

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

No. 15-40238

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

Plaintiffs-Appellees,

v.

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

Defendants-Appellants.

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

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

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

II. The Injunction Will Harm Individuals

A. The Economic Effects On Individuals Granted Deferred Action

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

¹⁵ Oakford, *supra* n.9, at 6.

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

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

Those eligible for deferred action will enjoy increased earning potential, producing a positive multiplier effect on local economies. CAP estimates:

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

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

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

¹⁸ *Id.* at 3.

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

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

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

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

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

B. The Human Impact Of The Deferred Action Initiative

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

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

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

1. Individuals Who Immigrated As Children

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

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

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

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

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

²² Information on file with Karen Tumlin, NILC.

²³ Information on file with Karen Tumlin, NILC.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

²⁸ Information on file with Karen Tumlin, NILC.

²⁹ Information on file with Karen Tumlin, NILC.