

Nos. 18-587, 18-588, and 18-589

In The
Supreme Court of the United States

DEPARTMENT OF HOMELAND SECURITY, et al.,
Petitioners,

v.

REGENTS OF THE UNIVERSITY OF CALIFORNIA, et al.,
Respondents.

DONALD J. TRUMP, President of the United States, et al.,
Petitioners,

v.

NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE, et al.,
Respondents.

KEVIN K. MCALEENAN,
Acting Secretary of Homeland Security, et al.,
Petitioners,

v.

MARTIN JONATHAN BATALLA VIDAL, et al.,
Respondents.

**On Writs Of Certiorari To The
United States Courts Of Appeals For The Ninth,
District Of Columbia, And Second Circuits**

**BRIEF OF TEACH FOR AMERICA, INC.
AS AMICUS CURIAE IN SUPPORT OF
RESPONDENTS AND AFFIRMANCE**

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Leib Sutcher et al., <i>A Coming Crisis in Teaching? Teacher Supply, Demand, and Shortages in the U.S.</i> , Learning Pol'y Inst. 1 (2016), https://learningpolicyinstitute.org/sites/default/files/product-files/A_Coming_Crisis_in_Teaching_REPORT.pdf	18

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U.S. Dep’t of Educ. Fed. Student Aid, <i>Financial Aid and Undocumented Students</i> , https://studentaid.ed.gov/sa/sites/default/files/financial-aid-and-undocumented-students.pdf (last accessed Sept. 29, 2019)	20

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<i>Undocumented Student Tuition: Overview</i> , Nat'l Conf. St. Legislatures (Sept. 29, 2019), http://www.ncsl.org/research/education/undocumented-student-tuition-overview.aspx	20
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Zenen Jaimes Pérez, <i>Removing Barriers to Higher Education for Undocumented Students</i> , Ctr. Am. Progress 8 (Dec. 2014), https://cdn.americanprogress.org/wp-content/uploads/2014/12/UndocHigherEd-report2.pdf	15, 16, 20

INTEREST OF AMICUS CURIAE¹

For almost three decades, Teach For America, Inc. has recruited top college graduates and professionals who commit to teach for at least two years in low-income communities. More than 6,500 Teach For America corps members currently teach in 2,500 public schools across the country. Many Teach For America alumni become lifelong leaders in the effort to end educational inequity. They win recognition as teachers, school principals, and leaders in school systems and departments of education. Our 62,000 corps members and alumni include 20,000 teachers working in classrooms; nearly 3,000 principals, assistant principals, and deans; more than 550 system leaders; and over 100 school board members. Eight alumni currently lead statewide school systems, serving as state education commissioners, state education secretaries, or state superintendents. Others work outside the education system, advocating for policy reforms or pioneering new approaches for meeting the needs of low-income children.

Teach For America counts almost 250 Deferred Action for Childhood Arrivals (“DACA”) recipients among its corps members and alumni, including Respondent Miriam Gonzalez Avila, who was a corps member when she became a party in *Garcia v. United States*, No. 3:17-cv-5380 (N.D. Cal.). The organization witnesses

¹ All parties have consented to the filing of this brief. No party or party’s counsel authored this brief in whole or in part. No one but *amicus curiae* and its counsel made monetary contribution to its preparation or submission.

firsthand the leadership, passion, and empathy these incredible individuals bring to serving their students, schools, and communities. An end to DACA would end their ability to work and put them at risk of deportation—a far cry from the pathway to citizenship these young people deserve. Ending DACA would undermine Teach For America’s effort to increase academic success among all students, and would severely impact undocumented students, for whom DACA teachers are particularly powerful role models. Teach For America thus has an interest in the continued vitality of DACA, and seeks to ensure that the program is not unlawfully rescinded.

INTRODUCTION AND SUMMARY OF ARGUMENT

Almost four decades ago, this Court confirmed that undocumented children enjoy a constitutional right to free public education, “the primary vehicle for transmitting the values on which our society rests.” *Plyler v. Doe*, 457 U.S. 202, 221 (1982) (internal quotation marks omitted). “By denying these children a basic education,” the Court explained, “we deny them the ability to live within the structure of our civic institutions, and foreclose any realistic possibility that they will contribute in even the smallest way to the progress of our Nation.” *Id.* at 223. Especially because undocumented children may “remain in this country indefinitely,” the cost of public education is “wholly

insubstantial” when compared against the benefit “to these children, the State, and the Nation.” *Id.* at 230.

On *Plyler*’s thirtieth anniversary, President Obama announced a policy of temporary relief from deportation for “talented young people, who, for all intents and purposes, are Americans.” In a tacit acknowledgement of *Plyler*’s legacy, President Obama identified DACA’s beneficiaries as “young people who study in our schools,” who have “been raised as Americans,” and who “understand themselves to be part of this country.”²

Over the next five years, hundreds of thousands of people successfully applied to the United States Department of Homeland Security for temporary deportation relief and work authorization under DACA. They graduated from high school, pursued higher education, served in the military, and worked in their communities.

Presented with the full range of job opportunities, many chose to give back to their communities. In particular, approximately 250 helped educate a new generation of students by serving as Teach For America corps members, often working in schools with large populations of undocumented children who, to this day, benefit from *Plyler*’s promise of free public education. These teachers typically held leadership positions in their colleges, and are often open about their status as DACA recipients. They deconstruct stereotypes and

² *Remarks by the President on Immigration*, The White House (June 15, 2012), <https://obamawhitehouse.archives.gov/the-press-office/2012/06/15/remarks-president-immigration>.

operate as role models of achievement, possibility, and service. Their presence is especially valuable for undocumented students, a vulnerable group that benefits substantially from having authority figures with whom they can identify.

Because of DACA, these Teach For America corps members have a better chance than ever before to live out the simple truth, recognized by this Court, that “education provides the basic tools by which individuals might lead economically productive lives to the benefit of us all.” *Plyler*, 457 U.S. at 221.

That chance was abruptly curtailed, however, when the Department rescinded DACA on September 5, 2017. Acting Secretary Elaine Duke’s memorandum (the “Duke Memorandum”) articulated unsubstantiated concerns about the legal basis for the DACA policy, then announced that the Department would “wind it down in an efficient and orderly fashion.”³

Without DACA, undocumented youth—including thousands of schoolchildren—lack a clear path to higher education, economic mobility, and high-quality jobs. They risk deportation to countries they do not know. Even if they avoid removal, they are hampered in their ability to “lead economically productive lives.” Without DACA, Teach For America, school districts, and other organizations lose the investment they have

³ Memorandum on Rescission of Deferred Action for Childhood Arrivals (Sept. 5, 2017), available at Pet. App. 101a, *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, No. 18-587 (“Regents”).

made in recruiting and training talented workers, and our communities lose teachers, caregivers, healthcare professionals, and members of the military, all of whom seek to advance our nation’s ideals.

In light of the enormous reliance interests at stake, the Department errs in arguing that this Court may not review the rescission of DACA even under an “arbitrary and capricious” standard. The Department asks this Court to tell DACA recipients, the nation, and the world that judicial review does not apply to a government decision depriving 700,000 young people of basic protections for personal safety and the ability to continue the only life they have ever known. No legal basis supports the Department’s decision, which would hobble our moral standing and undermine American values. *See Heckler v. Chaney*, 470 U.S. 821, 832 (1985).

The Duke Memorandum makes no mention of DACA’s profound impact on hundreds of thousands of young people, or on the communities where they live, learn, teach and work. For these reasons, Teach For America urges this Court to affirm the unanimous opinions and orders from the lower courts setting aside the Department’s rescission of DACA as arbitrary and capricious under the Administrative Procedure Act (“APA”).

ARGUMENT

I. THE APA REQUIRES AN AGENCY TO CONSIDER “SERIOUS RELIANCE INTERESTS” WHEN IMPLEMENTING A POLICY CHANGE

Congress vested the Department with authority to implement the DACA policy, and also to amend or rescind that policy. 6 U.S.C. § 202(5). Although agencies are “free to change their existing policies,” they must “provide a reasoned explanation for the change.” *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2125 (2016). In particular, the agency must acknowledge cases in which the “prior policy has engendered serious reliance interests.” *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). “[I]t is not that further justification is demanded by the mere fact of policy change,” but the agency must offer “a reasoned explanation” for “disregarding facts and circumstances that underlay or were engendered by the prior policy.” *Id.* at 515–16.

Courts reviewing agency action under the APA must ensure that an agency’s “decision was based on a consideration of the relevant factors.” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). A court should set aside an action as arbitrary and capricious if the agency “entirely failed to consider an important aspect of the problem.” *Ibid.* Where “serious reliance interests [are] at stake,” the agency may not rely on “conclusory statements” to justify its change in position, and must provide a “reasoned explanation” for reversing course. *Encino Motorcars*, 136 S. Ct. at 2127.

Teach For America's experience demonstrates that the Department violated these well-settled principles when it rescinded DACA.

II. DACA HAS ENGENDERED SERIOUS RELIANCE INTERESTS IN TEACH FOR AMERICA, TEACHERS, SCHOOLS, AND STUDENTS

In 2013, Teach For America was among the first organizations to recruit DACA-eligible college students. Starting with two DACA teachers in Denver, Teach For America's DACA cohort has grown to 89 current members and more than 150 alumni, many of whom remain active in the education community.

Teach For America has expended considerable resources to recruit and support these talented young people on their journey to becoming teachers and leaders in communities nationwide. Their lived experience as undocumented immigrants enhances their ability to guide students and spearhead transformative change in the classroom and beyond, and so advances Teach For America's pedagogical mission. Because of these unique benefits, an end to DACA harms not only DACA recipients, but also the organizations that recruited and trained them, the students who depend on them daily, and the communities they serve.

A. DACA Freed Undocumented Young People to Pursue Productive Lives

Commentary on DACA's impact has generally—and rightly—focused on the 700,000 individuals who

hold temporary relief and work authorization. *See, e.g.*, *Regents of the Univ. of Cal. v. U.S. Dep’t of Homeland Sec.*, 908 F.3d 476, 520 (9th Cir. 2018) (Because of DACA, Respondent “Dulce Garcia and the hundreds of thousands of other young dreamers like her may continue to live productively in the only country they have ever known.”).

DACA allows undocumented youth to live without fear of deportation. One cannot overstate the benefits of dispelling that ever-present specter. As this Court has long recognized, involuntary removal may cause “loss of both property and life, or of all that makes life worth living.” *Ng Fung Ho v. White*, 259 U.S. 276, 284 (1922). For a young person who thinks of America as home and has never known any other, deportation means “banishment or exile.” *Delgadillo v. Carmichael*, 332 U.S. 388, 391 (1947); *see also Padilla v. Kentucky*, 559 U.S. 356, 373 (2010) (recognizing the “severity of deportation”).

In addition to providing peace of mind, DACA opened up opportunities that U.S. citizens take for granted, like applying for a driver’s license or a job. Almost 250 of these accomplished young leaders chose to participate in the Teach For America program to help remedy educational inequity and become lifelong leaders who impact societal change. The six described below embody DACA’s benefits and the reliance interests at stake in this case.

1. Alejandro Fuentes Mena

At age four, Alejandro Fuentes Mena came to San Diego from Valparaiso, Chile. His undocumented parents found work, but their low-wage jobs could not prevent periods of homelessness during Fuentes's childhood. He entered his teenage years with near-failing grades, but encouragement from a dedicated teacher helped him raise his GPA high enough to earn a full scholarship at Whitman College in Washington. As college graduation approached, however, he began to feel hopeless about his future, fearing that his lack of documentation would force him into the same low-wage, under-the-table jobs as his parents.

DACA changed everything, enabling Fuentes to join Teach For America as one of the first undocumented corps members. He wanted to become a teacher because he'd seen an educator turn around a child's life. Fuentes finished his two-year commitment with Teach For America in 2015 and continues to serve students in Denver, where he began his seventh year as a middle school math teacher this fall. After participating in Moonshot, a school incubator fellowship, Fuentes now seeks to start his own school with a focus on arts integration. He aims to help students develop their talents alongside their academics. Fuentes also continues to humanize the undocumented community, seeking to share his narrative in the podcast Shoebox Stories to contribute to nationwide exposure around the immigration crisis.

2. Marissa Molina

Marissa Molina came from Mexico when she was nine and grew up in Glenwood Springs, Colorado. Before her first day of school, she practiced saying, “I don’t speak English.” Even after learning English, she spent high school ashamed and isolated by her undocumented status, which her family instructed her to keep secret. She revealed her status to an empathetic college counselor, who helped Molina become the first member of her family to attend college. Paying tuition was a struggle, however, even though Molina worked alongside her mother cleaning houses. She considered dropping out. Without the ability to work legally, she thought, a college degree was little more than a piece of paper.

Then DACA opened new opportunities. Molina graduated from college and joined Teach For America in 2014. The following year, the White House honored her as a “Champion of Change” for developing a culturally responsive curriculum tailored to native Spanish speakers. In March 2019, Colorado Governor Jared Polis appointed Molina to the Board of Trustees for the Metropolitan State University of Denver, acknowledging her ability to advocate for expanding educational opportunity.

3. Vanessa Luna

Vanessa Luna emigrated from Lima, Peru at age ten. Like Molina, she grew up fearing social rejection and removal orders, then became the first of her family

to graduate from college. She taught in Los Angeles as a Teach For America corps member and served as a founding member of the organization's DACA Advisory Board.

After her time in the classroom, Luna drew on her experiences as an undocumented student and teacher to found ImmSchools, a non-profit organization that helps educators create safe and welcoming spaces for undocumented students and their families. She created programming materials that have trained almost 1,000 educators, and devised workshops to help nearly 1,000 immigrant families learn about legal and educational services. This year, the Forbes "30 Under 30" list honored Luna for her ongoing impact.

4. Erik Kwak

Eric Kwak came to the United States from South Korea when he was eight and grew up in Koreatown, Los Angeles. Kwak's mother faced dim prospects in South Korea as the fourth daughter in a patriarchal society, and moved to America hoping to give her family a chance at a better life. She was determined to escape poverty and impressed upon her son the value of education as a tool for upward social mobility.

Kwak graduated as the valedictorian of his high school class and went on to the University of California, Berkeley. He then joined Teach For America as a Head Start teacher in West Garfield Park, Chicago. He is now pursuing a career in education policy, hoping to address inequities in our education system. This past

year, he worked as a Public Policy Fellow at the Alameda County Office of Education to organize and advocate for a bill increasing funding for public schools in California. DACA gave him the opportunity to make his mother's dream come true.

5. Denise Panaligan

Denise Panaligan was born in Mandaluyong in the Philippines. She came to the United States when she was nine and, like Kwak, grew up in Koreatown. She too spent much of her life ashamed and fearful of her undocumented status, until a resourceful counselor told her about a conference that connected undocumented students with resources in higher education. With support from her community, Panaligan graduated from UCLA with a dual degree in Economics and Asian American Studies, then earned a master's degree in urban education from Loyola Marymount University.

After joining Teach For America, she was honored as the Urban Educator of the Year for her work with English Learners and students with disabilities. Panaligan began her fourth year of teaching this fall as a history teacher, and will be assisting with Teach For America trainings around diversity, equity, and inclusion. She believes teachers should help break down systemic injustices and develop equitable policies for new generations of students. Panaligan is also an active member of UPLIFT, a community organization that advances Asian American and Pacific Islander

representation in the narrative around immigration in order to highlight important histories, cultures, and social justice issues.

6. Miriam Gonzalez Avila

Miriam Gonzalez Avila arrived in Los Angeles at age six. In high school, a formerly undocumented Latina teacher became her role model and inspired her to believe that she could “make it,” even without a formal immigration status. After graduating with Dean’s Honors from UCLA, Gonzalez joined Teach For America, hoping that she too could become a role model. She recalls a student confessing his undocumented status to her, a secret he had not told any other teacher. After hearing his family’s story, including their reluctance to ask for help for fear of being discovered, she organized a “know your rights” workshop for local immigrant families.

Gonzalez was in the middle of teaching a class in her hometown when the Department announced its rescission of DACA. Her students knew that she was a DACA recipient. They asked what would happen to her, and whether she would have to leave. She decided to join the complaint in *Garcia v. United States* to show her students the importance of fighting for one’s beliefs. She believes, as Teach For America believes, that to rescind DACA so abruptly, when so many have relied on it to better themselves and their country, is unlawful and wrong.

* * *

Dedicated educators inspired these young people to pursue higher education. Yet their limited post-college prospects nearly stifled that inspiration. DACA brought hope and created a legal path to previously unattainable goals. Their government offered an opportunity and they made the most of it, hoping to give back to the nation that had given them so much. As five former Secretaries of Education explained, rescinding DACA would “violate a promise our nation made to these earnest young people.”⁴

B. DACA Teachers Provide Special Value to Students, Schools, and Communities

Fuentes, Molina, Luna, Kwak, Panaligan, and Gonzalez exemplify the “outstanding and diverse leaders” that Teach For America places in low-income communities, where they “confront both the challenges and joys of expanding opportunities for kids.”⁵ Teach For America requires strong academic records and leadership skills, attributes often found in DACA students who engage in advocacy and awareness campaigns around immigration issues on campus, in the public square, and in the halls of government. Moreover,

⁴ Arne Duncan et al., Bipartisan Letter to Congress from Former Education Secretaries at 2, <https://www.politico.com/f/?id=0000015e-5b9c-db52-a75e-dffded380001> (last accessed Sept. 29, 2019); *see also ibid.* (“We must not, we cannot, let these children down. The stakes are too high for them and for the future of our country.”).

⁵ Teach For America, *What We Do*, <https://www.teachforamerica.org/what-we-do> (last accessed Sept. 29, 2019).

DACA enables Teach For America to recruit and partner with teachers who reflect the diverse demographics in school systems across the country, thereby advancing Teach For America's mission in unique and powerful ways.

1. Teacher Diversity Redresses Achievement Gaps and Promotes Positive Student Outcomes

Undocumented youth are a vulnerable group: compared to their U.S.-born peers, they are five times less likely to finish high school, and those who enroll in college are far less likely to graduate.⁶ Black and Hispanic students, too, continue to lag behind on standardized test scores, discipline records, and high school graduation rates.⁷

A growing body of research shows that diversity among educators plays a powerful role in closing these achievement gaps, in addition to “providing social advantages for all students.”⁸ Diverse teachers “break[]

⁶ Zenen Jaimes Pérez, *Removing Barriers to Higher Education for Undocumented Students*, Ctr. Am. Progress 8–9 (Dec. 2014), <https://cdn.americanprogress.org/wp-content/uploads/2014/12/UndocHigherEd-report2.pdf>.

⁷ *Status and Trends in the Education of Racial and Ethnic Groups 2017*, Nat'l Ctr. Educ. Statistics, U.S. Dep't Educ., at iii–v (July 2017), <https://nces.ed.gov/pubs2017/2017051.pdf>.

⁸ *The State of Racial Diversity in the Educator Workforce 2016*, U.S. Dep't Educ., at 2 (July 2016), <https://eric.ed.gov/?id=ED571989>; see also Anna J. Egalite & Brian Kisida, *The Effects of Teacher Match on Students' Academic Perceptions and Attitudes*. *Educational Evaluation and Policy Analysis*, 40 Rev. Res.

down negative stereotypes” and serve as “positive role models” in different ways to different students.⁹ Teachers who share demographic traits with their students help upend the tyranny of low expectations, diffuse conflicts that can lead to disciplinary action, and inspire students to be their best selves.

DACA teachers add to the diversity of Teach For America’s corps in many ways, including language fluency, national origin, socioeconomic status, race, and ethnicity. Their lived experience as undocumented immigrants is uniquely valuable to the 80,000 DACA-eligible undocumented children who turn 18 each year.¹⁰ A “teacher is often the first adult an undocumented student will ask for help” in overcoming obstacles and planning their future, as the experiences of Fuentes, Molina, Luna, Kwak, Panaligan, and Gonzalez demonstrate.¹¹ DACA teachers “know first-hand the concerns that undocumented kids face.”¹²

Educ. 59 (2018); Constance A. Lindsay & Cassandra M. D. Hart, *Exposure to Same-Race Teachers and Student Disciplinary Outcomes for Black Students in North Carolina*, 39 Rev. Res. Educ. 485 (2018); Stephen B. Holt & Nicholas W. Papageorge, *Who Believes in Me? The Effect of Student–Teacher Demographic Match on Teacher Expectations*, Econ. Educ. Rev., Vol. 52, Issue C, at 209 (2016); Anna J. Egalite et al., *Representation in the Classroom: The Effect of Own-Race Teachers on Student Achievement*, Econ. Educ. Rev., Vol. 45, Issue C, at 44 (2015).

⁹ *The State of Racial Diversity*, *supra* n.8, at 1.

¹⁰ Jaimes, *supra* n.6, at 8.

¹¹ *DACA Recipients*, Teach For America, <https://www.teachforamerica.org/how-to-join/eligibility/daca> (last accessed Sept. 29, 2019).

¹² *Ibid.*

DACA teachers' impact does not stop at the door to the classroom, however; they also pass their specialized knowledge to their peers. Teach For America's DACA Advisory Board encouraged the organization to prepare *all* corps members for the unique needs of undocumented students. With the organization's support and coordination, undocumented corps members and alumni worked to develop and implement a training program for the more than 3,000 teachers who join Teach For America each year.

2. Excellent Teachers Offer Great Value, Especially in Teacher Shortage Areas

Teach For America's commitment to excellence in hiring supports educational equality for all students. DACA teachers' backgrounds and skills, enhanced with two years of training and experience as Teach For America corps members, lay the foundation for a lifetime commitment to education and advocacy. The White House's "Champions of Change" series, for example, recognized nine "DACAmented teachers" as "extraordinary educators"; five of the nine were Teach For America corps members or alumni.¹³

These wonderful teachers are especially valuable in the growing number of school districts that face teacher shortages. A 2016 study found a nationwide deficit of approximately 64,000 teachers, and predicted

¹³ *Champions of Change: Dacamented Teachers*, The White House, <https://obamawhitehouse.archives.gov/champions/dacamented-teachers> (last accessed Sept. 29, 2019).

an annual teacher shortage of 112,000 in 2018.¹⁴ Those shortages will only increase if America loses the estimated 9,000 education professionals who currently benefit from DACA's protection.¹⁵

Teach For America recruits corps members to serve in high-need, hard-to-staff schools with high concentrations of low-income students. The DACA corps members are no different, and help to fill crucial needs in these communities. Since 2014, for example, Teach For America has placed more than a quarter of its DACA corps members into science, technology, engineering, and math ("STEM") subjects that represent teacher shortage areas in almost every state in the country.¹⁶ Most states also report shortages of bilingual teachers, or specialists in teaching English Learners or teaching other languages.¹⁷ DACA teachers fill those needs, too, by virtue of their native language

¹⁴ Leib Sutcher et al., *A Coming Crisis in Teaching? Teacher Supply, Demand, and Shortages in the U.S.*, Learning Pol'y Inst. 1 (2016), https://learningpolicyinstitute.org/sites/default/files/product-files/A_Coming_Crisis_in_Teaching_REPORT.pdf.

¹⁵ Jie Zong et al., *A Profile of Current DACA Recipients by Education, Industry, and Occupation*, Migration Pol'y Inst. 2 (Nov. 2017), <https://www.migrationpolicy.org/research/profile-current-daca-recipients-education-industry-and-occupation>.

¹⁶ All states other than Kansas and Ohio identified a STEM subject as a teacher shortage area. See *Teacher Shortage Areas*, U.S. Dep't of Educ., <https://tsa.ed.gov>; see also Sutcher et al., *supra* n.14, at 10–11 (discussing STEM teacher shortages in prior school years).

¹⁷ See *Teacher Shortage Areas*, *supra* n.16; Sutcher et al., *supra* n.14, at 11.

proficiencies and their experiences learning English as an additional language.

Teachers are the lifeblood of a well-functioning school system. Districts around the country rely on Teach For America corps members, and the members' commitment to teach at least two years. That reliance is especially pronounced in hard-to-staff schools and subject areas, where each additional loss worsens a growing crisis.

C. Teach For America Has Expended Considerable Resources Recruiting and Supporting Talented DACA Teachers

When President Obama announced DACA in 2012, Teach For America immediately recognized the policy's potential to promote the organization's mission of advancing educational equality. Teach For America hired staff, built administrative infrastructure, and raised funds to recruit DACA recipients and support them during their two years of service and beyond.

One prominent example is the financial award available to Teach For America corps members who complete their two-year commitment. Most corps members are eligible for federal education awards to pay down student debt or pursue additional education.¹⁸

¹⁸ Teach For America is the largest grantee of the Corporation for National and Community Service, which administers the AmeriCorps program. Like all AmeriCorps volunteers, Teach For America corps members who serve a two-year term are eligible for a Segal AmeriCorps Education Award to pay for student loans

DACA recipients, however, are ineligible for federal financial aid.¹⁹ Undocumented students often struggle to pay for school, given their generally low socioeconomic status, their lack of access to federal aid, and their ineligibility in most states for discounted in-state tuition rates.²⁰ To mitigate those imbalances, Teach For America has done extensive fundraising and designed administrative systems to provide DACA teachers “with the same opportunities for an education award as all other corps members.”²¹

Teach For America also provides financial resources and free legal assistance to corps members when they re-apply for DACA status. These services cost almost \$1,500 per renewal application, which requires Teach For America to raise significant funding from private sources.

In addition, the organization hired a full-time staff member dedicated to recruiting and supporting DACA

or further higher education. See *AmeriCorps*, Teach For America, <https://www.teachforamerica.org/life-in-the-corps/salary-and-benefits/americorps> (last accessed Sept. 29, 2019).

¹⁹ See U.S. Dep’t of Educ. Fed. Student Aid, *Financial Aid and Undocumented Students*, <https://studentaid.ed.gov/sa/sites/default/files/financial-aid-and-undocumented-students.pdf> (last accessed Sept. 29, 2019).

²⁰ See Jaimes, *supra* n.6, at 9; *Undocumented Student Tuition: Overview*, Nat'l Conf. St. Legislatures (Sept. 29, 2019), <http://www.ncsl.org/research/education/undocumented-student-tuition-overview.aspx>.

²¹ *DACA Recipients*, *supra* n.11.

corps members.²² And each year, Teach For America hosts a “convening” of DACAmented corps members and alumni. Participants have commented on how meaningful it is to be surrounded by talented, high-achieving people who are committed to educational excellence and equity. They bond over shared experiences, and discover how their lives have differed because of local demographics or state policies. This knowledge and these connections fuel their efficacy as educators and advocates.

Teach For America offers these benefits to reward DACA corps members’ commitment to service. These extraordinary young people choose to dedicate at least two years—the same period as their renewable DACA relief—to serve children and schools in low-income communities. Teach For America is unreservedly confident in placing these wonderful teachers in parts of the country where students need them most. That is why the organization makes such efforts to recruit and support DACA recipients, efforts that have purpose only as long as DACA survives.

²² *DACA Recipients*, *supra* n.11; see also Viridiana Carrizales, *Why TFA Supports DACA and Undocumented Students*, Teach For America (Feb. 28, 2017), <https://www.teachforamerica.org/stories/why-tfa-supports-daca-and-undocumented-students> (statement from Teach For America’s former “Managing Director of DACA Corps Member Support”).

III. THE DEPARTMENT ACTED ARBITRARILY AND CAPRICIOUSLY BY RESCINDING DACA WITHOUT CONSIDERING SERIOUS RELIANCE INTERESTS

DACA profoundly altered the lives of 700,000 young people, allowing them to join organizations like Teach For America for the betterment of communities nationwide. Most critically, DACA lifted the looming shadow of deportation and vastly expanded the universe of potential jobs. Teach For America was among the first organizations to recruit motivated individuals from this newly available pool of talent. The organization sought, trained, and financially supported high-achieving DACA recipients in furtherance of its mission to equalize educational opportunity.

Like all good teachers, Teach For America's DACA corps members educate, inspire, and guide their students. Many provide vital assistance to school districts suffering shortages of high-quality teachers in hard-to-staff subjects. Over and above those crucial benefits, Teach For America recognized the special value that DACA recipients offer students and communities by virtue of their lived experience as undocumented immigrants.

Acting Secretary Duke rescinded DACA without acknowledging, much less weighing, the rich and variegated reliance interests engendered over DACA's first five years. The Duke Memorandum's abrupt rescission of DACA "entirely failed to consider" these "important aspect[s] of the problem" DACA sought to address.

State Farm, 463 U.S. at 43. The “significant reliance interests involved” compel the Department to offer “a more reasoned explanation for its decision to depart from its existing enforcement policy.” *Encino Motor-cars*, 136 S. Ct. at 2127. The agency’s failure to do so, together with the flaws of law and logic discussed in Respondents’ briefs, demonstrate that the agency’s decision to “depart from its existing enforcement policy” was arbitrary and capricious. *Id.* at 2126. The lower courts recognized these flaws and properly set aside the agency action rescinding DACA.²³

There are perhaps no greater examples of DACA’s importance, and the consequences of its rescission, than the students and teachers who have relied upon its relief. Beyond serving as critical role models for undocumented students, DACA educators benefit *all* students in their schools. Their American story deepens all students’ understanding of the richness of the diversity of our country. This Court has long extolled the virtues of education, recognizing public schools as “a principal instrument in awakening the child to cultural values” and laying the foundation for “later

²³ Homeland Security Secretary Kirstjen Nielsen offered a post hoc rationalization in her 2018 memorandum, commenting in passing that “DACA recipients have availed themselves of the policy in continuing their presence in this country and pursuing their lives.” *Regents Pet. App.* 125a. Even if the Court considers these perfunctory post hoc statements, the Nielsen memorandum falls woefully short of acknowledging the profound ways DACA transformed the lives of undocumented young people. The memorandum also ignores the reliance interests that DACA has engendered in organizations like Teach For America.

professional training.” *Brown v. Bd. of Ed. of Topeka*, 347 U.S. 483, 493 (1954); *see also Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 864 (1982) (describing public schools as “vehicles for inculcating fundamental values necessary to the maintenance of a democratic political system.” (internal quotation marks omitted)); *Plyler*, 457 U.S. at 221 (collecting cases). Education at all levels—from pre-K to post-doctorate—is “pivotal to sustaining our political and cultural heritage” and occupies a “fundamental role in maintaining the fabric of society.” *Grutter v. Bollinger*, 539 U.S. 306, 331 (2003) (internal quotation marks omitted).

The pivotal role schools play in shaping our youth makes all the more important the courts’ role in safeguarding the rights of those who sit at desks or stand at the head of classrooms. “[E]ducation prepares individuals to be self-reliant and self-sufficient participants in society,” the *Plyler* Court wrote, decrying “governmental barriers” that present “unreasonable obstacles to advancement on the basis of individual merit.” 457 U.S. at 222. Even before that, the Court emphasized the need for “scrupulous protection” of rights in the schoolhouse “if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes.” *W. Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 637 (1943).

These admonitions apply with equal force today. What will impressionable children think upon learning that their teacher has been sent far away without the government even having to establish that its

actions were rational? What lessons will children learn about faith in their government, trust in social institutions, and the rule of law? How will we instill American values—the importance of keeping promises, the rewards that flow from talent and hard work—when the Department seeks to upend hundreds of thousands of lives without considering the depth of their loss or the immediacy of their suffering?

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CONCLUSION

Under the Administrative Procedure Act, the Department may rescind DACA only if it offers a sufficiently reasoned explanation, which it did not do. In light of the serious reliance interests at stake for DACA recipients, the organizations they work with, and the communities they serve, the Department’s conclusory statements do not suffice to explain its abrupt rescission. Teach For America urges the Court to affirm the lower courts’ unanimous judgments and orders in these consolidated appeals.

Respectfully submitted,

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