

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

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**In the Supreme Court of the United States**

DEPARTMENT OF HOMELAND SECURITY, et al.,  
*Petitioners,*

*v.*

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

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

*v.*

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

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

*v.*

MARTIN JONATHAN BATALLA VIDAL, et al.,  
*Respondents.*

On Writs of Certiorari to the United States Courts of Appeals  
for the Ninth, District of Columbia, and Second Circuits

**BRIEF OF AMICI CURIAE CURRENT AND FORMER  
PROSECUTORS AND LAW ENFORCEMENT LEADERS IN  
SUPPORT OF RESPONDENTS**

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**INTEREST OF AMICI CURIAE<sup>1</sup>**

Amici are current and former prosecutors and law enforcement leaders who have extensive expertise in law enforcement, prosecution, and cooperative federal-state law enforcement activities. They are intimately familiar with the challenges of performing critical law enforcement and governance functions in communities where immigrants fear the police and are vulnerable to exploitation and crime. Amici represent jurisdictions from across the country that understand the challenges of protecting local community needs and public safety.

Amici's experience in keeping their communities safe has underscored the critical importance of bringing immigrants and their families "out of the shadows." Community trust and cooperation are essential to public safety, and sound police work as well as successful prosecutorial efforts are undermined when undocumented immigrants and their communities fear interacting with law enforcement and the justice system. This dynamic leaves undocumented immigrants more vulnerable to crime and exploitation—and undocumented immigrant victims less likely to come forward or cooperate with investigations and prosecutions—leading to more violence in the communities

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<sup>1</sup> Pursuant to Supreme Court Rule 37.6, counsel for amici certifies that no counsel for a party authored this brief in whole or in part and that no person or entity, other than amici and their counsel, made a monetary contribution intended to fund this brief's preparation or submission. Counsel of record for all parties received timely notice of the filing of this brief and consented to its filing.

amici are and have been charged with protecting. In the State of California, where more than a quarter of the population are immigrants,<sup>2</sup> these problems have a particularly profound impact.

The Deferred Action for Childhood Arrivals (“DACA”) program has protected from removal nearly 800,000 individuals brought to this country as children. Under DACA, these individuals—who have undergone background checks and lived continuously in the United States since 2007—have been permitted to live, work, and study in this country without fear of removal. Amici are aware that the DACA program has helped law enforcement officers and prosecutors keep their communities safe by reducing the fear of removal for these nearly 800,000 individuals who are active members of their communities.

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<sup>2</sup> Hans Johnson & Sergio Sanchez, *Immigrants in California*, Public Policy Institute of California, 1 (2019), <https://perma.cc/W5RL-7ZZA> (in 2017, immigrants constituted 27 percent of California’s population).

## SUMMARY OF ARGUMENT

The lessons amici have learned in protecting their communities shed important light on the issues raised in this case. When community residents live in constant fear that interactions with local law enforcement officials could result in removal, that fundamental breakdown in trust threatens public safety and impedes justice system leaders from doing their jobs. Extensive evidence shows that, in such circumstances, undocumented immigrants—and their lawfully present family and neighbors—fear that turning to the police and cooperating with prosecutors could bring adverse immigration consequences. As a result, immigrant communities are less willing to report crimes and cooperate with criminal investigations and prosecutions. This dynamic poses a major challenge to the investigation and prosecution of individual crimes and to the proper allocation of public safety resources.

DACA ameliorates these problems by addressing an important reason that many individuals fear cooperating with law enforcement. As experience with DACA has shown, when immigrants are permitted to step out of the shadows, they are much more willing to work cooperatively with police and prosecutors. As explained below, nearly two-thirds of DACA recipients reported being less afraid of law enforcement, and 59 percent indicated that they were more likely to report crimes after having entered the program. DACA further aids law enforcement by facilitating access to identification, such as federal employment authorization documents. Lack of identification in immigrant communities often leads to undue burdens on

police, potentially turning a simple traffic stop into an hours-long detour to fingerprint someone at the police station. When police are able to identify victims, witnesses, and potential suspects without those sorts of delays, valuable law enforcement resources are spared. Knowing the identity of individuals with whom law enforcement officers come into contact aids in the safety of law enforcement officers as well.

DACA also promotes public safety by helping law enforcement to protect a population uniquely vulnerable to exploitation and violent crime. Numerous studies have shown that undocumented individuals' fear of interacting with law enforcement makes them attractive targets for many forms of crime and abuse. With limited access to bank accounts (in substantial part because of their lack of identification), they have been dubbed "walking ATMs" and are frequent targets for robbery. Undocumented individuals are also especially vulnerable to domestic abuse because they often fear turning to law enforcement for help. And they face increased wage theft and other forms of exploitation in the workplace.

By eliminating an important reason to fear law enforcement, enabling access to work authorization and to identification, and building trust between law enforcement and immigrants with longstanding ties to the United States, DACA aids community policing and makes recipients less vulnerable to crime and exploitation. In doing so, DACA provides vital support to police and prosecutors charged with protecting all members of their communities.

## ARGUMENT

### I. DACA FOSTERS EFFECTIVE LAW ENFORCEMENT

#### A. “Community Policing” Is Essential To Effective Law Enforcement

The experience of policing cities across the country has taught law enforcement officers that doing their jobs well requires “the trust and respect of the communities [they] serve.” *Hearing Before the S. Comm. on the Judiciary*, 114th Cong. 2 (2015) (statement of Tom Manger, Chief, Montgomery Cty., Md., Police Dep’t & President, Major Cities Chiefs Ass’n), <https://perma.cc/SKM2-QKV9> [hereinafter Statement of Tom Manger]. To combat crime, police officers “need the full cooperation of victims and witnesses.” *Id.* This common-sense philosophy is sometimes called “community policing”—an approach to policing whereby local law enforcement organizations partner with communities to reduce crime and promote public safety. See Anita Khashu, *The Role of Local Police: Striking a Balance Between Immigration Enforcement and Civil Liberties*, Police Found. (2009), <https://perma.cc/KL5A-EQWR>.

Community policing requires police to interact with neighborhood residents in a manner that builds trust and encourages cooperation. *Id.* at xiii. When that trust is missing—as it is when people believe that contacting police or cooperating with prosecutors could lead to removal for themselves or others—community policing breaks down and the entire community suffers.

### **B. Trust And Respect Between Communities And Law Enforcement Officials Are Thwarted When Individuals Fear Removal Consequences Of Cooperation**

The reality of everyday life for millions of undocumented immigrants living in the United States poses significant challenges to effective community policing. According to a recent Pew survey, 66 percent of Hispanic immigrants and 43 percent of all Hispanic adults in the United States worry about removal—of themselves, family members, or close friends. Mark Hugo Lopez et al., *More Latinos Have Serious Concerns About Their Place in America Under Trump*, Pew Res. Ctr.: Hispanic Trends (Oct. 25, 2018), <https://perma.cc/R3TE-DMAD>. This fear predictably hinders cooperation and communication with police and prosecutors. Immigrants often assume that interaction with law enforcement officials could have adverse consequences for themselves or a loved one.

As a result, immigrant communities—and undocumented immigrants in particular—are less likely to trust and cooperate with local police and prosecutors. One recent study found that individuals living in communities of recent immigrants are less likely to report violent crime: in neighborhoods where 65 percent of residents are immigrants, there is only a 5-percent chance that a victim will report a violent crime, compared with a 48-percent chance in a neighborhood where only 10 percent of residents are born outside the United States. Min Xie & Eric P. Baumer, *Neighborhood Immigrant Concentration and Violent Crime Reporting to the Police: A Multilevel Analysis of Data from the National Crime Victimization Survey*, 57

Criminology 237, 249 (2019), <https://perma.cc/QS5R-K867>. The authors of the study specifically noted that “the development of trusting relationships between citizens and the police is often challenged by the presence and application of local and federal immigration enforcement programs . . . that may dissuade residents from calling on the police to help address crime problems.” *Id.* at 254.

In addition, one survey of Latinos in four major cities found that 70 percent of undocumented immigrants and 44 percent of all Latinos would be less likely to contact law enforcement authorities if they were victims of a crime for fear that the police would ask them or people they know about their immigration status; and 67 percent of undocumented immigrants and 45 percent of all Latinos would be less likely to provide information about, or report, crimes because of the same fear. Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement* 5-6 (2013), <https://perma.cc/XEE8-P42V>; *see also id.* at 1 (“Survey results indicate that increased involvement of police in immigration enforcement has significantly heightened the fears many Latinos have of the police, . . . exacerbating their mistrust of law enforcement authorities.”). And a recent survey of undocumented individuals in San Diego County found that if local law enforcement officials were working together with ICE, 60 percent of survey respondents would be less likely to report a crime they witnessed, while 43 percent would be less likely to report being a victim of a crime. Tom K. Wong, *Sanctuary Cities Don’t ‘Breed Crime.’ They Encourage People to Report Crime.*, Wash. Post (Apr. 24, 2018),

9SEQ. These studies (among others) highlight that fears of immigration enforcement result in damage to law enforcement cooperation from not only undocumented community members, but also individuals with citizenship or lawful status, particularly in “mixed-status” households.<sup>3</sup>

This problematic atmosphere of mistrust poses a fundamental challenge for community policing. Police cannot prevent or solve crimes if victims or witnesses are unwilling to talk to them or prosecutors because of concerns that they, their loved ones, or their neighbors will face adverse immigration consequences. Law enforcement officers participating in one recent national survey reported seeing an across-the-board decline in immigrant communities’ willingness to cooperate with law enforcement. Nat’l Immigrant Women’s Advocacy Project, *Promoting Access to Justice for Immigrant and Limited English Proficient Crime Victims in an Age of Increased Immigration Enforcement: Initial Report from a 2017 National Survey* 101 (2018), <https://perma.cc/52MV-X8TG> [hereinafter *NIWAP Report*]. Roughly one-fifth of police officers surveyed reported that, in 2017, immigrants were less willing than they were in 2016 to make police reports, less likely to help police when

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<sup>3</sup> An estimated 85 percent of immigrants live in mixed-status families. See Khashu, *supra*, at 24; see also Jill Theresa Messing et al., *Latinas’ Perceptions of Law Enforcement: Fear of Deportation, Crime Reporting, and Trust in the System*, 30 *J. Women & Soc. Work* 328, 334 (2015) (“The results indicate that for each 1-point increase in fear of deportation [e.g., from ‘not much’ to ‘some’ worry, or from ‘some’ to ‘a lot’], Latina participants were [15 percent] less willing to report being [a] victim of a violent crime to police.”).

they arrived at the scene of the crime, less likely to assist with subsequent investigations, and less willing to work with prosecutors. *Id.* at 42. As a result, more than half of the law enforcement officials surveyed reported that crimes such as domestic violence, human trafficking, and sexual assault became more difficult to investigate. *Id.* at 51.

These trends have continued to worsen in recent years. See Cora Engelbrecht, *Fewer Immigrants Are Reporting Domestic Abuse. Police Blame Fear of Deportation.*, N.Y. Times (June 3, 2018), <https://perma.cc/Q4HN-N5BX>. According to the Houston Police Department, rape reporting by members of the Hispanic community fell over 40 percent from the first quarter of 2016 to the same period in 2017, despite an overall increase in city-wide crime reports. Michael Morris & Lauren Renee Sepulveda, *A New ICE Age*, Texas Dist. & Cty. Attorneys Ass'n, *The Texas Prosecutor*, Vol. 47, No. 4 (July/Aug. 2017), <https://perma.cc/J2QH-AWV7>. Los Angeles, San Francisco, and San Diego also witnessed lagging sexual assault and domestic violence reporting by Latino persons—but not other ethnic groups—in the first half of 2017. James Queally, *Fearing Deportation, Many Domestic Violence Victims Are Steering Clear of Police and Courts*, L.A. Times (Oct. 9, 2017), <https://perma.cc/QR2S-FKX7>. According to Los Angeles County Sheriff's Deputy Marino Gonzalez, “[t]hey’re afraid of us. And the reason they’re afraid of us is because they think we’re going to deport them.” *Id.*; see also *NIWAP Report, supra*, at 99 (finding that, in 2016 and 2017, fear of removal was the principal reason that immigrant victims did not call the police for help or file or follow through with a court

case). Law enforcement officials across the country have echoed that sentiment. *See, e.g.*, Hannah Rapleye et al., *Immigration Crackdown Makes Women Afraid to Testify Against Abusers, Experts Warn*, NBC News (Sept. 22, 2018), <https://perma.cc/UB6S-RTE7> (“We rely very heavily at the local level on cooperation from our witnesses and from our victims to ensure that cases can be prosecuted,” said Denver City Attorney Kristin Bronson. “What we’ve found in Denver is people are not showing up because they’re afraid that they might get apprehended in the hallways.”); *see also City of Philadelphia v. Sessions*, 309 F. Supp. 3d 289, 341 (E.D. Pa. 2018) (“[Philadelphia] Police Commissioner Ross reiterated his earlier testimony that the City’s ability to fight crime is impaired when victims and witnesses are afraid to report crimes for fear of immigration consequences.”); Bret Hauff, *ICE Targets Immigrants at La Plata County Courthouse*, Durango Herald (Mar. 23, 2019), <https://perma.cc/8RFS-3YMW> (explaining that the tactic of courthouse arrests “deters people from making reports; it deters people from coming in” (quoting Colorado 6th Judicial District Chief Judge Jeffery Wilson)).

Immigrants’ fear of interacting with law enforcement and prosecutors in light of potential removal consequences is not merely theoretical. In February 2017, for example, an immigrant woman living in Texas arrived at a courthouse seeking a protective order against her abusive boyfriend, only to leave under arrest—likely due to a tip from her abuser. Katie Mettler, *This Is Really Unprecedented: ICE Detains Woman Seeking Domestic Abuse Protection at Texas Courthouse*, Wash. Post (Feb. 16, 2017),

<https://perma.cc/33UE-WC85>. In August 2017, federal agents detained an undocumented immigrant who had provided key testimony in two homicide cases. James Fanelli, *Father of Two Who Testified in Brooklyn Homicide Cases and Is Married to a U.S. Citizen Detained by ICE*, N.Y. Daily News (Aug. 2, 2017), <https://perma.cc/SBH8-BUGH>. Weeks later, ICE agents arrested a victim of domestic violence as he left a county courthouse. Steve Coll, *When a Day in Court Is a Trap for Immigrants*, New Yorker (Nov. 8, 2017), <https://perma.cc/VMT5-75M5>. And in February 2019, ICE detained a 38-year-old mother of three who was cooperating with police in an open investigation—and almost removed her to her native Nicaragua. Asked upon her release if she would think twice before interacting with law enforcement in the future, she answered without hesitation: “Sí.” Jessica Lipscomb, *Miami Crime Victim Detained by ICE Warns Others About Calling Police for Help*, Miami New Times (Apr. 23, 2019), <https://perma.cc/9GG5-BKQQ>.

The underreporting of crimes by recent immigrants is a problem for the entire criminal justice system. Precisely because victims and witnesses fear removal, violent crimes have gone unreported, and pending prosecutions have disappeared from courts’ dockets. For example, a Texas district attorney confirmed that a victim of domestic violence had become uncooperative because she feared removal. Philip Jankowski, *Deportation Fears Keep Victim from Cooperating in Domestic Violence Case, Travis DA Says*, Statesman (Austin) (Mar. 8, 2017), <https://perma.cc/9AYX-5FQP>. Denver prosecutors have been forced to drop 30 domestic violence cases

for similar reasons, Rappelle et al., *supra*, and in 2017, more than a dozen Latina women in Denver dropped their own civil cases against domestic abusers, citing fear of removal. Sarah Stillman, *When Deportation Is a Death Sentence*, *New Yorker* (Jan. 15, 2018), <https://perma.cc/TK4U-FKMY>. An immigrant mother in New Jersey, fearing that interaction with the court system could trigger removal, declined to report that her son had been assaulted on his way to school. S.P. Sullivan, *Advocates Say ICE Courthouse Arrests in N.J. Are Hurting Immigrant Crime Victims*, *NJ* (June 5, 2017), <https://perma.cc/8VQW-TYD7>. And a victim of domestic violence in New York City “did not think it was in her best interest” to pursue a protective order. Emma Whitford, *Courthouse ICE Arrests Are Making Immigrants ‘Sitting Ducks,’ Lawyers Warn*, *Gothamist* (June 22, 2017), <https://perma.cc/XJT4-YQ4D>. In addition to their particular removal concerns, undocumented immigrant victims and witnesses may understandably recoil more generally from a system that allows participants to walk into a courthouse to fulfill a civic responsibility to testify, only to be detained by immigration authorities and prevented from walking freely out of that same courthouse.

In response to these types of incidents, the chief justices of three state supreme courts—including the Supreme Court of California—wrote to federal authorities to emphasize that preserving trust with immigrant communities is essential to the administration of justice. Letter from Tani G. Cantil-Sakauye, Chief Justice of California, to Jeff Sessions, Att’y Gen. of the U.S., and John F. Kelly, Sec’y of Dep’t of Homeland Sec. (Mar. 16, 2017),

QVET; Letter from Mary E. Fairhurst, Chief Justice of the Supreme Court of Washington, to John F. Kelly, Sec’y of Dep’t of Homeland Sec. (Mar. 22, 2017), <https://perma.cc/6358-7Z3H>; Letter from Stuart Rabner, Chief Justice of the Supreme Court of New Jersey, to John F. Kelly, Sec’y of Dep’t of Homeland Sec. (Apr. 19, 2017), <https://perma.cc/M2QA-FJYD>. In addition, 75 former state and federal judges wrote to ICE’s Acting Director to explain that “our justice system cannot function effectively . . . if victims, defendants, witnesses, and family members do not feel secure in accessing the courthouse.” Letter from Seventy-Five Former State and Federal Judges to Ronald D. Vitiello, Acting Director of ICE (Dec. 12, 2018), <https://perma.cc/LJE2-94P7>. Three district attorneys in New York asked ICE to stop making courthouse arrests because of the “chilling effect” this practice has on witnesses. Rappleye et al., *supra*. And other leaders around the country have asserted that using local court systems as levers for federal immigration enforcement “undercuts local law enforcement’s ability to develop the critical trust needed to keep communities safe.” Maria Cramer, *ICE Courthouse Arrests Worry Attorneys, Prosecutors*, Boston Globe (June 16, 2017), <https://perma.cc/VZZ9-J7WE> (quoting Massachusetts Attorney General Maura Healey).

### **C. DACA Promotes Cooperation With Law Enforcement**

DACA has improved public safety by helping to build trust between immigrant communities and law enforcement. Nearly eight in ten recipients of DACA relief reported that they are now less afraid of re-

removal, Zenén Jaimes Pérez, United We Dream, *A Portrait of Deferred Action for Childhood Arrivals Recipients: Challenges and Opportunities Three-Years Later* 23 (2015), <https://perma.cc/AGE7-X5UH>. Two-thirds reported being less afraid of law enforcement, and 59 percent said that they would report a crime now in a situation in which they would not have reported it before. Roberto G. Gonzales & Angie M. Bautista-Chavez, Am. Immigration Council, *Two Years and Counting: Assessing the Growing Power of DACA* 9 (June 16, 2014), <https://perma.cc/6UBE-Z9AK>; Roberto G. Gonzales, *Here's How DACA Changed the Lives of Young Immigrants, According to Research*, Vox Media (Feb. 16, 2018), <https://perma.cc/PB6B-9S9L>. If the DACA program continues, those who qualify for the program would not need to fear ordinary encounters with law enforcement. Instead, they would retain greater freedom to cooperate for the protection of their communities—and indeed all communities—without worrying that their good deed might be punished with separation from their family members, siblings, or loved ones.

Lessons learned from the implementation of the Violence Against Women Act, Pub. L. No. 106-386, 114 Stat. 1491 (2000), are instructive. With that Act, Congress created the U visa to provide immigration relief to undocumented victims of certain crimes. See *Victims of Criminal Activity: U Nonimmigrant Status*, U.S. Citizenship & Immigr. Servs., <https://perma.cc/P3AC-XTHG> (last updated June 12, 2018). A U visa allows recipients to identify themselves, receive temporary relief from removal, and obtain verified government identification. See *id.* The benefits for law enforcement have been striking. A

recent study indicated that U visa applicants and recipients, freed of the need to remain in the shadows, became far more likely to cooperate with law enforcement in the detection, investigation, and prosecution of crimes. *See* Leslye Orloff et al., Nat'l Immigrant Women's Advocacy Project, *U-Visa Victims and Lawful Permanent Residency* 5-6 (2012), <https://perma.cc/53NZ-LCPF>. Indeed, more than 99 percent stated that they were willing to cooperate with the police, and 70 percent were in fact asked to—and did—provide assistance related to crimes committed against them. *See id.* That U visa holders who seek lawful permanent residency are expected to provide “reasonably requested information and assistance” to law enforcement in connection with the crimes that qualify them for immigration relief undoubtedly helps to explain the especially high level of cooperation. *Id.* at 5 (internal quotation marks omitted) (quoting New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53,014 (Sept. 17, 2007) (to be codified in scattered sections of 8 C.F.R.)). But it is the protection offered by the U visa that enables that cooperation in the first place.<sup>4</sup> *See id.* Another study revealed that three-quarters of law enforcement officers view U visas as beneficial in encouraging victims to come forward and report crimes. Natalia Lee et al., Nat'l Immigrant Women's Advocacy Project, *National*

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<sup>4</sup> As set forth *supra*, the DACA program has yielded similar results, despite entailing no explicit expectation of law enforcement cooperation.

*Survey of Service Providers on Police Response to Immigrant Crime Victims, U Visa Certification and Language Access* 21 (2013), <https://perma.cc/5SR9-VTWA>.

#### **D. DACA Aids Law Enforcement By Facilitating Access To Identification**

DACA further benefits effective policing because it provides an easy method of identification for DACA recipients. Because most states do not issue driver's licenses or other identification to undocumented immigrants, law enforcement officials often face serious difficulties in reliably identifying undocumented community members. Ready access to identification aids law enforcement in the most basic of ways: if the police cannot verify who someone is, it becomes much harder to identify witnesses and victims, investigate potential suspects, and perform critical tasks like searching for a criminal history, investigating outstanding warrants, and determining whether someone poses a threat. *See, e.g.,* Police Exec. Research Forum, *Voices from Across the Country: Local Law Enforcement Officials Discuss the Challenges of Immigration Enforcement* 15 (2012), <https://perma.cc/QKN8-QFJK>; *see also* Michael Corkery & Jessica Silver-Greenberg, *Banks Reject New York City IDs, Leaving 'Unbanked' on Sidelines*, N.Y. Times (Dec. 23, 2015), <https://perma.cc/A5B7-X32D> (describing municipal identification and stating, "The mayor emphasized that the cards were developed with input from the New York City Police Department and said the department had been one of the biggest backers of the program. 'They want every New Yorker on the street to have an ID card; it greatly improves the work of the NYPD,' Mr. de Blasio said.").

Even the simplest traffic stop can lead to an unnecessary waste of valuable law enforcement resources if an individual cannot be identified. Police Exec. Research Forum, *supra*, at 15-16. As one police chief has explained, “[w]hen we stop cars and the driver doesn’t have a driver’s license, there are very few options for the officers and troopers.” *Id.* at 16 (quoting Chief Harry Dolan, N.C. Police). The only reliable method of identification—fingerprinting—requires a detour to “jail so we can find out who they are.” *Id.* (same). Another former police chief lamented the “manpower” required and time lost—“up to two to three hours to determine who an arrestee is”—which could be devoted to more-pressing law enforcement concerns. *Id.* at 15 (quoting Art Venegas, Founder, Law Enf’t Engagement Initiative).

Recipients of DACA are eligible to apply for a federal employment authorization document (“EAD”). The EAD comes in the form of a card issued by U.S. Citizenship and Immigration Services, and includes the recipient’s photograph. *See* 8 U.S.C. § 1324a(h)(3); 8 C.F.R. § 274a.12(c)(14); *see also* U.S. Citizenship & Immigration Servs., U.S. Dep’t of Homeland Sec., OMB No. 1615-0040, Instructions for I-765 Application for Employment Authorization (last updated May 31, 2018) (describing EAD as a “card” and requiring two passport-style photos) <https://perma.cc/JW66-XQCG> . Individuals who receive employment authorization also are eligible to obtain a Social Security number and card. *See* Soc. Sec. Admin., SSA Publ’n No. 05-10096, Social Security Numbers for Noncitizens (2017), <https://perma.cc/9RGJ-X8Y2>. Because DACA has ex-

panded the availability of identification, it has enhanced law enforcement officers' ability to identify those whom they encounter. More than 90 percent of recipients of relief under DACA report that they have acquired a driver's license or other identification. Pérez, *supra*, at 20. Freed from time-consuming, wasteful, and potentially antagonistic encounters with individuals who pose no public safety concern, police have more time to focus on higher priorities in keeping their communities safe.

## **II. DACA HELPS LAW ENFORCEMENT PROTECT VULNERABLE INDIVIDUALS FROM CRIME AND EXPLOITATION**

DACA has yielded another vital public safety benefit: protecting individuals who are particularly vulnerable to crime and thus attractive targets for criminals.

As discussed above, undocumented immigrants and their families are reluctant to report crimes for fear of removal. Predators who seek to take advantage of the vulnerabilities of immigrant communities also know this. These communities face a range of unlawful conduct, including domestic and gang violence, as well as abuse by unscrupulous employers. See Office of Cmty. Oriented Policing Servs., U.S. Dep't of Justice, *Enhancing Community Policing with Immigrant Populations: Recommendations from a Roundtable Meeting of Immigrant Advocates and Law Enforcement Leaders* 16 (2010), <https://perma.cc/62JX-99KK>.

When immigrants distrust their local police, "it creates conditions that encourage criminals to prey upon victims and witnesses alike." Statement of Tom

Manger, *supra*, at 2. This phenomenon has been termed the “deportation threat dynamic,” whereby individuals who fear removal from the United States do not report the crimes they suffer. Elizabeth Fussell, *The Deportation Threat Dynamic and Victimization of Latino Migrants: Wage Theft and Robbery*, 52 Soc. Q. 593, 610 (2011). Nearly two-thirds of undocumented migrant workers participating in a study in Memphis, Tennessee, reported being the victim of at least one crime, with the most common being theft and robbery. Jacob Bucher et al., *Undocumented Victims: An Examination of Crimes Against Undocumented Male Migrant Workers*, 7 Sw. J. Crim. Just. 159, 164, 166 tbl.2 (2010). Respondents indicated that fewer than a quarter of these crimes were reported to the police, and only one was reported by the victim himself. *Id.* at 165. In one especially horrific incident, a four-year-old girl in Texas suffered repeated sexual abuse at the hands of someone who threatened to cause her mother to be removed if the mother reported her daughter’s exploitation. See Matthew Haag, *Texas Deputy Accused of Molesting 4-Year-Old and Threatening to Deport Her Mother*, N.Y. Times (June 18, 2018), <https://perma.cc/682K-2ZR3>.

Robbery and similar crimes pose a particular threat to undocumented individuals, who often do not have bank accounts, in part because of their inability to obtain government-issued identification. Fussell, *supra*, at 604 & tbl.2, 605; S. Poverty Law Ctr., *Under Siege: Life for Low-Income Latinos in the South* 6, 25 (2009), <https://perma.cc/7GCY-V25L>. In addition, many of these immigrants live in group apartments and are unable to store valuables in a safe place at

home. Khashu, *supra*, at 25. As a result, undocumented immigrants are known to carry large amounts of cash, making them especially vulnerable to robbery. The risk to the perpetrators, meanwhile, is minimal because the victims are often too afraid of adverse immigration consequences to report the crimes to the police.

The targeting of undocumented immigrants for robbery has become so widespread that these individuals have been labeled “walking ATMs”—or the subjects of “amigo shopping.” See Fussell, *supra*, at 604-05 (internal quotation marks omitted); S. Poverty Law Ctr., *supra*, at 25 (same); Khashu, *supra*, at 25. In a study of largely undocumented immigrants helping to rebuild New Orleans in the wake of Hurricane Katrina, the immigrants reported robbery and physical assault at more than ten times the rate experienced by the general population. See Fussell, *supra*, at 604 & tbl.2, 605. In another survey, 53 percent of law enforcement officers held the view that undocumented immigrants were especially likely to be victims of robbery and theft. See Khashu, *supra*, at 25.

Undocumented immigrants also are particularly vulnerable to domestic violence. Numerous studies have shown that abusive partners may exploit the threat of removal to maintain power and control. See, e.g., Messing et al., *supra*, at 330 (citing several studies); Angelica S. Reina et al., “*He Said They’d Deport Me*”: *Factors Influencing Domestic Violence Help-Seeking Practices Among Latina Immigrants*, 29 J.

Interpersonal Violence 593, 601 (2014).<sup>5</sup> Financial dependence on an abusive partner with stable immigration status may facilitate violence in this way. *See, e.g.*, Messing et al., *supra*, at 330. Seventy percent of participants in one study of domestic violence victims said that immigration status was a major factor keeping them from seeking help or reporting their abuse to the authorities—thereby permitting the violence to continue. Reina et al., *supra*, at 600. In another study, immigration status was identified as the single largest factor independently affecting the rate at which battered Latina immigrants called the police. Nawal H. Ammar et al., *Calls to Police and Police Response: A Case Study of Latina Immigrant Women in the USA*, 7 Int'l J. Police Sci. & Mgmt. 230, 237 (2005).

Undocumented immigrants are vulnerable in the workplace, as well. In a number of studies, between 40 and 80 percent of mostly undocumented immigrants reported being victims of wage theft. *See* Fussell, *supra*, at 604 & tbl.2 (finding that 40 percent of respondents reported wage theft since arriving in New Orleans); *id.* (citing Nik Theodore, Abel Valenzuela, Jr. & Edwin Meléndez, *La Esquina (The Corner): Day Laborers on the Margins of New York's Formal Economy*, 9 WorkingUSA: J. Lab. & Soc'y 407

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<sup>5</sup> One study cited a participant who explained that a partner “beat me up and I could have called the police because that was what I thought to do . . . but he threatened me . . . . [H]e told me that if I called the police I was going to lose out . . . because [police officers] would . . . take me, because I didn't have legal documents.” Reina et al., *supra*, at 601; *see also NIWAP Report, supra*, at 103 (noting that 69 percent of law enforcement officers surveyed had observed a decrease in domestic violence reporting).

(2006) (finding a wage theft rate of approximately 50 percent in New York)); S. Poverty Law Ctr., *supra*, at 6 (finding that 41 percent of those surveyed across the South and 80 percent surveyed in New Orleans had experienced wage theft). Many immigrants also reported other types of worksite abuse. Fussell, *supra*, at 604 & tbl.2. In one study, 32 percent of respondents said that they had suffered on-the-job injuries—and most of these individuals, after being injured, were either fired, not paid lost wages, or denied medical care by their employers. S. Poverty Law Ctr., *supra*, at 6. The “deportation threat dynamic” fuels not only workplace exploitation but also outright violence. An advocate reported that, when one worker attempted to collect wages his employer owed him, “[t]he contractor raised his shirt and showed he had a gun—and that was enough . . . . He didn’t have to say any more. The worker left.” *Id.* at 7 (internal quotation marks omitted).

Unlike undocumented immigrants, DACA recipients are currently eligible to apply to receive work authorization. Many are currently working or pursuing higher educational opportunities. Should they lose their work authorization and once again fear removal from the United States, exploitative employers and criminals alike would be emboldened, thus diminishing the safety of entire communities. By permitting these young individuals to live and work openly, DACA eliminates a significant barrier to developing trusting relationships with law enforcement that are essential to public safety. Continuing the DACA program will enable police and prosecutors to fight crime more effectively and to serve all of those whom they are charged with protecting.

**CONCLUSION**

For the foregoing reasons, the judgments of the United States District Court for the District of Columbia and the Court of Appeals for the Ninth Circuit, as well as the orders of the United States District Court for the Eastern District of New York, should be affirmed.

Respectfully submitted.

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OCTOBER 2019

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**Carmen Best**, Chief, Seattle Police Department, Washington.

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**Paul H. Fitzgerald**, Sheriff, Story County, Iowa.

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**Sim Gill**, District Attorney, Salt Lake County, Utah.

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**Eric Gonzalez**, District Attorney, Kings County, New York.

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**Andrea Harrington**, District Attorney, Berkshire County, Massachusetts.

**Michael S. Harrison**, Commissioner, Baltimore Police Department, Maryland.

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