

**Consolidated Case Nos. 18-15068, 18-15069, 18-15070,
18-15071, 18-15072, 18-15128, 18-15133, 18-15134**

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

REGENTS OF THE UNIVERSITY OF CALIFORNIA, *ET AL.*,
Plaintiffs/Appellees,

v.

U.S. DEPARTMENT OF HOMELAND SECURITY, *ET AL.*,
Defendants/Appellants.

**On Appeal from the United States District Court
for the Northern District of California, Honorable William H. Alsup**

**BRIEF OF *AMICUS CURIAE*
THE BAR ASSOCIATION OF SAN FRANCISCO IN SUPPORT OF
PLAINTIFFS-APPELLEES**

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CORPORATE DISCLOSURE STATEMENT

I, John-Paul S. Deol,¹ attorney for *Amicus Curiae* the Bar Association of San Francisco (“BASF”), certify that BASF is a not-for-profit organization. BASF has no parent corporation; nor does it issue stock; nor does there exist a publicly held corporation that owns 10% or more of the stock of BASF.

¹ Pursuant to Fed. R. App. P. 29(a)(4)(E), BASF represents that its counsel drafted this brief in its entirety. BASF’s counsel has covered the incidental costs required to submit this brief, but neither BASF nor any other individuals or entities have otherwise contributed money to fund the preparation of this brief.

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Bar Association of San Francisco, About Us: Our Mission, http://www.sfbar.org/about/ (last visited October 30, 2017).....	1
BUREAU OF LABOR STATISTICS, Labor Force Statistics from the Current Population Survey, https://www.bls.gov/cps/cpsaat11.htm (last visited October 29, 2017).....	15
Doug Criss, <i>For the First Time, California Appoints an Undocumented Immigrant to a State Post</i> , CNN (Mar. 16, 2018), https://www.cnn.com/2018/03/16/politics/california-undocumented-appointment-trnd/index.html	9
Eli Wald, <i>A Primer on Diversity, Discrimination, and Equality in the Legal Profession or Who Is Responsible for Pursuing Diversity and Why</i> , 24 GEO. J. LEGAL ETHICS 1079 (2011)	18, 19, 20
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Jennifer Medina, <i>A Defender of the Constitution, With No Legal Right to Live Here</i> , N.Y. TIMES (Jul. 17, 2017), https://www.nytimes.com/2017/07/17/us/undocumented-immigrants-illegal-citizenship.html	8, 9
Joshua Rosenberg, <i>Interpersonal Dynamics: Helping Lawyers Learn the Skills, and the Importance, of Human Relationships in the Practice of Law</i> , 58 U. MIAMI L. REV. 1225 (2004).....	21
Kristin Gerdy, <i>Clients, Empathy, and Compassion: Introducing First-Year Students to the “Heart” of Lawyering</i> , 87 NEB. L. REV. 1 (2008)	20

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	Page(s)
Mike McPhate, <i>California Today: They’re Lawyers, and at Risk of Deportation</i> , N.Y. TIMES (Jul. 18, 2017), https://www.nytimes.com/2017/07/18/us/california-todayundocumented-immigrants-lawyers.html	9
Nicole Negowetti, <i>Implicit Bias and the Legal Profession’s “Diversity Crisis”: A Call for Self-Reflection</i> , 15 NEV. L.J. 930 (2015).....	18
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Rebecca Klein, <i>An Undocumented Teen Gains Asylum With The Help Of His Undocumented Lawyer</i> , HUFFINGTON POST (Jul. 22, 2017), https://www.huffingtonpost.com/entry/cesar-vargas-undocumented-lawyer-client_us_59727244e4b09e5f6ccf6cf6	6
Tom Wong, <i>New Study of DACA Beneficiaries Shows Positive Economic and Educational Outcomes</i> , CENTER FOR AMERICAN PROGRESS (Oct. 18, 2016), https://www.americanprogress.org/issues/immigration/news/2016/10/18/146290/new-study-of-daca-beneficiaries-shows-positive-economic-and-educational-outcomes/	15
White Paper, <i>How Foreign-Born Workers Make America More Competitive and Benefit American Workers</i> , HR POLICY ASSOCIATION (2017)	19
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I. INTEREST OF AMICUS CURIAE

The Bar Association of San Francisco (“BASF”) is a nonprofit organization with a membership of over seven thousand legal professionals in the Bay Area. Founded in 1872 by pioneers and Civil War veterans, BASF is a leader in the formation and improvement of the legal system in San Francisco, California and the United States. BASF’s mission statement is as follows:

The Bar Association of San Francisco champions equal access to justice and promotes humanity, excellence, and diversity in the legal profession.

We provide legal services to disadvantaged and underserved individuals in San Francisco. We create opportunities for legal service in the community and encourage participation by our members.

We advance professional growth and education, and elevate the standards of integrity, honor, and respect in the practice of law.

We cultivate diversity and equality in the legal profession, provide a collective voice for public advocacy, and pioneer constructive change in society.

Bar Association of San Francisco, About Us: Our Mission, <http://www.sfbar.org/about/> (last visited October 30, 2017).

BASF submits this brief to assist the Court in understanding that the termination of the Deferred Action for Childhood Arrivals (“DACA”) program would have a severe and detrimental impact on the American legal profession. In so doing, BASF highlights the benefits that DACA-authorized legal professionals

confer on the profession through their unique perspectives and work with clients in need, including undocumented immigrants and others.

BASF has a direct and substantial interest in the outcome of this case, as it is an organization devoted to advocating for equal access to justice, as well as humanity, excellence, and diversity in the legal profession. DACA legal professionals often undertake legal representation of the neediest residents surviving on the margins of our community, and by doing so, assist BASF in advancing access to justice. BASF is therefore qualified to inform the Court about the devastating impact the termination of the DACA program would have on its own members and on others in the legal profession and the community.²

² Pursuant to Fed. R. App. P. 29(a)(4)(D), BASF represents that Plaintiffs/Appellees and Defendants/Appellants have consented to the filing of this brief.

II. SUMMARY OF ARGUMENT

In September 2017, the Trump administration announced its plan to terminate the DACA program in March 2018, leaving close to 800,000 work-authorized and legally present immigrants brought to this country by their parents without any certainty as to whether they will be able to remain in the United States. As there are numerous DACA recipients and DACA-eligible individuals currently engaged in the practice of law or studying to become lawyers, the termination of the program will severely hamper their ability to represent their clients and contribute their unique skills and attributes to the legal profession. This loss will inevitably harm the legal profession as a whole, as well as the individuals, communities, organizations and businesses served by the legal profession. And it will reverse the progress that has been made by these courageous attorneys and law students who have sacrificed and persevered to enter a profession not long ago completely off limits to them.

The first part of this brief explains some of the many contributions DACA attorneys and law students have made in the short time they have been allowed to practice law in California, Florida, Illinois, Nebraska, New York, and Wyoming. It also describes the impact that a sudden termination of the DACA program would have on the clients of these individuals, many of whom are of modest means and themselves undocumented immigrants.

The second part of this brief reaches beyond the readily identifiable, tangible contributions that DACA attorneys and law students have made and continue to make in their practices, illustrating how these individuals contribute to the diversity of the legal profession in ways that others cannot, sharing their experiences, opinions, and viewpoints as previously undocumented immigrants themselves. They have the critical ability to empathize with and have compassion for their clients, including but not limited to undocumented individuals of color who would otherwise have no access to lawyers with these crucial attributes.³

For these reasons and those discussed below, BASF respectfully requests that this Court affirm the district court's orders granting a preliminary injunction and denying in part the government's motion to dismiss and that it reverse the district court's order granting in part the government's motion to dismiss.

III. ARGUMENT

A. Termination of the DACA Program Would Impact Lawyers, Law Students, and Those That Depend on Them.

As a result of the federal government's DACA program, lawyers and law students participating in DACA have become fully integrated members of the legal profession. Some of the nation's most populous states have grappled with the issue

³ To be clear, DACA attorneys have much to offer all clients, undocumented or not; and non-DACA attorneys are certainly capable of effectively representing undocumented immigrants.

of whether law school graduates in the DACA program should be admitted to their respective state bars, and have concluded that admitting these aspiring lawyers to practice is both fair to the individuals and a benefit to the profession. As of this year, California, Florida, Illinois, Nebraska, New York, and Wyoming now allow undocumented immigrants the opportunity to obtain a license to practice law under certain conditions, including, in some states, the condition that the applicant possess a valid work permit from the federal government or have been granted DACA relief.⁴

With these states leading the way, the tide of popular opinion is also shifting. This year, the American Bar Association passed a resolution stating that it supports “the principle that bar admission should not be denied based solely on immigration

⁴ Cal. Bus. & Prof. Code § 6064(b) (“Upon certification by the examining committee that an applicant who is not lawfully present in the United States has fulfilled the requirements for admission to practice law, the Supreme Court may admit that applicant as an attorney at law in all the courts of this state.”); Fla. Stat. Ann. § 454.021 (“Upon certification by the Florida Board of Bar Examiners that an applicant who is an unauthorized immigrant ... has fulfilled all requirements for admission to practice law in this state, the Supreme Court of Florida may admit that applicant as an attorney at law authorized to practice in this state.”); 705 Ill. Comp. Stat. Ann. 205/2 (“No person shall be prohibited from receiving a license solely because he or she is not a citizen of the United States.”); Neb. Rev. Stat. Ann. § 4-111 (“The Legislature finds that it is in the best interest of the State of Nebraska to make full use of the skills and talents in the state by ensuring that a person who is work-authorized is able to obtain a professional or commercial license and practice his or her profession.”); *In re Vargas*, 131 A.D.3d 4, 27–28 (N.Y. App. Div. 2015) (“Finding no legal impediment or rational basis for withholding the privilege of practicing law in the State of New York from undocumented immigrants who have been granted DACA relief, we ... declare that such persons may be admitted to the practice of law.”); Wyo. Stat. Ann. § 33-5-105 (removing the requirement that an applicant for a law license be a U.S. citizen).

status,” and urging Congress to amend federal law to state affirmatively that “[a] state court vested with exclusive authority to regulate admission to the bar may, by rule, order, or other affirmative act, permit an undocumented alien seeking legal status to obtain a professional license to practice law in that jurisdiction.” A.B.A. Resolution 108 (2017).

These recent changes in policy have opened the door for work authorized immigrants, particularly those participating in DACA, to practice law despite their otherwise unsettled immigration status. Since being granted the ability to engage in their chosen profession, these newly admitted professionals, and the law students following in their footsteps, have made significant impacts on the lives of their clients and on the legal profession as a whole.

1. DACA Lawyers Are Making Tangible Contributions to the Profession.

In the relatively short amount of time they have been admitted to practice law, DACA attorneys have made powerful contributions to the legal profession and to the lives of their clients. The case of New York DACA recipient and attorney Cesar Vargas is illustrative. In early 2016, almost five years after he passed the state’s bar examination and fought a protracted legal battle in the courts, Mr. Vargas was finally admitted to practice law in New York. Rebecca Klein, *An Undocumented Teen Gains Asylum With The Help Of His Undocumented Lawyer*, HUFFINGTON POST (Jul. 22, 2017), <https://www.huffingtonpost.com/entry/cesar-vargas-undocumented->

lawyer-client_us_59727244e4b09e5f6ccf6cf6. Born in Puebla, Mexico in September of 1983, Mr. Vargas came to the United States with his siblings and mother when he was five-and-a-half years old, without lawful documentation to enter or remain in the country. *In re Vargas*, 131 A.D.3d at 6–7. Mr. Vargas attended elementary school and high school in the New York City public school system, and then attended college in Brooklyn, New York, graduating in December of 2005. *Id.* He was then accepted to law school at the City University of New York School of Law. *Id.* During his time in law school, he undertook a number of prestigious internships, working for Main Street Legal Services, Inc., the Office of the District Attorney of Kings County, a New York State Supreme Court Justice, and even a member of Congress. *Id.*

Since being admitted to practice law in 2016, Mr. Vargas has taken on several pro bono projects to provide legal representation to immigrants in need of legal assistance. Klein, *supra*. The most prominent example of his pro bono work is his recent representation of Ivan Ruiz, an undocumented sixteen-year-old Honduran immigrant seeking asylum. *Id.* Mr. Ruiz is a member of the Garifuna ethnic group, an Afro-indigenous people often subjected to intense discrimination in Honduras. *Id.* While still living in that country, Mr. Ruiz was barely fed, was forced to work long hours, and was frequently beaten because of his ethnic background. *Id.* This discriminatory treatment prompted him to flee Honduras for the United States, which

he entered without documentation in 2016. *Id.* Based on the pro bono work of Mr. Vargas, Mr. Ruiz was granted asylum. *Id.* He now pursues summer school classes, studies English, and lives the normal life of a teenager. *Id.* Despite his victory for Mr. Ruiz, Mr. Vargas recognizes the reality that, given his now uncertain DACA status, Mr. Ruiz “is probably going to have a much more permanent immigration status than his attorney.” *Id.*

Mr. Vargas is but one of many DACA attorneys giving back to the profession they only recently were allowed to enter. California attorneys Luis Angel Reyes Savalza and Lizbeth Mateo were brought to the United States from Mexico when they were children. Jennifer Medina, *A Defender of the Constitution, With No Legal Right to Live Here*, N.Y. TIMES (Jul. 17, 2017), <https://www.nytimes.com/2017/07/17/us/undocumented-immigrants-illegal-citizenship.html>. Having both been admitted to the State Bar of California, they now practice immigration law, primarily focusing on representing undocumented immigrants such as themselves. *Id.*

Ms. Mateo spends her days preparing legal strategies to help undocumented immigrants remain in the United States. *Id.* Despite her admission to practice law and her important work assisting new immigrants obtain legal status, Ms. Mateo herself is subject to removal at the government’s whim. *Id.* That threat, however, has not stopped her from pursuing justice for others. Because she has not yet

received DACA relief, she does not have authorization to work for a law firm or company. *Id.* Nevertheless, Ms. Mateo plans to open her own practice in order to continue representing her clients, including undocumented immigrants. *Id.* In the meantime, she represents her clients from an office at a center for day laborers in Pasadena, California. *Id.*⁵

Mr. Reyes Savalza is Ms. Mateo's lawyer and himself a DACA recipient. *Id.* For the past two years, he has worked at a prominent nonprofit firm in San Francisco, California, where he defends immigrants from the federal government's attempts to deport them. *Id.* With the end of DACA, Mr. Reyes Savalza may himself soon be subject to removal, despite the invaluable contributions he has made to the lives of his clients. Like his colleagues Mr. Vargas and Ms. Mateo, Mr. Reyes Savalza was inspired to become an immigration lawyer because of his own family's entanglement with the immigration system. Mike McPhate, *California Today: They're Lawyers, and at Risk of Deportation*, N.Y. TIMES (Jul. 18, 2017), <https://www.nytimes.com/2017/07/18/us/california-todayundocumented-immigrants-lawyers.html>.

⁵ Ms. Mateo was also recently appointed to the Student Opportunity and Access Program Project Grant Advisory Committee, a California state senate committee that seeks to increase college opportunities for low-income students. Doug Criss, *For the First Time, California Appoints an Undocumented Immigrant to a State Post*, CNN (Mar. 16, 2018), <https://www.cnn.com/2018/03/16/politics/california-undocumented-appointment-trnd/index.html>.

Mr. Reyes Savalza's background is impressive. He attended New York University School of Law, where he worked with immigrants facing deportation as part of the school's Immigrant Rights and Advanced Immigrant Rights Clinics. PANGEA LEGAL SERVICES, Luis Angel Reyes Savalza, <http://www.pangealegal.org/luis-angel-reyes-savalza> (last visited October 29, 2017). During law school, he also served as an articles editor of the NYU Law Review. *Id.* In his last year of school, he argued before the U.S. Court of Appeals for the Second Circuit, successfully persuading the court that immigrants subject to mandatory detention must be provided with a bail hearing within six months of their detention. *Lora v. Shanahan*, 804 F.3d 601, 606 (2d Cir. 2015).

Ms. Mateo and Messrs. Vargas and Reyes Savalza are just three examples of the many DACA lawyers doing important work and making tangible contributions to the legal profession, despite their short tenures as lawyers and their own uncertain legal status. There are many more examples of such dedication throughout the nation, and if DACA remains in effect, many more to come.

2. Like Their Licensed Counterparts, DACA Law Students Are Also Making Key Contributions to the Legal Profession.

DACA attorneys are not the only immigrants contributing to the betterment of the legal profession despite their uncertain immigration status. There are many DACA law students across the nation who seek nothing more than to become lawyers so they can also participate in the noble profession of law. In some cases,

these individuals are not simply pursuing their studies, they are actively engaged in representing clients, even while in school. Cristel Martinez Medina and Alfonso Maldonado Silva are two key examples. Both DACA recipients, Ms. Martinez Medina and Mr. Maldonado Silva graduated from Western State College of Law with honors in May of 2017 and are currently awaiting admission to the State Bar. Yvette Cabrera, *The Unlikely Story of the Undocumented Attorneys Fighting for the Lives of Their Undocumented Clients*, THINKPROGRESS (Aug. 15, 2017), <https://thinkprogress.org/the-unlikely-story-of-the-undocumented-attorneys-fighting-for-the-lives-of-their-undocumented-clients-07209cb95282/>. While in law school, Ms. Martinez Medina and Mr. Maldonado Silva worked in their school's legal clinics. They even represented a client before the U.S. Court of Appeals for the Ninth Circuit, argued the case and obtained a remand to the Board of Immigration Appeals, thus giving their undocumented client the opportunity to challenge his removal order and apply for other immigration relief. *Id.* Having now graduated from law school, both are dedicated to the pursuit of justice for undocumented immigrants. Nevertheless, like Mr. Vargas in New York, both students recognize the irony that while they have saved their client from deportation, they themselves are at risk of being removed if the government terminates the DACA program. *Id.*

While Ms. Martinez Medina and Mr. Maldonado Silva's work advancing justice for immigrants is impressive, the benefits that these law students bring to the

legal profession are not limited to the field of immigration law, nor to protecting the interests of the undocumented. One student, N, who was interviewed in the course of drafting this brief, intends to work in healthcare law after graduating from the University of California, Berkeley Law School.⁶ N was brought to the United States at the age of ten. While growing up undocumented in the Bay Area, he experienced homelessness and a chronic lack of access to quality healthcare, largely because of his undocumented status (and that of his family).

N applied for the DACA program immediately after it became available in 2012. In 2013, while a college student at the University of California at Santa Cruz pursuing dual degrees in sociology and politics, he was granted DACA status and received work authorization from the federal government. N used his work authorization to take part in his school's work study program. After he graduated from college in 2014, N worked for Covered California, enrolling eligible individuals in health insurance plans. After working for Covered California, N took on a role with the San Francisco AIDS Foundation, where he helped Latinos and other people of color apply for, understand, and utilize healthcare benefits. Of particular interest to N was the fact that many immigrants and individuals of color, especially those in the LGBT community, either did not know about or had difficulty

⁶ To respect the privacy of the interviewee, he will be referred to as "N."

obtaining important medications, such as PrEP and PEP.⁷ Some had trouble obtaining insurance coverage for these medications, even though they obtained valid prescriptions.

Working through the San Francisco AIDS Foundation, N also represented clients before the California Department of Managed Healthcare in challenging denials of benefits for PrEP and PEP. This experience, and his own personal life experiences, inspired him to apply to law school. While he has two-and-a-half years of school remaining, N expects to graduate from Berkeley Law and work in healthcare law in order to assist individuals like himself and his family obtain the healthcare benefits to which they are entitled. With his current work authorization, N is currently participating in his school's clinical programs, advising undocumented individuals in tenants' and workers' rights matters. Without DACA, N will be forced to cease his work in those clinics and, without lawful status, may be subject to removal himself, thus ending a promising legal career before it has even begun.

3. Clients Will Suffer If the Government Terminates the DACA Program.

Subjecting attorneys with DACA status to removal would destroy critical attorney-client relationships. The harm would be permanent and irreversible. The

⁷ PrEP and PEP are pre-exposure and post-exposure prophylactic medications for those who might come into contact or have recently come into contact with HIV.

detention and/or removal of affected attorneys would leave their clients without legal representation when they are at their most vulnerable and in need of their legal representatives. *See Mendoza v. Ruesga*, 169 Cal. App. 4th 270, 274 (2008) (“[I]mmigrants seeking legal residency in the United States” are a “particularly vulnerable population.”); *In re Dale*, No. 00-O-14350, 2005 WL 1389226, at *11 (Cal. Bar Ct. May 6, 2005) (recognizing the particular vulnerability of criminal defendants).⁸

Having built strong, longstanding relationships of trust with their lawyers, these clients would be forced to start over with new, unfamiliar counsel, perhaps in the middle of their legal travails, whether they be business dealings, civil litigation, removal proceedings or criminal cases. Clients placed in such a situation may not have the means to afford new legal representation, having spent what they had on their previous lawyer. Even under the best of circumstances, having to change counsel midstream involves disruption, added expense and lost time, and it is difficult to imagine a more disruptive and terrifying event than for an undocumented client to have her lawyer detained pending deportation by the U.S. government.

⁸ By way of example, Ms. Mateo and Mr. Reyes Savalza alone currently represent more than a dozen clients. *Medina, supra*. This is in addition to the clients represented by the numerous other DACA-qualified legal professionals now admitted to practice law (or allowed to practice under the supervision of their professors).

B. The End of the DACA Program Would Be Detrimental to Diversity and Excellence in the Legal Profession.

1. DACA Recipients Make The Legal Profession More Diverse, Benefitting the Profession as a Whole.

The legal profession is already one of the nation's least diverse professions. Only approximately 14.7% of lawyers are African-American, Asian-American, or Latino, with Latino lawyers making up only 5.6% of the total population of U.S. lawyers. BUREAU OF LABOR STATISTICS, Labor Force Statistics from the Current Population Survey, <https://www.bls.gov/cps/cpsaat11.htm> (last visited October 29, 2017).

Termination of the DACA program would disproportionately affect Latinos and reduce the numbers of Latinos already in the legal profession, in addition to those who might pursue a law degree in the future. As of 2016, approximately 741,546 undocumented young people had received DACA status. Tom Wong, *New Study of DACA Beneficiaries Shows Positive Economic and Educational Outcomes*, CENTER FOR AMERICAN PROGRESS (Oct. 18, 2016), <https://www.americanprogress.org/issues/immigration/news/2016/10/18/146290/new-study-of-daca-beneficiaries-shows-positive-economic-and-educational-outcomes/>. Almost all DACA recipients (*i.e.*, 94%) were born in Mexico or Central or South America. Gustavo Lopez, *Key Facts About Unauthorized Immigrants Enrolled in DACA*, PEW RESEARCH CENTER (Sept. 25, 2017), <http://www.pewresearch.org/fact-tank/2017/09/25/key-facts->

about-unauthorized-immigrants-enrolled-in-daca/. According to a recent survey conducted by Tom K. Wong, a political science professor at the University of California at San Diego, approximately 46% of DACA recipients are currently in school. Wong, *supra*. Seventy percent of those individuals are pursuing a bachelor's degree or higher. *Id.* This includes individuals pursuing master's degrees, Ph.D. degrees, and professional degrees, some of whom may wish to become lawyers. *Id.*

DACA recipients bring with them unique backgrounds, experiences, opinions, and viewpoints, all of which contribute to the diversity of the legal profession. While the legal profession may already include people of color, diversity is not limited solely to race or gender. As the Supreme Court has pointed out, "diversity takes many forms." *Fisher v. Univ. of Texas at Austin*, 136 S. Ct. 2198, 2210 (2016). Given their backgrounds, these attorneys and law students bring an important set of experiences and perspectives to the profession. They are different, even from their other immigrant counterparts, who may share their cultural backgrounds and countries of origin, but who do not share the experience of having lived in the United States without legal status and without the benefits such status brings with it. Indeed, it is not simply that the individuals in question are largely persons of color that makes them special, although their cultural backgrounds are vitally important. Instead, it is that these individuals have perspectives, opinions, and experiences that no other

lawyers have, *because they are DACA recipients*, which makes them invaluable to the legal profession.

The Supreme Court has recognized that the benefits of diversity are “not theoretical, but real” and that they are “substantial.” *Grutter v. Bollinger*, 539 U.S. 306, 330 (2003). The benefits to the legal profession that come from the diversity of its membership are similar to the benefits a diverse student body confers on public education. As the Supreme Court reasoned in *Grutter*, diversity promotes “cross-racial understanding, helps to break down racial stereotypes, and enables [individuals] to better understand persons of different races,” enriching the educational environment for all concerned, including other students and faculty. *Id.* at 330 (internal quotation marks omitted). Furthermore, “major American businesses have made clear that the skills needed in today’s increasingly global marketplace can only be developed through exposure to *widely diverse people, cultures, ideas, and viewpoints.*” *Id.* (emphasis added). “Effective participation by members of all ... groups in the civic life of our Nation is essential if the dream of one Nation, indivisible, is to be realized.” *Id.* at 332. As Justice O’Connor put it in *Grutter*:

In order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity. All members of our heterogeneous society must have confidence in the openness and integrity of the educational institutions that provide this training. As we have recognized, law schools cannot be effective in

isolation from the individuals and institutions with which the law interacts. Access to legal education (and thus the legal profession) must be inclusive ... so that all members of our heterogeneous society may participate in the educational institutions that provide the training and education necessary to succeed in America.

Id. at 332–33 (internal citations and quotation marks omitted).

While diversity of every kind is crucial to the success of public education, it is particularly crucial in the legal profession. “Diversity and inclusion strengthens the profession and enhances its ability to serve clients, solve problems, resolve conflicts, and dispense justice.” Nicole Negowetti, *Implicit Bias and the Legal Profession’s “Diversity Crisis”: A Call for Self-Reflection*, 15 NEV. L.J. 930, 949–50 (2015). Indeed, as Eli Wald, a professor at the University of Denver Sturm College of Law has explained, “[L]aw is the social glue of our society” and “is premised on the fundamental values of equality, fairness, and the rule of law.” Eli Wald, *A Primer on Diversity, Discrimination, and Equality in the Legal Profession or Who Is Responsible for Pursuing Diversity and Why*, 24 GEO. J. LEGAL ETHICS 1079, 1101–02 (2011). “[A]s long as lawyers claim to be public citizens and servants of the public interest, and purport to have a special relationship with and owe fiduciary duties to pursue equality and justice, they owe a duty to combat underrepresentation based on inequalities, cultural perceptions, and past and current discrimination.” *Id.* DACA lawyers with their rich diversity of experiences, backgrounds, opinions, and viewpoints are uniquely positioned to aid the legal

profession in fulfilling its duty to promote equality, fairness, and the rule of law, no matter what type of law they practice.⁹ Losing these individuals would mean losing their unique attributes and their important contributions to the profession, with lasting consequences.

A reduction in the diversity of the profession would also mean losing credibility with the individuals the law seeks to serve, including undocumented immigrants. As Professor Wald persuasively reasons, “a diverse bar is more likely to be able to meet, and be perceived as able to meet the goals of access to lawyers, justice, and effective representation. [T]he very essence of a just legal system is ... in the identity of the legal actors who make and enforce [the laws].” *Id.* This can affect the public’s perception of equal treatment and fairness by the legal system. *Id.* Indeed, a study undertaken by the National Center for State Courts found that a majority of those asked stated that African Americans and Latinos usually receive less favorable results in court than others and that approximately two-thirds of those asked believed that non-English speakers also receive less favorable results. Negowetti, *supra* at 950. If, however, DACA attorneys are granted the ability to represent (and to continue to represent) their clients, including those in

⁹ Studies have shown that, of those responsible for some of the most important business innovations in the United States, over a third are foreign-born, while seventeen percent are not U.S. citizens. White Paper, *How Foreign-Born Workers Make America More Competitive and Benefit American Workers*, HR POLICY ASSOCIATION (2017).

circumstances similar to their own, such attorney-client relationships would engender trust and confidence in the profession by those who have traditionally been skeptical of it.

2. DACA Legal Professionals' Unique Traits of Empathy and Compassion.

Intertwined with their diverse experiences, backgrounds, opinions, and viewpoints is DACA legal professionals' ability to empathize with and show compassion for their clients, particularly clients who, like them, are undocumented and/or individuals of color. In discussing her work representing an undocumented immigrant before the Ninth Circuit, Ms. Martinez Medina explained, "I've always said, you can talk about poverty, but if you haven't been poor you really don't understand what poverty is." Cabrera, *supra*. Ms. Martinez Medina credits her success in obtaining her clients' trust to her own experience as an undocumented immigrant of humble means, acknowledging that undocumented clients are much more likely to open up to her knowing that she has walked a similar path. *Id.*

As Kristin Gerdy, a professor at Brigham Young University's Reuben Clark Law School points out, "[E]mpathy and compassion must go hand in hand with 'thinking like a lawyer' and in fact, caring actually makes analysis stronger." Kristin Gerdy, *Clients, Empathy, and Compassion: Introducing First-Year Students to the "Heart" of Lawyering*, 87 NEB. L. REV. 1, 15 (2008). Indeed, "success in law (as in other fields) correlates significantly more with relationship skills than it does with

intelligence, writing ability, or any other known factor.” Joshua Rosenberg, *Interpersonal Dynamics: Helping Lawyers Learn the Skills, and the Importance, of Human Relationships in the Practice of Law*, 58 U. MIAMI L. REV. 1225, 1229 (2004). “To experience empathy means to share or at least understand a client’s feelings, to imagine and thereby nonjudgmentally understand what it would be like to be in the client’s position. And once the lawyer has developed empathy for the client, she can more effectively exercise her other skills on the client’s behalf.” Gerdy, *supra* at 18. Empathy aids a lawyer in building rapport with the client, fosters open and complete communication, leads to more thorough legal analysis, and improves the image of the legal profession. *Id.* at 19-20.

In addition to empathy, compassion is also a crucial lawyering skill. “When a client feels that a lawyer ... is compassionate, she feels that the lawyer is loyal to her cause and can be a source of emotional sustenance, particularly for those clients whose legal problems are as painful as they are complex. [And] [w]ith the emotional support of a compassionate lawyer, the client may be better equipped to face a long, difficult legal battle.” *Id.* at 26-27.

While a U.S.-born attorney, for example, might be perfectly competent in immigration law, he or she can never know what it is like to have immigrated to this country, oftentimes under precarious conditions. He or she can never know what it is like to go without the benefits afforded to American citizens simply by virtue of

their birth on American soil. He or she can never know what it is like to live in constant fear of detention and/or deportation. All of these experiences give undocumented legal professionals a unique perspective to contribute to the practice of law and to the service of their clients, just as lawyers from other backgrounds bring their own unique perspectives to the job. Rather than simply listening to their client's stories and relaying them to the court, these legal professionals have lived these same stories, giving them the distinctive ability to understand what it is like to walk in the client's shoes. This, in turn, provides them with a special understanding of their clients' goals and interests, thus enhancing their ability to represent their clients effectively.

Further, the participation of DACA professionals enriches the profession well beyond their unique ability to represent their clients. Not every undocumented individual will be able to retain a DACA lawyer, but those lawyers can mentor others and spread their singular insights throughout the legal profession. Conversely, not every DACA attorney will represent undocumented clients, but those attorneys can spread the benefits of diversity to other clients and practice areas as well.

IV. CONCLUSION

For the reasons set forth above and in the briefs submitted by Plaintiffs/Appellees, and for the benefit of Plaintiffs/Appellees, the legal profession and the surrounding community, *amicus curiae* the Bar Association of San Francisco

respectfully requests the Court affirm the district court's orders granting a preliminary injunction and denying in part the government's motion to dismiss and that it reverse the district court's order granting in part the government's motion to dismiss.

Dated: March 20, 2018

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that, pursuant to Federal Rules of Appellate Procedure 28.1 and 29 the attached **BRIEF OF *AMICUS CURIAE* THE BAR ASSOCIATION OF SAN FRANCISCO IN SUPPORT OF PLAINTIFFS-APPELLEES** is proportionately spaced, has a typeface of 14 points or more, and contains 5,252 words (based on the word processing system used to prepare the brief).

Dated: March 20, 2018

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on March 20, 2018.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: March 20, 2018

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