales Sanchez, a 2018 graduate from Princeton University, is now a Senior Policy Manager at Centro de los Derechos del Migrante, where she leads gender-focused advocacy and policy

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<sup>11</sup> This anecdote—along with those discussed *infra* about Johan Villanueva, Maria De La Cruz Perales Sanchez, Carlos Sotelo, Dr. Dalia Larios, Barbara Olachea Lopez Portillo, Juan Jose Martinez-Guevara, Jose Gomez, Paul Gastello, Cristina Velasquez, Sergio Jara Reynoso, and Jaida Forbes—were provided for this brief by *amici* or the individuals themselves.

efforts to ensure migrant workers' perspectives are represented in policies that impact them directly. Maria also serves as the Secretary of the Board of Directors of Alianza Nacional de Campesinas, the first national alliance of farmworker-women-serving organizations. In 2017, Maria joined Princeton in a lawsuit opposing the rescission of DACA. Maria is currently in the process of applying to law school and hopes to gain the technical skills she needs to continue to make a difference in her community.

- Carlos Sotelo was born in Mexico and came to Texas when he was four months old. Despite the hardships his family faced, Carlos understood that the best path forward for him was a good education. He persisted and worked hard in school—and was eventually admitted to Princeton. Since graduating in 2017, Carlos has worked in college readiness programming back in the same area he attended high school, overseeing 22 campuses and specifically focusing on immigrant and Latinx student communities. He is in the process of applying to business school, after which he hopes to use his experience in education equity to scale solutions beyond the school or district level.

DACA students' presence on *amici*'s campuses is all the more notable given the enormous challenges that undocumented youth face in order to obtain a higher

education. To start, the vast majority of these students have grown up in households that survive on incomes far below the federal poverty line, and most are the first persons in their families to attend college.<sup>12</sup> Additionally, these students often cope with family instability and anxiety relating to their undocumented status.<sup>13</sup> As one DACA alumna of Yale explained:

[The] challenges . . . start in high school—when many undocumented students, seeing no way out of their limbo status, lose motivation. Others pick up jobs on the side to financially help their families, slowly drifting away from their classwork. Even for those who remain dedicated to their classes, studies show a lack of information regarding university options and an inability to obtain financial aid obstructs the path to higher education.<sup>14</sup>

Given the significant adversity that DACA students have surmounted prior to even applying to *amici* institutions, it is no surprise that they have also excelled on *amici*'s campuses. Dr. Dalia Larios was the first DACA recipient accepted to Harvard Medical School, where she pursued her passion: curing cancer. Indeed,

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<sup>12</sup> See Institute for Immigration, Globalization, & Education, *In the Shadows of the Ivory Tower: Undocumented Undergraduates and the Liminal State of Immigration Reform* 7 (2015), <https://tinyurl.com/y6kvtafm> (reporting on a survey of undocumented students that found “61.3% . . . had an annual household income below \$30,000” and 67.6% were first-generation college students).

<sup>13</sup> *Id.* at 2 (“[Undocumented youth] are disproportionately more likely to grow up in poverty, crowded housing, lacking health care, and residing in households where families have trouble paying rent and affording food.”).

<sup>14</sup> Stephanie Leutert, *Undocumented in the Ivy League*, AM. Q. (May 5, 2015), <https://tinyurl.com/y36yanvr>.

she remained in medical school for an extra year to study novel therapies for mesothelioma and lung cancer and has presented her research at numerous conferences and published several manuscripts. Today, Dr. Larios has completed a year of general medicine at Brigham and Women's Hospital where she served during the peak of the COVID-19 pandemic in the intensive care unit (ICU) and oncology units caring for critically ill COVID-19 patients. During this time, she also worked with hospital leadership to help develop guidelines focused on improving healthy equity in populations disproportionately affected by COVID-19 as well as revising crisis resource allocation protocols. She is now completing specialized training at both Brigham and Women's Hospital and Massachusetts General Hospital under the Harvard Radiation Oncology Program, where she cares for cancer patients of all backgrounds. She has also continued research work on the treatment of lung cancer patients with a recent national conference presentation. Without DACA, Dr. Larios would not be able to complete her radiation oncology residency, nor would she be able to continue caring for the many cancer patients who rely on her. Given the significant adversity that DACA students have surmounted prior to even applying to *amici* institutions, it is no surprise that they have also excelled on *amici*'s campuses.

Jin Park was born in South Korea and came to New York City at age 7.<sup>15</sup> Growing up, Park understood that his family was different: “I knew that my family couldn’t get a car, that we didn’t have health care, and that we should avoid busy streets, where immigration raids often take place[,] . . . but I didn’t quite understand it.”<sup>16</sup> In high school, a Manhattan hospital rejected him from an internship program on that basis. Jin credits DACA with giving him the confidence to apply to college to pursue his dream of becoming a “doctor to work on policies to help the most vulnerable.”<sup>17</sup> Indeed, his professional goals are an outgrowth of his experience growing up undocumented: “When I was 11, I had to search online how to treat a burn at home because my father had been burned at work and couldn’t go to the hospital.”<sup>18</sup> A 2018 Harvard graduate and Class Day speaker, Jin is the first DACA recipient of a Rhodes Scholarship.<sup>19</sup> Without DACA, Jin would not have been able to travel to the United Kingdom to participate in this prestigious program.

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<sup>15</sup> Jin Park is an Intervenor Defendant in this case.

<sup>16</sup> Liz Mineo, *Ask the Undocumented*, HARVARD GAZETTE (May 4, 2017), <https://tinyurl.com/y5ufmbms>.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Jin Park, *I’m a Dreamer and a Rhodes Scholar. Where Do I Belong?*, THE N.Y. TIMES (Jan. 11, 2019), <https://tinyurl.com/y76482pd>.

## **II. ENDING DACA WOULD HARM AMICI'S STUDENTS AND ALUMNI, AND DEPRIVE BOTH AMICI INSTITUTIONS AND THE COUNTRY OF THEIR PROMISE**

### **A. Ending DACA Would Have a Devastating Impact on DACA Students**

DACA students are American in everything except immigration status. They came of age in this country, excelling in our elementary, middle, and high schools. Still more, an amazing number of these young people have demonstrated their dedication to this country's ideals by actively engaging in its civic life to the full extent permitted by law. Even before their arrival on our campuses, many of *amici's* students and alumni led voter registration drives, carried petitions, testified before state and federal legislative bodies, wrote letters to the editor, and participated in documentary film projects. And they continue to do so today—despite the potential consequences for themselves, their friends, and their loved ones. In short, many of these young people have engaged in precisely the kind of courageous civic activities that are crucial to the continued vitality of our democracy.

While DACA does not provide our students and alumni a path to citizenship, it does offer them a measure of security and access to opportunities for educational and professional development. As Juan Jose Martinez-Guevara, a Georgetown graduate, put it:

Throughout my undergraduate education, DACA enabled me to

hold steady on-campus jobs to cover costs associated with meals, books, travel, and other necessities for college living. DACA gave me a sense of safety I otherwise wouldn't have had. This allowed me to thrive as a first generation college student.

The same goes for Barbara Olachea Lopez Portillo, who graduated in the spring of 2019 from Dartmouth, where she double-majored in film and media studies and sociology. Barbara was the valedictorian of her high school class in Phoenix, Arizona, the secretary of her school's student government, and an active participant in various other extracurricular activities, including Inspire Arizona, an organization that promotes civic engagement. Relying on her DACA status, Barbara is now pursuing a career in post-production in Los Angeles, processing major television shows and features at leading post facilities such as Picture Shop and Company 3, as well as serving as a junior editor for LATV Network.

Ending DACA would wrest from Juan, Barbara, and hundreds of thousands of strivers like them the sense of safety and possibility that they deserve and have come to rely on. Indeed, as the Supreme Court has recognized, since DACA was enacted in 2012, "DACA recipients have 'enrolled in degree programs, embarked on careers, started businesses, purchased homes, and even married and had children, all in reliance' on the DACA program." *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1914 (2020) (quoting respondents' brief). Many other courts have similarly recognized the significant interests DACA recipients have in its continuation. *See Regents of Univ. of Cal. v. U.S.*

*Dep't of Homeland Sec.*, 908 F.3d 476, 486 (9th Cir. 2018) (“DACA also allows recipients to apply for authorization to work in this country legally, paying taxes and operating in the above-ground economy. ... [H]undreds of thousands of ... young people, trusting the government to honor its promises, leapt at the opportunity.”); *NAACP v. Trump*, 298 F. Supp. 3d 209, 240 (D.D.C. 2018) (“Because DHS failed to even acknowledge how heavily DACA beneficiaries had come to rely on the expectation that they would be able to renew their DACA benefits, its barebones legal interpretation was doubly insufficient and cannot support DACA’s rescission.”); *Batalla Vidal v. Nielsen*, 279 F. Supp. 3d 401, 431 (E.D.N.Y. 2018) (“[E]ducational institutions have enrolled DACA recipients who, if they lose their DACA benefits, may be forced to leave the United States or may see little need to continue pursuing educational opportunities.”); *Regents of Univ. of Cal. v. U.S. Dep't of Homeland Sec.*, 279 F. Supp. 3d 1011, 1046 (N.D. Cal. 2018) (“DACA recipients, their employers, their colleges, and their communities all developed expectations based on the possibility that DACA recipients could renew their deferred action and work authorizations for additional two-year periods.”). Through no fault of their own, these young people would face the terrifying prospect of having to return to a life in which they have little chance of making the best use of their hard-earned skills and knowledge, or, worse still, being removed altogether and forced to make their way in a “home” country that is

wholly foreign to them.

Ending the DACA program also would send a clear message to the more than one million undocumented children in the United States that the trails *amici*'s students and alumni have blazed lead nowhere and are not worth following. That message is antithetical to the commitment to equal opportunity on which this country was founded, raising “the specter of a permanent caste of undocumented [immigrants] . . . denied the benefits that our society makes available to citizens and lawful residents.” *Plyler v. Doe*, 457 U.S. 202, 218–19 (1982). Rather than serving our country's interests, ending DACA will deprive our society of the many contributions these young people are prepared and eager to make.

**B. Ending DACA Would Prevent Undocumented Students From Fully Benefitting From and Contributing To *Amici*'s Institutions**

Consistent with their missions, *amici* are committed to providing a full and complete education to all of their enrolled students—anything less is insufficient to prepare them to identify and solve the consequential problems that *amici* expect their alumni to address over the course of their careers. DACA helps *amici* achieve this objective by making it possible for undocumented students to participate in educational work opportunities, such as off-campus internships and on-campus research with university faculty. It also allows them to conduct field work outside of the United States and participate in *amici*'s varied study abroad

programs.<sup>20</sup> By participating in these experiences, students generate questions for further exploration during their time on campus and begin to chart their course for after graduation.

For instance, during his time at MIT, Jose Gomez, who came to the United States from northern Mexico when he was five years old, participated in MIT's Undergraduate Research Opportunity Program at the MIT Space Systems Laboratory, where, among other things, he participated as a flyer in a NASA reduced gravity flight. This work in turn resulted in Jose co-authoring a paper that was presented at an international conference in Vienna, Austria. Separately, due to DACA, Jose was eligible to participate in an externship at a startup company that develops robots to improve the efficiency of e-commerce order fulfillment. During this externship, Jose led the development of a tactile sensor kit for a robotic hand and designed and prototyped robotic finger mechanical components using 3D

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<sup>20</sup> Indeed, *amici* have emphasized the importance of study abroad programs to better prepare students to build “global competence” and navigate careers in an interconnected world. See, e.g., Northwestern University, *About the Global Learning Office*, <https://tinyurl.com/y335nlrj> (last visited Dec. 7, 2021); Vanderbilt University, *About the Global Education Office*, <https://tinyurl.com/yyyyzxvf3> (last visited Dec. 7, 2021) (Vanderbilt “is committed to preparing global citizens. . . .”); Emory University, *Study Abroad at Emory*, [tinyurl.com/2ybybu9w](https://tinyurl.com/2ybybu9w) (last visited Dec. 10, 2021) (“Such an education abroad experience not only fosters appreciation of cultures and languages other than our own, but it also promotes a better, more discerning understanding of the U.S. in all of its own diversity. Education abroad experiences are essential to the development and preparation of students for future scholarship and careers.”).

printed parts and rubber casting. Given this achievement, it is no surprise that the startup asked Jose to return as an applications engineer after he graduated with a Bachelor's of Aerospace Engineering in June 2017. He has now worked at the company for five years and oversees his own team of engineers. Jose's work is also integrated into products used by customers in North America, Europe, and Japan. Jose explained: "If DACA didn't exist today, I would still be in my hometown in Texas. I'm not sure I would have even graduated college." Without DACA, Jose's story would not have been possible.

Paul Gastello has a similar story. Paul grew up in New York and was the first person in his family to go to college. He studied government at Dartmouth, but was unable to find a job through the on-campus recruiting process his senior year because of his immigration status. For Paul, DACA changed everything. When DACA was announced, Paul decided to take a year off from college to gain the work experience that he needed to pursue a career in finance. During that year, Paul interned with a private investment management company and subsequently accepted an offer to return as a full-time employee after he graduated in 2014. Paul stayed with that company for four years before taking a job analyzing strategic financing opportunities for a startup company that operates an online marketplace for the sale of new and used clothing. He has since moved on to another startup that seeks to improve financial outcomes for America's

“under-banked” population, leading its “strategy & finance” function. Looking to the future, Paul’s primary goal is to take care of his aging parents, who endured many hardships to give him access to freedom and economic security. DACA is vital to his ability to do so.

In addition to unlocking the full array of enriching activities that comprise a world-class higher education, deferred action under DACA empowers undocumented students to talk about their lived experiences without fear of retribution, adding meaningfully to the robust exchange of ideas that *amici* seek to cultivate on their campuses. For instance, while attending the University of Pennsylvania’s Wharton School of Business, class of 2014 graduate and DACA recipient Tania Chairez founded Penn for Immigrant Rights (“PIR”), an organization intended to “debunk misconceptions and connect immigration to current events.”<sup>21</sup> Under her leadership, PIR conducted “undocu-trainings . . . [to] mak[e] sure as many student leaders as possible know what it even means to be an undocumented person.”<sup>22</sup>

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<sup>21</sup> Penn for Immigrant Rights, *Founders Statement*, <https://tinyurl.com/y3gltspb> (last visited Dec. 7, 2021).

<sup>22</sup> Laura Anthony, *Two Years Later, Tania Chairez Still ‘Undocumented and Unapologetic’*, DAILY PENNSYLVANIAN (Apr. 17, 2014), <https://tinyurl.com/y46uchbl>.

True, numerous DACA students have continued to speak publicly about their immigration status despite the uncertainty wrought by the district court’s decision—including the many students who agreed to the use of their names in this brief. But permanently enjoining DACA places these students, and the many more whom these threats to DACA have silenced, in a position wholly at odds with the principles of free speech to which *amici* are fervently committed. These students should not have to risk their own physical liberty—and that of their families—in order to tell their stories.

### **C. Ending DACA Would Deprive the Nation of Invaluable Resources**

The DACA students at *amici* institutions—and the many thousands more enrolled at other colleges and universities—are by definition the product of this nation’s education system and the communities that support it. Through the opportunities provided by American institutions of higher education all over this country, including *amici*’s, these young people now have the skills to give back—in ways big and small—to the country that raised them. And they want nothing more than the opportunity to do so. “[D]riving them out” now “would be throwing away a tremendous national investment” for no discernible benefit.<sup>23</sup>

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<sup>23</sup> Reif, *supra*, note 4.

Take Cristina Velasquez, whose mother brought her to Madison, Wisconsin, when she was six years old. In a letter to Senator Richard Durbin of Illinois, Cristina wrote that her values and attitude were shaped by the people surrounding her during her childhood, especially their “compassion, patience and hard work.” During middle school, Cristina’s family relocated to Florida, where she went on to graduate from high school with impeccable grades and a track record of community engagement, but she could not afford to attend college. After taking a gap year to focus on saving money, Cristina enrolled at Miami-Dade Community College before transferring to the Georgetown School of Foreign Service from which she graduated in 2017. While at Georgetown, Cristina spent both of her summers working with high-achieving, low-income middle school students, and she received several awards for her academic achievement and commitment to public service. After graduation, Cristina returned to the classroom, where she is currently one of 240 DACA recipients teaching some of our nation’s most marginalized and vulnerable youth through Teach for America.<sup>24</sup> Christina received a “highly effective” teacher rating — the highest rating a teacher can

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<sup>24</sup> *Durbin: Let’s Show The American Dream Is Still Alive By Passing The Dream Act* (Sept. 12, 2017), <https://tinyurl.com/y69m6nmd>; Teach for America, *Immigrants and Refugees*, <https://tinyurl.com/yxkxbq75> (last visited Dec. 7, 2021).

receive in DC public schools. She is currently in the process of applying to law school to continue her service beyond the classroom.

Consider, too, Alfredo Muniz, who arrived with his parents in Houston, Texas when he was only a year old and went on to earn a full scholarship to attend the University of Pennsylvania, from which he graduated in 2016 with undergraduate and graduate degrees in mechanical engineering and robotics.<sup>25</sup> While at Penn, Alfredo and a classmate developed XEED, a sensor-based system that collects and transmits data about limb movement in individuals with Parkinson's disease.<sup>26</sup> Healthcare professionals and patients can use this information to better assess the disease's progress and the effectiveness of treatment. The project, which has the potential to help hundreds of thousands of patients around the world, was awarded the 2016 University of Pennsylvania President's Innovation Prize, which was accompanied by \$100,000 to support its further development.<sup>27</sup>

Blanca Morales arrived in the United States when she was five years old. She "believed [her] teachers when they said that if [she] just worked hard enough,

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<sup>25</sup> Amanda Mott, *Inaugural President's Innovation Prize Winners Announced at Penn*, PENNNEWS (Apr. 20, 2016), <https://tinyurl.com/y5juheqm>.

<sup>26</sup> *Id.*

<sup>27</sup> Roberto Torres, *These 3 Companies Are Coming to the Pennovation Center*, TECHNICAL.LY (June 30, 2016), <https://tinyurl.com/y2sa6sl6>.

[she] could achieve great things.”<sup>28</sup> Heeding their advice, Blanca graduated as the valedictorian of her community college class and with Latin honors from the University of California, Irvine, before receiving a full scholarship to attend Harvard Medical School.<sup>29</sup> Blanca is currently a resident at the University of California, San Francisco, studying to be an OB/GYN.<sup>30</sup> Without DACA, Blanca would be “left to wonder if [she] will be deported” before she has the opportunity to do so.<sup>31</sup> “When I received this white coat, I took an oath to act whenever there are injustices and to embrace my duty to advocate for patients,” Blanca said. “The end of DACA would put an end to my direct ability to treat pelvic cancers, reduce morbidity and mortalities from high risk pregnancies, and provide preventive gynecological care to women. I have spent my entire academic career preparing to be a doctor. DACA has enabled me to pursue medicine, but without, I cannot fulfill my duty to serve my patients.”<sup>32</sup>

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<sup>28</sup> Troy Parks, *Med Student ‘Dreamers’ Speak Out on Maintaining DACA Protections*, AMA WIRE (Feb. 13, 2017), <https://tinyurl.com/zg8p8vd>.

<sup>29</sup> *Id.*

<sup>30</sup> Greg Lee, *Undocumented Santa Ana Scholar Accepted to Harvard Medical School*, ABC NEWS (June 16, 2016), <https://tinyurl.com/y5lcbqj7>.

<sup>31</sup> Jake Miller, *White Coats for DACA*, HARVARD MED. SCH. NEWS (Sept. 14, 2017), <https://tinyurl.com/y6rudq xv>.

<sup>32</sup> *Id.*

The district court's injunction has jeopardized the future of some of *amici's* students. Sergio Jara Reynoso is a junior at Harvard studying computer science. He is passionate about computer programming and helping other people, and is looking forward to pursuing a career that combines those interests. Sergio was in the process of applying for DACA status when the district court enjoined the program, abruptly halting his plans. Without DACA, he is unsure if he will be able to apply for an internship or job in his field. Next semester, he wants to work for a startup that is building drones to deliver medical equipment in Africa—but because of the uncertainty he faces, he fears he won't be able to work with them.

The district court's decision also disrupted Jaida Forbes's plans. Jaida is a sophomore at Georgetown University majoring in government, with plans to go to law school once she graduates. In December of 2020, when Jaida was first eligible, she immediately submitted her DACA application. She was looking forward to travelling to England to see her family and feeling safer in a country she had grown up in almost her entire life. Following the district court's ruling, her life has been "in limbo." While Jaida wants to apply to various internships and opportunities in D.C., she is unable to do so because of her current status. And Jaida's dreams of going to law school after graduation are on hold due to the extreme costs of graduate school and her inability to work and save up money.

Cristina, Alfredo, Blanca, Sergio, Jaida, and countless others like them have “bound” themselves to this nation through their “hard work, perseverance, grit and determination to succeed.”<sup>33</sup> And this nation, in turn, has bound itself to them. The United States now stands to benefit greatly by permitting the young people that it has raised “to put their skills to their highest use.”<sup>34</sup> “[F]orcing them to return to the shadows of our society”—or out of the country entirely—by ending the DACA program would be a tragic mistake.<sup>35</sup>

### CONCLUSION

For the foregoing reasons, ending the DACA program would impede *amici*’s ability to advance their missions, impose a direct harm on their current students and alumni, and deprive the United States of the benefit of DACA students’ considerable talents. Accordingly, the Court should reverse the decisions below.

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<sup>33</sup> *Brown President Urges Trump to Continue DACA*, BROWN UNIV. NEWS (Aug. 30, 2017), <https://tinyurl.com/yxcceope>.

<sup>34</sup> Faust, *supra*, note 2.

<sup>35</sup> *Id.*

Respectfully submitted,

*/s/ Anton Metlitsky*

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### CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of December, 2021 I electronically filed the foregoing with the Clerk of the Court for the U.S. Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. All participants are registered CM/ECF users, and will be served by the appellate CM/ECF system.

Dated: December 15, 2021

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B)(i) because this brief contains 6,092 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman 14-point font.

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