

No. 21-40680

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

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

v.

UNITED STATES OF AMERICA; ALEJANDRO MAYORKAS, SECRETARY, U.S.
DEPARTMENT OF HOMELAND SECURITY; TROY MILLER, ACTING COMMISSIONER,
U.S. CUSTOMS AND BORDER PROTECTION; TRACY RENAUD, DEPUTY DIRECTOR OF
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; UR M. JADDOU, DIRECTOR OF
U.S. CITIZENSHIP AND IMMIGRATION SERVICES,
Defendants-Appellants,

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

STATE OF NEW JERSEY,
Intervenor-Appellant.

On Appeal from the United States District Court for the
Southern District of Texas, Dist. Ct. No. 1:18-CV-68

**BRIEF OF AMICI CURIAE CURRENT AND FORMER PROSECUTORS,
LAW ENFORCEMENT LEADERS, AND DEPARTMENT OF JUSTICE
OFFICIALS IN SUPPORT OF APPELLANTS**

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The undersigned counsel of record certifies that the following listed persons and entities have an interest in this amicus brief, as required by Fifth Circuit Rule 29.2. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

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Pursuant to Rules 26.1(a) and 29(a)(4)(A), amici curiae state that no party to this brief is a publicly held corporation, issues stock, or has a parent corporation.

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December 15, 2021

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INTEREST OF AMICI CURIAE¹

Amici are current and former prosecutors, law enforcement leaders, and Department of Justice officials 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.²

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; sound police work and successful prosecutorial efforts are undermined when undocumented immigrants and their communities fear interacting with law enforcement and the justice

¹ Pursuant to Fed. R. App. P. 29, 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.

² Amici also include the Law Enforcement Action Partnership, a nonprofit organization of police, prosecutors, judges, corrections officials, and other law enforcement officials advocating for criminal justice and drug policy reforms that will make our communities safer and more just.

system. Amici are aware that the Deferred Action for Childhood Arrivals (“DACA”) program has preserved local law enforcement resources and helped law enforcement officers and prosecutors keep their communities safe by reducing the fear of removal for these active members of their communities.

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 preserves local and state resources and improves public safety by promoting cooperation between law enforcement and the communities they serve.³ When immigrants are permitted to step out of the shadows, they are much more willing to cooperate with police and prosecutors. 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 being granted deferred action.

DACA further optimizes allocation of law enforcement resources to pressing public safety matters. DACA facilitates access to identification, such as federal employment authorization documents, which reduces burdens on police and improves officer safety. DACA also deprioritized federal enforcement actions against low-priority noncitizens, leading to a reduced number of requests for detainers to state and local agencies and reducing the costs that compliance imposes. DACA has also contributed to a reduction in property crime rates, allowing for law enforcement resources to be used for other priorities.

³ See *Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact of Public Safety and Honoring the Victims: Hearing Before the S. Comm. on the Judiciary*, 114th Cong. 2 (July 21, 2015), <https://perma.cc/SKM2-QKV9> (statement of Tom Manger, Chief, Montgomery Cty., Md., Police Dep't & President, Major Cities Chiefs Ass'n) [hereinafter Statement of Tom Manger].

DACA further promotes public safety by helping law enforcement protect a population uniquely vulnerable to exploitation and violent crime. With limited access to bank accounts (in substantial part because of their lack of identification), undocumented immigrants are frequent targets for robbery. They are also especially vulnerable to domestic abuse because they 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 identification, and building trust between law enforcement and immigrants with longstanding ties to the United States, DACA aids community policing, preserves law enforcement resources, and makes recipients less vulnerable to crime and exploitation.

ARGUMENT

I. DACA Fosters Effective Law Enforcement

A. “Community Policing” Is Essential to Effective Law Enforcement

Law enforcement officers know that doing their jobs well requires “the trust and respect of the communities [they] serve.” Statement of Tom Manger, *supra*, at 2. 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 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>; *see also* Pradine Saint-Fort et al., VERA Inst. of Justice & Office of Cmty. Oriented Policing Servs., U.S. Dep’t of Justice, *Engaging Police in Immigrant Populations* v (2012), <https://perma.cc/WJE5-KG27>.

Community policing requires police to interact with neighborhood residents in a manner that builds trust and encourages cooperation. Saint-Fort et al., *supra*, at v. 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. *See Sanctuary Jurisdictions: The Impact on Public Safety and Victims: Hearing Before the S. Comm. on the Judiciary*, 116th Cong. 4 (Oct. 22, 2019), <https://perma.cc/MTS9-WZYY> (statement of Andy Harvey, Former Chief of Police, Palestine, Tex., Police Dep’t) (“Particularly in a time of ramped-up immigration enforcement and increasingly troubling rhetoric surrounding immigration, it is increasingly challenging to law enforcement to win [community] trust.”); Police Exec. Rsch. Forum, *Community Policing in Immigrant Neighborhoods: Stories of*

Success 4 (2019), <https://perma.cc/A7R3-QHSH> (“Proponents of community policing know that when a segment of the population is afraid to report crime, the entire community is made less safe.”).

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 the Pew National Survey of Latinos, 73.5 percent of Latino noncitizens and 51.8 percent of all Latino adults in the United States worry about removal—of themselves, family members, or close friends. Asad L. Asad, *Latinos’ Deportation Fears by Citizenship and Legal Status, 2007 to 2018*, 117 PNAS 8836, 8837 (2020), <https://perma.cc/C4RT-74SV>.

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 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 immigrants. 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 study’s authors specifically noted that “the presence and application of local and federal immigration enforcement programs...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 U.S. 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 their acquaintances about their immigration status; 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 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, respondents were roughly 35 percent less likely “to trust ‘a great deal’ or ‘a lot’ that police officers and sheriffs would keep them and their families safe,” and roughly 30 percent less likely to “to trust ‘a great deal’ or ‘a lot’” that their confidentiality as witnesses

would be protected. Tom K. Wong et al., *How Interior Immigration Enforcement Affects Trust in Law Enforcement*, 19 *Perspective on Politics* 357, 364 (2021), <https://perma.cc/Q8US-Q8P5>.⁴ These studies (among others) highlight that fears of immigration enforcement reduce cooperation from not only undocumented community members, but also individuals with citizenship or lawful status, particularly in “mixed-status” households.

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 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

⁴ See also Tom K. Wong, *Sanctuary Cities Don’t ‘Breed Crime.’ They Encourage People to Report Crime.*, Wash. Post (Apr. 24, 2018), <https://perma.cc/EDW3-9SEQ> (in San Diego undocumented survey respondents said that if local law enforcement officials were working with ICE, 60 percent would be less likely to report a crime they witnessed, while 43 percent would be less likely to report being a crime victim).

they were in 2016 to make police reports, less likely to help police when 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 those 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.⁵ In Houston, rape reporting by members of the Latino community fell over 40 percent from the first quarter of 2016 to the same period in 2017. Michael Morris & Lauren Renee Sepulveda, *A New ICE Age*, Texas Dist. & Cnty. 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 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

⁵ 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> (survey of hundreds of police officers, victims’ advocates, and prosecutors across all 50 states found that undocumented immigrants are now more reluctant to call the police, press criminal charges and testify against assailants, and 82 percent of prosecutors said that domestic abuse cases have become harder to prosecute).

we’re going to deport them.” *Id.*; *see also NIWAP Report, supra*, at 99 (in 2016 and 2017, fear of removal was the principal reason that immigrant victims did not call police for help or file or follow through with court cases); Sarah Holder, *What the Fear Campaign Against Immigrants Is Doing*, Bloomberg CityLab (July 25, 2019), <https://perma.cc/ZNL2-A5EG> (“about one in six adults in surveyed immigrant families say that they or a family member avoided situations where they’d be asked about their citizenship status,” including reporting a crime).

Law enforcement officials across the country have echoed that sentiment. *See, e.g.*, Hannah Rappleye et al., *Immigration Crackdown Makes Women Afraid to Testify Against Abusers, Experts Warn*, NBC News (Sept. 22, 2018), <https://perma.cc/UB6S-RTE7> (“What we’ve found in Denver is people are not showing up because they’re afraid that they might get apprehended in the hallways.” (quoting Denver City Attorney Kristin Bronson)); *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> (courthouse arrests “deter[] people from making reports” (quoting Colorado 6th Judicial District Chief Judge Jeffery Wilson)); Christina Goldbaum, *When*

Paying a Traffic Ticket Can End in Deportation, N.Y. Times (June 30, 2019), <https://perma.cc/XS3J-D5MS> (“If [immigrants are] afraid to come forward out of fear of being swept up and deported, how many heinous crimes will go unreported?” (quoting Albany County Sheriff Craig D. Apple Sr.)); Chris Blue, *For Law Enforcement, a Permanent Solution on DACA Is Critical*, Law Enf’t Immigration Task Force Blog (Sept. 18, 2020), <https://perma.cc/CE5S-9N4W> (“DACA serves as a critical crime-fighting tool” because “[w]hen undocumented residents live in fear that interactions with local law enforcement officials could result in deportation, they are less likely to work with police or prosecutors,” which “hampers...investigation of individual crimes and creates fertile ground for criminal activity”).⁶

Immigrants’ fear of interacting with law enforcement and prosecutors because of potential removal consequences is not merely theoretical. In February 2017, an immigrant woman in Texas arrived at a courthouse seeking a protective order against her abusive boyfriend only to leave under arrest—likely due to a tip

⁶ Latino individuals are more likely to report crime when the risk of deportation or detention is reduced. Elisa Jácome, *The Effect of Immigration on Crime Reporting: Evidence from Dallas*, 128 J. Urb. Econ. (Mar. 2022), at 1, 2 (after Dallas Police Department implemented federal program designed to rebuild trust by directing ICE to only focus on detaining individuals convicted of serious crimes, the number of violent and property crimes reported by Latinos increased by four percent).

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>. In February 2018, an undocumented immigrant called 911 to report a trespasser at his home; within the hour, he was delivered by police into ICE custody. Samantha Schmidt, *An Immigrant Called 911 to Report a Crime. Police Took Him to ICE in Handcuffs.*, Wash. Post (Feb. 14, 2018), <https://perma.cc/8GXM-YHRA>. In April 2018, a Michigan mother of four was deported to Mexico after reporting her rape to the police—despite having helped convict her former partner by testifying against him in court. Isabela Dias, *She Helped Convict Her Rapist. ICE Deported Her Anyway.*, The Nation (Apr. 1, 2019) <https://perma.cc/F4VP-5DWU>. In 2020, ICE deported at least six women, and attempted to deport at least six more after they cooperated with a criminal investiga-

tion into a gynecologist who “performed overly aggressive or unnecessary gynecological surgeries on [ICE detainees] without their consent,” including hysterectomies. Molly O’Toole, *ICE Is Deporting Women at Irwin Amid Criminal Investigation into Georgia Doctor*, L.A. Times (Nov. 18, 2020), <https://www.latimes.com/politics/story/2020-11-18/ice-deporting-women-at-irwin-amid-criminal-investigation-into-georgia-doctor>.

The underreporting of crimes by recent immigrants is a problem for the entire criminal justice system. Robert C. Davis et al., *Access to Justice for Immigrants Who Are Victimized: The Perspectives of Police and Prosecutors*, 12 *Crim. Just. Pol’y Rev.* 183, 188 (2001). In 2017, 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 were forced to drop 30 domestic violence cases for similar reasons, Rappleye 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>. A recent survey of advocates working with immigrant survivors of domestic violence and sexual assault found 43 percent had worked with survivors who dropped civil

or criminal cases out of fear. *2017 Advocate and Legal Service Survey Regarding Immigrant Survivors*, Tahirih Just. Ctr. (2017), <https://perma.cc/3UNX-V2DC>. 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>. 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 response to these types of incidents, the chief justices of five state supreme courts 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), <https://perma.cc/9C8T-QVET>; Letter from Mary E. Fairhurst, Chief Justice of the Supreme Court of Washington, to John F. Kelly (Mar. 22, 2017), <https://perma.cc/6358-7Z3H>; Letter from Thomas A. Balmer, Chief Justice of the Oregon Supreme Court, to Jeff Sessions & John F. Kelly (Apr. 6, 2017),

<https://perma.cc/LH7Z-X3WZ>; Letter from Stuart Rabner, Chief Justice of the Supreme Court of New Jersey, to John F. Kelly (Apr. 19, 2017),

<https://perma.cc/M2QA-FJYD>; Letter from Chase T. Rogers, Chief Justice of the Connecticut Supreme Court, to Jeff Sessions & John F. Kelly (May 15, 2017),

<https://perma.cc/KMR9-FNK8>; *see also* News Advisory, Rhode Island Judiciary, Courts Must Remain Open and Accessible to All, Chief Justice Tells Lawyers, Judges (June 16, 2017), <https://perma.cc/68TB-N7WQ> (quoting Chief Justice Paul Suttell).

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*. 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).⁷

C. DACA Promotes Cooperation with Law Enforcement

Two years after DACA was implemented, two-thirds of those who received DACA relief reported being less afraid of law enforcement, and 59 percent said that they would report a crime 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>. In 2015, nearly eight in ten recipients of DACA relief reported that they were less afraid of removal. Zenén Jaimes Pérez, United We Dream, *A Portrait of Deferred Action for Childhood Arrivals Recipients: Challenges and Opportunities Three-Years Later* 23 (2015),

⁷ In April 2021, the Department of Homeland Security directed ICE and Customs and Border Protection to limit civil immigration enforcement near courthouses to instances involving (1) national security; (2) imminent risk of death, violence, or physical harm to any person; (3) hot pursuit of an individual who poses a threat to public safety; or (4) an imminent risk of destruction of evidence material to a criminal case. Press Release, U.S. Dep't of Homeland Sec., DHS Announces New Guidance to Limit ICE and CBP Civil Enforcement Actions In or Near Courthouse (Apr. 27, 2021), <https://perma.cc/7V7H-SL5D>.

<https://perma.cc/AGE7-X5UH>. Law enforcement officers particularly have recognized the critical role DACA plays in enhancing community safety. *See* Cassidy Arena, *Iowa Law Enforcement State Their Support for DACA*, Iowa Pub. Radio (Jul. 30, 2021), <https://perma.cc/6FDD-49HU> (Cedar Rapids Police Chief Wayne Jerman reiterating that “legal protections that DACA recipients receive make Cedar Rapids safer...and DACA helps reassure Dreamers that...they can contact the Cedar Rapids Police Department”).

As concern over the future of the DACA policy has mounted, these positive developments have diminished. A 2018 survey of 1,000 DACA recipients determined that “not having DACA would result in 35.9 percent of DACA recipients being less likely to report a crime.” Tom K. Wong et al., *Ending DACA Would Have Wide-Ranging Effects but Immigrant Youth Are Fired Up and Politically Engaged*, United We Dream (Aug. 23, 2018), <https://perma.cc/HVQ8-Q286>. In addition, “45 percent of respondents reported that they think about being detained in an immigration detention facility at least once a day; 55 percent reported that they think about being deported at least once a day; and 64 percent reported that they think about a family member being deported at least once a day.” Tom K. Wong et al., *Amid Legal and Political Uncertainty, DACA Remains More Important Than Ever*, Ctr. for Am. Progress (Aug. 15, 2018), <https://perma.cc/A65K-K5U2>.

Lessons learned from implementation of the Violence Against Women Act, Pub. L. No. 106-386, 114 Stat. 1491 (2000), are instructive. That Act 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>. More than 99 percent stated that they were willing to cooperate with the police, and 70 percent were 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 (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. *See id.*

II. DACA Preserves Local Law Enforcement Resources

DACA frees up local law enforcement resources by facilitating access to identification for DACA recipients; reducing the fiscal burden of cooperation between local and federal law enforcement as federal authorities deprioritize enforcement against DACA recipients; and contributing to a decrease in property crime rates which enables prioritization of serious and violent crimes.

A. DACA Increases Access to Identification

DACA encourages effective policing because it provides an easy method of identification for DACA recipients.⁸ 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. Rsch. Forum, *Voices from Across the Country: Local Law Enforcement Officials Discuss the Challenges of Immigration Enforcement* 15 (2012),

⁸ Most states do not issue driver's licenses or other identification to undocumented immigrants, making identification difficult.

<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> (“The mayor emphasized that the cards were developed with input from the New York City Police Department.... ‘They want every New Yorker on the street to have an ID card; it greatly improves the work of the NYPD.’”).

Even the simplest traffic stop can lead to an unnecessary waste of valuable law enforcement resources if an individual cannot be identified. Police Exec. Rsch. Forum, *Voices from Across the Country*, *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 Raleigh, N.C. Police Chief Harry Dolan). 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 of the Law Enforcement Engagement Initiative).

DACA recipients, like all individuals granted deferred action, are eligible to apply for a federal employment authorization document (“EAD”), which is a card issued by U.S. Citizenship and Immigration Services that includes the recipient’s

photograph. *See* 8 U.S.C. § 1324a(h)(3); 8 C.F.R. § 274a.12(c)(14).⁹ 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>. More than 90 percent of DACA recipients 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.

B. DACA Reduces the Costs of Cooperating with Federal Immigration Authorities

DACA also plays an important role in reducing the costs local law enforcement incur from cooperating with federal immigration authorities. Although total DHS apprehensions for immigration violations remained fairly consistent pre- and post-DACA, ICE administrative arrests—which usually occur through cooperation with federal, state, and local law enforcement agencies—drastically decreased after the implementation of DACA. *See* Mike Guo, DHS Off. of Immigr. Stat., *Immigration Enforcement Actions: 2019 2–4 & tbl.1* (Sept. 2020),

⁹ U.S. Citizenship & Immigration Servs., OMB No. 1615-0040, Instructions for I-765 Application for Employment Authorization, <https://perma.cc/JW66-XQCG> (last updated May 31, 2018).

<https://perma.cc/6VNG-2M97>; John Gramlich, *How Border Apprehensions, ICE Arrests and Deportations Have Changed Under Trump*, Pew Rsch. Ctr. (Mar. 2, 2020), <https://perma.cc/Q9Z3-JNJY> (ICE interior arrests decreased from 297,898 in 2009 to 110,104 in 2016); Alberto Ciancio, *The Impact of Immigration Policies on Local Enforcement, Crime and Policing Efficiency 50* (2017) (Ph.D dissertation, University of Pennsylvania), <https://perma.cc/AQK7-MZCC> (“[A] policy change for the deportation process in the United States that prioritized the deportation of dangerous criminals...precipitated a 70% fall in non-border removals between 2011 and 2015.”).

The reduction in interior federal immigration enforcement reduces the costs that state and local law enforcement incur through cooperation. ICE immigration detainees ask state and local law enforcement agencies to hold individuals in criminal custody for up to 48 hours past their scheduled release. *Immigration Detainers: An Overview*, Am. Immigr. Council (Mar. 21, 2017), <https://perma.cc/5PEZ-9L45>. Compliance with ICE detainers is voluntary but costly. *See, e.g.*, Alexandra Sirota et al., N.C. Just. Ctr., *Local Communities Face High Costs of Federal Immigration Enforcement 4–5* (Apr. 2019), <https://perma.cc/W64K-ZPQZ> (average daily cost of holding someone in detention for ICE in North Carolina is \$71.44 per day); Faith Burns & Laura Goren, The Commonwealth Inst., *Federal Responsibility, Local Costs: Immigration Enforcement in Virginia 3–4* (Sept. 2018)

<https://perma.cc/7MQ8-ANRH> (average daily cost of holding an individual is \$85.17 in Virginia). These costs are borne almost entirely by local governments and divert “much needed resources away from other safety initiatives.” Sirota, *supra*, at 1–2.

The federal government’s deprioritization of DACA recipients from immigration enforcement actions frees up valuable resources for use where they are most needed while simultaneously encouraging community engagement and protection.

C. Property-Crime Rates Decrease as DACA Approvals Increase

DACA also contributes to preservation of law enforcement resources by reducing crime rates. A recent study found that DACA implementation is associated with a reduction in property crime: An increase of one DACA application approval per 1,000 population resulted in a 1.6 percent decline in overall property-crime rates. Christian Gunadi, *Does Immigrant Legalization Affect Crime? Evidence from Deferred Action for Childhood Arrivals in the United States*, 178 J. Econ. Behav. & Org. 327, 328 (2020). These findings mirror historical and international evidence that legalizing the status of unauthorized immigrants reduces crime. A study of the 1986 Immigration Reform and Control Act found that crime decreased by two to six percent from a one percent increase in the population legalized, primarily driven by a drop in property crimes. Scott R. Baker, *Effects of*

Immigrant Legalization on Crime: The 1986 Immigration Reform and Control Act 2, 25 (Stan. L. & Econ. Olin Working Paper, Paper No. 412, 2014), <https://perma.cc/7UQ5-TMDY>. A recent study of immigrant populations in Italy found that obtaining legal status reduces the crime rate for immigrants by approximately 50 percent. Paolo Pinotti, *Clicking on Heaven's Door: The Effect of Immigrant Legalization on Crime*, 107 Am. Econ. Rev. 138, 140 (2017). Another study of Italian immigrant populations found that obtaining legal status reduced recidivism of previously incarcerated immigrants by 50 percent. Giovanni Mastrobuoni & Paolo Pinotti, *Legal Status and the Criminal Activity of Immigrants*, 7 Am. Econ. J.: Applied Econ. 175, 178 (2015).

In sum, DACA allows law enforcement to efficiently allocate limited resources toward investigating and prosecuting serious crimes by increasing DACA recipients' access to identification, reducing costs associated with federal immigration enforcement, and contributing to a fall in property crime rates.

III. DACA Helps Law Enforcement Protect Vulnerable Individuals from Crime And Exploitation

DACA yields another vital public safety benefit: protecting individuals who are particularly vulnerable to crime and thus attractive targets for criminals. Predators know that undocumented immigrants and their families are reluctant to report crimes for fear of removal. 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. Termed the “deportation threat dynamic,” 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, 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). Fewer than a quarter of these crimes were reported to police; 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 by 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/7GCV-V25L>. 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 often carry large amounts of cash, making them especially vulnerable to robbery, while the risk to the perpetrators is minimal because the victims are 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.” Fussell, *supra*, at 604–05; *see also* S. Poverty Law Ctr., *supra*, at 25; Khashu, *supra*, at 25. In a study of largely undocumented immigrants in New Orleans after Hurricane Katrina, the immigrants reported robbery and physical assault at more than ten times the rate experienced by the general population. Fussell, *supra*, at 604 & tbl.2, 605. In a particularly egregious case in Florida, an undocumented immigrant

was kidnapped, assaulted, robbed, and repeatedly threatened with death and deportation by a group of seven people who, according to police, targeted undocumented immigrants because they were less likely to report being a victim of a crime.

Wayne K. Roustan, *Armed Kidnapping Scheme Targets Undocumented Immigrants, Police Say*, S. Fla. Sun Sentinel (Feb. 8, 2019), <https://www.sun-sentinel.com/local/broward/davie/fl-ne-davie-armed-kidnapping-20190207-story.html>; see also Francesca D'Annunzio, *Suspects Wanted in Multiple Cases of Aggravated Robberies Targeting Undocumented Immigrants*, Plano Star Courier (Sept. 4, 2020), <https://perma.cc/F97Y-RRS5> (Plano police reporting that undocumented immigrants were targeted in aggravated robberies because they “carry large sums of cash (due to not being eligible to open a bank account in some cases), may not carry an ID, and are unlikely to report crimes to law enforcement due to fear of deportation”).

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., 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, 330 (2015) (citing several studies); Angelica S. Reina et al., *“He Said They’d Deport Me”*: Factors Influenc-

ing Domestic Violence Help-Seeking Practices Among Latina Immigrants, 29 *J. Interpersonal Violence* 593, 601 (2014); Shannon Dooling, *'I Was Afraid Of Him And Of Immigration,': Domestic Violence Survivors Take Chance Applying for Special Visa*, WBUR (Sept. 12, 2017), <https://perma.cc/3LNA-5WLL>.¹⁰ 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. Reina et al., *supra*, at 600. Another study identified immigration status 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 also vulnerable in the workplace. In a number of studies, between 40 and 80 percent of mostly undocumented immigrants reported being victims of wage theft. Fussell, *supra*, at 604 & tbl.2 (40 percent of respondents reported wage theft since arriving in New Orleans); *id.* (citing Nik Theo-

¹⁰ *See also NIWAP Report, supra*, at 103 (noting that 69 percent of law enforcement officers surveyed had observed a decrease in domestic violence reporting).

dore, 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 (2006) (wage theft rate of approximately 50 percent in New York)); S. Poverty Law Ctr., *supra*, at 6 (41 percent of those surveyed across the South and 80 percent surveyed in New Orleans had experienced wage theft). Even those who file a claim often settle for less or face workplace retaliation. Susan Ferriss & Joe Yerardi, *Wage Theft Hits Immigrants – Hard*, Ctr. for Pub. Integrity (Oct. 14, 2021), <https://perma.cc/ZH8K-68DD>. In 2017, an immigrant successfully obtained a check for unpaid wages, but was fired after refusing a supervisor's order that she return the money. *Id.*

Immigrants reported other types of worksite abuse as well. Fussell, *supra*, at 604 & tbl.2. In one study, 32 percent of respondents said that they had suffered on-the-job injuries—and most were later fired, not paid lost wages, or denied medical care by their employers. S. Poverty Law Ctr., *supra*, at 6; *see also* Lara Jirmanus, *Why Nearly Half My Patients Who Get Hurt on the Job Don't Report It*, WBUR (June 5, 2017) <https://perma.cc/459B-ZX9Z> (arrest of immigrants seeking workers' compensation “sends a chilling message to immigrant workers, suggesting that if they demand their rights to payment for work-related injuries, they risk deportation”). The “deportation threat dynamic” also fuels violence. 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.” S. Poverty Law Ctr., *supra*, at 7 (internal quotation marks omitted).

Unlike undocumented immigrants, DACA recipients are currently eligible to apply to receive work authorization. Many are working or pursuing higher educational opportunities. 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 policy 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 judgment of the district court should be reversed.

December 15, 2021

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I, Mary B. McCord, hereby certify that the foregoing Brief of Amici Curiae Current and Former Prosecutors, Law Enforcement Leaders, and Department of Justice Officials in Support of Appellants complies with type-volume limits because, excluding the parts of the document exempted by Rule 32(f) of the Federal Rules of Appellate Procedure, the brief contains 6,452 words, and is proportionately spaced using a roman style typeface of 14-point.

/s/ Mary B. McCord
Mary B. McCord

Dated: December 15, 2021

CERTIFICATE OF SERVICE

I, Mary B. McCord, hereby certify that on December 15, 2021, I electronically filed the foregoing Brief of Amici Curiae Current and Former Prosecutors, Law Enforcement Leaders, and Department of Justice Officials in Support of Appellants with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system, which will send notice of such filing to all registered CM/ECF users.

/s/ Mary B. McCord
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