

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

No. 15-40238

STATE OF TEXAS; STATE OF ALABAMA; STATE OF GEORGIA; STATE OF IDAHO; STATE OF INDIANA; STATE OF KANSAS; STATE OF LOUISIANA; STATE OF MONTANA; STATE OF NEBRASKA; STATE OF SOUTH CAROLINA; STATE OF SOUTH DAKOTA; STATE OF UTAH; STATE OF WEST VIRGINIA; STATE OF WISCONSIN; PAUL R. LEPAGE, Governor, State of Maine; PATRICK L. MCCRORY, Governor, State of North Carolina; C. L. "BUTCH" OTTER, Governor, State of Idaho; PHIL BRYANT, Governor, State of Mississippi; STATE OF NORTH DAKOTA; STATE OF OHIO; STATE OF OKLAHOMA; STATE OF FLORIDA; STATE OF ARIZONA; STATE OF ARKANSAS; ATTORNEY GENERAL BILL SCHUETTE; STATE OF NEVADA; STATE OF TENNESSEE,

Plaintiffs-Appellees,

v.

UNITED STATES OF AMERICA; JEH CHARLES JOHNSON, SECRETARY, DEPARTMENT OF HOMELAND SECURITY; R. GIL KERLIKOWSKA, Commissioner of U.S. Customs and Border Protection; RONALD D. VITIELLO, Deputy Chief of U.S. Border Patrol, U.S. Customs and Border Protection; SARAH R. SALDANA, Director of U.S. Immigration and Customs Enforcement; LEON RODRIGUEZ, Director of U.S. Citizenship and Immigration Services,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

**AMICI CURIAE BRIEF OF AMERICAN IMMIGRATION COUNCIL,
NATIONAL IMMIGRATION LAW CENTER, SERVICE EMPLOYEES
INTERNATIONAL UNION AND OTHERS IN SUPPORT OF APPELLANT
UNITED STATES SEEKING REVERSAL OF PRELIMINARY
INJUNCTION**

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SUPPLEMENTAL CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Circuit Rule 28.2.1, in addition to those disclosed in the parties' certificates of interested persons, 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.

- ACLU of Nevada
- Action NC
- The Advancement Project
- AIM for Equity
- Alabama Coalition for Immigrant Justice
- Alliance for a Just Society
- Alliance of Filipinos for Immigrant Rights and Empowerment
- Alliance San Diego
- The American Friends Service Committee
- The American Immigration Lawyers' Association
- America's Voice Education Fund
- American Immigration Council
- Arab American Action Network
- Arab American Family Services
- Arizona Asian Pacific American Vote Alliance
- The Arkansas United Community Coalition
- Asian American Legal Defense and Education Fund
- Asian Americans Advancing Justice-AAJC
- Asian Americans Advancing Justice-Asian Law Caucus
- Asian Americans Advancing Justice | Atlanta
- Asian Americans Advancing Justice | Chicago
- Asian Americans Advancing Justice | Los Angeles
- The Asian & Pacific Islander American Health Forum
- Asian & Pacific Islander American Vote - Michigan
- Asian Law Alliance

- Asian Pacific American Labor Alliance, AFL-CIO
- Asian Pacific American Network of Oregon
- Asian Pacific Community in Action
- Asian Services In Action, Inc.
- Asociación de Liderazgo Comunitario
- The Association of Asian Pacific Community Health Organizations
- The Beloved Community Center of Greensboro, North Carolina
- Black Alliance for Just Immigration
- Boat People SOS
- The Border Network for Human Rights
- BreakOUT!
- The California Primary Care Association
- The Canal Alliance
- CASA
- The Center for Community Change
- The Center for Popular Democracy
- The Center for Public Policy Priorities
- The Central American Resource Center
- The Central Ohio Worker Center
- Chinese American Service League
- Chinese for Affirmative Action
- The Cincinnati Interfaith Workers Center
- The Coalition for Humane Immigrant Rights of Los Angeles The Colorado Immigrant Rights Coalition
- Comunidades Unidas
- The Connecticut Immigrant Rights Alliance
- The Consejo de Federaciones Mexicanas en Norteamérica
- Define American
- Dream Action Coalition
- El CENTRO de Igualdad y Derechos
- End Domestic Abuse Wisconsin
- The Fair Immigration Reform Movement
- Farmworker Justice
- The Florida Immigrant Coalition
- The Georgia Association of Latino Elected Officials
- The Georgia Latino Alliance for Human Rights
- The Hispanic Federation, Inc.

- The Hispanic Interest Coalition of Alabama
- The Hispanic National Bar Association
- HOLA Ohio
- The Idaho Community Action Network
- The Illinois Coalition for Immigrant and Refugee Rights Iowa
- Citizens for Community Improvement
- The Japanese American Citizens League
- Jobs With Justice
- Junta for Progressive Action, Inc.
- KAN-WIN
- Korean Immigrant Workers Advocates of Southern California
- Korean American Community Services
- The Korean American Resource and Cultural Center
- The Korean Resource Center
- La Fuente
- The Labor Council for Latin American Advancement
- Lambda Legal Defense & Education Fund, Inc.
- The Latino Commission on AIDS
- LatinoJustice PRLDEF
- Latinos En Axion STL
- Latinos United for Change and Advancement
- The Lawyers' Committee for Civil Rights of the San Francisco Bay Area
- The League of United Latin American Citizens
- The Los Angeles Center for Law and Justice
- The Lowcountry Immigration Coalition
- Maine Equal Justice Partners
- The Maine People's Alliance
- Make the Road New York
- The Michigan Coalition for Immigrant and Refugee Rights
- The Michigan Immigrant Rights Center
- Michigan United
- Mi Familia Vota The Montana Human Rights Network
- The Montana Immigrant Justice Alliance
- The National Alliance of Latin American and Caribbean Communities
- The National Asian Pacific American Women's Form
- National Council of Asian Pacific Americans
- National Council of La Raza

- The National Domestic Workers Alliance
- The National Immigrant Justice Center
- The National Immigration Law Center
- The National Korean American Service and Education Consortium
- The National Latina Institute for Reproductive Health
- The National LGBTQ Task Force
- The National Partnership for New Americans
- The National Queer Asian Pacific Islander Alliance
- National Tongan American Society
- Nebraska Appleseed Center for Law in the Public Interest
- The New Jersey Alliance for Immigrant Justice
- New Jersey Policy Perspective
- The New Orleans Workers' Center for Racial Justice
- New York Immigration Coalition, New York City, NY
- North Carolina Justice Center
- OCA - Asian Pacific American Advocates
- OCA-Greater Houston
- OneAmerica
- The Pennsylvania Immigration and Citizenship Coalition
- PICO National Network
- Pineros y Campesinos Unidos del Noroeste,
- Presente.org
- The Progressive Leadership Alliance of Nevada
- Promise Arizona
- Public Counsel
- Rights for All People
- South Asian Helpline & Referral Agency
- The San Diego & Imperial Counties Labor Council, AFL-CIO
- Service Employees International Union
- Southeast Asia Resource Action Center
- Services, Immigrant Rights and Education Network
- South Asian American Policy & Research Institute
- South Asian Americans Leading Together
- The South Asian Bar Association of North America
- South Asian Network
- South Carolina Appleseed Legal Justice Center
- The Southern Poverty Law Center

- The St. Joseph Valley Project
- Sunflower Community Action
- The Tennessee Immigrant & Refugee Rights Coalition
- The Tennessee Justice Center
- The Texas Organizing Project
- The United Farm Workers of America
- United Migrant Opportunity Service Inc.
- United We Dream
- Unitarian Universalist Refugee and Immigrant Services and Education, Inc.
- Valle del Sol
- VAYLA
- Voces de la Frontera
- The William C. Velasquez Institute
- Workers Defense Project
- The Workers' Rights Center of Madison
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INTRODUCTION AND SUMMARY OF ARGUMENT

Amici support Appellants' request for reversal of the preliminary injunction blocking the initiative established by Department of Homeland Security ("DHS") Secretary Jeh Johnson's November 20, 2014 memorandum. ROA.83. That initiative, referred to below as the "Deferred Action Initiative," should be implemented without delay.

Amici supplement Appellants' brief by presenting information within their expertise demonstrating the harms that the injunction has caused and will continue to cause, the public interest in the Deferred Action Initiative, and the discretion afforded DHS officers under the initiative. *Amici* demonstrate that the Deferred Action Initiative promises to have significant and widespread benefits to the United States economy, raising wages, increasing tax revenue, and creating jobs. In addition, *amici* show the benefits of the Deferred Action Initiative to individual immigrants, their families, and the communities in which they play an integral role. The district court ignored these benefits in assessing the irreparable harm and public interest prongs of the preliminary injunction analysis.

Amici also offer examples of the exercise of discretion under Secretary Napolitano's June 15, 2012 memorandum. ROA.123.¹ The district court wrongly

¹ The Deferred Action Initiative may be implemented in a different fashion than the initiative in the earlier memorandum. Nonetheless, because of the district court's reliance on past practice, *amici* address practices under the earlier regime.

concluded that DHS officers have not exercised discretion on a case-by-case basis in denying deferred action requests. ROA.4483-4485. Record evidence belies this conclusion. *Amici* highlight this evidence and identify individual instances of such denials from their own experience.

The experience of the *amici* organizations illustrates the importance of permitting the Deferred Action Initiative to take effect without judicial interference. The district court repeatedly emphasized its mistaken understanding that the preliminary injunction maintains the status quo. ROA.4427, 4492, 4494, 4496. But the November 20, 2014 memorandum had already been issued and, as Appellants explained, DHS had already spent considerable resources to prepare for implementation of the Deferred Action Initiative. App. Br. at 53 (citing ROA.4451 n.55). At the time of the district court's order, DHS, an agency of one of the elected branches, was to begin assessing within days deferred action requests under the Deferred Action Initiative. That situation is similar to *Planned Parenthood of the Blue Ridge v. Camblos*, 116 F.3d 707 (4th Cir. 1997), in which the Fourth Circuit issued an emergency stay of a district court's injunction blocking implementation of a state statute prior to its effective date. The appellate court rejected the district court's reasoning that an injunction was necessary to preserve the status quo, explaining "[i]n this context, the status quo is that which the People

have wrought [i.e., the enacted state law that was due to take effect shortly], not that which unaccountable federal judges impose upon them.” 116 F.3d at 721.

For the reasons explained below, and in Appellants’ brief, the preliminary injunction should be reversed.

IDENTITY AND INTEREST OF AMICI CURIAE

Proposed *amici* are a broad array of immigrants’ rights, civil rights and labor organizations. *Amici* have a substantial interest in the outcome of this case, which implicates the subject matter of their advocacy and directly impacts the communities they serve. A complete list of the 154 *amici* and their interests is attached to the accompanying motion for leave to file. *Amici* have authority to file this brief pursuant to F.R.A.P. 29(a) because the parties have consented to its filing.

ARGUMENT

I. The Injunction Will Harm The Economy

Studies by the government, think-tanks, non-profit advocacy organizations, and academic researchers show that the Deferred Action Initiative would improve the U.S. economy and benefit U.S. workers. Temporary work authorization for eligible immigrants will raise not only their wages, but the wages of all Americans, which will in turn increase government tax revenue and create new jobs.

The overwhelming consensus of economists is that immigration is positive for the U.S. economy. For instance, Dr. Giovanni Peri has concluded that “immigrants expand the U.S. economy’s productive capacity, stimulate investment, and promote specialization that in the long run boosts productivity,” and that “there is no evidence that these effects take place at the expense of jobs for workers born in the United States.”² Because immigrants and native-born workers tend to fill different kinds of jobs that require different skills, they complement each other rather than compete.³ This increases the productivity, and therefore the wages, of native-born workers.⁴ Further, the increased spending power of both immigrants and native-born workers bolsters U.S. businesses, which

² Giovanni Peri, *The Effect of Immigrants on U.S. Employment and Productivity*, FRBSF Econ. Letter 2010-26, Aug. 30, 2010, <http://www.frbsf.org/economic-research/publications/economic-letter/2010/august/effect-immigrants-us-employment-productivity>; see also Jack Strauss, *Does Immigration, Particularly Increases in Latinos, Affect African American Wages, Unemployment and Incarceration Rates?*, Dec. 8, 2012, available at Social Science Research Network, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2186978.

³ Peri, *supra* n.2; see also Heidi Shierholz, *Immigration and Wages: Methodological advancements confirm modest gains for native workers*, at 10-11 (Econ. Policy Inst., Briefing Paper No. 255 (Feb. 4, 2010), <http://www.epi.org/files/page/-/bp255/bp255.pdf>); Gianmarco I.P. Ottaviano and Giovanni Peri, *Rethinking the Effects of Immigration on Wages*, at 3-4 (Nat’l Bureau of Econ. Research, Working Paper No. 12497, 2006, revised 2008), <http://www.nber.org/papers/w12497.pdf>; Michael Greenstone and Adam Looney, *Ten Economic Facts About Immigration*, at 5, The Hamilton Project, Brookings Institute (Sept. 2010).

⁴ Peri, *supra* n.2; see also Shierholz, *supra* n.3, at 19 (estimating that, from 1994 to 2007, immigration increased the wages of native-born workers by 0.4 percent); Ottaviano and Peri, *supra* n.3, at 4 (estimating that, from 1990 to 2004, immigration increased the wages of native-born workers by 0.7 percent); Greenstone and Looney, *supra* n.3, at 5.

are then able to invest in new ventures. The end result is more jobs for more workers, as well as upward pressure on wages created by higher demand for labor.⁵

Deferred action and temporary work authorization would amplify the positive impact immigration has on the U.S. economy. As the White House Council of Economic Advisors (“CEA”) explains, “better task specialization and occupational reallocation as a result of work authorization for undocumented workers granted deferred action would allow for greater productivity – and thus higher wages – for native workers as well.”⁶ CEA estimates the wage gains to be 0.1 percent for native-born workers over the next ten years as a result of the executive actions.⁷

The federal government, as well as state and local governments, will enjoy higher tax revenues as a result of the Deferred Action Initiative. Not only will

⁵ Giovanni Peri, *Rethinking the Effects of Immigration on Wages: New Data and Analysis from 1990-2004*, 5 Immigration Policy In Focus, No. 8, at 1 (American Immigration Law Foundation (now, American Immigration Council), Oct. 2006), <http://www.immigrationpolicy.org/sites/default/files/docs/IPC%20Rethinking%20Wages,%202011-2006.pdf>; White House Council of Economic Advisors (“CEA”), *The Economic Effects of Administrative Action on Immigration*, at 9 (Nov. 2014), available at http://www.whitehouse.gov/sites/default/files/docs/cea_2014_economic_effects_of_immigration_executive_action.pdf.

⁶ CEA, *supra* n.5, at 9.

⁷ *Id.* at 9-11; *see also* U.S. Chamber of Commerce, *Immigration Myths and Facts*, at 4-5 (2013), available at https://www.uschamber.com/sites/default/files/legacy/reports/Immigration_MythsFacts.pdf (discussing ten-year projections (2010-2020) for retirement and economic growth, which make immigration “invaluable” in sustaining the U.S. work force).

previously unauthorized workers be brought into the formal workforce, with much higher rates of tax compliance, but they will also be able to obtain better jobs and earn higher wages. The North American Integration and Development Center (“NAID”) at the University of California, Los Angeles, estimates that if 3.8 million people are eligible to receive deferred action, tax revenues would increase by approximately \$2.6 billion over the first two years.⁸ Similarly, the Center for American Progress (“CAP”) estimates that if 4.7 million individuals are eligible to receive deferred action, payroll tax revenues will increase by \$2.87 billion in the first year and \$21.24 billion over the first five years.⁹ The effects on individual states are striking. For instance, CAP estimates that in Texas alone, granting deferred action and a temporary work permit to those individuals who would be eligible would result in a \$338 million increase in tax revenues over five years.¹⁰ CAP also estimates that deferred action recipients will earn \$103 billion more in

⁸ Dr. Raul Hinojosa-Ojeda with Maksim Wynn, *From the Shadows to the Mainstream: Estimating the Economic Impact of Presidential Administrative Action and Comprehensive Immigration Reform*, Appendix A at 32 (NAID, Nov. 21, 2014), http://www.naid.ucla.edu/uploads/4/2/1/9/4219226/ucla_naid_center_report_-_estimating_the_economic_impact_of_presidential_administrative_action_and_comprehensive_immigration_reform.pdf.

⁹ Patrick Oakford, *Administrative Action on Immigration Reform, The Fiscal Benefits of Temporary Work Permits*, at 9 (CAP, 2014), <http://cdn.americanprogress.org/wp-content/uploads/2014/09/OakfordAdminRelief.pdf>.

¹⁰ CAP, *Executive Action on Immigration Will Benefit State Economies* at 3, available at <http://www.scribd.com/doc/248189539/Topline-Fiscal-Impact-of-Executive-Action-Numbers-for-28-States>.

wages over the next 10 years than they otherwise would. The resulting increase in economic activity will, over the coming decade, raise the income of all Americans by \$124 billion and create 28,814 new jobs per year.¹¹

As a result of these various economic benefits, deferred action will have the effect of growing the economy generally. The CEA predicts that over the next 10 years the Deferred Action Initiative will increase GDP between \$90 billion and \$210 billion,¹² and CAP predicts \$230 billion in GDP growth.¹³ Moreover, as a result of higher GDP growth and resulting higher tax revenue, CEA estimates that the executive actions on immigration will decrease federal deficits by between \$25 and \$60 billion over the next decade.¹⁴

In making its finding concerning irreparable harm, the district court credits Appellees' assertion of harm, finding "there are millions of dollars at stake in the form of unrecoverable costs to the States if DAPA is implemented and later found unlawful in terms of infrastructure and personnel to handle the influx of applications." ROA.4490. In doing so, however, the district court neglected to

¹¹ CAP, *Assessing the Economic Impacts of Granting Deferred Action Through DACA and DAPA*, available at <https://www.americanprogress.org/issues/immigration/news/2015/04/02/110045/assessing-the-economic-impacts-of-granting-deferred-action-through-daca-and-dapa/>.

¹² CEA, *supra* n.5, at 2.

¹³ *Supra* n.10.

¹⁴ CEA, *supra* n.5, at 2.

consider the far stronger evidence of economic benefits discussed above. This evidence not only compels the conclusion that Appellees failed to demonstrate irreparable harm sufficient to support the preliminary injunction, but also the conclusion that the public interest lies in reversal of the district court's order.

II. The Injunction Will Harm Individuals

A. The Economic Effects On Individuals Granted Deferred Action

Under the Deferred Action Initiative, many currently employed undocumented individuals will have access to better jobs and improved working conditions. Because undocumented immigrants seek jobs that minimize their risk of being identified and deported, they often do not work in jobs that best fit their education, skills, and abilities, or those which would maximize their earning potential.¹⁵ Making workers eligible for deferred action and work permits will allow them greater occupational mobility, enabling them to seek out a wider range of potential jobs. Moreover, as CAP has explained, “[t]he interaction between our broken immigration system and employment and labor laws have made undocumented workers more susceptible to exploitation in the workplace, leading them to earn lower wages than they otherwise could.”¹⁶ Eliminating the fear of

¹⁵ Oakford, *supra* n.9, at 6.

¹⁶ *Id.* at 5. Additionally, deferred action will not have a negative impact on employment for native-born workers. CEA explains: “Theory suggests that these policy changes would not have an effect on the long-run employment (or unemployment) rate . . . as the additional demand associated with the expanded economy would offset the additional supply of workers. . . .”

retaliatory reporting and potential deportation will allow these workers to better protect their own workplace rights, leading to higher real wages and fewer violations of employment and labor laws and regulations.¹⁷

Those eligible for deferred action will enjoy increased earning potential, producing a positive multiplier effect on local economies. CAP estimates: “Temporary work permits would increase the earnings of undocumented immigrants by about 8.5 percent as they are able to work legally and find jobs that match their skills.”¹⁸ Similarly, the Fiscal Policy Institute estimates that wages for those eligible for work authorization will increase by 5 to 10 percent.¹⁹ Overall, one estimate suggests that the group of individuals eligible to receive deferred action through this initiative “will experience a labor income increase of \$7.1 billion dollars.”²⁰

Consistent with the theory, much of the academic literature suggests that changes in immigration policy have no effect on the likelihood of employment for native workers.” CEA, *supra* n.5, at 9.

¹⁷ Indeed, enabling undocumented workers to better protect their workplace rights will have a positive effect on all U.S. workers. Not only will more workers have the opportunity to bring employers’ violations to light, but diminishing the exploitation of these workers will prevent a race-to-the-bottom in workplace conditions. *See* Oakford, *supra* n.9, at 6.

¹⁸ *Id.* at 3.

¹⁹ Fiscal Policy Institute, *President’s Immigration Action Expected to Benefit Economy*, <http://fiscalpolicy.org/presidents-immigration-action-expected-to-benefit-economy>.

²⁰ Hinojosa-Ojeda and Wynn, *supra* n.8, Appendix A at 32.

The benefits of the Deferred Action Initiative for upward mobility are apparent from the impact of the initial Deferred Action for Childhood Arrivals (“DACA”) program, announced in June 2012. A national survey of 1,402 young adults across the country who were approved for DACA through June 2013 found:

Since receiving DACA, young adult immigrants have become more integrated into the nation’s economic institutions. Approximately 61% of DACA recipients surveyed have obtained a new job since receiving DACA. Meanwhile, over half have opened their first bank account, and 38% have obtained their first credit card.²¹

In short, DACA created numerous economic benefits to qualifying individuals and to society at large, including by permitting greater levels of contribution to the workforce by educated individuals who previously had limited employment opportunities. The Deferred Action Initiative would do the same.

B. The Human Impact Of The Deferred Action Initiative

The stories of the individuals described below highlight the benefits of permitting the Executive Branch to roll out the Deferred Action Initiative unimpeded by judicial intervention. As Appellants have explained, the Deferred Action Initiative allows DHS to focus its limited resources on such priorities as national security and public safety. App. Br. at 24-25. The following are

²¹ Roberto G. Gonzales and Veronica Terriquez, *How DACA is Impacting the Lives of Those who are now DACAmended: Preliminary Findings from the National UnDACAmended Research Project* (American Immigration Council, 2013), <http://www.immigrationpolicy.org/just-facts/how-daca-impacting-lives-those-who-are-now-dacamended>.

descriptions of individuals who stand to benefit from deferred action and who have long made the United States their home and contributed in a multitude of ways.

1. Individuals Who Immigrated As Children

The Deferred Action Initiative, like DACA, is designed to allow individuals who came to the United States as children, pursued educational opportunities, and lack a viable means to legalize their status, to apply for a temporary, revocable reprieve from deportation and obtain work authorization. The eligible individuals often know only the United States as their home but, despite having been raised and educated here, lack the ability to work legally and live in constant fear of deportation. DACA limited relief to individuals who were under age 31 as of June 15, 2012, and required individuals to have been in the United States as of June 15, 2007. These cut-off dates excluded numerous individuals, who have made critical contributions to our country.

Jose Antonio Vargas. Jose Antonio Vargas, who is now age 33, arrived in the United States at age 12 from Antipolo, Philippines. He currently lives in California. Jose is a well-known journalist who was part of the *Washington Post* team that won the Pulitzer Prize for coverage of the Virginia Tech shootings in 2011. He is also a filmmaker and founder of the nonprofit media and culture campaign, “Define American,” which seeks to elevate the immigration conversation in the United States. Jose discovered he was undocumented at age 16

when he attempted to apply for a driver's license. He is the only undocumented member of his family. He missed the age cutoff for the original DACA program by a few months. Jose is already an American entrepreneur and business owner who has made tremendous contributions to society through his films and advocacy work. He has created numerous jobs for U.S. citizens despite lacking his own work authorization, for which the expanded DACA initiative would finally allow Jose to apply.²²

Aly. Aly has lived in the United States for 30 years. He arrived in 1985 from Dakar, Senegal, at age 8. He currently lives in Syracuse, New York, where he is a community organizer. Aly came to the United States as the son of a diplomat working at the United Nations. He eventually traded his diplomatic visa for a student visa, graduated from Georgetown Preparatory School, attended the University of Pennsylvania, and completed his studies with a Bachelor of Arts in Political Science from Le Moyne College in Syracuse. He missed the age cutoff for the original DACA program, but would be able to apply under the expansion.²³

Juan Carlos. Juan Carlos is 21 years old and lives in North Carolina. He is originally from El Salvador but came to the United States when he was 15 years

²² Information on file with Karen Tumlin, NILC.

²³ Information on file with Karen Tumlin, NILC.

old. He was detained while crossing into the United States in 2008 and has a final order of removal. Following his high school graduation in June 2012, Juan Carlos was accepted into five colleges. But he could not afford to attend because North Carolina does not provide in-state tuition for undocumented students. To make ends meet, Juan Carlos started working with his father in construction. After he fell on his third day of work, he did not return to that job because he knew that if he suffered a more serious workplace injury, he would not be able to afford the medical costs. especially

Juan Carlos was not eligible for DACA because he came to the United States in 2008. Receiving deferred action is important to Juan Carlos because as a gay man deportation to El Salvador would be especially difficult. Moreover, deferred action also would allow him to pursue higher education, to follow his dream of becoming an architect.²⁴

2. Parents Of U.S. Citizens And Lawful Permanent Residents

Under the Deferred Action Initiative, certain other individuals with strong ties to the United States will become eligible for deferred action based on the immigration status of their children.

²⁴ See Letter from Julieta Garibay, Co-founder and Deputy Advocacy Director United We Dream, to Karen Tumlin, NILC (Dec. 29, 2014) (on file with NILC).

Rosalva and Fidel. Rosalva resides in Indianapolis, Indiana. Rosalva and her husband Fidel have three U.S. citizen children: Brandon, age 11, Candy, age 17, and Brenda, age 19. Their oldest daughter, Brenda, proudly serves our nation in the United States National Guard and recently completed basic training. Rosalva is a small business owner. Because of their U.S. citizen children, Rosalva and Fidel qualify for the Deferred Action Initiative. Deferred action would also give Rosalva the opportunity to travel to Mexico and visit her 93-year old father whom she has not seen in over 20 years.

Denis and Reina. Denis has lived in the U.S. for 11 years. His wife, Reina, has lived in the U.S. since 2007. Both are from Honduras. Denis left Honduras in 2003 because he feared for his life.

Denis has lived in the New Orleans area since Hurricane Katrina. A skilled roofer and construction worker, he came to the city to help rebuild New Orleans. Denis and Reina are the parents of a one-year-old son who is a U.S. citizen. Unfortunately, their young son has been diagnosed with respiratory complications that require regular physician visits as well as emergency care. Denis' income is the family's main source of financial support, and multiple physicians have advised him that his continued presence in the United States is critical to ensuring that his son receives adequate medical care. Denis is subject to a final removal order, which was issued following proceedings that he did not adequately

understand and at which he appeared *pro se*. Denis lives in constant fear he will be deported. The Deferred Action Initiative would protect Denis and Reina from deportation, allowing their family to remain together and maximizing the chances for a healthy future for their son.²⁵

Rebeca. Rebeca (a pseudonym) entered the United States from Mexico in 2000 and resides in Indiana. She has six children, four of whom are U.S. citizens. During her time in the United States, Rebeca suffered years of abuse at the hands of her domestic partner. Her abuser, who was often drunk, would yell at her and beat her in front of her children. On one occasion he punched her in the stomach while she was pregnant; on another occasion, he threatened her with a knife. The abuser was arrested for felony battery and deported. As the mother of U.S. citizen children, Rebeca could benefit from deferred action, which would enable her to continue to raise her children in the only country they have ever known.²⁶ For women in Rebeca's situation, obtaining deferred action would reduce their vulnerability to abuse by making them less afraid to report crimes.²⁷

²⁵ See Letter from Yihong "Julie" Mao, Esq., to Karen Tumlin, NILC (Dec. 29, 2014) (on file with NILC).

²⁶ See Letter from Charles Roth, Esq., to Karen Tumlin, NILC (Dec. 29, 2014) (on file with NILC).

²⁷ National Latina Network for Healthy Families and Communities, *Realidades Latinas: A National Survey on the Impact of Immigration and Language Access on Latina Survivors*, Research Report No. 2013.4 (2013), available at

Nga. Nga came to the United States from Vietnam on a V-nonimmigrant visa in 2004 to reunite with her husband, a lawful permanent resident. She started working in Houston, Texas, and became an integral part of her community. But her marriage ended in divorce, and her ex-husband never completed her immigrant visa process. She began living with her uncle until 2007, when he sexually abused her. She moved out, sought legal assistance, and bravely reported his conduct to the police, but her uncle was never prosecuted. Nga was placed in a women's shelter as she had nowhere else to go. Later, she moved in with her partner, who was a lawful permanent resident. In 2009, when her partner found out that Nga was pregnant with his child, he broke up with her. Nga was, once again, left to fend for herself. In June 2010, Nga gave birth to a baby girl, a U.S. citizen, and began raising her as a single mother.

Around the same time, Nga's work permit expired. She was left without a way to earn a steady income, and became embroiled in a custody battle with her ex-partner over her child. Based in part on Nga's lack of stable employment, the father of the child was awarded custody. Nga currently sees her daughter weekly, while working low-paying jobs in the restaurant industry to support her. The

Deferred Action Initiative would help Nga seek better and more stable employment opportunities, and gain back custody of her daughter.²⁸

Concepción. Concepción, her husband, and their two oldest children came to the United States from Mexico in 1995. They live in Winter Garden, Florida. Concepción has waited since 2001 to adjust her immigration status through a family petition by her brother, but due to backlogs a visa is not yet available. Concepción has four children—the two youngest are U.S. citizens, which qualifies her for the Deferred Action Initiative. Receiving deferred action would allow her to apply for a driver’s license so she could take her two youngest children to school and to extra-curricular activities without fear of being pulled over by police and turned over to immigration authorities.²⁹

These stories provide a small glimpse into the human toll the injunction perpetuated. They illustrate the benefits the Deferred Action Initiative will provide to our nation’s families, communities, and economy. These benefits, as well as those Appellants discuss, demonstrate that a continued preliminary injunction would be contrary to the public interest.

²⁸ Information on file with Karen Tumlin, NILC.

²⁹ Information on file with Karen Tumlin, NILC.

III. DHS Line Officers Have Discretion Under The Initiative To Evaluate Requests For Deferred Action On A Case-By-Case Basis

The district court's finding that DHS simply rubber stamps DACA requests is incorrect. The court found: "the only discretion that has been or will be exercised is that already exercised by Secretary Johnson in enacting the DAPA program and establishing the criteria therein," ROA.4483, and "[n]o DACA application that has met the criteria has been denied based on an exercise of individualized discretion," ROA.4484. This finding is contrary to record evidence and the experience of *amici*.

As Appellants have explained, DHS maintains complete and unreviewable prosecutorial discretion under the Deferred Action Initiative to decide on a case-by-case basis whether to grant any particular individual's request. App. Br. at 44-45. According to the latest statistics, almost six percent of DACA requests have been denied,³⁰ in addition to the almost six percent that were rejected as incomplete or otherwise insufficient. ROA.917; *see also* ROA.4148.³¹

³⁰ According to USCIS statistics (current through YE 2014), 677,494 initial requests have been adjudicated. Of those, 638,897 were approved and 38,597 were denied. http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/I821d_performancedata_fy2015_qtr1.pdf

³¹ It is unsurprising that a large number of DACA requests are approved, as individuals who meet the specified guidelines are more likely to warrant a favorable exercise of discretion. Thus, they have a greater incentive to pay the requisite fees and identify themselves to the government agency empowered to initiate removal proceedings. Further, in the experience of *amici*, those who do not meet DACA guidelines are counseled to refrain from submitting requests, thereby reducing the number of denials.

The record indicates that DHS officers consider numerous discretionary factors in deciding whether to grant a DACA request. ROA.4145-4148 (Neufeld Decl.). The record further shows that DACA requests have been denied in the exercise of discretion based on the agency’s belief that the applicant “submitted false statements or attempted to commit fraud in a prior application or petition . . . falsely claimed to be a U.S. citizen and had prior removals” as well as other factors not specified in the DACA guidelines. ROA.4146. Indeed, a form used for denial of DACA requests includes a box specifically allowing denials solely on the basis of discretion—even where eligibility guidelines are met, as well as another box permitting denial where requestor “do[es] not warrant a favorable exercise of prosecutorial discretion because of national security or public safety concerns.” ROA.1841.³²

The district court refused to treat denials on the basis of public safety and fraud as exercises of discretion because they “are specifically listed in the Operation Instructions as reasons to deny relief.” ROA.4485. But the point is that an undefined and flexible “public safety” concern has been the basis for denial of

³² Appendix A attached hereto includes three different versions of the denial form. *See also* Written Testimony of Stephen H. Legomsky Before the House Judiciary Committee at 13-14 (Feb. 25, 2015) (describing evolution of denial form, each version of which contains an option reflecting discretion to deny requests even when all threshold guidelines are satisfied), available at: http://judiciary.house.gov/_cache/files/fc3022e2-6e8d-403f-a19c-25bb77ddfb09/legomsky-testimony.pdf.

deferred action, even for those who meet all the objective guidelines for DACA. In other words, when DHS officers exercise judgment on a case-by-case basis to deny deferred action to those who have not “been convicted of a felony offense, a significant misdemeanor offense, [or] multiple misdemeanor offenses,” ROA.123, but because the DHS officer has public safety concerns even in the absence of such convictions, meaningful discretion is exercised.³³

In the experience of *amici*, many of whom have advised DACA applicants and their lawyers, some DACA denials are based solely on this unreviewable prosecutorial discretion. That is, individuals meeting all the DACA eligibility requirements are nonetheless denied deferred action, and have no recourse for these denials. They cannot appeal the denials, nor are they entitled to reconsideration of the discretionary determinations.

³³ DHS line officers also exercise discretion in assessing whether the DACA guidelines have been met. For instance, DACA requires that individuals have not departed the United States since June 15, 2007, except for absences that are “brief, casual, and innocent.” The assessment of whether a particular absence is “innocent,” “casual,” or “brief” is left to the officer’s discretion. Likewise, DACA requires that an individual not have committed a “significant misdemeanor,” a category that includes “driving under the influence” and “domestic violence” offenses. In making this assessment, officers review conviction records, police reports and other documents that the applicant must provide. An officer’s decision to categorize a particular offense as a “significant misdemeanor” based on the facts presented is an act of discretion. The same reasoning applies to other DACA guidelines.

The following examples illustrate the types of circumstances where agency officials exercised their discretion to deny DACA to individuals who met all the threshold eligibility guidelines.

Christian. Christian, a 24-year-old Guatemalan national, received a discretionary DACA denial in August 2013. Christian came to the United States at the age of eight. His family settled in the Kansas City area. In 2009, following a consolidated hearing with his father in which his father was denied asylum, Christian and his father were ordered removed. During the removal proceeding, the government accused Christian's father of engaging in war crimes during the Guatemalan civil war. The Guatemalan civil war concluded in 1996, when Christian was five years old.

Despite the immigration judge's decision, Christian did not leave the United States because his U.S. citizen daughter suffers from a chromosomal abnormality called Turner's Syndrome. Christian was the primary provider for the child and the child's mother. After the DACA program was announced, Christian applied. He met all the established eligibility guidelines.³⁴ Christian stated in his application for work authorization that he sought a work permit to provide for his

³⁴ The policy governing DACA decisions provides that a final order of removal, without more, is not disqualifying. USCIS, DACA Frequently Asked Questions (updated Oct. 23, 2014), at Q.7, *available at* <http://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-process/frequently-asked-questions> (hereinafter "DACA FAQ").

immediate and extended family, and to make donations to his church. He expressed a desire to attend college and enlist in the U.S. military. USCIS denied Christian's DACA request. The denial provided that Christian had not established that he "warrant[ed] a favorable exercise of prosecutorial discretion." No further explanation was given.³⁵

Francisco.³⁶ In January 2014, DHS denied the DACA request of Francisco, a young Virginia man. Francisco came to the United States from Mexico when he was 10 years old. Francisco is married to a U.S. citizen and is the father of a five-year-old U.S. citizen child. At the time he requested DACA, Francisco was enrolled in a local community college and was working fulltime to support his family. Francisco's mother and siblings lawfully reside in the United States. DHS denied Francisco's DACA request on the ground that he did not warrant a favorable exercise of prosecutorial discretion.

The agency did not point to any other basis for denying Francisco's request. Although Francisco had minor criminal convictions, his criminal history did not disqualify him from DACA. A person is ineligible for DACA if he or she has "been convicted of a felony offense, a significant misdemeanor offense, multiple

³⁵ Information on file with Patrick Taurel, American Immigration Council.

³⁶ This individual's name has been changed at counsel's request.

misdemeanor offenses, or otherwise poses a threat to national security or public safety.” ROA.123. Francisco was convicted of misdemeanor marijuana possession as well as minor traffic offenses. In addition, Francisco was charged with—but not convicted of—driving with a suspended license, failure to possess a valid driver’s license, and reckless driving. In connection with the misdemeanor marijuana offense, Francisco was sentenced to probation, and his driver’s license was restricted for six months. He was not sentenced to serve any time in custody. Therefore, the simple possession offense does not rise to the level of a “significant misdemeanor” as DHS has defined the term under DACA.³⁷ Moreover, Francisco’s other convictions are all for driving without a license, which is the type of “minor traffic offense” DHS does not consider “a misdemeanor for purposes of [DACA].”³⁸ Nonetheless, he was denied based on prosecutorial discretion.³⁹

Adolfo. Adolfo also was denied DACA despite meeting all the eligibility guidelines. Adolfo, now age 28, came to the United States from El Salvador when he was 14. He fled violence at home at the hands of his uncle. He initially resided in Los Angeles and then moved to the Washington, DC area.

³⁷ DACA FAQ Q.62.

³⁸ DACA FAQ Q.64.

³⁹ Information on file with Patrick Taurel, American Immigration Council.

After arriving in the United States, Adolfo joined a gang. Two years later, at age 16, he decided to turn his life around and escaped the gang. For the next several years, Adolfo helped law enforcement combat gang activity. He began working with a local non-profit that seeks to keep Latino youth out of gangs and in school. He regularly travelled to schools to explain why young people should stay out of gangs. Adolfo went on to obtain his GED degree, and works full-time to support himself and his three-year-old U.S. citizen child.

Adolfo disclosed his former gang membership in his DACA application. In connection with his DACA request, an immigration officer questioned Adolfo for approximately three hours regarding his former gang membership.⁴⁰ Several months later, Adolfo received a denial of his DACA request solely because he did not “warrant[] a favorable exercise of prosecutorial discretion.”⁴¹

Luis. Luis has lived in the United States since he came from Mexico at the age of three. He grew up in California and, after completing three years of high school, moved to Colorado to find work. There, Luis got married and had a daughter. Finding work in painting and construction, Luis dedicated himself to

⁴⁰ USCIS occasionally interviews DACA requestors. Some are selected randomly for quality control purposes, while others are selected because of eligibility issues. *See* Practice Alert: DACA Interviews at Local USCIS Field Offices, AILA InfoNet Doc. No. 13050246 (posted May 2, 2013).

⁴¹ Information on file with Patrick Taurel, American Immigration Council.

supporting his family. He filed taxes and enrolled in a GED program to complete his high school education.

Luis had contact with the justice system on four occasions, but did not run afoul of the DACA disqualifying grounds. His first two offenses – underage alcohol possession and trespass – were handled in juvenile court. These incidents did not bar Luis from DACA because “juvenile convictions will not automatically disqualify” a requestor.⁴² Subsequently, Luis was cited for speeding and driving without a license. The latter is a misdemeanor in Luis’s home state; however, “minor traffic offenses, such as driving without a license” are not considered misdemeanors for purposes of DACA.⁴³ Luis’s last encounter with the criminal justice system resulted in a conviction for driving under restraint, a state law that makes it a misdemeanor to drive with knowledge that the person’s license or privilege to drive is under restraint. Luis was also charged with providing false information, but this charge was dropped. Even if Luis’s conviction for driving under restraint is *not* considered a “minor traffic offense” under DACA, it would still not rise to the level of a “significant misdemeanor” because Luis was not sentenced to 90 days in custody and the crime is not one of the enumerated significant misdemeanors. Nor would it justify a conclusion that Luis had been

⁴² DACA FAQ Q.67.

⁴³ DACA FAQ Q.64.

convicted of three or more other misdemeanors because none of Luis's other delinquency findings or convictions constitute misdemeanors for purposes of DACA.⁴⁴ Luis was thus not disqualified from DACA.

Luis applied for DACA and submitted proof that he met the eligibility guidelines. Nevertheless, USCIS denied his application as a matter of discretion. The only box checked on the template denial he received provided: "You have not established that you warrant a favorable exercise of discretion."⁴⁵

Jose. In October 2014, USCIS issued a discretionary DACA denial to Jose, a Texas high school graduate with substantial family ties in the United States. Jose met all the guidelines, had no criminal convictions, is married to a U.S. citizen, is the father of a U.S. citizen; and helps his lawful permanent resident mother take care of his three siblings, two of whom are U.S. citizens and one of whom has DACA.

Jose came to the United States from Mexico when he was four years old. His family settled in Texas, where Jose excelled in school. After graduation, he enrolled in community college courses while working various jobs to help provide for his family. Jose was a taxpayer and helped support his niece and nephew. He dreamed of one day being able to complete his education.

⁴⁴ DACA FAQ Q.62 (identifying per se significant misdemeanors).

⁴⁵ Information on file with Patrick Taurel, American Immigration Council.

The only blemish on Jose’s record is a criminal charge that did not result in conviction. In 2011, Jose was arrested and accused of sexual assault of a child under 17 years of age based on his relationship with a woman who was then his girlfriend and is now his wife and the mother of his U.S. citizen child. A grand jury investigated the case and declined to indict Jose. Upon his release from state custody, Jose was placed in removal proceedings. An immigration judge subsequently ordered Jose’s release on bond, which enabled him to request DACA.

Jose demonstrated that he met all the DACA guidelines. That removal proceedings were pending when he submitted his DACA request did not render him ineligible. Likewise, that Jose had been charged with a felony did not disqualify him because he was not convicted.⁴⁶ Nevertheless, USCIS denied Jose’s application solely because, according to the agency, Jose did not warrant a favorable exercise of discretion.⁴⁷

Jaime Leon Rivas. Jaime was ten years old when he left El Salvador for the United States. He was accompanied by his older brother and a *coyote* whom Jaime’s mother, a housekeeper, paid out of her savings. The boys made the long

⁴⁶ Memorandum from Janet Napolitano, Secretary of Homeland Security, *Exercising Prosecutorial Discretion with respect to Individuals who Came to the United States as Children* (June 15, 2012), at 1 (providing that an individual may be considered for an exercise of discretion under DACA if he or she has not been “convicted of a felony offense”).

⁴⁷ Information on file with Patrick Taurel, American Immigration Council.

journey to reunite with their mother, who had moved to Colorado in the hope of being able to better provide for her family. Before leaving El Salvador, she entrusted her boys to the care of her parents. The rise in criminality in El Salvador prompted her to send for her children.

Jaime was apprehended by immigration officials while trying to enter the United States. He was placed in removal proceedings and granted voluntary departure. Because he did not leave the United States, his voluntary departure order automatically converted into a removal order. 8 C.F.R. §1240.26(d).

Jaime did not transition well to life in the United States. Between 2007 and 2011, he had several encounters with the juvenile justice system. In 2007, at age twelve, Jaime was found carrying a knife to school and charged with unlawful possession of a weapon. He was found delinquent and ordered to complete probation. In 2009, Jaime was charged with trespass and with possession of alcohol as a minor. He was sentenced to probation and 15 days in a juvenile detention facility. In 2011, Jaime was found delinquent of criminal mischief and sentenced to probation. He was also charged with a second minor in possession of alcohol offense, which was dismissed. Shortly thereafter, he was found delinquent for a crime that remains sealed but which news reports describe as larceny.⁴⁸ This

⁴⁸ Ben Trollinger, *Beloved Summit County High School Student Faces Deportation*, Summit Daily News, March 19, 2014, available at <http://www.summitdaily.com/news/10683848-113/leon-rivas-summit-peaks>.

last incident landed Jaime in a program called “Rite of Passage” that appears to have changed his life. Rite of Passage is a Colorado Division of Youth Corrections program designed to help at-risk youth transition out of the juvenile justice system.⁴⁹

By all accounts, Jaime emerged from Rite of Passage a different person.⁵⁰ According to one of Jaime’s teachers who has known him since middle school, “When students go to the juvenile justice system and return to the same home and the same school and the same community, they do not make the changes that Jaime did[....] Jaime returned to us in Summit County a respectful, dedicated, compassionate, kind young man. He is an important part of our school community. He is a leader in our school community”⁵¹ In a letter of support that was submitted with Jaime’s DACA application, his high school counselor wrote, “I work with many diverse teens and children in Summit County and Jaime is a student that has positively impacted me personally. . . . I have total trust in his character and know that he is currently contributing to our community and will continue to do so as he matures.” Jaime aspires to become a counselor to help

⁴⁹ Rite of Passage About Us Page, <http://www.riteofpassage.com/index-1.html>.

⁵⁰ Michael de Yoanna, *Deported to Death*, Boulder Weekly, April 3, 2014, available at <http://www.boulderweekly.com/article-12611-deported-to-death.html>.

⁵¹ Trollinger, *supra* n. 49 (internal quotation marks omitted).

troubled youth, saying, “I want to help young kids so they can learn the right way.”⁵²

Jaime’s criminal history drew government attention. On the eve of his graduation, he was taken into custody by immigration authorities. From inside a detention facility, he took the unusual step of continuing his education, eventually receiving his high school diploma. He remained in custody until granted a stay of removal so he could request DACA.⁵³

Upon release, Jaime requested DACA and demonstrated that he met all the guidelines. His contact with the juvenile justice system did not disqualify him from DACA because “juvenile convictions will not automatically disqualify” a requestor.⁵⁴ Notwithstanding Jaime’s extraordinary transition from troubled youth to community leader, USCIS denied Jaime’s DACA request on the sole basis that he did not warrant a favorable exercise of discretion.⁵⁵

CONCLUSION

For the reasons in Appellants’ brief and the reasons above, the preliminary injunction should be reversed.

⁵² de Yoanna, *supra* n.51 (internal quotation marks omitted).

⁵³ Trollinger, *supra* n.49.

⁵⁴ DACA FAQ Q.67.

⁵⁵ Information on file with Patrick Taurel, American Immigration Council.

Dated April 6, 2015

Respectfully submitted,

/s/ Jonathan Weissglass

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Appendix A

Appendix F

NOTICE OF DENIAL OF CONSIDERATION OF DEFERRED ACTION FOR CHILDHOOD ARRIVALS, FORM I-821D

USCIS has evaluated your Form I-821D, Consideration of Deferred Action for Childhood Arrivals. For the reason(s) indicated below, USCIS has, in its unreviewable discretion, determined that it will not defer action in your matter. Accordingly, your Form I-765, Application for Employment Authorization, has also been denied. Deferred action is a discretionary determination to defer removal action of an individual as an act of prosecutorial discretion. You may not file an appeal or motion to reopen/reconsider this decision.

- At the time of filing, you were under the age of fifteen (15) and were not in removal proceedings, did not have a final removal order, or did not have a voluntary departure order.
- You have not established that you came to the United States under the age of sixteen (16).
- You have not established that you were under age 31 on June 15, 2012.
- You have not established that you have continuously resided in the United States since June 15, 2007, until the date of filing your request.
- During your period of residence in the United States, you had one or more absences that did not qualify as "brief, casual, and innocent."
- You have not established that you were present in the United States on June 15, 2012.
- You have not established that you were in an unlawful immigration status in the United States on June 15, 2012.
- You have not established that you are currently in school at the time of filing your request, have graduated or obtained a certificate of completion from a U.S. high school, or have obtained a general educational development (GED) certificate or other equivalent State-authorized exam in the United States, or that you are an honorably discharged veteran of the Coast Guard or Armed Forces of the United States.
- You have been convicted of a felony or a significant misdemeanor, or you have been convicted of three or more misdemeanors, or you do not warrant a favorable exercise of prosecutorial discretion because of public safety concerns, or exercising prosecutorial discretion in your case would not be consistent with the Department of Homeland Security's enforcement priorities.
- You have not established that you warrant a favorable exercise of prosecutorial discretion.
- You have not paid the fee for your concurrently filed Application for Employment Authorization, Form I-765, and/or your biometrics fee, because your payment has been rejected for insufficient funds and you have failed to correct the fee deficiency within the allotted time.
- USCIS was unable to conduct a background check on you because you did not appear for your scheduled appointment at an Application Support Center for the collection of biometrics, or your fingerprints were rejected as unclassifiable and you did not submit a local police clearance certificate for each jurisdiction in which you have lived for six months or more within the past five years.
- You did not respond to a Request for Evidence or Notice of Intent to Deny within the time prescribed.
- You have abandoned your Form I-821D, Consideration of Deferred Action for Childhood Arrivals because you departed the United States while the form was pending.
- USCIS lacks the authority to consider your request because you were in immigration detention at the time you filed your Form I-821D and you remain in immigration detention as of the date of this notice.

Appendix F

NOTICE OF DENIAL OF CONSIDERATION OF DEFERRED ACTION FOR CHILDHOOD ARRIVALS, FORM I-821D

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- You are under the age of fifteen (15) and are not in removal proceedings, do not have a final removal order, or do not have a voluntary departure order.
- You have not established that you came to the United States under the age of sixteen (16).
- You have not established that you were under age 31 on June 15, 2012.
- You have not established that you have continuously resided in the United States since June 15, 2007, until the date of filing your request.
- During your period of residence in the United States, you had one or more absences that did not qualify as "brief, casual, and innocent."
- You have not established that you were present in the United States on June 15, 2012.
- You have not established that you were in an unlawful immigration status in the United States on June 15, 2012.
- You have not established that you are currently in school at the time of filing your request, have graduated or obtained a certificate of completion from a U.S. high school, or have obtained a general educational development (GED) certificate or other equivalent State-authorized exam in the United States, or that you are an honorably discharged veteran of the Coast Guard or Armed Forces of the United States.
- You have been convicted of a felony or a significant misdemeanor, or you have been convicted of three or more misdemeanors, or you do not warrant a favorable exercise of prosecutorial discretion because of public safety concerns, or exercising prosecutorial discretion in your case would not be consistent with the Department of Homeland Security's enforcement priorities.
- You have not established that you warrant a favorable exercise of prosecutorial discretion.
- You have not paid the fee for your concurrently filed Application for Employment Authorization, Form I-765, and/or your biometrics fee, because your payment has been rejected for insufficient funds and you have failed to correct the fee deficiency within the allotted time.
- USCIS was unable to conduct a background check on you because you failed to appear for your scheduled appointment at an Application Support Center for the collection of biometrics, or your fingerprints were rejected as unclassifiable and you did not submit a local police clearance certificate for each jurisdiction in which you have lived for six months or more within the past five years.
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- USCIS lacks the authority to consider your request because you were in immigration detention at the time you filed your Form I-821D and you remain in immigration detention as of the date of this notice.

Appendix F

NOTICE OF DENIAL OF CONSIDERATION OF DEFERRED ACTION FOR CHILDHOOD ARRIVALS, FORM I-821D

USCIS has evaluated your Form I-821D, Consideration of Deferred Action for Childhood Arrivals. For the reason(s) indicated below, USCIS has, in its unreviewable discretion, determined that that it will not defer action in your matter. Accordingly, your Form I-765, Application for Employment Authorization, has also been denied. Deferred action is a discretionary determination to defer removal action of an individual as an act of prosecutorial discretion. You may not file an appeal or motion to reopen/reconsider this decision.

- You are under the age of fifteen (15) and are not in removal proceedings, do not have a final removal order, or do not have a voluntary departure order.
- You have failed to establish that you came to the United States under the age of sixteen (16).
- You have failed to establish that you were under age 31 on June 15, 2012.
- You have failed to establish that you have continuously resided in the United States since June 15, 2007, until the date of filing your request.
- During your period of residence in the United States, you had one or more absences that did not qualify as "brief, casual, and innocent."
- You have failed to establish that you were present in the United States on June 15, 2012 and that you were unlawfully present in the United States on that date.
- You have failed to establish that you are currently in school, have graduated or obtained a certificate of completion from high school, have obtained a general education development (GED) certificate, or that you are an honorably discharged veteran of the Coast Guard or Armed Forces of the United States.
- You have been convicted of a felony or a significant misdemeanor, or you have been convicted of three or more misdemeanors, or you do not warrant a favorable exercise of prosecutorial discretion because of public safety concerns.
- You do not warrant a favorable exercise of prosecutorial discretion because of other concerns.
- You have failed to pay the fee for your concurrently filed Application for Employment Authorization, Form I-765, and/or your biometrics fee, because your payment has been rejected for insufficient funds and you have failed to correct the fee deficiency within the allotted time.
- You failed to appear for the collection of biometrics at an Application Support Center.
- You failed to respond to a Request for Evidence or Notice of Intent to Deny within the time prescribed.
- You have abandoned your Form I-821D, Consideration of Deferred Action for Childhood Arrivals because you departed the United States while the form was pending.

CERTIFICATE OF COMPLIANCE WITH FRAP 29(c)(5)

Pursuant to Fed. R. App. P. 29(c)(5), I certify that:

1. A party's counsel did not author the brief in whole or in part. The brief was written in full by counsel for *amici*.

2. No party or party's counsel contributed money intended to fund preparing or submitting the brief.

3. No person—other than the *amici curiae*—contributed money that was intended to fund preparing or submitting the brief.

Dated: April 6, 2015

/s/ Jonathan Weissglass

Counsel for Service Employees
International Union

CERTIFICATE OF COMPLIANCE WITH FRAP 29(d) and 32(a)(7)

I certify that this brief is proportionately spaced in Times New Roman font, 14 point type, and that this brief contains 6,988 words, exclusive of the table of contents, table of authorities, signature blocks and certificates of compliance. This certification is based upon the word count of the word processing system used in preparing this brief.

Dated: April 6, 2015

By: s/ Jonathan Weissglass
Jonathan Weissglass

CERTIFICATE OF SERVICE

I certify that on April 6, 2015, I caused the foregoing to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit using the appellate CM/ECF system. Counsel for all parties to the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

/s/ Jonathan Weissglass
Jonathan Weissglass