
United States Court of Appeals

for the

Fifth Circuit

Case No. 23-40653

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

Plaintiffs-Appellees,

v.

UNITED STATES OF AMERICA; ALEJANDRO MAYORKAS, Secretary, U.S.
Department of Homeland Security; TROY MILLER, Senior Official Performing
the Duties of the Commissioner, U.S. Customs and Border Protection; PATRICK
J. LECHLEITNER, Acting Director of U.S. Immigration and Customs
Enforcement; UR M. JADDOU, Director of U.S. Citizenship and Immigration
Services; JASON D. OWENS, Chief of the U.S. Border Patrol,

Defendants-Appellants,

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

Intervenor Defendants-Appellants,

STATE OF NEW JERSEY,

Intervenor-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS, BROWNSVILLE IN CASE NO. 1:18-CV-68,
ANDREW S. HANEN, U.S. DISTRICT JUDGE

**BRIEF FOR *AMICI CURIAE* AMERICAN PROFESSIONAL
SOCIETY ON THE ABUSE OF CHILDREN, THE AMERICAN**

**ACADEMY OF PEDIATRICS, THE CENTER FOR LAW AND
SOCIAL POLICY, AND 12 CHILD ADVOCACY
ORGANIZATIONS, MEDICAL PROFESSIONALS, AND
CHILD DEVELOPMENT EXPERTS IN SUPPORT OF
DEFENDANTS-APPELLANTS AND INTERVENOR
DEFENDANTS-APPELLANTS**

MARY K. PERSYN

PERSYN LAW & POLICY

Attorneys for Amici Curiae Amici

Curiae American Professional

Society on the Abuse of Children,

American Academy of Pediatrics,

Center for Law and Social Policy,

and 12 Child Advocacy

Organizations, Medical

Professionals, and Child

Development Experts

912 Cole Street, Suite 124

San Francisco, California 94117

(628) 400-1254



COUNSEL PRESS (800) 4-APPEAL • (713) 315

CERTIFICATE OF INTERESTED PERSONS

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

1. Persyn Law & Policy, Counsel for *Amici Curiae* (Mary Kelly Persyn)
2. American Professional Society on the Abuse of Children
3. Center for Law and Social Policy (CLASP)
4. American Academy of Pediatrics
5. Children Now
6. Children’s Healthwatch
7. First Focus on Children
8. Foundation for Farmworkers
9. Futures Without Violence
10. Lisa R. Fortuna, MD, MPH, MDiv
11. National Center for Youth Law
12. Save the Children
13. The Children’s Partnership

14.The Society for Research in Child Development (SRCD)

15.Warren Binford, JD, EdM

16.ZERO TO THREE

Respectfully submitted,

PERSYN LAW & POLICY

s/Mary Kelly Persyn

912 Cole Street PMB 124

San Francisco, California 94117

Telephone: (628) 400-1254

Counsel for Amici Curiae American
Professional Society on the Abuse of
Children, American Academy of Pediatrics,
Center for Law and Social Policy, and 12
Child Advocacy Organizations, Medical
Professionals, and Child Development
Experts

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I. INTEREST OF *AMICI CURIAE*¹

Plaintiff states’ battle to end the Deferred Action for Childhood Arrivals (DACA) policy, based on harms that are spurious at best, threatens the mental and physical health of hundreds of thousands of children—mostly U.S. citizens—whose parents are DACA recipients. As organizations and individuals dedicated to supporting children and promoting their well-being, amici are deeply concerned about the immediate and long-term effects of ending the DACA policy on this population. Plaintiffs’ continuing efforts to end DACA combine with widespread anti-immigrant rhetoric, forcing DACA recipients’ children to live with the fear that their parents will be taken away. That fear, let alone the reality of actual deportation, negatively impacts all aspects of their lives, including their health, education, and overall family stability.

The American Professional Society on the Abuse of Children (APSAC) is the leading national organization for professionals serving children and families affected by child maltreatment. A multidisciplinary group, APSAC achieves its mission through expert training and educational activities, policy leadership and collaboration, and consultation emphasizing theoretically sound, evidence-based

¹ This brief is submitted under Federal Rule of Appellate Procedure 29(a) with the consent of all parties. Undersigned counsel for *amici curiae* certifies that this brief was not authored in whole or part by counsel for any of the parties; no party or party’s counsel contributed money for the brief; and no one other than *amici* and their counsel have contributed money for this brief.

principles. For 30 years, APSAC has played a central role in developing guidelines that address child maltreatment. It is qualified to inform this Court about the damage that maltreatment can inflict on children's brain development and cognitive ability. APSAC submits this brief to assist this Court in understanding the impact of parental detention and deportation and children's physical, emotional, and mental development.

APSAC joins with 14 additional organizations and individuals in submitting this brief.² The statements of interest for all additional amici curiae are included in Appendix A.

II. SUMMARY OF ARGUMENT

Years after the Supreme Court invalidated the Trump Administration's attempted rescission of the Deferred Action for Childhood Arrivals (DACA) policy on the grounds that it was arbitrary and capricious, Texas and its fellow plaintiff States continue the attack on people who came here as children and know no other home. Years of DACA protection have enabled recipients to build lives and families

² *Amici curiae* include the American Professional Society on the Abuse of Children, American Academy of Pediatrics, Center for Law and Social Policy, Children Now, Children's Healthwatch, First Focus on Children, Foundation for Farmworkers, Futures Without Violence, Lisa Fortuna, MD, FAAP, MDiv, National Center for Youth Law, Save the Children, The Children's Partnership, The Society for Research in Child Development (SRCD), Warren Binford, JD, EdM, and ZERO TO THREE.

in the United States. Their citizen children are now the most vulnerable to great harm if DACA ends.

The court below did not consider the reliance interests of hundreds of thousands of DACA recipients or their children in opining that DACA is likely unconstitutional. Rather, the court focused on the putative economic harm to states where DACA recipients live, despite their immense contributions to America's economy and the fact of their U.S. citizen children.

Amici focus here on the most vulnerable class of affected persons disregarded by the Order below: the hundreds of thousands of children of DACA recipients. Because DACA recipients are at immediate risk of benefits loss and potential risk of imminent deportation if DACA is terminated, the danger to their children is both grave and immediate.

These children are endangered not only by the actual detention and deportation of their parents, but also the looming fear of deportation. The imminent threat of losing DACA benefits, let alone forbearance, places children at risk of losing income, food security, housing, access to health care, educational opportunities, and the sense of safety and security that is the foundation of healthy child development.

For example, the mental health benefits to children whose mothers are protected by DACA, and therefore protected from the fear of deportation, are large

and clinically significant. Jens Hainmueller et al., *Protecting unauthorized immigrant mothers improves their children's mental health*, 357 Science 1041-44 (2017), <https://tinyurl.com/y46cf7be>. Children who did not live in fear that their parent might be detained and deported saw significantly decreased adjustment and anxiety disorder diagnoses. *Id.*

In addition to the children of DACA recipients, children of other immigrant parents and in affected school communities also suffer increased stress. DACA recipients live in households with an average of four members, often of different immigration statuses, and within larger communities. The effects of deportation touch neighbors, friends, and family. Children who witness arrests often share their stories with friends and classmates. “[F]or every two adults deported, one citizen-child is directly affected.” Luis H. Zayas & Laurie Cook Heffron, *Disrupting young lives: How detention and deportation affect US-born children of immigrants*, Am. Psych. Ass’n (Nov. 2016).

As the American Academy of Pediatrics recently explained, “[t]he immigration status of children and their parents relates directly to their subsequent access to and use of health care, perceived health status, and health outcomes. Family immigration status is intertwined with other social determinants of health, including poverty, food insecurity, housing instability, discrimination, and health literacy.”

Julie M. Linton et al., *Providing Care for Children in Immigrant Families*, 144 Pediatrics 1, 4 (Sept. 2019), <https://tinyurl.com/y6ghwfkx>.

III. ARGUMENT

A. DACA Termination Would Immediately Harm Children.

While DACA termination would not result in immediate removal of all recipients, it would immediately push DACA recipients out of the workforce, sending them and their families into precarious conditions upon expiration of their protection. Loss of employment means economic, food, and housing insecurity for children. Further, research shows that deportation threat is a risk factor for children's health, whether or not it results in removal.

1. Hundreds of Thousands of U.S. Citizen Children Have at Least One DACA-Recipient Parent.

In the nearly 12 years since former president Barack Obama announced the Deferred Action for Childhood Arrivals ("DACA") policy in June 2012, hundreds of thousands of DACA recipients have graduated from high school and college, purchased homes, earned certifications, and entered the workforce. Many have married and started families; reliable estimates are that at least 300,000 U.S-born citizen children have at least one parent with DACA. Ctr. for Am. Progress, *The Demographic and Economic Impacts of DACA Recipients: Fall 2021 Edition* (Nov. 24, 2021), <http://tinyurl.com/fdrwwsb4>. The oldest of these children of DACA

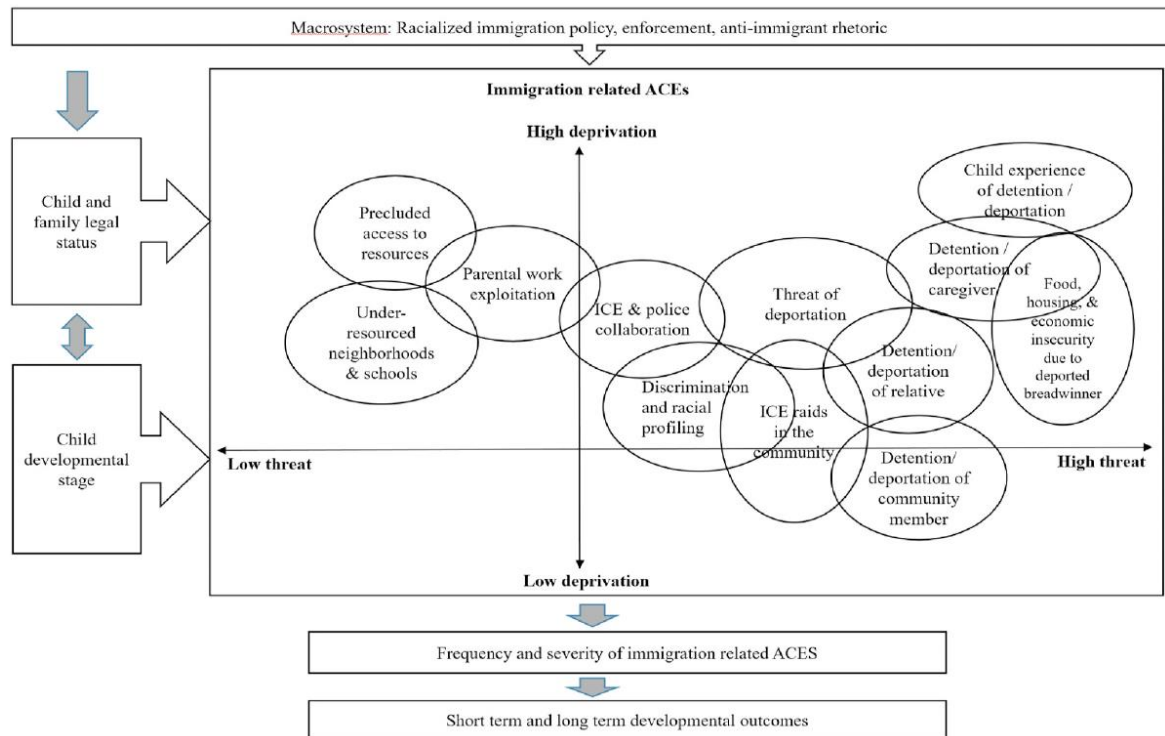
recipients would be about ten years old today. In finding the Trump administration's DACA rescission arbitrary and capricious, the Supreme Court recognized the important reliance interests of DACA recipients. *Dep't of Homeland Sec. et al. v. Regents of the Univ. of Calif. et al.*, 140 S.Ct. 1891, 1913 (2020). Four years later, those interests are all the more acute, especially in the case of recipients' U.S. citizen children.

The Order on appeal to this Court takes no notice of these U.S. citizen children or their significant interests in this litigation. And yet the impact on these children of their parents losing DACA forbearance and benefits would be nothing short of catastrophic. Significant damage is done by both the reality and the threat of DACA termination. The outside impact of toxic stress on children amplifies what should be their special status in this litigation.

2. Recent Research on Child Toxic Stress Demonstrates Harm Done to Children by Parental Deportation and Its Threat.

DACA has been under constant threat at least since the Duke Memorandum of September 2017 first declared its rescission. *See* Dep't of Homeland Sec., Mem. on Rescission of Deferred Action for Childhood Arrivals (DACA) (Sept. 5, 2017), <http://tinyurl.com/488pd37s>. The attacks on DACA are part of a coordinated effort to institute increasingly restrictive immigration policies, including threats to “close” the southern border of the United States and significantly constrain the availability of asylum. Taken together, these threats “create chronic uncertainty about family

safety and preservation and may function as a form of psychological violence for children in immigrant families.” R.G. Barajas-Gonzalez et al., *An ecological expansion of the adverse childhood experiences (ACEs) framework to include threat and deprivation associated with U.S. immigration policies and enforcement practices: An examination of the Latinx immigrant experience*, 282 Soc. Sci. & Med. at 2 (2021), <http://tinyurl.com/yssyzsub>. The threat and reality of raids, detention, and deportation “function as anticipatory stressors that can become chronic stressors,” seriously damaging children’s mental and physical health. R.G. Barajas-Gonzalez et al., *Ecological* at 2. In proposing the addition of immigration-related adversity to the Adverse Childhood Experiences framework as part of “nascent” “research on the impact of immigration enforcement on children,” Barajas-Gonzalez, *Ecological* at 7, the authors visualize deprivation and threat as two axes that help to explain the magnitude of potential adversity visited on children in immigrant families and in the broader Latino/a community:



Note. ACEs = Adverse childhood experiences; ICE = Immigration and customs enforcement.

In this model, the highest-threat and highest-deprivation adversities include threat of deportation, deportation of a caregiver/parent, and food, housing, and economic insecurity from deportation of a breadwinner (insecurity resulting from loss of work authorization if DACA ends is closely allied). The impact of these adversities increases with developmental stage, “as cognition and identity develop, and exposure increases to media, peers, conversations with parents, and deportations in their family and community.” Barajas-Gonzalez et al., *Ecological* at 3. Should DACA end, former recipients will be less and less able to shield their U.S. citizen children from the toxic realities of deprivation, precarity, and potential deportation as those children grow into maturity.

DACA termination means detention and deportation of DACA recipient parents whose protections expire is immediately an option, with that likelihood increasingly dependent on the 2024 election result. Deportation of a parent is devastating for a child and can cause severe trauma. As a result, children may experience anxiety, depression, and insomnia, and exhibit signs of fear. They also may suffer from social isolation, self-stigma, and aggression, and may experience separation anxiety, attachment disorders, and post-traumatic stress disorders. Luis H. Zayas & Laurie Cook Heffron, *Disrupting young lives: How detention and deportation affect US-born children of immigrants*, Am. Psych. Ass'n (Nov. 2016), at 3. For young children, these impacts are even greater because they are more physically and emotionally dependent on their caregivers and because they are at a crucial developmental stage where interactions with their primary caregiver provide the framework for health and well-being. See Ajay Chaudry et al., *Facing Our Future: Children in the Aftermath of Immigration Enforcement*, Urban Inst. (Feb. 2010), <https://tinyurl.com/y2vv8aro>; Randy Capps et al., *Implications of Immigration Enforcement Activities for the Well-Being of Children in Immigrant Families: A Review of the Literature*, Migration Policy Inst. (Sept. 2015), <https://tinyurl.com/ybm62mqa>.

“[T]he children of the unauthorized live under constant threat that their parents might be arrested and deported, leaving them vulnerable to family separation,

instability, economic hardship, dramatic changes in their life courses, and potentially severe psychological and behavioral impacts.” Chaudry, *supra*, at 1. The arrest, detention, and deportation of a parent often accumulates on top of children’s other stress and can “detrimentally impact their mental health.” Zayas & Heffron, *supra*, at 1. And these children will likely suffer from depression, negative self-esteem, and anxiety, whether they accompany their parents out of the country or stay behind in the United States. *Id.* at 3. A recent empirical study shows that suicidal ideation, alcohol use, and clinical depression are more likely to afflict youth who have experienced family member detention or deportation in the year prior, “raising concerns about the potentially irreversible mental health effects of deportations and detentions on Latino and Latina youths enduring into adulthood”—95% of whom are U.S. citizens. Kathleen M. Roche, PhD, et al., *Association of Family Member Detention or Deportation With Latino or Latina Adolescents’ Later Risks of Suicidal Ideation, Alcohol Use, and Externalizing Problems*, 174 JAMA Pediatrics 478-486 (2020), <http://tinyurl.com/yupfxrmy>.

Moreover, research shows that this trauma is not limited to children whose parents are ultimately deported. As the Expanded ACEs framework shows, even the *threat* of deportation is highly traumatic for children. “As parents’ risk of deportation rises, so too does the stress of their children. The lingering possibility of deportation of parents leaves children with constant anxiety and vigilance about the potential

becoming real.” Zayas & Heffron, *supra*, at 2 (citations omitted). A 2013 study of family unity and health among mixed-status families (families with at least one undocumented parent and at least one U.S.-citizen child) found that almost 75% of undocumented parents reported signs of PTSD in their children, compared with 40% of documented parents. Sara Satinsky et al., *Family Unity, Family Health: How Family-Focused Immigration Reform Will Mean Better Health for Children and Families* 2, 8 (2013), <https://tinyurl.com/y437qu3s>. A 2017 study across six states found that children as young as three years old were expressing fear about losing a parent to deportation and demonstrating those fears through words and troubling behaviors. Wendy Cervantes et al., *Our Children’s Fear: Immigration Policy’s Effects on Young Children*, CLASP 8 (Mar. 2018), <https://tinyurl.com/yas57ql2>. A 2022 study notes the “compelling” link between fear of familial detention and deportation and harm to well-being, finding links between higher levels of immigration threat and lower levels of self-regulation, more attention problems, and hyper-vigilance outside the home in young children. Gabriela Barajas-Gonzales et al., *Parental perceived immigration threat and children’s mental health, self-regulation and executive functioning in Pre-Kindergarten*, 92(2) *Am. J. Orthopsychiatry* 176-189 (2022), <http://tinyurl.com/4avpwrme>. A 2023 qualitative study found strong evidence of “detrimental impacts to [the] psychological well-being” of children experiencing deportation threat; “prolonged stress in anticipation

of a parental deportation” made children “hypervigilant, worried, and fearful.” Jamile Tellez Lieberman et al., *“It felt like hitting rock bottom”: A qualitative exploration of the mental health impacts of immigration enforcement and discrimination on US-citizen, Mexican children*, 21 *Latino Studies* 323, 323, 339 (2023), <http://tinyurl.com/yck7hp9w>.

High levels of anxiety and stress experienced by young children during the early formative years can have serious and lasting effects on their physical and emotional development. Persistent and substantial exposure to fear and anxiety—sometimes called “toxic stress”—can do immense damage to children’s health. This level of stress can interfere with young children’s physical brain development, altering how they learn and their ability to manage their emotions. It can also lead to physical and mental health problems that last into adulthood. See Jack P. Shonkoff & Andrew S. Garner et al., *The Lifelong Effects of Early Childhood Adversity and Toxic Stress*, 129 *Pediatrics* e232-46 (Jan. 2012), <https://tinyurl.com/y38kyr9y>; Nat’l Sci. Council on the Developing Child, *Persistent Fear and Anxiety Can Affect Young Children’s Learning and Development* (Feb. 2010), <https://tinyurl.com/y2lw82qa>.

A child’s earliest years are a critical period for influencing their healthy development, with implications for lifelong physical and emotional well-being. Experiences during a child’s earliest years affect the development of their brain—including the cognitive, linguistic, social, and emotional abilities—and build a

healthy foundation for life. The well-being of the parents has an important impact on children's social-emotional, physical, and economic well-being. See Shonkoff & Garner, *supra*; Nat'l Sci. Council on the Developing Child, *The Science of Early Childhood Development: Closing the Gap Between What We Know and What We Do* (Jan. 2007), <https://tinyurl.com/y3x43yvr>.

A key reason why even the threat of termination damages child health is because family instability and parental stress can undermine parent-child attachment and child well-being. Children's mental health and social-emotional development is inextricably linked to that of their parents and caregivers, and their parents' stress has a collateral impact on them. There is "strong consensus on the central importance of child-caregiver relationships," and "[e]motional problems such as depression, economic stress, and marital conflict can interfere with sensitive and responsive parenting, be disruptive of secure attachments, and constitute a significant source of instability over time in attachment security." Nat'l Research Council & Inst. of Med., *From Neurons to Neighborhoods: The Science of Early Childhood Development* 234, 353 (Jack P. Shonkoff & Deborah A. Phillips eds., Nat'l Acad. Press 2000).

3. Ending DACA Will Likely Cause Income, Food, and Housing Insecurity.

Without DACA protection, recipients will lose their work authorizations, which means that they will no longer be able to work legally and likely will lose

income from employment. As a result, their children and families will face poverty and food insecurity.

Poverty has a significantly corrosive impact on child development and well-being. It causes negative outcomes across numerous health, mental health, and other indicators during childhood, as well as lower educational attainment and earnings into adulthood. Nat'l Acad. of Scis., Eng'g, & Med., *A Roadmap to Reducing Child Poverty* 20 (Greg Duncan & Suzanne Le Menestrel eds.), Nat'l Acad. Press 2019, <https://tinyurl.com/yyvwcu9z>. Poverty also affects children by stressing their parents, which impairs their ability to effectively parent their children. Caroline Ratcliffe & Signe-Mary McKernan, *Child Poverty and Its Lasting Consequence*, Urban Inst. (Sept. 2012), <https://tinyurl.com/y254aa6x>.

“Regardless of legal status, children of undocumented immigrants more often suffer from food insecurity than children of US citizens.” Zayas & Heffron, *supra*, at 2. Unauthorized immigrant parents “also may not use social services and public programs such as food stamps and childcare subsidies, for which their citizen-children are eligible.” *Id.* Moreover, the actual detention of a family member costs households an average of \$24,151 in accumulated and permanent financial losses, and it can leave a household without enough food. Alan Boye et al., *The Household Financial Losses Triggered by an Immigration Arrest, and How State and Local Government Can Most Effectively Protect Their Constituents*, 8(4) J. Migration and

Hum. Sec. 301 (2020), <http://tinyurl.com/5n6mct2m>. According to one study, more than 80% of households ran out of food six months after the detention of a family member and did not have the money to get more. Satinsky, *supra*, at 32-33. Food insecurity radiates outward; it can damage “many other biopsychosocial outcomes, including health, education, and economic prosperity.” *Growing Up in Fear: How the Trump Administration’s Immigration Policies are Harming Children: Hearing Before the House Comm. on Educ. and Lab.*, 116th Cong. 43 (Dec. 4, 2019) (statement of Olanrewaju Falusi, M.D., FAAP).

Ending DACA will likely increase housing instability for DACA recipients and their children. Unauthorized immigrants who lack DACA protection experience housing insecurity that interferes with their ability to exit poverty, in part because “harmful immigration enforcement policies [] actively force families to move often and endure poorer housing conditions.” Nicole Chávez et al., *Still at Risk: The Urgent Need to Address Immigration Enforcement’s Harms to Children* 11 (June 2023), <http://tinyurl.com/4fy4rjyp>. Men, who are frequently the primary breadwinner, are significantly more likely to be deported than women; their removal, which can reduce a family’s income by half or more, often leads to families “mov[ing] abruptly and frequently, or liv[ing] in crowded housing with family or friends.” This insecurity damages children’s health, well-being, and ability to

succeed in school. Wendy Cervantes et al., *Our Children's Fear: Immigration Policy's Effects on Young Children* 19 (March 2018), <http://tinyurl.com/j992s2df>.

Unauthorized parents often experience poor or exploitative work conditions, such as extended work hours without overtime pay, pay below the minimum wage, and little-to-no benefits, such as paid sick leave—all conditions that could negatively impact their children's lives. Research has found that the above conditions result in high levels of parental stress and increased economic insecurity. Children living in households under these stresses often experience poor cognitive development, which can be seen as early as age two. Hirokazu Yoshikawa, *Immigrants Raising Citizens: Undocumented Parents and Their Young Children* (Russell Sage Found. 2011).

4. Ending DACA threatens to cut off access to reliable health care.

Access to reliable health care is critical to child health and development. Although unauthorized immigrants, including DACA recipients, are not eligible for Affordable Care Act or federally funded Medicaid coverage, many DACA recipients have obtained health insurance through their employers or through college or university health plans. One survey found that about 60% of individuals eligible for DACA had health insurance, mostly through their employers. KFF, *Key Facts on Individuals Eligible for the Deferred Action for Childhood Arrivals (DACA) Program* 2 (Feb. 2018), <https://tinyurl.com/yxtnmxwr>. Rescinding DACA will cut off much of this access to health insurance—former recipients will no longer be

authorized to work, and their access to higher education will be significantly reduced. “Employers would likely terminate individuals as they lose work authorization, leading to job loss along with loss of health coverage. Job losses may also result in coverage losses for their children, who are often U.S.-born citizens.” *Id.* at 3.

In addition to losing health insurance coverage, parents no longer protected by DACA may be too fearful of deportation to seek medical care for their children. “In spite of the fact that citizen-children have the right to health care, their parents may avoid encounters with providers for fear of discovery.” Zayas & Heffron, *supra*, at 2. As a result, “undocumented immigrants make fewer visits to health care providers than citizens with authorized immigrant status.” *Id.* “Increased fears about the use of public programs and immigration status has deterred immigrants from accessing programs regardless of eligibility. In addition, immigration enforcement activities that occur at or near sensitive locations, such as hospitals, may prevent families from accessing needed medical care.” Linton, *supra*, at 8. Indeed, one study found that one-seventh of all adults in immigrant families reported avoiding non-cash public benefits during the past year because of fear that their legal immigration status would be harmed. Hamutal Bernstein et al., *One in Seven Adults in Immigrant Families Reported Avoiding Public Benefit Programs in 2018*, Urban Inst. 2 (May 2019), <https://tinyurl.com/y2fhwgg3>. Low-income members of immigrant families

reported even higher rates of avoidance. *Id.* Of this group that avoided benefits, 46% avoided nutrition benefits (SNAP), 42% avoided medical benefits (Medicaid and CHIP), and 33% avoided public housing subsidies. *Id.* at 8.

Even though doctors and health care providers are required by law to protect patient information, many people in immigrant communities avoid visiting clinics or hospitals for fear of being reported to immigration officials. In a 2018 survey of health care providers in California, for example, 67% noted an increase in parents' concerns about enrolling their children in public health and nutritional programs, and 42% reported an increase in skipped scheduled health care appointments. The Children's P'ship, *California Children in Immigrant Families: The Health Provider Perspective* (2018), <https://tinyurl.com/y2rdf4fp>. As one policy analyst explained, "[m]any undocumented immigrants 'say fear of deportation for themselves or family members is a barrier in terms of signing up for coverage and accessing healthcare services.'" Lisa Zamosky, *Health care options for undocumented immigrants*, L.A. Times (Apr. 27, 2014), <https://tinyurl.com/huvcp1j>.

In addition, "a political climate that tolerates migration criminalization rhetoric has served to create what's been called a *chilling effect*—reduction, due to fear rather than eligibility changes, in the number of undocumented immigrants willing to interact with staff at public agencies or enroll themselves or their children

in health plans or other benefits.” Isha Marina Di Bartolo, *Immigration, DACA, and Health Care*, 21 AMA J. of Ethics 1, E4 (Jan. 2019), <https://tinyurl.com/y394f85p>.

Children will lose health coverage—whether due to chilling effects or their households being directly affected by the termination of DACA—to potentially disastrous effects. Michael Karpman & Genevieve M. Kenney, *Health Insurance Coverage for Children and Parents: Changes Between 2013 and 2017*, Urban Inst. (Sept. 7, 2017), <https://tinyurl.com/yy2xn87s>. One study found that disenrollment of children in need of medical care would likely contribute to child deaths and future disability. Leah Zallman et al., *Implications of Changing Public Charge Immigration Rules for Children Who Need Medical Care*, 173 JAMA Pediatrics E4-E5 (July 1, 2019), <http://tinyurl.com/2jtyeyaz>. Foregoing regular treatment for such children will likely lead to increased health care costs and disastrous outcomes. *See id.* For these vulnerable children, the loss of health coverage would be catastrophic.

While the loss of health coverage by parents has a significant negative impact on their children’s health coverage, the converse is also true. When parents gain access to health coverage, their children also gain access to health coverage. Julie L. Hudson & Asako S. Moriya, *Medicaid Expansion For Adults Had Measurable ‘Welcome Mat’ Effects On their Children*, 36 Health Affairs 1643-51 (Sept. 2017), <http://tinyurl.com/3cf43y63>. When parents have health insurance coverage, children are more likely to access routine and preventative health care. Maya Venkataramani

et al., *Spillover Effects of Adult Medicaid Expansions on Children's Use of Preventive Services*, 140 *Pediatrics* 1, 6 (Dec. 2017), <https://tinyurl.com/yxwv5v2x>.

5. DACA termination puts children at risk of parental separation and reduced access to educational opportunities.

Of course, parental separation itself causes significant psychological and emotional harm to children. Separations are especially difficult for children when they do not know where their parents are, whether they are safe, or when they will return. “Chronic separation from a caregiver can be extremely overwhelming to a child. Depending on the circumstances and their significance, the child can experience these separations as traumatic. They may be sudden, unexpected, and prolonged, and can be accompanied by additional cumulative stressful events.” Nat’l Child Traumatic Stress Network, *Children with Traumatic Separation: Information for Professionals* 1 (2016), <https://tinyurl.com/y2k2sqg7>.

If DACA ends, the children of recipients will also face more barriers to educational opportunities as the result of prolonged exposure to highly stressful situations without the buffering support of a parent, also known as toxic stress. The anxiety, depression, and other symptoms that children will experience interfere with cognitive ability and focus, and behavioral issues like aggression that results from experiencing trauma can interfere with concentration and attendance. “Children in families under the threat of detention or deportation will achieve *fewer years of education* than children of citizens, and they face challenges in focusing on

schoolwork, potentially translating into less income as adults.” Satinsky, *supra*, at 17.

Recent research suggests that the trauma, strain, and stigma experienced by U.S. citizen children with undocumented parents during periods of heightened immigration enforcement impedes their educational progress. Where education is usually an integrating mechanism for these children, research indicates that “parental detention can significantly curtail future educational prospects.” Ultimately, aggressive immigration policy “can limit or even reverse intergenerational mobility.” Gabriela Gonzalez and Caitlin Patler, *The Educational Consequences of Parental Immigration Detention*, 64(2) *Sociological Perspectives* 301, 315 (2021), <http://tinyurl.com/5n8c9vre>.

6. Ending DACA puts children at risk of traumatic and chronic stress, causing immediate and long-term damage.

As described above, the risk of parental detention and deportation puts children at serious risk of harm, including increased risk to their mental and physical health, income, housing, and food security, and separation from their parents. Each of these experiences contributes to the development of child traumatic stress. Beginning with a landmark study published by Kaiser Permanente and the Centers for Disease Control and Prevention in 1998, numerous studies have confirmed that “adverse childhood experiences” can significantly impact physical and mental health well into the adult years, especially when the stress is chronic. *See* Centers for

Disease Control & Prevention, *Adverse Childhood Experiences*, <https://tinyurl.com/y8fc6qok>.

As the American Academy of Pediatrics explained in response to executive orders calling for tougher immigration enforcement:

Far too many children in this country already live in constant fear that their parents will be taken into custody or deported, and the message these children received today from the highest levels of our federal government exacerbates that fear and anxiety. No child should ever live in fear. When children are scared, it can impact their health and development. Indeed, fear and stress, particularly prolonged exposure to serious stress—known as toxic stress—can harm the developing brain and negatively impact short- and long-term health.

Am. Academy of Pediatrics, *AAP Statement on Protecting Immigrant Children* (Jan. 25, 2017), <https://tinyurl.com/y526he2n>.

Without a network of supportive relationships, toxic stress can disrupt normal development and negatively affect the immune system and other biological functions in children—potentially for life. Pediatrician Alan Shapiro notes the amplified effect of toxic stress for children with unauthorized immigrant parents: “In this bio-ecological framework, parental deportation becomes a double whammy for children, compounding the negative effect on a child’s health and well-being by increasing

their risk for exposure to stressors and removing a key buffer to that stress, their parent.” Alan Shapiro, *Immigration: deporting parents negatively affects kids’ health*, The Hill (May 13, 2016), <https://tinyurl.com/y5np9s83>.

The long-term, disruptive effects of toxic stress on the developing brains of children are particularly concerning. “Toxic stress damages developing brain architecture, which can lead to life-long problems in learning, behavior, and physical and mental health.” Ctr. on the Developing Child at Harvard Univ., *InBrief: The Science of Early Childhood Development*, <https://tinyurl.com/y6n3g894>. The stress is cumulative, such that “[t]he more adverse experiences in childhood, the greater the likelihood of developmental delays and other problems.” Ctr. on the Developing Child at Harvard Univ., *InBrief: The Impact of Early Adversity on Children’s Development*, <https://tinyurl.com/yyjxt72b>.

Children who experience toxic stress are at significant risk for negative consequences that can last a lifetime. Rescinding DACA will cause the children of recipients unrelenting fear of losing either their country or their parents and will also create additional hardships for their economic and social well-being. And the cumulative effect of that fear and additional hardships can lead to worse health outcomes, lower productivity, and less quality of life for hundreds of thousands of American children.

7. DACA protection benefits children's health.

While loss of DACA would have devastating consequences for children, DACA protection affirmatively helps them by protecting their parents. Recent evidence demonstrates the health-promoting effects of DACA protection, among them a reduction in chronic stress. For example, a recent study that examined transcripts of interviews with undocumented immigrants reveals the significant improvements in access to health care and significant reductions in stress associated with DACA. Importantly, “the DACA program lessens families’ anxiety about deportation and increases access to health care” and “decreases children’s fear of parental deportation and loss.” Ghida El-Banna et al., *The Intergenerational Health Effects of the Deferred Action for Childhood Arrivals Program on Families with Mixed Immigration Status*, 22(5) Acad. Pediatrics 729 (2022), <http://tinyurl.com/2b99fpfm>.

Likewise, a 2017 study found significant mental health benefits among DACA-eligible individuals. Atheendar S. Venkataramani et al., *Health consequences of the US Deferred Action for Childhood Arrivals (DACA) immigration programme: a quasi-experimental study*, 2 Lancet Public Health e175 (Apr. 2017), <https://tinyurl.com/yyj5nhgk>. Researchers found that the “effects on mental health were large and clinically significant, with the DACA programme significantly reducing the odds of individuals reporting moderate or worse

psychological distress.” *Id.* at e179. The authors further noted that these results should be expected, given other studies that show an increase in anxiety and depression symptoms when immigration policies raise the risk of deportation. *Id.* The American Academy of Pediatrics agrees: “Policies that offer protection from deportation, such as DACA, may confer large mental health benefits for youth and for the children of parenting youth.” Linton, *supra*, at 8.

Another recent study showed that the DACA eligibility of mothers had a positive impact on the physical and mental health of their children. By evaluating their health information, researchers found that adjustment and anxiety disorders were significantly reduced among the children of DACA-eligible mothers. Jens Hainmueller et al., *Protecting unauthorized immigrant mothers improves their children’s mental health*, 357 *Science* 1041-44, 1041 (2017), <https://tinyurl.com/y46cf7be>. The authors chose to study mental health disorders because the effects were immediately observable after DACA was established. “Moreover, examining mental health disorders that originate in childhood is important because they are associated with long-term health issues, low education, and welfare dependence, which generate considerable private and social costs.” *Id.* at 1042.

In sum, “favorable immigration policies can have a ‘warming effect’ on vulnerable children’s access of critical social services,” and “rolling back DACA or

instituting policies which raise the threat of deportation could result in a ‘chilling effect’ that could adversely affect child health.” Rebecka Rosenquist, *The ‘Warming Effect’ of DACA on American Children*, Penn LDI, Leonard Davis Inst. of Health Econ. 2 (June 4, 2018), <https://tinyurl.com/yys7sbj7>.

B. It Is in Society’s Best Interests to Protect Children.

As the Supreme Court has recognized, it is in “the interests of society to protect the welfare of children.” *Prince v. Massachusetts*, 321 U.S. 158, 165 (1944). “It is the interest of youth itself, and of the whole community, that children be both safeguarded from abuses and given opportunities for growth into free and independent well-developed men and citizens.” *Id.*; see generally *Brown v. Board of Educ. of Topeka, Shawnee Cty., Kan.*, 347 U.S. 483, 494 (1954) (holding that racial segregation in schools deprived children of equal educational opportunities); *Ginsberg v. New York*, 390 U.S. 629, 640 (1968) (“The State also has an independent interest in the well-being of its youth.”); *Brown v. Entm’t Merchants Ass’n*, 564 U.S. 786, 794 (2011) (recognizing that a state “possesses legitimate power to protect children from harm”).

The Court has also recognized the importance of family. “Our decisions establish that the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation’s history and tradition. It

is through the family that we inculcate and pass down many of our most cherished values, moral and cultural.” *Moore v. East Cleveland*, 431 U.S. 494, 503-04 (1977).

Indeed, these principles of family unity and child protection have animated laws across the United States that make family preservation a priority of child welfare agencies. The U.S. Department of Health and Human Services notes that laws in all states “require that child welfare agencies make reasonable efforts to provide services that will help families remedy the conditions that brought the child and family into the child welfare system ... [such as] accessible, available, and culturally appropriate services that are designed to improve the capacity of families to provide safe and stable homes for their children.” U.S. Dep’t of Health and Human Servs., *Reasonable Efforts to Preserve or Reunify Families and Achieve Permanency for Children* 1 (Mar. 2016), <https://tinyurl.com/y4xgdygj>.

Acknowledging the vital importance of family unity, on February 9, 2018, President Trump signed into law the Family First Prevention Services Act, as part of Division E in the Bipartisan Budget Act of 2018. P.L. 115-123 (H.R. 1892). This law makes comprehensive changes to child welfare laws in an effort to keep families together: “The purpose of this subtitle is to enable States to use Federal funds ... to provide enhanced support to children and families and prevent foster care placements through the provision of mental health and substance abuse prevention and treatment services, in-home parent skill-based programs, and kinship navigator

services.” P.L. 115-123. Family First represents an intentional shift to a more upstream system that can prevent unnecessary foster care through services for vulnerable families; more recently, regulations effective in November 2023 strengthened support for kinship placement in further recognition of the importance of family unity. 88 FR 66700 (Nov. 27, 2023).

The United States is also a signatory to the United Nations Convention on the Rights of the Child. Although the United States has not ratified the Convention, its signature “creates an obligation to refrain, in good faith, from acts that would defeat the object and the purpose of the treaty.” United Nations, *What is the difference between signing, ratification and accession of UN treaties?* (citing Arts. 10 and 18, Vienna Convention on the Law of Treaties 1969), <https://tinyurl.com/y3j2c84l>. The Convention emphasizes the importance of protecting child safety and family unity and establishes that a child has “the right to know and be cared for by his or her parents.” Convention on the Rights of the Child, Arts. 7, 18. It also requires parties to “ensure that a child shall not be separated from his or her parents against their will.” *Id.*, Art. 9.

The well-being of children and the importance of family preservation are fundamental values in our society. DACA recipients came here as children and have no other choice of home. Many of these recipients are now parents of U.S.-born children. Termination of DACA puts these children at immediate risk of housing,

food, and economic insecurity and forced separation from their parents, a catastrophic occurrence that is in direct contravention of our nation's core commitment to protect children. At a bare minimum, this Court must weigh these concerns carefully in its review of the Order below.

IV. CONCLUSION

For the foregoing reasons, the Court should reverse the injunction below.

Dated: February 1, 2024

Respectfully submitted,

PERSYN LAW & POLICY

s/ Mary Kelly Persyn
Mary Kelly Persyn

Counsel for Amici Curiae American Professional Society on the Abuse of Children, Center for Law and Social Policy, American Academy of Pediatrics, and 12 Child Advocacy Organizations, Medical Professionals, and Child Development Experts

CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Mary Kelly Persyn
Mary Kelly Persyn

Counsel for Amici Curiae American Professional Society on the Abuse of Children, Center for Law and Social Policy, American Academy of Pediatrics, and 12 Child Advocacy Organizations, Medical Professionals, and Child Development Experts

CERTIFICATE OF COMPLIANCE

The undersigned certifies that:

1. This brief complies with the type-volume limitation of Fed. R. App. P. 29(b)(4) because this brief contains 6,024 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).
2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and 5th Cir. R. 32.1 and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 365 in Times New Roman, 14-point font for text and 12-point font for footnotes.
3. This brief complies with the privacy redaction requirement of Fed. R. App. P. 25(a)(5), 5th Cir. R. 25.2.13, and Fed. R. Crim. P. 49.1, because it has been redacted of personal data identifiers.
4. This electronic submission is an exact copy of any paper document that the Court may order filed, in compliance with 5th Cir. R. 25.2.1.
5. This brief is free of viruses because it has been scanned for viruses with the most recent version of Norton Antivirus, in compliance with 5th Cir. ECF Filing Standard A(6).

s/ Mary Kelly Persyn
Mary Kelly Persyn

Counsel for Amici Curiae American Professional Society on the Abuse of Children, Center for Law and Social Policy, American Academy of Pediatrics, and 12 Child Advocacy Organizations, Medical Professionals, and Child Development Experts

ADDENDUM

The American Academy of Child and Adolescent AACAP is the professional home to more than 11,000 child and adolescent psychiatrists, fellows, residents, and medical students with a mission to promote the healthy development of children, adolescents and families through advocacy, education, and research.

The American Academy of Pediatrics (AAP) is a non-profit professional membership organization of 67,000 primary care pediatricians and pediatric medical subspecialists, and pediatric surgical specialists dedicated to the health and well-being of infants, children, adolescents, and young adults. AAP believes that the future prosperity and well-being of the United States depends on the health and vitality of all of its children, without exception. Pediatricians have seen the negative effects that family separation and the threat of deportation have on child health. As such, AAP is uniquely positioned to understand the impact of the rescission of the DACA policy on the health of children.

CHILDREN AT RISK is a non-partisan research and advocacy non-profit dedicated to understanding and addressing the root causes of child poverty and inequality. Established in 1989, CHILDREN AT RISK has grown into a statewide organization tackling Texas children and families' most pressing needs. Our mission is to serve as a catalyst for change to improve the quality of life for children through strategic research, public policy analysis, education, collaboration, and advocacy to develop evidence-based policy recommendations. Our strategies are utilized to reduce child poverty, promote economic opportunity and address barriers faced by immigrant children with a specific focus on access to education and educational outcomes, early childhood development, health and immigration policy. In Texas, nearly 2.5 million children have at least one immigrant parent, a total of 5 million immigrants live in Texas, the second state in the nation with the highest immigrant population. We are uniquely qualified to address the Court and identify the manners in which harmful immigration policies impact child development, educational outcomes, and access to services.

Children Now is a nonpartisan whole-child research, policy development, communications, and advocacy organization working on all key kids' issues, and is dedicated to promoting children's health, education and well-being in California. We support upholding protections for DACA recipients and their children because California is home to over 25% of the nation's nearly 700,000 DACA recipients, and over 72,000 kids in our state are children of DACA recipients. When a parent loses DACA protections, they also lose their ability to work, support their families, and contribute fully to their communities; but most importantly, they become vulnerable to detention or deportation that could separate them from their children. Children whose parents are deported face hardships that are associated with reduced school achievement, greater difficulty maintaining relationships, and lower earnings as adults. When parents are no longer afraid of being detained or deported, children can thrive.

Children's HealthWatch is the only frontline organization that collects and analyzes data on an ongoing basis exclusively about very young children who are from families facing economic hardship. For 25 years, Children's HealthWatch has been working is to achieve health equity for young children and their families by advancing research to transform policy. Children's HealthWatch research provides a foundation upon which inclusive, equitable policies and programs can be created at the national, state, and local level to address the needs of all young children and their families.

First Focus on Children is a bipartisan advocacy organization dedicated to making children and families the priority in federal policy and budget decisions. One of First Focus on Children's priority issues is to ensure that federal policies, including immigration policies, promote the health, safety and well-being of children in immigrant families. First Focus on Children and its partner organization, the First Focus Campaign for Children, have been advocating for both legislative and administrative solutions to keep families together and minimize the harm of immigration enforcement policies on children. First Focus on Children believes the decision to rescind the DACA program continues to cause trauma and stress for both DACA recipients and their children who rightfully fear their parents may be deported in the near future.

The Foundation for Farmworkers is a nonprofit organization that supports DACA recipients by raising funds to pay the DACA renewal fees of farmworker DACA applicants and to pay the DACA renewal fees of DACA applicants who work at East Coast Migrant Head Start Project, a nonprofit sister organization that provides high-quality and comprehensive early childhood education services to the children of farmworkers.

FUTURES is a national nonprofit organization, based in San Francisco, that has worked for more than 35 years to prevent and end violence against women and children in the United States (U.S.) and around the world. FUTURES works to eliminate child abuse, domestic violence, sexual assault, and human trafficking through education and prevention campaigns, training and technical assistance to state agencies, public and private entities, including health care and state and local child protective systems, judges and court systems, colleges and universities, and global organizations. FUTURES advances promising policies and practices at the state and federal level that prevent violence and help adult and child survivors of abuse and violence heal and thrive. FUTURES staff are experts on child abuse, family violence prevention, sexual assault, and human trafficking and the services and supports necessary for children and women to heal from abuse, violence and trauma.

Lisa R. Fortuna, MD, MPH

Lisa R. Fortuna, MD, MPH, M.Div., is the Director of Child and Adolescent Psychiatry at Boston Medical Center, Boston University School of Medicine. She is a co-founder of the Refugee and Immigrant Assistance Center Community Counseling program, which offers mental health care integrated within a refugee and immigrant services agency in Boston. She has been an investigator on several international epidemiological and clinical studies on the topic of immigrant mental health and traumatic stress. She currently serves as a member of the American Academy of Child and Adolescent Psychiatry Resource Group on Youth at the Border and has been a member of the Physicians for Human Rights Asylum Network since 2007.

The National Center for Youth Law (“NCYL”) is a private, non-profit law firm that uses the law to help children and youth grow and thrive. For more than 50 years, NCYL has worked to protect the rights of children, promote their healthy development, and ensure that they have the knowledge, skills, resources, agency, and decision-making power to achieve their goals. NCYL uses a combination of federal litigation, state and federal policy advocacy, stakeholder education, and coalition building to uphold and expand the rights of detained immigrant youth as well as immigrant children in the community. NCYL strongly supports upholding protections for DACA recipients, recognizing that the rescission of DACA would inflict grave harm on children’s health and well-being.

Save the Children Federation, Inc. (Save the Children), both in the United States and globally, ensures children receive a healthy start in life, the opportunity to learn and protection from harm. Specializing in childhood health and nutrition, psycho-social supports, alternative care settings, and protection during migration and forced displacement, Save the Children places a strong emphasis on cross-cutting thematic priorities, including the ending of harmful practices towards children and adolescents. Consequently, it is well-equipped to offer valuable insights into the potential consequences of terminating the DACA policy and its impact on the hundreds of thousands of children of DACA recipients. The potential parental detentions, separations, and deportations caused by the termination of this policy pose irreparable harm to these children's development, social well-being, and mental and emotional health.

The Center for Law and Social Policy (CLASP) is a national, nonpartisan nonprofit that conducts research and advances anti-poverty policy solutions that disrupt structural and systemic racism and sexism and remove barriers blocking people from economic security and opportunity. We work at the federal and state levels, supporting policy and practice that makes a difference in the lives of people living in poverty. CLASP holds cross-sector expertise in early care and education, child development, mental health, and immigration policy. CLASP recognizes the important role DACA has played in strengthening families and communities, and we are deeply concerned with the harmful impact that rescinding DACA will have on hundreds of thousands of young children with DACA parents, including possible separation from their parents, weakened economic security, and poor developmental outcomes. CLASP strongly urges the Court to consider the long-term implications for children's health and well-being and uphold DACA protections.

The Children's Partnership (TCP) envisions a future where all children—regardless of their race, ethnicity or place of birth—have the resources and opportunities they need to grow up healthy and thrive, and its mission is to advance this vision of child health equity through research, policy and community engagement. The DACA program has allowed hundreds of thousands of children of immigrants to gain stability, lower their levels of toxic stress, build a future, and achieve higher levels of education. This leads to long-term positive outcomes for DACA recipients, their children and their communities. TCP believes programs like DACA will help ensure the healthy development of thousands of California children and ensure a stronger future for the entire state and country.

The Society for Research in Child Development (SRCD) is a nonpartisan, multidisciplinary professional membership association established in 1933 by the National Research Council of the National Academy of Sciences. With a membership of around 5,000 child developmental scientists, our members come from many disciplines, including education, psychology, biology, sociology, anthropology, economics, public health and more. SRCD's core mission is to advance the developmental sciences and promote their use to improve human lives.

SRCD concurs with the compelling evidence that termination of DACA poses risks to the health and development of children whose parents are DACA recipients and other immigrant communities. The science unequivocally points to stress, material hardship, and barriers to health care and other necessary social services resulting from the termination of DACA as having negative and long-lasting effects on future generations of Americans, particularly children.

Warren Binford is an internationally recognized child rights scholar and advocate who holds an endowed chair in pediatric law, policy, and ethics. A professor of pediatrics and a professor of law, Binford has provided pro bono services to numerous DACA recipients.

ZERO TO THREE (ZTT) is a national nonprofit, nonpartisan organization founded over 40 years ago to promote the well-being of all infants and toddlers, translating the science of early childhood development for policymakers, practitioners, and parents. Deeply rooted in the science of brain development and the importance of early relationships, ZERO TO THREE is concerned about the impact of rescinding DACA and what that would mean for these individuals who now have families of their own. Increasing the families' stress levels through the act of or fear of separation and deportation will inflict immense trauma on infants and toddlers during their most formative years of development.