

No. 18-55564

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

INLAND EMPIRE-IMMIGRANT YOUTH COLLECTIVE ET AL.,
Plaintiffs and Appellees,

v.

KIRSTJEN NIELSEN, U.S. DEPARTMENT OF HOMELAND SECURITY ET AL.,
Defendants and Appellants.

**On Appeal from the United States District Court
for the Central District of California**

No. 5:17-cv-02048-PSG-SHK

Philip S. Gutierrez, Judge

**AMICUS CURIAE BRIEF OF THE STATES OF CALIFORNIA,
CONNECTICUT, DELAWARE, DISTRICT OF COLUMBIA, HAWAII,
ILLINOIS, IOWA, MARYLAND, MASSACHUSETTS, MINNESOTA, NEW
MEXICO, NEW YORK, OREGON, PENNSYLVANIA, RHODE ISLAND,
VERMONT, VIRGINIA, AND WASHINGTON**

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INTRODUCTION AND INTEREST OF AMICI STATES

The Amici States are home to hundreds of thousands of young people who have received protection from removal and work permits under the Deferred Action for Childhood Arrivals (DACA) program, as well as their families, including U.S.-citizen children. For many DACA recipients, the United States is the only country they have ever known. They have relied on DACA protections to enroll in colleges and universities, earn degrees, become medical professionals and teachers, serve in the U.S. military, open businesses, start families, and purchase homes. They are vital members of Amici States and their local communities.

The Department of Homeland Security's (DHS) unlawful practice of automatically terminating DACA grants upon issuing a Notice to Appear (NTA), without affording DACA recipients notice or an opportunity to contest the termination, strips these individuals of legal authorization to work and forces them to go back into the shadows. As courts have repeatedly recognized, such unlawful federal actions not only harm the welfare of DACA recipients and their families, but also Amici States' economies, workforces, businesses, schools, and social services. *See Regents of Univ. of Cal. v. U.S. Dep't of Homeland Sec.*, 279 F. Supp. 3d 1011, 1026–27, 1033–34 (N.D. Cal. 2018) (*Regents I*), *aff'd*, 908 F.3d 476 (9th Cir. 2018) (*Regents II*), *petition for cert. filed*, No. 18-587 (U.S. Nov. 5, 2018); *Batalla Vidal v. Nielsen*, 279 F. Supp. 3d 401, 434–35 (E.D.N.Y. 2018).

The practice enjoined by the district court in this case, if allowed to continue, could impact a substantial number of DACA recipients, who would suffer the attendant harms that come from losing their grants. *See Inland Empire-Immigrant Youth Collective v. Nielsen*, No. CV-17-2048, 2018 WL 1061408, at *6–7 (C.D. Cal. Feb. 26, 2018) (*Inland Empire II*) (noting that plaintiffs put forward evidence of 22 identified class members, and that plaintiffs plausibly estimated that, “given the increased rate of DACA revocations and increased scrutiny on the part of federal immigration authorities, there are likely at least dozens—if not many more—who have already had their DACA terminated”; also noting that this number does not even include the people who are likely to be subject to future harm).

This Court recently affirmed a preliminary injunction that the District Court for the Northern District of California issued after a coalition of States (including some of the signatories to this brief) sought provisional relief against the federal government’s rescission of the DACA program as a whole. *Regents II*, 908 F.3d at 486.¹ The benefit of that preliminary injunction is severely undermined if

¹ The District Court for the Eastern District of New York likewise issued a nationwide preliminary injunction barring the federal government from ending the DACA program pending a final adjudication on the merits. *See Batalla Vidal*, 279 F. Supp. 3d at 437–38. Defendants’ appeal of this injunction is pending with the Second Circuit. Defendants have also filed a petition for certiorari before judgment as to this order, *Batalla Vidal v. Nielsen*, No. 18-587 (U.S. Nov. 5, 2018), and requested that it be consolidated with the petition in *Regents*.

defendants are not enjoined from the conduct at issue here, and are allowed to continue improperly terminating grants of individuals who should be protected under the *Regents* injunction.

Amici States also have a significant interest in ensuring that the federal government complies with its obligations under the law, including its obligation to follow its own written procedures. In this case, hundreds of thousands of residents of the States have applied for and received individual grants of deferred action under DACA, trusting that the federal government would comply with the rules for the DACA program that it created. The federal government's failure to do so creates uncertainty, fear, and confusion among DACA recipients in Amici States and undercuts the public's trust in the government.

ARGUMENT

I. UNLAWFUL TERMINATION OF DACA GRANTS INFLECTS SERIOUS AND IRREPARABLE HARM ON INDIVIDUALS, FAMILIES, COMMUNITIES, AND THE AMICI STATES

One of the factors in entering a preliminary injunction is whether the “injunction is in the public interest.” *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008). The public interest is particularly relevant in cases where the impact of an injunction reaches beyond the parties and carries a potential for public consequences. *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1139 (9th Cir. 2009). In cases like this one, which affects many non-parties (including Amici States), courts

consider the hardship to third parties as part of the public interest analysis. *See Golden Gate Rest. Ass'n v. City & Cnty. of San Francisco*, 512 F.3d 1112, 1126–27 (9th Cir. 2008).

The public interest strongly favors plaintiffs as evidenced, in part, by the significant harm that Amici States will suffer if the preliminary injunction is not upheld. Almost 354,000 DACA recipients live in Amici States, more than half of the Nation's total.² These young people have lived in the United States since they were children, and many have known no other country. Based on the belief that the federal government will follow regular procedure when administering the DACA program, these individuals have made, and continue to make, life-altering decisions. After receiving deferred action and work authorization through the DACA program, they have started families, earned degrees, founded businesses, bought homes, and advanced in their careers. They contribute to Amici States' economies, workforces, and civic life in countless ways, both quantifiable and intangible. Upholding the injunction granted by the district court would prevent irreparable harm not only to the individuals whose DACA grants are threatened by

² U.S. Citizenship and Immig. Servs. (USCIS), *DACA Characteristics Data: Approximate Active DACA Recipients as of Aug. 31, 2018* (Oct. 2, 2018), https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/DACA_Population_Data_August_31_2018.pdf.

the federal government's practices challenged here, but also to their families, employers, communities, as well as Amici States.

On the other side, the federal government can assert no meaningful harm from the injunction. While the federal government has an interest in enforcing immigration laws, “[t]here can be no harm to [government agencies] in requiring them to follow their own written guidelines.” *Coyotl v. Kelly*, 261 F. Supp. 3d 1328, 1344 (N.D. Ga. 2017) (granting preliminary injunction and reinstating plaintiff's terminated DACA grant because USCIS had failed to follow its Standard Operating Procedures [DACA SOP]). Any residual interest pales when compared with the serious harm caused by improper terminations of DACA grants and work authorizations.

Courts have repeatedly considered the kind of public harms asserted by the Amici States here when assessing whether a preliminary injunction is appropriate. Indeed, the rulings by the Northern District of California and Eastern District of New York granting preliminary injunctions against the federal government's rescission of DACA expressly recognized many such harms as cognizable under the public interest prong. *See Regents I*, 279 F. Supp. 3d at 1047–48; *Batalla*

Vidal, 279 F. Supp. 3d at 436. These include harms to family members,³ economic and employment-based harms,⁴ increased public health care expenses,⁵ public health harms,⁶ public safety harms,⁷ and impacts to public services.⁸ *See also Ramos v. Nielsen*, No. 18-CV-01554, 2018 WL 4778285, at *6 (N.D. Cal. Oct. 3, 2018) (citing States’ amicus brief for harms caused by unlawful termination of Temporary Protected Status [TPS] program, including loss of TPS beneficiaries

³ *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017) (citing “indirect hardship to [plaintiffs’] friends and family members,” including harm to children who “had to receive counseling because of the trauma of their government-compelled separation from their father”) (citing *Golden Gate Rest. Ass’n*, 512 F.3d at 1126); *Ms. L. v. U.S. Immig. & Customs Enf’t (ICE)*, 310 F. Supp. 3d 1133, 1148 (S.D. Cal. 2018) (discussing public interest in right to “family integrity and association” involving separation of minor immigrant children from their parents) (citing *Hernandez*, 872 F.3d at 996); *Doe v. Trump*, 288 F. Supp. 3d 1045, 1084 (W.D. Wash. 2017) (citing “public interest in uniting families”).

⁴ *Alliance for the Wild Rockies v. U.S. Forest Serv.*, 2016 WL 3349221 at *5 (D. Idaho June 14, 2016) (denying injunction against project on National Forest land, citing “employment and economic benefits to the surrounding communities”).

⁵ *Golden Gate Rest. Ass’n*, 512 F.3d at 1126 (citing municipality’s “overall health care expenses”).

⁶ *Stormans, Inc.*, 586 F.3d at 1139 (citing potential impact on “health of state residents”) (quotation marks omitted).

⁷ *Spiegel v. City of Houston*, 636 F.2d 997, 1002 (5th Cir. 1981) (finding injunctions’ impact on overbroad range of law enforcement practices contrary to public interest); *Earth Island v. Elliott*, 290 F. Supp. 3d 1102, 1125 (E.D. Cal. 2017) (examining public safety implications of proposed injunction on Forest Service tree removal project).

⁸ *Morris v. N. Haw. Cmty. Hosp.*, 37 F. Supp. 2d 1181, 1188–89 (D. Haw. 1999) (discussing public interest in ensuring that eligible people receive home health care benefits).

from the workforce, adverse impact to state and local economies, loss of employer-sponsored health care, increased foreclosures, and loss of civic engagement and community service). While the programmatic terminations of the DACA and TPS programs create harm on a quantitatively greater scale than the harms from the policies at issue here, the latter are nonetheless significant and qualitatively similar to the harms set forth in those cases.

II. DHS’S IMPROPER TERMINATION OF DACA GRANTS WILL INFLICT SERIOUS AND IRREPARABLE HARM ON INDIVIDUALS, FAMILIES, COMMUNITIES, AND THE AMICI STATES

A. DACA recipients’ families will suffer lasting harm

Plaintiffs ably documented the severe and irreparable harms that DHS’s illegal policy causes them in their district court filings, *see Inland Empire II*, 2018 WL 1061408, at *20–21, and correctly note that defendants do not challenge these finding on appeal, Pl.-Appellee’s Resp. Br. 18, 41. However, these harms extend beyond the individual DACA recipients who are subject to unlawful terminations. DACA recipients have lived in the United States since they were children, and most have family members—including U.S.-citizen children—living in the United States. According to a 2018 survey of DACA recipients, over 70 percent of respondents have a spouse, child, parent, or sibling who is a U.S. citizen.⁹ The

⁹ Tom K. Wong et al., *2018 National DACA Study* (Aug. 2018) https://cdn.americanprogress.org/content/uploads/2018/08/13121550/2018_DACA_Survey.pdf.

unlawful termination of DACA grants will not only cause irreparable harm to the individual DACA recipients in question, but will also cause lasting harm to their U.S.-citizen children and other family members.

The termination of DACA grants and loss of work authorization forces DACA recipients to retreat into the shadows, knowing they cannot work legally and could be deported at any time. In *Regents I*, the district court recognized this potential and irreparable harm to DACA recipients if their DACA grants were terminated:

Plaintiffs have clearly demonstrated that they are likely to suffer serious irreparable harm absent an injunction. Before DACA, Individual Plaintiffs, brought to America as children, faced a tough set of life and career choices turning on the comparative probabilities of being deported versus remaining here. DACA gave them a more tolerable set of choices, including joining the mainstream workforce. Now, absent an injunction, they will slide back to the pre-DACA era and associated hardship.

Regents I, 279 F. Supp. 3d at 1046.

Of course, this uncertainty not only harms DACA recipients, but their entire families. Stress and anxiety can cause substantial harm to children in families with parents in tenuous immigration situations; these children can exhibit disturbing behaviors including increased aggression, anxiety, depression, self-harm and

regression.¹⁰ Prolonged anxiety and stress can have serious and lasting effects on children's physical, emotional, and cognitive development and negatively impact their short- and long-term physical and mental health.¹¹ Traumatic childhood experiences not only cause lasting harm to children but can also inflict enormous social and economic costs on society, including increased health care expenditures for the States. In contrast, research has found that children whose mothers were eligible for DACA protection saw a significant improvement in their mental health.¹² These improvements, however, will be undermined if DACA grants are improperly terminated.

In addition, the loss of work authorization for a family's breadwinner can lead to economic, housing, and food instability for family members.¹³ DACA

¹⁰ Wendy Cervantes et al., *Our Children's Fear: Immigration Policy's Effects on Young Children*, Ctr. L. & Soc. Pol'y (Mar. 2018), https://www.clasp.org/sites/default/files/publications/2018/03/2018_ourchildrensfears.pdf.

¹¹ *Id.*; Jack P. Shonkoff et al., *The Lifelong Effects of Early Childhood Adversity and Toxic Stress*, Nat'l Sci. Council on the Developing Child, Persistent Fear and Anxiety, *Pediatrics* 129 (2012), <http://pediatrics.aappublications.org/content/pediatrics/129/1/e232.full.pdf>.

¹² Jens Hainmueller et al., *Protecting unauthorized immigrant mothers improves their children's mental health*, *Science* (Aug. 31, 2017), <http://science.sciencemag.org/content/sci/357/6355/1041.full.pdf>.

¹³ Randy Capps et al., *Implications of Immigration Enforcement Activities for the Well-Being of Children in Immigrant Families: A Review of the Literature*, Migration Pol'y Inst. (Sept. 2015),

recipients often take a prominent economic role in their families, including helping pay rent and utility bills, due to their ability to work legally.¹⁴ Seventy-four percent of survey respondents reported that they were able to help their family financially after being approved for DACA, while seventy-six percent reported that DACA helped them become financially independent.¹⁵ The loss of work authorization thus can have devastating financial impacts on DACA recipients and their families.

B. Amici States will suffer harm to their economies, workforces, and public universities and colleges if DACA recipients lose work authorization

Not only will DACA recipients' families be harmed if the federal government is able to unlawfully terminate DACA grants, Amici States will also suffer various forms of harm. The ability to work legally has been critical in helping DACA recipients participate fully in the labor force, support their families, and attend school. According to the 2018 survey, 89 percent of DACA

<https://www.urban.org/sites/default/files/alfresco/publication-exhibits/2000405/2000405-Implications-of-Immigration-Enforcement-Activities-for-the-Well-Being-of-Children-in-Immigrant-Families.pdf>.

¹⁴ Zenén Jaimes Pérez, *A Portrait of Deferred Action for Childhood Arrivals Recipients: Challenges and Opportunities Three-Years Later*, United We Dream (Oct. 2015), <https://unitedwedream.org/wp-content/uploads/2017/10/DACA-report-final-1.pdf>.

¹⁵ *National DACA Study*, *supra* note 9 at 3.

respondents were employed and 40 percent were enrolled in school.¹⁶ Not only has DACA boosted employment rates among recipients, it has enabled them to move to jobs with better pay and, in a number of cases, start their own businesses.¹⁷ These higher wages have led to greater financial independence and security for DACA recipients and their families, as well as increased tax revenues and economic growth for Amici States.¹⁸

DACA work authorization has enabled DACA recipients to contribute significantly to the tax revenues of Amici States, as well as to the U.S. economy. *See Batalla Vidal*, 279 F. Supp. 3d at 434–35 (noting that “the DACA rescission will result in staggering adverse economic impacts, including . . . \$215 billion in lost GDP over the next decade, and \$797 million in lost state and local tax revenue”); *see also Regents I*, 279 F. Supp. 3d at 1033 (“DACA’s rescission would reduce state and local tax contributions by DACA-eligible individuals by at least half”). The most recent estimates are that DACA recipients will contribute \$351 billion to the U.S. GDP over the next decade, as well as an estimated \$39.2 billion

¹⁶ *Id.* at 3, 6.

¹⁷ *Id.* at 3.

¹⁸ Tom K. Wong et al., *DACA Recipients’ Economic and Educational Gains Continue to Grow*, Ctr. for Amer. Progress (Aug. 28, 2017), <https://www.americanprogress.org/issues/immigration/news/2017/08/28/437956/daca-recipients-economic-educational-gains-continue-grow/>.

in tax revenue.¹⁹ Another 2018 study estimated that individuals with DACA contribute over \$1.2 billion a year in state and local taxes.²⁰

If DACA recipients lose their work authorization, the businesses in Amici States that employ them will be harmed. *See Batalla Vidal*, 279 F. Supp. 3d at 434 (noting that, with the loss of deferred action, DACA recipients will also lose their work authorization and “[e]mployers will suffer due to the inability to hire or retain erstwhile DACA recipients, affecting their operations on an ongoing basis and causing them to incur unrecoverable economic losses”). This impact is likely to be felt across a wide variety of industries and most acutely in the sectors that employ the most DACA recipients, including hospitality, retail, construction, education, health and social services, and professional services.²¹ Some of these industries, such as education, are already facing severe worker shortages, and DACA

¹⁹ Logan Albright et al., *A New Estimate of the Cost of Reversing DACA*, Cato Inst. (Feb. 15, 2018), <https://object.cato.org/sites/cato.org/files/pubs/pdf/working-paper-49.pdf>.

²⁰ Misha E. Hill and Meg Wiehe, *State & Local Tax Contributions of Young Undocumented Immigrants*, Inst. on Tax’n & Econ. Pol’y (April 2018), <https://itep.org/wp-content/uploads/2018DACA.pdf>.

²¹ *See* Jie Zong et al., *A Profile of Current DACA Recipients by Education, Industry, and Occupation*, Migration Pol’y Inst. (Nov. 2017) 6, <https://www.migrationpolicy.org/research/profile-current-daca-recipients-education-industry-and-occupation>.

recipients working in these industries help mitigate these shortages.²² For example, approximately 9,000 DACA recipients are employed as teachers or similar education professionals.²³ Some Amici States also directly employ DACA recipients, and these States will be harmed if the DACA grants of their employees are unlawfully terminated and they are no longer legally able to work. *See Regents I*, 279 F. Supp. 3d at 1033 (finding that California and Maryland had standing to challenge DACA rescission in part because they “employ DACA recipients, in connection with whom they have invested substantial resources in hiring and training” and noting allegations that “they will not only lose these employees as work authorizations expire, but . . . will also need to expend additional resources to hire and train replacements”).

When DACA grants are improperly terminated, the Amici States will also suffer harm by losing DACA recipients as homeowners. *See Batalla Vidal*, 279 F.

²² *See* Sara Betancourt, *Teacher shortages worsening in majority of US states, study reveals*, The Guardian (Sept. 8, 2018), <https://www.theguardian.com/us-news/2018/sep/06/teacher-shortages-guardian-survey-schools>; *see also* Leibel Satcher et al., *Understaffed and Underprepared: California Districts Report Ongoing Teacher Shortages*, Learning Pol’y Inst. (Feb. 5, 2018), <https://learningpolicyinstitute.org/product/ca-district-teacher-shortage-brief>; Liana Loewus, *Thousands of Teachers at Risk of Deportation Under DACA Repeal*, Education Week (Sept. 7, 2017), http://blogs.edweek.org/edweek/teacherbeat/2017/09/thousands_of_teachers_at_risk_deportation_daca.html.

²³ Jie Zong et al., *supra* note 21 at 2.

Supp. 3d at 434 (“DACA recipients, due to the imminent loss of their employment, may lose their homes. . . .”). Thirteen percent of DACA survey respondents bought a home after their DACA application was approved.²⁴ Approximately 123,000 DACA recipients are homeowners and pay roughly \$380 million in property taxes, over \$110 million from more than 31,000 homeowners in California alone.²⁵ Homeowners’ loss of DACA protections could lead to job loss or diminished wages, which would in turn result in more foreclosures.²⁶ Foreclosures cause hardship for families and require more local resources to be spent to address the effects of foreclosure, which include declining property values, abandoned homes, crime, and social disorder.²⁷

The unlawful termination of DACA grants and work authorizations also threatens to harm Amici States’ public universities. Some current DACA

²⁴ *National DACA Study*, *supra* note 9 at 3.

²⁵ Alexander Casey, *An Estimated 123,000 ‘Dreamers’ Own Homes and Pay \$380M in Property Taxes* (Sept. 20, 2017), <https://www.zillow.com/research/daca-homeowners-380m-taxes-16629/>.

²⁶ See Jacob S. Rugh and Matthew Hall, *Deporting the American Dream: Immigration Enforcement and Latino Foreclosures*, 3 Soc. Sci. 1053 (2016), https://www.sociologicalscience.com/download/vol-3/december/SocSci_v3_1053to1076.pdf.

²⁷ G. Thomas Kingsley et al., *The Impacts of Foreclosures on Families and Communities*, The Urb. Inst. 13 (May 2009), <https://www.urban.org/sites/default/files/publication/30426/411909-The-Impacts-of-Foreclosures-on-Families-and-Communities.PDF>.

recipients may have to drop out of school because they would not be able to pay the cost of attendance without work authorization. *See Regents I*, 279 F. Supp. 3d at 1033–34; *Batalla Vidal*, 279 F. Supp. 3d at 434. Amici States’ public universities have also invested considerable resources in recruiting and retaining DACA recipients as employees, and these investments will be lost if these employees lose their ability to work legally in the United States. *See Regents I*, 279 F. Supp. 3d at 1034. Further, the improper loss of DACA grants and work authorization for DACA recipients will reduce the diversity of the talent pool of potential students, making it more difficult for universities to fulfill their missions of increasing diversity. *See id.*

C. Vulnerable residents will suffer disruptions in necessary care provided by DACA recipients who are no longer permitted to work

Improper termination of DACA grants will also disrupt critical services provided to seniors and people with disabilities. Over 14,000 DACA recipients are employed in health care practitioner and support jobs, which includes home health and personal care aides who assist elders, convalescents, or persons with disabilities with daily living activities in the home or in a care facility.²⁸ If DACA grantees employed in this field lose their work authorization, vulnerable residents

²⁸ Jie Zong et al., *supra* note 21 at 2; *see also* Bureau of Lab. Stats., *Healthcare Occupations*, Occupational Outlook Handbook (last modified April 13, 2018), <https://www.bls.gov/ooh/healthcare/home.htm>.

will lose the services of health care workers with whom they have established trusting relationships. Moreover, the country is already facing an acute shortage of home health aides and nursing assistants as demand for workers in this area is growing, and it may be difficult to fill the positions that DACA workers are forced to leave.²⁹ If home care positions go unfilled, patients who would otherwise be able to stay in their homes may be forced to move to nursing facilities, incurring higher costs for them and the Amici States and, in many cases, significantly decreasing patients' quality of life.³⁰

D. Public health will suffer, and Amici States will be required to spend more on public health programs

Improper DACA terminations will also harm public health and increase Amici States' expenditures on public health programs. Forty-six percent of DACA recipients surveyed reported that they gained access to health care insurance or other benefits through an employer after being approved for DACA.³¹ If these

²⁹ Amy Baxter, *Where the Home Health Aide Shortage Will Hit Hardest by 2025*, Home Health Care News (May 6, 2018), <https://homehealthcarenews.com/2018/05/where-the-home-health-aide-shortage-will-hit-hardest-by-2025/>.

³⁰ See, e.g., Christine Olsen et al., *Differences in quality of life in home-dwelling persons and nursing home residents with dementia – a cross-sectional study*, 16 BMC Geriatrics 137 (2016), <https://bmcgeriatr.biomedcentral.com/track/pdf/10.1186/s12877-016-0312-4>.

³¹ *National DACA Study*, *supra* note 9 at 3.

DACA recipients lose work authorization, they will lose employer-sponsored health insurance for themselves and their families, hindering their access to health care and “endanger[ing] DACA recipients and their families.” *Batalla Vidal*, 279 F. Supp. 3d at 434. Undocumented immigrants are less likely than other residents of the United States to have health insurance and receive fewer preventative health care services.³² In particular, undocumented women are less likely to receive needed healthcare and preventative screenings than the general U.S. population; this leads to significantly higher rates of adverse conditions, including cervical cancer and birth complications, neonatal morbidity, respiratory distress syndrome, and seizures for newborns.³³ These individual health problems add up to create public health problems and costs that could have been prevented if these patients had better access to preventative services and routine care that can come as a result of being granted DACA.

³² Am. C. of Obstets. & Gynecols., *Health care for unauthorized immigrants*, Comm. Op. No. 627, 125 *Obstet. Gynecol.* 755 (2015), <https://www.acog.org/Clinical-Guidance-and-Publications/Committee-Opinions/Committee-on-Health-Care-for-Underserved-Women/Health-Care-for-Unauthorized-Immigrants?IsMobileSet=false>.

³³ *Id.*

E. Public safety will suffer

The unlawful termination of individuals' DACA grants will also threaten public safety in Amici States. If DACA recipients lose their grants, they will be less likely to report crime, even if they are victims.³⁴ If law enforcement is unable to obtain evidence of crimes, public safety suffers, and the Amici States will have more difficulty enforcing their criminal laws, a core aspect of state sovereignty. *See, e.g., Alfred L. Snapp & Son, Inc. v. P.R. ex rel. Barez*, 458 U.S. 592, 601 (1982).

III. REQUIRING THE FEDERAL GOVERNMENT TO FOLLOW ITS OWN RULES AND TREAT PEOPLE FAIRLY IS IN THE PUBLIC INTEREST

District courts across the country have recently held that DHS's automatic termination of DACA grants without notice or an opportunity to contest the termination and other failures to follow its written procedures in the DACA SOP likely violate the Administrative Procedure Act (APA) because such decisions were not consistent with DHS's non-discretionary procedures and were therefore arbitrary, capricious, and contrary to law.³⁵ These rulings are also consistent with

³⁴ *See* Alexandra Ricks, *Latinx immigrant crime victims fear seeking help*, Urb. Inst. (Sept. 25, 2017), <https://www.urban.org/urban-wire/latinx-immigrant-crime-victims-fear-seeking-help>.

³⁵ *See Coyotl*, 261 F. Supp. 3d at 1344 n.7 (noting that the government's interest in enforcing immigration laws does not justify "running roughshod over Plaintiff by ignoring their own required procedures" prior to terminating her DACA grant); *Torres v. U.S. Dep't of Homeland Sec.*, No. 17-CV-1840, 2017 WL 4340385, at

the district court's holding in this case that the plaintiffs had demonstrated a likelihood of success on the merits of their claim that DHS's termination of their DACA grants based solely on the issuance of an NTA, in conflict with the procedures required by the DACA SOP, was arbitrary and capricious in violation of the APA. *Inland Empire II*, 2018 WL 1061408, at *19 (citing *Inland Empire-Immigrant Youth Collective v. Duke*, No. CV-17-2048, 2017 WL 5900061, at *9–10 (C.D. Cal. Nov. 20, 2017) [*Inland Empire I*] [granting injunction as to individual DACA recipient]).

These decisions illuminate a broader principle: namely, that the public interest requires that the federal government follow its own rules. It is well established that federal agencies must follow their own procedures, and courts have recognized this principle in a wide variety of contexts.³⁶ Indeed, as a court

*5–7 (S.D. Cal. Sept. 29, 2017) (granting preliminary injunction preventing government from revoking plaintiff's DACA grant because government had failed to follow termination procedures set forth in DACA SOP); *Medina v. U.S. Dep't of Homeland Sec.*, No. C17-0218, 2017 WL 5176720, at *9 (W.D. Wash. 2017) (finding that Plaintiff alleged plausible claims that the government had violated the APA by failing to follow its own operating procedures in terminating his DACA grant).

³⁶ See *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (“Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures. This is so even where the internal procedures are possibly more rigorous than otherwise would be required.”); *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) (reversing Board of Immigration Appeals' denial of application for suspension because BIA failed to exercise discretion as required by its own

recently held in the context of a DACA recipient losing her protection from removal due to immigration authorities' failure to follow their internal procedures, "the public has an interest in government agencies being required to comply with their own written guidelines instead of engaging in arbitrary decision making[.]" *Coyotl*, 261 F. Supp. 3d at 1344.

DACA recipients and their family members have made and continue to make life-altering decisions in reliance on the premise that the federal government will abide by its own written procedures. Defendants' failure to follow their own rules has worsened these families' feelings of insecurity and uncertainty about their futures, which are already substantial given the federal government's expressed intent to end the DACA program, and is contrary to the public interest.

CONCLUSION

This Court should affirm the district court's grant of a preliminary injunction.

regulations); *Alcaraz v. INS*, 384 F.3d 1150, 1162 (9th Cir. 2004) (collecting cases); *Church of Scientology of Cal. v. United States*, 920 F.2d 1481, 1487 (9th Cir. 1990) (noting that "an administrative agency is required to adhere to its own internal operating procedures"); *Nicholas v. Immig. & Naturalization Serv.*, 590 F.2d 802, 807 (9th Cir. 1979) (*superseded by rule as stated in Romeiro de Silva v. Smith*, 773 F.2d 1021, 1025 (9th Cir. 1985)) (noting that the INS can be bound by its "Operations Instructions").

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Respectfully submitted,

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STATEMENT OF RELATED CASES

Amici Curiae are not aware of any related cases, as defined by Ninth Circuit Rule 28-2.6, that are currently pending in this Court.

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the requirements of Federal Rules of Appellate Procedure 32(a)(5)-(6) and 29(a)(5) because it uses a proportionately spaced Times New Roman font, has a typeface of 14 points, and contains 4,522 words.

Dated: December 21, 2018

s/ Rebekah A. Fretz

Rebekah A. Fretz

CERTIFICATE OF SERVICE

I certify that on December 21, 2018, I electronically filed the foregoing document with the Clerk of the Court of the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. I certify that all other participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: December 21, 2018

s/ Rebekah A. Fretz

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