

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

MARTIN JONATHAN BATALLA VIDAL
et al.,

Plaintiffs,

v.

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I. Introduction.

Since its inception in 2012, the Deferred Action for Childhood Arrivals (DACA) program has yielded immeasurable benefits for our nation's primary and secondary schools, colleges and universities, their educators, and their students.

AASA, The School Superintendents Association represents more than 13,000 educational leaders throughout the world. AASA advocates for the highest quality public education for all students. Districts led by AASA members benefit from both DACA educators and students.

American Federation of School Administrators is the only national education union for school administrators and represents principals and assistant principals. AFSA has more than 20,000 members located primarily in urban school districts across the nation. AFSA is committed to maintaining quality public education for all students and DACA recipients provide a significant and important component of our schools.

American Federation of Teachers represents approximately 1.7 million members employed in K-12 and higher education, public employment, and healthcare. AFT has a long history of civil rights advocacy. AFT has members throughout the country who have received DACA. These members have utilized DACA to obtain employment in institutions that provide essential public services. AFT members also teach DACA students. These students are integral members of their educational institutions. They contribute to the diversity of experience and viewpoint in classrooms, engage in valuable research projects, and play leadership roles in student life.

Council of School Supervisors and Administrators represents New York City Department of Education Principals, Assistant Principals, Education Administrators, and Clinical Supervisors. CSA's membership totals nearly 6,400 active members and 15,000 retirees. DACA recipients are students and employees in the schools CSA members lead. CSA advocates for the strongest and most inclusive learning environment for students.

National Education Association represents three million education employees, including teachers, counselors, nurses, bus drivers, librarians, para-professionals, and many other employees essential to public schools and universities. DACA educators are among NEA's

members. DACA recipients also make up a large contingent of the students served by NEA

directly affect the mission and operation of K-12 public schools. Anxiety over possible arrests and deportation impairs the ability of students to study and learn, and to even attend school, which further affects their ability to acquire the knowledge and skills necessary to become productive members of society. This limits the capacity of boards to discharge their obligation to provide such opportunities. The rescission of DACA affects the continued employment of qualified educators and staff. This in turn affects the stability necessary to operate schools, a core responsibility of school boards.

New York State United Teachers represents more than 675,000 people who work in, or are retired from, New York's schools, colleges, and healthcare facilities. These include teachers, university faculty, bus drivers, custodians, secretaries, cafeteria workers, and nurses. NYSUT's mission is to improve the professional

School Administrators, is part of the New York State School Administrators Consortium (NYSSAC), a lobbying consortium representing over 23,000 school leaders. SAANYS is the official New York representative on the National Association of Elementary School Principals and the National Association of Secondary School Principals. Through its representation and advocacy efforts, SAANYS supports school administrators who have received DACA's invaluable benefits, and those who encourage current DACA students to continue their education.

United Federation of Teachers represents more than 80,000 teachers and other employees in the New York City School District, one of the largest school districts in the country. UFT advocates for the highest quality public education for all students, and develops and supports students and teachers. DACA recipients work in the schools in which our members teach and many are studying to become future educators.

United University Professions represents more than 42,000 academic and professional staff in the State University of New York (SUNY). UUP negotiates collective bargaining agreements and advocates for quality public higher education. DACA recipients work in the UUP bargaining unit and study in colleges whose faculty it represents.

Together, *Amici Curiae* represent over four million public school educators, 95,000 board members, and more than 3uriae

III. ARGUMENT

generations of children, so they can strive to reach their greatest potential. Morales and New York have made a significant investment in her education which will only be lost if she cannot teach in public schools.

This was the reaction of Roberto Valdez upon learning of DACA.³ As a public school student in Texas, Valdez dreamed of becoming an academic, but felt that advanced academic opportunities were out of reach because he was undocumented. When he reached middle school he realized that being undocumented would hinder his future opportunities. He stopped caring about his schoolwork because he thought –no matter how hard I try I can never go to college. In high school, he began missing school frequently and struggled academically. However, after the announcement of DACA, he immediately saw that it was a –vehicle to better opportunities and applied. He improved his schoolwork and was accepted to the University of Texas at El Paso. Valdez states that –I feel like a new person after DACA. While DACA has allowed Valdez to work for a decent wage and put himself through college, –without DACA, it’s game over. He will not be able to pursue graduate studies as he had planned. His education and career will be irreversibly impeded.

Prior to receiving DACA, Texas college student Joseph Ramirez would question the need to do well in school because he did not think he would go to college: –What am I going to do with that degree without a Social Security number? During his senior year, he received DACA and it –was a motivator and without it, –I would not have pushed my limits. Ramirez is the first in his family to go to college. He studies public health

with the goal of pursuing a career in nursing or public health. –Losing DACA would be devastating for Ramirez because it would foreclose his

C. Rescinding DACA Will Irreparably Harm Public Schools.

The harm caused by the rescission of DACA will not be borne by its recipients alone. As the loss of DACA disrupts classrooms and destabilizes school districts, its effects will reverberate throughout communities. As the status of educators with DACA expires on different dates throughout the school year,

since the announcement of DACA's termination. A superintendent in Long Island, New York noted that since the announcement, he can –definitely sense an increase in anxiety and stress, both for the student who fears that the end of DACA means they have to go back to a country they have not lived in since the age of two; and for documented students, the worry is in wondering if their friend will need to go and leave the U.S. Heidi Sipe is the superintendent of the Umatilla School District in eastern Oregon. Umatilla is in a rural area and serves primarily Hispanic students. Superintendent Sipe also spoke of the atmosphere of fear that has permeated her district. –The fear is very real in young students all the way up to high schoolers. Sipe observes that the anxiety –puts educators in a really uncomfortable role because we cannot tell them that everything will be okay because it is not true.

Matt Charlton, the superintendent of the Manson School District in Washington state, echoed these observations, noting that in his rural, majority Hispanic district, there is now an overall

Superintendent Sipe spoke emotionally of a brilliant student who dreams of becoming a pediatrician but is no longer even considering college

educators each hold individual DACA expiration dates. No district, school, or classroom can fully anticipate or, most importantly, prepare students for the staggered, unpredictable departure of beloved teachers. When this occurs mid-year, or at critical points like testing periods, children and their educational outcomes will be irreversibly damaged. An example is second-grade teacher Karina Alvarez, who while awaiting the delayed renewal of her DACA work permit, was forced to temporarily resign from her classroom. Seven-year-olds cannot comprehend the reasons for such a loss, but research abundantly shows events like this diminish trust and thus students' psycho-social wellbeing and educational outcomes. During Alvarez's absence, her second-graders lost educational progress and relationship continuity with a trusted teacher. This will occur on a much larger scale as thousands of teachers continue to lose their DACA status, now without the possibility of renewal.

Teacher turnover has long been shown to harm student academic achievement. Matthew Ronfeldt et al., *How Teacher Turnover Harms Student Achievement*, 50 Am. Educ. Res. J. 4, 31 (2013). Not only will the students of teachers who leave mid-year perform worse academically, but the students of teachers who remain are also negatively impacted. *Id.* Turnover causes a decline in student achievement school-wide because it can damage faculty morale, increase the workload of remaining teachers, and divert district funds away from student programs to training new hires. *Id.* at 8, 32. These impacts will only escalate in schools if the DACA rescission is not enjoined. In sum, the DACA rescission has placed children in an unmitigated state of uncertainty that –den[ies] them the ability to live within the structure of our civic institutions, and foreclose[s] any realistic possibility that they will contribute in even the smallest way to the progress of our Nation. *Plyler v. Doe*, 457 U.S. at 223.

a. Ending DACA will worsen already severe teacher shortages.

Throughout the country, states face a critical shortage of teachers. The U.S. Department of Education has found that –every state is dealing with shortages of teachers in key subject areas in the 2017-18 school year. Valerie Strauss, *Teacher Shortages Affecting Every State As 2017-18 School Year Begins*, Washington Post (Aug. 28, 2017); see also Office of Postsecondary Educ., U.S. Dep’t. of Educ., *Teacher Shortage Areas Nationwide Listing 1990-1991 through 2017-2018* (June 2017),

<https://www2.ed.gov/about/offices/list/ope/pol/ateachershortageareasreport2017-18.pdf>. Every superintendent interviewed for this brief reported staffing shortages. Superintendent Sipe noted that her district posts positions for three to six months without receiving a single application. Superintendent Utterback stated that his district has not been fully staffed for 18 months.

DACA has helped districts ease these shortages. Approximately 9,000 DACA recipients nationwide work in education. Zong, *A Profile of Current DACA Recipients by Education, Industry, and Occupation* at 8. At a time when the nation can ill afford to lose teachers, the rescission of DACA will lead to a significant loss of educational employees.

In Sacramento, Superintendent Jorge Aguilar runs a district with a largely minority and immigrant population. According to Superintendent Aguilar, Sacramento is heavily impacted by the teacher shortage felt throughout California. He knows of employees who receive DACA and he fears the end of DACA will exacerbate the district’s already-critical need for qualified staff.

K.R. is a Texas educator with DACA who teaches special education to hearing impaired pre-K children. A course she took on deaf education was her –light at the end of the tunnel and she knew she wanted to dedicate her life to teaching children with limited communication abilities. Because of DACA, K.R. has been able to work in her field, but her DACA expires in

2018. Absent an injunction, the DACA rescission will end her career and very likely leave her students without a specialized teacher, due to a shortage of teachers who can teach hearing impaired students.

R.A. teaches history in a Bronx, New York high school. Rece(li)-3(z)-5(e)4(1 0 0/F7f1 0 0 1 72.0241681

It is therefore critical for schools to hire teachers from minority backgrounds to keep pace with the growing immigrant population. Yet districts have had difficulty doing so. Every interviewed superintendent spoke of the gap between the number of Hispanic students compared to that of Hispanic educators. Between 2003 and 2012, –the increase in the percentage of Hispanic students [in the U.S.] far outpaced the modest increase in the percentage of Hispanic teachers. Goldhaber, *The Theoretical and Empirical Arguments for Diversifying the Teacher Workforce: A Review of the Evidence* at 1. A 2016 study by the U.S. Department of Education found that in 2011-12, 24% of students were Hispanic, while only 8% of teachers were Hispanic. U.S. Dep’t of Educ., *The State of Racial Diversity in the Educator Workforce* at 6. The disparity between the increased need for Hispanic teachers and the lagging number of Hispanic teachers that districts are able to hire, is only expected to grow: –students of color are expected to make up 56 percent of the student population by 2024. *Id.* at 1.

Districts thus have a critical need to hire an increasing number of Hispanic teachers to serve the needs of their expanding Hispanic student populations. DACA teachers have helped to meet this growing need, given that close to 80% of DACA recipients were born in Mexico. U.S. Citizenship and Immigration Servs., *Approximate Active DACA Recipients: Country of Birth* 1 (Sept. 4, 2017),

https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/daca_population_data.pdf. Indeed,

some districts have specifically recruited DACA recipients. *See, e.g.,* Alexia Fernandez Campbell, *DACA immigrants are teaching American gone?*, Vox (Sept. 15, 2017), <https://www.vox.com/policy>

Many DACA educators acknowledge that their background makes them especially important to students, and that they have been drawn to teaching because of their desire to act as role models. For example, DACA recipient Karina Alvarez teaches second-grade students in Texas, where many of her students are Hispanic and some are undocumented. Alvarez speaks to her students about her own experience as an undocumented immigrant

Another DACA educator interviewed for this brief became a math teacher in Los Angeles because he felt he could be particularly effective with immigrant students. He is open about his prior lack of legal immigration status and his childhood in an economically depressed community. He believes his openness helps students to feel safe so they can focus on their studies and that students trust him as a mentor in ways that help their morale and academic progress.

R.A., a New York high school teacher, is similarly open with his students regarding his DACA status. –My school is 100% English language learners. That means the majority, 95%, are immigrants. Some have green cards, some are citizens, some may be undocumented. That is why I shared my experience . . . I wanted them to know that this person that is in front of them . . . that I’m also an immigrant.

Administrators recognize the need for a diverse teaching staff. Superintendent Charlton said that –students benefit when they have role models and people teaching them who come from their background. As a result, his district is trying to promote Hispanic para-professionals to teaching positions because –schools need to reflect our community. Tom Ahart, the superintendent of the Des Moines School District in Iowa, which serves approximately 33,000 students, has witnessed the importance of a –diversity of points of view and different perspectives informing what happens in our classrooms, and that having diverse educators is important so that –all students see models of success and leadership that look like them, so they start imagining different possibilities for themselves. Superintendent Utterback echoed those sentiments, noting that –students can go thirteen years without experiencing

Public K-12 schools and universities stand to lose 9,000 education employees. Their students will lose trusted mentors who share their background. These are losses that public schools and universities and their students can ill-afford to bear; losses that cannot be remedied absent injunctive relief.

IV. Conclusion.

The termination of DACA will irreparably harm our nation's public schools and universities and their students. DACA has given hundreds of thousands of young people a reason to succeed in school. By taking away the prospect of advanced learning and gainful employment, DACA rescission will rob society of the contributions of motivated, committed DACA recipients who seek education employment. Those who have already completed their studies will lose their employment, rendering useless not only their own hard work, but the resources that the country and teachers have invested in them. The end of DACA would deprive schools and universities of qualified teachers and mentors, diminish diversity in the teaching corps, and destabilize school environments. To prevent these harms, and to allow schools and students to succeed, *Amici* respectfully request that

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