



# Agenda

CITY CLERK'S OFFICE

DATE 1/30/15 TIME 9:36am

SERVED BY Terrie Rodriguez

RECEIVED BY Alejandra Seluja

Immigration Committee  
February 3, 2015  
500 Market Station, Suite 200  
Round House Conference Room  
4:00pm to 5:30pm

1. Roll Call
2. Approval of Agenda
3. Approval of Minutes – January 6, 2014
4. Announcements
5. Community Comments
6. New Business
  - a. Recommend to Mayor Gonzales to have City of Santa Fe sig-on to Amicus Brief
7. Old Business
  - a. Update on legislative actions – Alejandra Seluja
  - b. Update on DAPA actions – Marcela Diaz
8. Communications from Staff
9. Communications from Committee
10. Next Meeting and Adjourn

Persons with disabilities in need of accommodations, contact the City Clerk's office at 955-6520  
five (5) working days prior to meeting date.

**IMMIGRATION COMMITTEE  
INDEX  
FEBRUARY 3, 2015**

Cover Page		Page 0
Call to Order and Roll Call	The Chair convened the Immigration Committee meeting at 4:00 pm, Market Center, Santa Fe, New Mexico. A quorum was declared by roll call.	Page 1
Approval of Agenda	<i>Ms. Lopez moved to approve the Agenda as presented, second by Ms. Guerrero, motion carried by unanimous voice vote.</i>	Page 1
Approval of Minutes January 6, 2015	<i>Ms. Lopez moved to approve the minutes of January 6, 2015 as presented, second by Ms. Esquibel, motion carried by unanimous voice vote.</i>	Page 1
Announcements	Informational	Page 1
Community Comments	None	Page 2
New Business <ul style="list-style-type: none"> <li>Recommend to Mayor Gonzales to have City of Santa Fe sign on to Amicus Brief</li> </ul>	<i>Ms. Diaz moved to direct staff to issue a letter of support to sign on to the Amicus Brief and to do a resolution for DAPA and for staff to include information on the challenges, second by Ms. Guerrero, motion carried by unanimous voice vote.</i>  <i>Exhibit A - Attached</i>	Page 2
Old Business <ul style="list-style-type: none"> <li>a. Update on Legislative Actions</li> <li>b. Update on DAPA actions</li> </ul>	Informational	Page 3-4
Communications from Committee	Informational	Page
Next Meeting and Adjourn	Meeting was adjourned at 5:30 pm	Page 5
Signature Page		Page 5

Immigration Committee  
February 3, 2015  
500 Market Station, Suite 200  
Round House Conference Room  
4:00pm to 5:30pm

**MINUTES**

1. The Immigration Committee was called to order at 4:00 pm by the Chair, Alejandra Seluja. A quorum did exist and is reflected in roll call.

Roll Call

Present

Alejandra Seluja, Chair  
Maria Cristina Lopez  
Amparo Guerrero  
Marcela Diaz  
Juan Rios  
Cara Esquibel

Not Present

Jewel Cabeza de Baca  
Cecilia Tadfor

Others Present:

Julia Valdez, Santa Fe County  
Fran Lucero, Stenographer

2. Approval of Agenda

***Maria Cristina Lopez moved to approve the agenda as presented, second by Amparo Guerrero, motion carried by unanimous voice vote.***

3. Approval of Minutes – January 6, 2015

***Maria Cristina Lopez moved to approve the minutes of January 6, 2015 as presented, second by Cara Esquibel, motion carried by unanimous voice vote.***

4. Announcements

The Driver's License Repeal will be heard on Friday at the NM Legislature, Judiciary Committee, HB7 and HB 32. The Chair asked that information on date, time and location of the Judiciary Committee meeting be sent to

Chief Eric Garcia, Mayor Gonzales and Officer Luis Carlos as they have committed to attend meetings related to the driver's license repeal.

5. Community Comments  
None

6. New Business

- a. Recommend to Mayor Gonzales to have City of Santa Fe sign on to Amicus Brief.

Ms. Diaz explained the Amicus Brief. (Exhibit A) 12 Attorney General's throughout the country have issued a brief regarding the support of DAPA, 26 Governors not including our own are suing to stop the DAPA program from happening. Mayor Gonzales attended a meeting with Mayor Deblasio from New York and they pledge their support for DAPA.

Ms. Diaz said that they are expecting DAPA to be implemented in May. Everyone is being encouraged to convey that this is legally sound. "It is important that we continue to prepare and be ready."

Ms. Diaz explained that the Amicus Brief is for the Mayor's signature, not the governing body of the city of Santa Fe.

Ms. Rodriguez said that the Mayor and Council will go in to Executive Committee at the next City Council meeting to discuss the Amicus Brief and decided to support or not support.

Ms. Diaz recommends that the Immigration Committee take the position to encourage the Mayor and the Council to support DAPA and DACA.

***Ms. Diaz moved to direct staff to issue a letter of support to sign on to the Amicus Brief and to do a resolution for DAPA and for staff to include information on the challenges, second by Ms. Guerrero, motion carried by unanimous voice vote.***

7. Old Business

- a. Update on Legislative Actions – Alejandra Seluja

The Chair informed the committee members that HB31 & HB 79 were heard in the Public Safety and Civil Affairs Committee. It was noted that the fiscal impact report that NM Tax and Rev provided to the committee was later told that the document had flaws. Both bills passed this first committee and they will be heard next by the Judiciary Committee.

Over 1,000 people attended Immigrant Day at the legislature. The Chair reiterated the importance for the Immigration Committee to be visible at the legislature and support the bills we are monitoring. Ms. Diaz made reference to our kids presenting (plastic keys) to the legislators with the message, "why are you taking drivers licenses away from my parents." This was a touching moment for many members of the legislature to see children pleading before them.

Mr. Rios reported on the students who were reading their essays at the Legislation on Anti-racism. A student of Ms. Esquibel's gave an outstanding presentation. Ms. Diaz said if the pictures and essay could be sent to her she will post this information on their website and you tube. (All permissions will be acquired.)

Equality New Mexico Lobby Day is on February 16<sup>th</sup>.

The Chair announced that they will invite Equality New Mexico to a future meeting of the Immigration Committee to discuss same sex spouses amongst the immigrants.

b. Update on DAPA actions – Marcela Diaz

Ms. Diaz reported on her meeting with Kate Nobel from the City Economic Development Division, Ms. Sochil Campos and Randy Randall from Tourism. They are on board to help. Ms. Nobel made a recommendation that possibly at one of the Mayor's events they could arrange as a fund raising event. Ms. Diaz reiterated that the Immigration Committee should continue to pursue a meeting with the Mayor and Santa Fe County Commission should also be invited to the next Stakeholders meeting. February 27<sup>th</sup> is the projected meeting date with the Santa Fe Community Foundation.

Ms. Lopez said that she did not feel the topic of discussion was not clearly defined at the first meeting. The goal and request was to discuss if there was any left over money in the city available to assist DAPA efforts.

Ms. Diaz said that the Immigration Committee is interested in assuring that the stakeholders at this meeting understand the mission. Ms. Campos had presented the question to the Immigration Committee members at the first Stakeholders meeting if they knew the funding schedule.

Ms. Diaz asked Ms. Rodriguez if there is money that is not spent before the end of the fiscal year; is this creative funding that would be available for projects such as this one mentioned above.

Ms. Diaz noted that recently there were close to 1,000 individuals attended a DAPA presentation at the Guadalupe location.

Ms. Rodriguez said that what is important is the collaborative piece. The money that Ms. Campos addressed is money that has already been allocated. Ms. Rodriguez also reiterated that the request to the Mayor was going to be for money that was outside of the cycle.

The Chair asked staff to set up another meeting and to have Ms. Rodriguez and Ms. Valdez attend this meeting. Ms. Valdez suggested that the Chair invite Commissioner Liz Stefancis and if she could not attend she could send the correct representative to the meeting.

The Chair also reiterated that if the invitation is sent to Santa Fe County Commissioner Stefanics that the City Councilors should also be invited. Ms. Diaz said that they all should be invited to the Stakeholders meeting on February 27<sup>th</sup>.

Santa Fe Public schools issued a resolution in support of DAPA and driver's licenses. (Exhibit B-1 and B-2)

The Chair reiterated that the message has to be strengthened for everyone to be ready to file.

8. Communications from Staff  
None

9. Communications from Committee  
Police Chief from Espanola has committed to being present at legislative hearings in support of drivers licenses.

On Sunday the Folk Art Museum is having a National Dialogue on the current exhibit, discussing Immigration in the Gallery of Conscience. Ms. Esquibel will send this information to the committee and staff.

Mr. Rios would like to invite the WICK Program Coordinator and Ventanilla Representative to an Immigration Committee meeting after the legislative session. Mr. Rios said that he can also speak on behalf of immigration subjects off of work schedule.

Ms. Valdez stated that resolutions are not being issued by Santa Fe County Commissioners during the legislature. They will be doing motions to take a stand.

Ms. Diaz asked if they could get an expanded DAPA resolution from Santa Fe County. Ms. Diaz will send language to Ms. Valdez for coordination

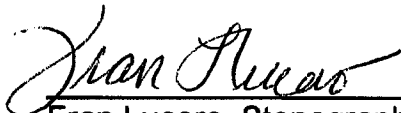
10. Next Meeting and Adjourn

Next Meeting: March 3, 2015

There being no further business to come before the Immigration Committee the meeting was adjourned at 5:30 pm.

Signature:

  
Alejandra Seluja, Chair

  
Fran Lucero, Stenographer

## TABLE OF AUTHORITIES

### Cases

<i>Apache Corp. v. Chevedden</i> 696 F. Supp. 2d 723 (S.D. Tex. 2010) .....	1
<i>Arizona Dream Act Coal. v. Brewer</i> 757 F.3d 1053 (9th Cir. 2014) .....	10
<i>Arizona v. United States</i> 132 S. Ct. 2492 (2012) .....	11, 13
<i>Crane v. Napolitano</i> 920 F. Supp. 2d 724 (N.D. Texas 2013) .....	8, 9
<i>Heckler v. Chaney</i> 470 U.S. 821, 105 S. Ct. 1649, 84 L. Ed. 2d 714 (1985) .....	13, 14
<i>In re Guardianship of D.S.</i> 178 Wash. App. 681, 317 P.3d 489 (2013) .....	7
<i>Jin v. Ministry of State Sec.</i> 557 F. Supp. 2d 131 (D. D.C. 2008) .....	1
<i>Maples v. Thomas</i> No. 5:03-cv-2399-SLB-MHH, 2013 WL 5350669 (N.D. Ala. Sept. 23, 2013) .....	2
<i>Sierra Club v. Fed. Emergency Mgmt. Agency</i> No. H-07-0608, 2007 WL 3472851 (S.D. Tex. Nov. 14, 2007) .....	1
<i>Texas v. United States</i> 106 F.3d 661 (5th Cir. 1997) .....	7, 10
<i>United States ex rel. Knauff v. Shaughnessy</i> 338 U.S. 537, 70 S. Ct. 309, 94 L. Ed. 317 (1950) .....	13
<i>United States ex rel. Thompson v. Columbia/HCA Healthcare Corp.</i> 20 F. Supp. 2d 1017 (S.D. Tex. 1998) .....	1
<i>United States v. Bader</i> No. 07-cr-00338-MSK, 2009 WL 2219258 (D. Colo. July 23, 2009) .....	1
<i>United States v. Louisiana</i> 751 F. Supp. 608 (E.D. La. 1990) .....	1, 2



<i>Whitney Nat'l Bank v. Karam</i> 306 F. Supp. 2d 678 (S.D. Tex. 2004) .....	1
<i>Winter v. Natural Res. Def. Council, Inc.</i> 555 U.S. 7, 129 S. Ct. 365, 172 L. Ed. 2d 249 (2008) .....	4, 11

## Statutes

8 U.S.C. § 1621 .....	10
Pub. L. No. 99-603, 100 Stat. 3359 (Immigration Reform and Control Act of 1986) .....	3, 5

## Other Authorities

American Immigration Council (Oct. 2014), <i>available at</i> <a href="http://www.immigrationpolicy.org/sites/default/files/docs/executive_grants_of_temporary_immigration_relief_1956-present_final_4.pdf">http://www.immigrationpolicy.org/sites/default/files/docs/executive_grants_of_temporary_immigration_relief_1956-present_final_4.pdf</a> .....	3
American Immigration Council, Roberto Gonzales & Angie Bautista-Chavez, <i>Two Years and Counting: Assessing the Growing Power of DACA</i> (June 16, 2014), <i>available at</i> <a href="http://www.immigrationpolicy.org/special-reports/two-years-and-counting-assessing-growing-power-daca">http://www.immigrationpolicy.org/special-reports/two-years-and-counting-assessing-growing-power-daca</a> .....	5, 6, 9
Angela S. Garcia & David G. Keyes, <i>Life as an Undocumented Immigrant: How Restrictive Local Immigration Policies Affect Daily Life</i> (Mar. 26, 2012), <i>available at</i> <a href="https://www.americanprogress.org/issues/immigration/report/2012/03/26/11210/life-as-an-undocumented-immigrant/">https://www.americanprogress.org/issues/immigration/report/2012/03/26/11210/life-as-an-undocumented-immigrant/</a> .....	10
Cato Inst., Alex Nowrasteh, <i>DACA Did Not Cause the Surge in Unaccompanied Children</i> (July 29, 2014), <i>available at</i> <a href="http://www.cato.org/blog/daca-did-not-cause-surge-unaccompanied-children">http://www.cato.org/blog/daca-did-not-cause-surge-unaccompanied-children</a> .....	8
Center for American Progress, <i>Executive Action On Immigration Will Benefit Washington's Economy</i> , <i>available at</i> <a href="http://www.scribd.com/doc/247296801/Economic-Benefits-of-Executive-Action-in-Washington">http://www.scribd.com/doc/247296801/Economic-Benefits-of-Executive-Action-in-Washington</a> .....	6

Center for American Progress, <i>Topline Fiscal Impact of Executive Action Numbers for 28 States,</i> available at <a href="http://www.scribd.com/doc/248189539/Topline-Fiscal-Impact-of-Executive-Action-Numbers-for-28-States">http://www.scribd.com/doc/248189539/Topline-Fiscal-Impact-of-Executive-Action-Numbers-for-28-States</a> .....	6
Dr. Raul Hinojosa-Ojeda, <i>From the Shadows to the Mainstream: Estimating the Economic Impact of Presidential Administrative Action and Comprehensive Immigration Reform</i> 17 (N. Am. Integration & Dev. Ctr., UCLA, Nov. 20, 2014), available at <a href="http://www.naid.ucla.edu/uploads/4/2/1/9/4219226/hinojosa_-_estimating_the_economic_impact_of_presidential_administrative_action_and_comprehensive_immigration_reform_-_ucla_naid_center.pdf">http://www.naid.ucla.edu/uploads/4/2/1/9/4219226/hinojosa_-_estimating_the_economic_impact_of_presidential_administrative_action_and_comprehensive_immigration_reform_-_ucla_naid_center.pdf</a> .....	5, 6
<a href="http://www.dhs.gov/immigration-action">http://www.dhs.gov/immigration-action</a> (Fixing Our Broken Immigration System) .....	9
<a href="http://www.uscis.gov/immigrationaction">http://www.uscis.gov/immigrationaction</a> (Executive Actions on Immigration).....	3, 9
<a href="https://naws.jbsinternational.com/3/3status.php">https://naws.jbsinternational.com/3/3status.php</a> (graph) .....	12
Memorandum from Gene McNary, INS Commissioner, to Regional Commissioners (Feb. 2, 1990), available at <a href="http://www.factcheck.org/UploadedFiles/2014/11/McNary-memo.pdf">http://www.factcheck.org/UploadedFiles/2014/11/McNary-memo.pdf</a> .....	3
Memorandum from Jeh Charles Johnson, Secretary of Homeland Security, to Thomas S. Winkowski, Acting Director of U.S. Immigration and Customs Enforcement, et al. (Nov. 20, 2014), available at <a href="http://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf">http://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf</a> .....	3
Memorandum from Paul W. Virtue, Acting Executive Associate INS Commissioner, to Regional Directors et al. (May 6, 1997), available at <a href="http://www.asistahelp.org/documents/resources/Virtue_Memo_97pdf_53DC84D782445.pdf">http://www.asistahelp.org/documents/resources/Virtue_Memo_97pdf_53DC84D782445.pdf</a> .....	3
Migration Policy Inst., Jeanne Batalova, Sarah Hooker & Randy Cappys, <i>DACA at the Two-Year Mark: A Nat'l and State Profile of Youth Eligible and Applying for Deferred Action</i> (Aug. 2014), available at <a href="http://www.migrationpolicy.org/research/daca-two-year-mark-national-and-state-profile-youth-eligible-and-applying-deferred-action">http://www.migrationpolicy.org/research/daca-two-year-mark-national-and-state-profile-youth-eligible-and-applying-deferred-action</a> .....	5
Migration Policy Inst., Marc R. Rosenblum & Kristen McCabe, <i>Deportation and Discretion: Reviewing the Record and Options for Change</i> (Oct. 2014), available at <a href="http://www.migrationpolicy.org/research/deportation-and-discretion-reviewing-record-and-options-change">http://www.migrationpolicy.org/research/deportation-and-discretion-reviewing-record-and-options-change</a> .....	8

Migration Policy Inst., <i>National and State Estimates of Populations Eligible for Anticipated Deferred Action and DACA Programs</i> (Nov. 2014) (Excel spreadsheet) available at <a href="http://www.migrationpolicy.org/sites/default/files/datahub/US-State-Estimates-unauthorized-populations-executive-action.xlsx">http://www.migrationpolicy.org/sites/default/files/datahub/US-State-Estimates-unauthorized-populations-executive-action.xlsx</a> .....	6
Pew Research Ctr., Jeffrey S. Passel & D’Vera Cohn, <i>State Unauthorized Immigrant Populations</i> (Nov. 18, 2014), available at <a href="http://www.pewhispanic.org/2014/11/18/chapter-1-state-unauthorized-immigrant-populations/#unauthorized-immigrant-population-share">http://www.pewhispanic.org/2014/11/18/chapter-1-state-unauthorized-immigrant-populations/#unauthorized-immigrant-population-share</a> .....	9
Pew Research Ctr., Jeffrey S. Passel, et al., <i>As Growth Stalls, Unauthorized Immigrant Population Becomes More Settled</i> 4 (Sept. 3, 2014), available at <a href="http://www.pewhispanic.org/2014/09/03/as-growth-stalls-unauthorized-immigrant-population-becomes-more-settled/">http://www.pewhispanic.org/2014/09/03/as-growth-stalls-unauthorized-immigrant-population-becomes-more-settled/</a> .....	8, 12
Pew Research, Jeffrey S. Passel & D’Vera Cohn, <i>A Portrait of Unauthorized Immigrants in the United States</i> (Apr. 14, 2009), available at <a href="http://www.pewhispanic.org/2009/04/14/a-portrait-of-unauthorized-immigrants-in-the-united-states/">http://www.pewhispanic.org/2009/04/14/a-portrait-of-unauthorized-immigrants-in-the-united-states/</a> .....	12

## APPENDIX

The appendix is listed in the order the authorities are used, with an indication as to which footnote the authority first appears in:

Note 1: <i>United States v. Bader</i> , No. 07-cr-00338-MSK, 2009 WL 2219258 (D. Colo. July 23, 2009).....	A-1
Note 1: <i>Sierra Club v. Fed. Emergency Mgmt. Agency</i> , No. H-07-0608, 2007 WL 3472851 (S.D. Tex. Nov. 14, 2007).....	A-14
Note 4: <i>Maples v. Thomas</i> , No. 5:03-cv-2399-SLB-MHH, 2013 WL 5350669, *3 (N.D. Ala. Sept. 23, 2013) .....	A-18
Note 6: <a href="http://www.uscis.gov/immigrationaction">http://www.uscis.gov/immigrationaction</a> (Executive Actions on Immigration) .....	A-22
Note 7: Memorandum from Jeh Charles Johnson, Secretary of Homeland Security, to Thomas S. Winkowski, Acting Director of U.S. Immigration and Customs Enforcement, et al. (Nov. 20, 2014), available at <a href="http://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf">http://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf</a> .....	A-27

- Note 8: Memorandum from Gene McNary, INS Commissioner, to Regional Commissioners (Feb. 2, 1990), available at <http://www.factcheck.org/UploadedFiles/2014/11/McNary-memo.pdf> (Re: *Family Fairness: Guidelines for Voluntary Departure under 8 CFR 242.5 for the Ineligible Spouses and Children of Legalized Aliens*)..... A-30
- Note 9: American Immigration Council (Oct. 2014), available at [http://www.immigrationpolicy.org/sites/default/files/docs/executive\\_grants\\_of\\_temporary\\_immigration\\_relief\\_1956-present\\_final\\_4.pdf](http://www.immigrationpolicy.org/sites/default/files/docs/executive_grants_of_temporary_immigration_relief_1956-present_final_4.pdf) (*Executive Grants of Temporary Immigration Relief, 1956-Present*) ..... A-32
- Note 10: Memorandum from Paul W. Virtue, Acting Executive Associate INS Commissioner, to Regional Directors et al. (May 6, 1997), available at [http://www.asistahelp.org/documents/resources/Virtue\\_Memo\\_97pdf\\_53DC84D782445.pdf](http://www.asistahelp.org/documents/resources/Virtue_Memo_97pdf_53DC84D782445.pdf) (Re: *Supplemental Guidance on Battered Alien Self-Petitioning Process and Related Issues*) ..... A-42
- Note 14: Migration Policy Inst., Jeanne Batalova, Sarah Hooker & Randy Cappys, *DACA at the Two-Year Mark: A Nat'l and State Profile of Youth Eligible and Applying for Deferred Action* (Aug. 2014), available at <http://www.migrationpolicy.org/research/daca-two-year-mark-national-and-state-profile-youth-eligible-and-applying-deferred-action>..... A-52
- Note 15: American Immigration Council, Roberto Gonzales & Angie Bautista-Chavez, *Two Years and Counting: Assessing the Growing Power of DACA* (June 16, 2014), available at <http://www.immigrationpolicy.org/special-reports/two-years-and-counting-assessing-growing-power-daca>..... A-55
- Note 16: Dr. Raul Hinojosa-Ojeda, *From the Shadows to the Mainstream: Estimating the Economic Impact of Presidential Administrative Action and Comprehensive Immigration Reform* 17 (N. Am. Integration & Dev. Ctr., UCLA, Nov. 20, 2014), available at [http://www.naid.ucla.edu/uploads/4/2/1/9/4219226/hinojosa\\_-\\_estimating\\_the\\_economic\\_impact\\_of\\_presidential\\_administrative\\_action\\_and\\_comprehensive\\_immigration\\_reform\\_-\\_ucla\\_naid\\_center.pdf](http://www.naid.ucla.edu/uploads/4/2/1/9/4219226/hinojosa_-_estimating_the_economic_impact_of_presidential_administrative_action_and_comprehensive_immigration_reform_-_ucla_naid_center.pdf) (pages 1-11 of a 31-page document)..... A-64
- Note 19: Migration Policy Inst., *National and State Estimates of Populations Eligible for Anticipated Deferred Action and DACA Programs* (Nov. 2014) (Excel spreadsheet), available at <http://www.migrationpolicy.org/sites/default/files/datahub/US-State-Estimates-unauthorized-populations-executive-action.xlsx> ..... A-75

- Note 20: Center for American Progress, *Executive Action On Immigration Will Benefit Washington's Economy*, available at <http://www.scribd.com/doc/247296801/Economic-Benefits-of-Executive-Action-in-Washington>..... A-79
- Note 21: Center for American Progress, *Topline Fiscal Impact of Executive Action Numbers for 28 States (Executive Action on Immigration Will Benefit State Economies)*, available at <http://www.scribd.com/doc/248189539/Topline-Fiscal-Impact-of-Executive-Action-Numbers-for-28-States> ..... A-81
- Note 24: *In re Guardianship of D.S.*, 178 Wash. App. 681, 317 P.3d 489 (2013)..... A-85
- Note 26: Pew Research Ctr., Jeffrey S. Passel, et al., *As Growth Stalls, Unauthorized Immigrant Population Becomes More Settled* (Sept. 3, 2014), available at <http://www.pewhispanic.org/2014/09/03/as-growth-stalls-unauthorized-immigrant-population-becomes-more-settled/> (in relevant part)..... A-90
- Note 27: Cato Inst., Alex Nowrasteh, *DACA Did Not Cause the Surge in Unaccompanied Children* (July 29, 2014), available at <http://www.cato.org/blog/daca-did-not-cause-surge-unaccompanied-children> ..... A-93
- Note 28: Migration Policy Inst., Marc R. Rosenblum & Kristen McCabe, *Deportation and Discretion: Reviewing the Record and Options for Change* (Oct. 2014), available at <http://www.migrationpolicy.org/research/deportation-and-discretion-reviewing-record-and-options-change> ..... A-96
- Note 30: Pew Research Ctr., Jeffrey S. Passel & D'Vera Cohn, *State Unauthorized Immigrant Populations* (Nov. 18, 2014), available at <http://www.pewhispanic.org/2014/11/18/chapter-1-state-unauthorized-immigrant-populations/#unauthorized-immigrant-population-share> (in relevant part)..... A-98
- Note 32: same as Note 6 (see A-22)
- Note 33: <http://www.dhs.gov/immigration-action> (*Fixing Our Broken Immigration System*) ..... A-100
- Note 35: Angela S. Garcia & David G. Keyes, *Life as an Undocumented Immigrant: How Restrictive Local Immigration Policies Affect Daily Life* (Mar. 26, 2012), available at <https://www.americanprogress.org/issues/immigration/report/2012/03/26/11210/life-as-an-undocumented-immigrant/> (in relevant part)..... A-102

- Note 42: Pew Research, Jeffrey S. Passel & D’Vera Cohn, *A Portrait of Unauthorized Immigrants in the United States* (Apr. 14, 2009), available at <http://www.pewhispanic.org/2009/04/14/a-portrait-of-unauthorized-immigrants-in-the-united-states/> (in Relevant part) ..... A-105
- Note 43: <https://naws.jbsinternational.com/3/3status.php> (graph from the Nat’l Agric. Workers Survey, Dep’t of Labor, Emp’t & Training Admin.) ..... A-107
- Note 44: same as Note 26 (see A-90)

## INTRODUCTION

Unhappy with the federal government's recent immigration directives, Plaintiffs ask this Court to step in. They claim that the directives exceed the President's legal authority, will irreparably harm states,<sup>1</sup> and that the equities and public interest weigh in their favor. None of these claims is true. In particular, Plaintiffs' speculative allegation that the directives will harm states is both unsupported and inaccurate. The truth is that the directives will substantially benefit states, will further the public interest, and are well within the President's broad authority to enforce immigration law. There is thus no legal basis for issuing a preliminary injunction. The amici States respectfully ask that the Court grant leave to file this brief and deny Plaintiffs' motion for preliminary injunction.

## MOTION FOR LEAVE TO FILE AMICUS BRIEF

The States of Washington, California, Connecticut, Hawaii, Illinois, Iowa, Maryland, Massachusetts, New Mexico, New York, Oregon, and Vermont, and the District of Columbia (the moving States) respectfully move, pursuant to the Court's inherent authority, for leave to file a brief as amicus curiae.

Whether to permit amicus participation lies within the Court's inherent authority.<sup>1</sup> "Generally, courts have exercised great liberality in permitting an amicus curiae to file a brief in a pending case," as evidenced by this Court's historic practice of permitting amici participation.<sup>2</sup> There are no prerequisites to qualify for amicus status; rather, one seeking to appear as amicus "must merely make a showing that his participation is useful to or otherwise desirable by the

---

<sup>1</sup> See, e.g., *United States v. Bader*, No. 07-cr-00338-MSK, 2009 WL 2219258 (D. Colo. July 23, 2009); *Jin v. Ministry of State Sec.*, 557 F. Supp. 2d 131, 136 (D. D.C. 2008); *Sierra Club v. Fed. Emergency Mgmt. Agency*, No. H-07-0608, 2007 WL 3472851, at \*3 (S.D. Tex. Nov. 14, 2007).

<sup>2</sup> *United States v. Louisiana*, 751 F. Supp. 608, 620 (E.D. La. 1990); see, e.g., *Apache Corp. v. Chevedden*, 696 F. Supp. 2d 723 (S.D. Tex. 2010); *Whitney Nat'l Bank v. Karam*, 306 F. Supp. 2d 678 (S.D. Tex. 2004); *United States ex rel. Thompson v. Columbia/HCA Healthcare Corp.*, 20 F. Supp. 2d 1017 (S.D. Tex. 1998).

court.”<sup>3</sup> An amicus brief may be of considerable help if it “brings to the attention of the Court relevant matter not already brought to its attention by the parties[.]”<sup>4</sup>

Applying these standards, the Court should accept this brief. The moving States are well-positioned to file an amicus brief because they have direct experience with and helpful evidence to add as to the impacts of immigration and federal immigration enforcement. Unfortunately, the Plaintiffs in this case have painted a distorted picture of the impacts of the federal government’s recent immigration directives. In reality, those directives will substantially benefit states—not harm them. The proposed amicus brief will rebut Plaintiffs’ speculative assertions of harm, providing specific information that will aid the Court in determining whether Plaintiffs have met their burden of persuasion on each element of the preliminary injunction standard.<sup>5</sup>

Counsel for amici has contacted the parties concerning the filing of the amicus brief. Neither Plaintiffs nor Defendants object to the filing of this amicus brief.

### **FACTUAL BACKGROUND**

On November 20, 2014, the Department of Homeland Security released a series of directives announcing a shift in the focus of removal of undocumented immigrants. The directives expand the 2012 Deferred Action for Childhood Arrivals Program for persons who entered the United States as children and have been present in the United States since January 1, 2010, and create a new deferred immigration action program for undocumented parents of U.S. citizens and parents of lawful permanent residents who have been in the United States since January 1, 2010. To qualify, undocumented immigrants must come forward to register, submit biometric data, pass background checks, pay fees, and show that their child was born before the

---

<sup>3</sup> *Louisiana*, 751 F. Supp. at 620.

<sup>4</sup> *Maples v. Thomas*, No. 5:03-cv-2399-SLB-MHH, 2013 WL 5350669, \*3 (N.D. Ala. Sept. 23, 2013).

<sup>5</sup> *Id.* at \*2-3.



deferral was announced. Up to 4.4 million people are expected to be eligible for these programs. Individuals who qualify for a temporary deferral will not obtain authority to remain in the United States permanently. Rather, they will be authorized to work for three years, subject to renewal, if they comply with all laws and pay their taxes.<sup>6</sup> The deferred immigration action will be coupled with focusing enforcement efforts on deportation of persons posing the highest threat to national security and public safety—including gang members, felons, and other serious criminals.<sup>7</sup>

The recent directives are consistent with a long pattern of presidential exercises of enforcement discretion within the bounds of immigration law to protect families and defer deportation. For example, following passage of the Immigration Reform and Control Act of 1986, President Reagan and President George H.W. Bush deferred deportations for family members of immigrants who were in the process of obtaining legal status.<sup>8</sup> These deferrals impacted over 40% of undocumented immigrants.<sup>9</sup> President Clinton similarly deferred action for immigrant women and children who have been abused by a U.S. citizen or legal permanent resident.<sup>10</sup>

---

<sup>6</sup> <http://www.uscis.gov/immigrationaction> (Executive Actions on Immigration).

<sup>7</sup> Memorandum from Jeh Charles Johnson, Secretary of Homeland Security, to Thomas S. Winkowski, Acting Director of U.S. Immigration and Customs Enforcement, et al. (Nov. 20, 2014), *available at* [http://www.dhs.gov/sites/default/files/publications/14\\_1120\\_memo\\_secure\\_communities.pdf](http://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf).

<sup>8</sup> Pub. L. No. 99-603, 100 Stat. 3359; Memorandum from Gene McNary, INS Commissioner, to Regional Commissioners (Feb. 2, 1990), *available at* <http://www.factcheck.org/UploadedFiles/2014/11/McNary-memo.pdf> (*Re: Family Fairness: Guidelines for Voluntary Departure under 8 CFR 242.5 for the Ineligible Spouses and Children of Legalized Aliens*).

<sup>9</sup> American Immigration Council (Oct. 2014), *available at* [http://www.immigrationpolicy.org/sites/default/files/docs/executive\\_grants\\_of\\_temporary\\_immigration\\_relief\\_1956-present\\_final\\_4.pdf](http://www.immigrationpolicy.org/sites/default/files/docs/executive_grants_of_temporary_immigration_relief_1956-present_final_4.pdf) (*Executive Grants of Temporary Immigration Relief, 1956-Present*).

<sup>10</sup> Memorandum from Paul W. Virtue, Acting Executive Associate INS Commissioner, to Regional Directors et al. (May 6, 1997), *available at* [http://www.asistahelp.org/documents/resources/Virtue\\_Memo\\_97pdf\\_53DC84D782445.pdf](http://www.asistahelp.org/documents/resources/Virtue_Memo_97pdf_53DC84D782445.pdf) (*Re: Supplemental Guidance on Battered Alien Self-Petitioning Process and Related Issues*).

## ARGUMENT

To obtain a preliminary injunction, a plaintiff must establish a likelihood of irreparable harm in the absence of preliminary relief, likelihood of success on the merits, that the balance of equities tips in his or her favor, and that an injunction is in the public interest.<sup>11</sup>

Plaintiffs are unable to satisfy any of these elements. Contrary to Plaintiffs' speculation, the data show that allowing persons who are already in the country to work legally benefits, rather than harms, the states. The equities and public interest also support this approach. Moreover, Plaintiffs cannot succeed on the merits given the courts' consistent recognition of the executive branch's broad discretion to make decisions regarding immigration priorities.

### **A. Plaintiffs Have Shown No Irreparable Injury Because Deferred Immigration Action Will Benefit States, Not Cause Harm**

To obtain a preliminary injunction, Plaintiffs must "demonstrate that irreparable injury is *likely* in the absence of an injunction."<sup>12</sup> Awarding a preliminary injunction "based only on a possibility of irreparable harm is inconsistent" with the Supreme Court's "characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief."<sup>13</sup>

Here, the only harm Plaintiffs assert from the immigration directives is speculative and unsupported. And the data show that allowing immigrants to work legally substantially benefits states. Plaintiffs are thus unable to show irreparable harm.

---

<sup>11</sup> *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20, 129 S. Ct. 365, 172 L. Ed. 2d 249 (2008).

<sup>12</sup> *Id.* at 22.

<sup>13</sup> *Id.*

## **1. Allowing Immigrants to Work Legally Provides Economic and Social Benefits to the States**

Although Plaintiffs speculate that the immigration directives will cause them “drastic injuries,” their dire predictions directly conflict with available data. Programs deferring immigration action are not new. Past experience demonstrates that suspending deportation and providing work authorization benefits families and state economies by authorizing work, increasing earnings, and growing the tax base.

The most recent example of the benefits provided by allowing immigrants to work legally is the 2012 Deferred Action for Childhood Arrivals Program (DACA). DACA offered temporary relief to more than 2.1 million undocumented immigrants who came to the United States as children.<sup>14</sup> DACA participation resulted in almost 60% of respondents obtaining new jobs,<sup>15</sup> and surveys of DACA beneficiaries found that wages increased by over 240%.<sup>16</sup>

The statistics regarding DACA are consistent with findings on the economic impact of the Immigration Reform and Control Act of 1986 (IRCA), which provided legal status to 3 million undocumented immigrants.<sup>17</sup> Research has consistently shown that, as occurred with IRCA, when immigrants are able to work legally—even for a limited time—wages increase,

---

<sup>14</sup> Migration Policy Inst., Jeanne Batalova, Sarah Hooker & Randy Cappys, *DACA at the Two-Year Mark: A Nat'l and State Profile of Youth Eligible and Applying for Deferred Action* (Aug. 2014), available at <http://www.migrationpolicy.org/research/daca-two-year-mark-national-and-state-profile-youth-eligible-and-applying-deferred-action>.

<sup>15</sup> American Immigration Council, Roberto Gonzales & Angie Bautista-Chavez, *Two Years and Counting: Assessing the Growing Power of DACA* (June 16, 2014), available at <http://www.immigrationpolicy.org/special-reports/two-years-and-counting-assessing-growing-power-daca>.

<sup>16</sup> Dr. Raul Hinojosa-Ojeda, *From the Shadows to the Mainstream: Estimating the Economic Impact of Presidential Administrative Action and Comprehensive Immigration Reform* 17 (N. Am. Integration & Dev. Ctr., UCLA, Nov. 20, 2014), available at [http://www.naid.ucla.edu/uploads/4/2/1/9/4219226/hinojosa\\_-\\_estimating\\_the\\_economic\\_impact\\_of\\_presidential\\_administrative\\_action\\_and\\_comprehensive\\_immigration\\_reform\\_-\\_ucla\\_naid\\_center.pdf](http://www.naid.ucla.edu/uploads/4/2/1/9/4219226/hinojosa_-_estimating_the_economic_impact_of_presidential_administrative_action_and_comprehensive_immigration_reform_-_ucla_naid_center.pdf).

<sup>17</sup> *Id.* at 9.

workers are encouraged to seek work compatible with their skill level, and workers receive incentive to increase their skills to obtain higher wages.<sup>18</sup>

Allowing immigrants to work legally and increase their wages has far-reaching, positive impacts on state and ~~local~~ economies. In Washington, for example, approximately 105,000 people are anticipated to be eligible for deferred immigration action.<sup>19</sup> Assuming that even a portion of the eligible undocumented immigrants register, request a reprieve from deportation, and obtain a temporary work permit, it is estimated that Washington's tax revenues will grow by \$57 million over the next five years.<sup>20</sup> California's tax revenues are estimated to grow by \$904 million over the next five years with an anticipated 1,214,00 people eligible for deferred immigration action.<sup>21</sup> The tax consequences for the Plaintiff States are similarly positive. For example, if the estimated 594,000 undocumented immigrants eligible for deferred action in Texas receive temporary work permits, it will lead to an estimated \$338 million increase in the state tax base over five years.<sup>22</sup>

In addition to increasing state and local tax coffers, deferred immigration action has numerous social benefits. Many DACA beneficiaries, for example, used their increased wages to help support their families, many of which live in poverty.<sup>23</sup> Allowing parents of U.S. citizens and lawful permanent residents to increase their earnings by working legally will increase their

---

<sup>18</sup> Hinojosa-Ojeda at 9-10.

<sup>19</sup> Migration Policy Inst., *National and State Estimates of Populations Eligible for Anticipated Deferred Action and DACA Programs* (Nov. 2014) (Excel spreadsheet), available at <http://www.migrationpolicy.org/sites/default/files/datahub/US-State-Estimates-unauthorized-populations-executive-action.xlsx>.

<sup>20</sup> Center for American Progress, *Executive Action On Immigration Will Benefit Washington's Economy*, available at <http://www.scribd.com/doc/247296801/Economic-Benefits-of-Executive-Action-in-Washington>.

<sup>21</sup> Center for American Progress, *Topline Fiscal Impact of Executive Action Numbers for 28 States*, available at <http://www.scribd.com/doc/248189539/Topline-Fiscal-Impact-of-Executive-Action-Numbers-for-28-States>.

<sup>22</sup> *Id.*

<sup>23</sup> Gonzales & Bautista-Chavez at 5.

ability to support their U.S. citizen children, reducing the cost of state social service benefits. In addition, deferred deportation assists State social service agencies in keeping children with their families. When fit parents are deported, it can be difficult for the State to find the parents and reunite them with their children. The existence of fit parents—even if they have been deported—can also prevent the State from seeking alternative placement options for a child, such as a guardianship or adoption by another family member or third party.<sup>24</sup> Deferred deportation allows families to remain together, even if only temporarily.

If a preliminary injunction is granted, the States will be deprived of the demonstrated economic and social benefits of allowing established immigrants to remain with their families, seek legal work, and contribute to their communities.

**2. Plaintiffs Have Failed to Show That Deferred Immigration Action Will Require Them to Increase Spending On Public Safety or Healthcare**

Plaintiffs' contentions that they will be "forced" to expend large sums on public safety and health care as a result of "new waves of illegal immigration" are unsupported both legally and factually. *See* Pls.' Mot. at 26; Pls.' Compl. ¶ 65. As a matter of law, the Fifth Circuit has already held that "state expenditures on medical and correctional services for undocumented immigrants are not the result of federal coercion," but rather of state choice.<sup>25</sup> Moreover, as a factual matter, Plaintiffs' claims are refuted by the data.

Most generally, Plaintiffs claim that deferred immigration action will lead to an influx of undocumented immigrants is baseless. As the nation's experience with the DACA program shows, there is no reason to believe that deferring deportation for persons who have been in the

---

<sup>24</sup> *See, e.g., In re Guardianship of D.S.*, 178 Wash. App. 681, 317 P.3d 489 (2013) (inability to return a child to a deported parent in the near future does not justify a guardianship if there are no other parental deficiencies).

<sup>25</sup> *Texas v. United States*, 106 F.3d 661, 666 (5th Cir. 1997).

country for five years will increase the number of new undocumented immigrants. In reality, the population of undocumented immigrants has remained stable since 2009, despite the DACA program.<sup>26</sup> Seeking to give a contrary impression, Plaintiffs misleadingly focus on one sub-category of undocumented immigrants—minor children—to claim that DACA has caused a surge of immigrants. But this is just untrue, as their own amici have acknowledged. The Cato Institute, which has submitted an amicus brief in support of the plaintiff States (ECF No. 61-2), has concluded: “Few facts of the unaccompanied children (UAC) surge are consistent with the theory that DACA caused the surge.”<sup>27</sup> Moreover, there is no reason to expect the directives to significantly alter the number of undocumented immigrants who successfully remain present in the country, because those eligible under the directives were unlikely to be removed before. More than 95% of undocumented immigrants who were removed before the new directives were convicted of crimes, had disobeyed immigration court orders, or were recent arrivals.<sup>28</sup>

There is also no evidence that deferred immigration action will cause increased state spending. In considering a recent challenge to DACA, a Texas district court found that Mississippi was unable to provide evidence to back its allegations that immigration deferral resulted in fiscal injury to the State.<sup>29</sup> The Plaintiffs have similarly fallen short of establishing imminent harm here. For example, Plaintiffs claim that Texas “spends millions of dollars every

---

<sup>26</sup> Pew Research Ctr., Jeffrey S. Passel, et al., *As Growth Stalls, Unauthorized Immigrant Population Becomes More Settled* 4 (Sept. 3, 2014), available at <http://www.pewhispanic.org/2014/09/03/as-growth-stalls-unauthorized-immigrant-population-becomes-more-settled/>.

<sup>27</sup> Cato Inst., Alex Nowrasteh, *DACA Did Not Cause the Surge in Unaccompanied Children* (July 29, 2014), available at <http://www.cato.org/blog/daca-did-not-cause-surge-unaccompanied-children>.

<sup>28</sup> Migration Policy Inst., Marc R. Rosenblum & Kristen McCabe, *Deportation and Discretion: Reviewing the Record and Options for Change* (Oct. 2014), available at <http://www.migrationpolicy.org/research/deportation-and-discretion-reviewing-record-and-options-change>.

<sup>29</sup> *Crane v. Napolitano*, 920 F. Supp. 2d 724, 744-45 (N.D. Texas 2013).

year to provide uncompensated healthcare for undocumented immigrants.” Pls.’ Mot. at 26. But the only evidence cited is Plaintiffs’ complaint, which says only that in 2014, “Texas counties reported over \$23 million in indigent health care expenditures.” Pls.’ Compl. ¶ 65. Plaintiffs provide no evidence as to what portion of this indigent care went to undocumented immigrants, who make up a small fraction of the State’s population.<sup>30</sup> Moreover, the data clearly show that allowing immigrants to work legally makes it significantly more likely that they will obtain healthcare via their employer or be able to pay for coverage themselves.<sup>31</sup> There is thus no plausible evidence that deferred immigration action will actually increase state expenditures on indigent health care.

There is also no data to suggest that State expenditures on public safety will increase as a result of deferred immigration action. The immigration directives specifically exclude those who pose a public safety risk.<sup>32</sup> Deferral applications will be assessed on a case-by-case basis, and applicants will be required to come out of the shadows and “undergo a thorough background check of all relevant national security and criminal databases, including [Homeland Security] and FBI databases.”<sup>33</sup> If anything, public safety will be improved by focusing Homeland Security’s limited resources on deportation of terrorists, felons, and other serious criminals.<sup>34</sup> Moreover, granting deferred action will reduce the fear and hesitation many undocumented immigrants have about reporting crimes, serving as witnesses, or cooperating with law

---

<sup>30</sup> Pew Research Ctr., Jeffrey S. Passel & D’Vera Cohn, *State Unauthorized Immigrant Populations* (Nov. 18, 2014), available at <http://www.pewhispanic.org/2014/11/18/chapter-1-state-unauthorized-immigrant-populations/#unauthorized-immigrant-population-share>.

<sup>31</sup> Gonzales & Bautista-Chavez at 4.

<sup>32</sup> <http://www.uscis.gov/immigrationaction> (Executive Actions on Immigration).

<sup>33</sup> <http://www.dhs.gov/immigration-action> (Fixing Our Broken Immigration System).

<sup>34</sup> Cf. *Crane*, 920 F. Supp. 2d at 745 (rejecting Plaintiff’s claim that DACA would have no public safety benefits).

enforcement generally, further improving public safety and benefitting states.<sup>35</sup> If there is an increase in state spending on correctional expenses, it will “stem from [the State’s] enforcement of its own penal laws, not federal laws . . . .”<sup>36</sup>

Finally, Plaintiffs’ contention that provision of unemployment benefits, driver’s licenses, and professional licenses will cause irreparable injury is also meritless. Pls.’ Mot. at 26-27. The immigration directives do not require States to provide state benefits, even for immigrants who obtain authorization to work legally. The States retain full authority to make or amend their laws to limit the availability of State benefits and licenses.<sup>37</sup> The plaintiff States argue, misleadingly, that they will be forced to provide benefits like driver’s licenses under *Arizona Dream Act Coalition*<sup>38</sup> (Reply Mem. ECF No. 64, at 45-47). But that case merely held that when a state gives driver’s licenses to one group of deferred-action recipients, it cannot—without a rational basis—deny the same licenses to recipients of other kinds of deferred action.<sup>39</sup> Having to comply with the constitutional prohibition against irrational discrimination cannot be considered an irreparable injury.

In short, Plaintiffs have failed to show irreparable injury. In reality, the evidence shows that Plaintiffs and other states will benefit—not suffer—from deferred immigration action.

---

<sup>35</sup> Angela S. Garcia & David G. Keyes, *Life as an Undocumented Immigrant: How Restrictive Local Immigration Policies Affect Daily Life* (Mar. 26, 2012), available at <https://www.americanprogress.org/issues/immigration/report/2012/03/26/11210/life-as-an-undocumented-immigrant/>.

<sup>36</sup> *Texas*, 106 F.3d at 666 (rejecting claim for reimbursement of State expenses allegedly caused by inadequate federal enforcement of immigration laws).

<sup>37</sup> 8 U.S.C. § 1621.

<sup>38</sup> *Arizona Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1062 (9th Cir. 2014).

<sup>39</sup> *Id.*



## **B. The Equities and Public Interest Weigh In Favor of Denying Injunctive Relief**

Plaintiffs treat the equity and public interest prongs of the preliminary injunction test as virtual afterthoughts, providing not a single citation to a case or reference to other authority in addressing them. Pls.’ Mot. at 28-33. But these prongs are important. The Court must weigh the competing claims of injury and “should pay particular regard for the public consequences in employing the extraordinary remedy of injunction.”<sup>40</sup> Here, the equities and public interest tip decisively in favor of denying the preliminary injunction.

As to the equities, the United States has already explained in detail the harms it will suffer if the Court grants injunctive relief. U.S. Br. at 50-54. Forcing the Department of Homeland Security to spend resources processing and deporting immigrants who pose no public safety or other risk wastes scarce resources that could and should be devoted to targeting those undocumented immigrants who do pose risks.<sup>41</sup> On the other side of the balance, Plaintiffs cite nothing whatsoever, instead quoting page after page of statements by the President. Pls.’ Mot. at 28-31. Plaintiffs’ apparent anger at the President is not a relevant equity. Instead, Plaintiffs have to demonstrate real harms they will suffer if an injunction is denied, and they have utterly failed, as explained above.

As to the public interest, Plaintiffs’ argument is even less persuasive. Their primary argument is that if injunctive relief is denied, “future presidents will be able to remake the United States code” through various hypothetical enforcement decisions. Pls.’ Mot. at 32-33. Even if that absurd claim were true, it would not justify preliminary relief. There is more than enough

---

<sup>40</sup> *Winter*, 555 U.S. at 24 (internal quotation marks omitted).

<sup>41</sup> *Arizona v. United States*, 132 S. Ct. 2492, 2499 (2012) (“Unauthorized workers trying to support their families, for example, likely pose less danger than alien smugglers or aliens who commit a serious crime.”).

time for this Court to issue a final ruling on the merits (and even for subsequent appeals) before any “future president” could begin “remaking” the law.

In any event, Plaintiffs ignore the massive public interests weighing on the other side. As detailed above, states ~~stand~~ to benefit substantially from the directives at issue as immigrants are allowed to come out of the shadows, pursue legal work, and pay more in taxes. States also will not face as many difficult decisions about what to do with U.S. citizen children whose parents have been deported, and will benefit from the federal government’s increased focus on deporting undocumented immigrants who commit crimes or otherwise threaten public safety. Additionally, state economies will benefit substantially from the temporary reprieve the directives grant. Undocumented immigrants are a sizable portion of the workforce in many industries, including in the Plaintiff states.<sup>42</sup> In agriculture and construction, for example, undocumented immigrants make up a large share of the workforce,<sup>43</sup> and many states—including plaintiff states—depend on these industries. It is at best specious and at worst hypocritical for Plaintiffs to complain about granting temporary relief from deportation for workers on whom their economies depend.

Also to be considered is the public interest of the families who will benefit from deferred action. The millions of people who will be eligible to remain in the United States temporarily under the immigration directives are mothers and fathers, sons and daughters. Many have been here for decades—the median length of residence for undocumented immigrants in the United

---

<sup>42</sup> See, e.g., Pew Research, Jeffrey S. Passel & D’Vera Cohn, *A Portrait of Unauthorized Immigrants in the United States* (Apr. 14, 2009), available at <http://www.pewhispanic.org/2009/04/14/a-portrait-of-unauthorized-immigrants-in-the-united-states/> (showing that undocumented immigrants make up roughly 10% of the workforce in Arizona and 8% in Florida and Texas).

<sup>43</sup> See, e.g., *id.*; <https://naws.jbsinternational.com/3/3status.php> (graph from the Nat’l Agric. Workers Survey, Dep’t of Labor, Emp’t & Training Admin.).

States is 13 years<sup>44</sup>—and have been working hard, paying taxes, and contributing to their communities. Deporting such individuals harms their families, their communities, and their states. These are real public interests weighing against injunctive relief, not the speculative hyperbole offered by Plaintiffs.

In short, the equities and public interest weigh heavily in favor of denying preliminary relief. The Plaintiffs' claims of injury are at best speculative, while the amici States have shown real benefits of the immigration directives. And as the agency charged with balancing the factors that must be considered in making immigration enforcement decisions, Homeland Security is "far better equipped than the courts to deal with the many variables involved in the proper ordering of its priorities."<sup>45</sup> The Court should not intervene.

### **C. Plaintiffs Are Unlikely to Succeed On the Merits**

The United States has detailed at length why Plaintiffs' claims are unlikely to succeed on the merits, and the amici States will not rehash those compelling arguments here. Amici add only that, as the chief law enforcement officers for their various states, the Attorneys General who have prepared this brief are deeply familiar with the notion of enforcement discretion. No government agency has the resources to pursue every violation within its purview. Decisions must be made and priorities adopted. In the immigration realm, federal law decisively places those decisions in the hands of the executive branch.<sup>46</sup> And the U.S. Supreme Court has repeatedly held that it is not the place of courts to second guess these sorts of enforcement

---

<sup>44</sup> Pew Research Ctr., Jeffrey S. Passel, et al., *As Growth Stalls, Unauthorized Immigrant Population Becomes More Settled* 4 (Sept. 3, 2014), available at <http://www.pewhispanic.org/2014/09/03/as-growth-stalls-unauthorized-immigrant-population-becomes-more-settled/>.

<sup>45</sup> *Heckler v. Chaney*, 470 U.S. 821, 831-32, 105 S. Ct. 1649, 84 L. Ed. 2d 714 (1985).

<sup>46</sup> See, e.g., *Arizona*, 132 S. Ct. at 2499; *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 543, 70 S. Ct. 309, 94 L. Ed. 317 (1950) (stating that immigration is "a field where flexibility and the adaptation of the congressional policy to infinitely variable conditions constitute the essence of the program") (internal quotation marks omitted).

decisions, which are “generally committed to an agency’s absolute discretion.”<sup>47</sup> This Court should reject Plaintiffs’ invitation to ignore this long line of decisions and insert itself into the executive branch’s lawful exercise of enforcement discretion.

## CONCLUSION

Granting a preliminary injunction will prevent no harm to Plaintiffs but will hurt the amici States and the broader public. There is no legal basis to do so. The amici States ask that the Court accept their amicus brief and deny Plaintiffs’ motion for preliminary injunction.

RESPECTFULLY SUBMITTED this 12th day of January 2015.

ROBERT W. FERGUSON  
*Attorney General of Washington*

Noah G. Purcell, WSBA 43492  
*Solicitor General*

*/s Anne E. Egeler*

Anne E. Egeler, WSBA 20258  
*Deputy Solicitor General*  
*Attorney-In-Charge*

Washington Office of Attorney General  
PO Box 40100  
Olympia, WA 98504-0100  
360-753-6200 (office)  
360-664-2963 (fax)  
anneE1@atg.wa.gov

KAMALA D. HARRIS  
California Attorney General  
1300 I Street  
Sacramento, CA 95814

George Jepsen  
Connecticut Attorney General  
55 Elm Street  
Hartford, Ct 06106

---

<sup>47</sup> *Heckler*, 470 U.S. at 831 (1985) (citing *United States v. Batchelder*, 442 U.S. 114, 123-24, 99 S. Ct. 2198, 60 L. Ed. 2d 755 (1979); *United States v. Nixon*, 418 U.S. 683, 693, 94 S. Ct. 3090, 41 L. Ed. 2d 1039 (1974); *Vaca v. Sipes*, 386 U.S. 171, 182, 87 S. Ct. 903, 17 L. Ed. 2d 842 (1967)).

Russell A. Suzuki  
Hawai'i Attorney General  
425 Queen Street  
Honolulu, Hawaii 96813

Lisa Madigan  
Illinois Attorney General  
100 W Randolph Street 12th Floor  
Chicago, IL 60601

Thomas J. Miller  
Iowa Attorney General  
1305 E Walnut Street  
Des Moines, IA 50319

Brian E. Frosh  
Maryland Attorney General  
200 Saint Paul Place  
Baltimore, MD 21202

Martha Coakley  
Massachusetts Attorney General  
One Ashburton Place  
Boston, MA 02108

Hector H. Balderas  
New Mexico Attorney General  
PO Drawer 1508  
Santa Fe, NM 87504-1508

Eric T. Schneiderman  
New York Attorney General  
The Capitol  
Albany, NY 12224

Ellen F. Rosenblum  
Oregon Attorney General  
1162 Court Street NE  
Salem, Oregon 97301

William H. Sorrell  
Vermont Attorney General  
109 State Street  
Montpelier, VT 05609-1001

Karl A. Racine  
District of Columbia Attorney General  
One Judiciary Square  
441 4th Street NW Suite 1145 North  
Washington, D.C. 20001

### **CERTIFICATE OF SERVICE**

I hereby certify that service of the foregoing Amicus Brief Of The States Of Washington, California, Connecticut, Hawaii, Illinois, Iowa, Maryland, Massachusetts, New Mexico, New York, Oregon, and Vermont, and the District of Columbia In Support Of Defendants will be delivered electronically January 12, 2015, to counsel for plaintiffs and defendants through the District's Electronic Case Filing system.

*/s Anne E. Egeler*

Anne E. Egeler

*Deputy Solicitor General*

# **APPENDIX**

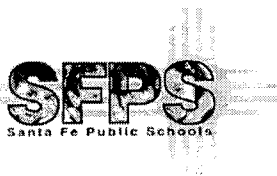
## APPENDIX

The appendix is listed in the order the authorities are used, with an indication as to which footnote the authority first appears in:

- Note 1: *United States v. Bader*,  
No. 07-cr-00338-MSK, 2009 WL 2219258  
(D. Colo. July 23, 2009)..... A-1
- Note 1: *Sierra Club v. Fed. Emergency Mgmt. Agency*,  
No. H-07-0608, 2007 WL 3472851  
(S.D. Tex. Nov. 14, 2007)..... A-14
- Note 4: *Maples v. Thomas*,  
No. 5:03-cv-2399-SLB-MHH, 2013 WL 5350669, \*3  
(N.D. Ala. Sept. 23, 2013) ..... A-18
- Note 6: <http://www.uscis.gov/immigrationaction>  
(Executive Actions on Immigration) ..... A-22
- Note 7: Memorandum from Jeh Charles Johnson, Secretary of Homeland  
Security, to Thomas S. Winkowski, Acting Director of U.S. Immigration  
and Customs Enforcement, et al. (Nov. 20, 2014),  
*available at* [http://www.dhs.gov/sites/default/files/publications/](http://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf)  
[14\\_1120\\_memo\\_secure\\_communities.pdf](http://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf) ..... A-27
- Note 8: Memorandum from Gene McNary, INS Commissioner, to  
Regional Commissioners (Feb. 2, 1990),  
*available at* [http://www.factcheck.org/UploadedFiles/2014/11/](http://www.factcheck.org/UploadedFiles/2014/11/McNary-memo.pdf)  
[McNary-memo.pdf](http://www.factcheck.org/UploadedFiles/2014/11/McNary-memo.pdf)  
(*Re: Family Fairness: Guidelines for Voluntary Departure under 8 CFR*  
*242.5 for the Ineligible Spouses and Children of Legalized Aliens*)..... A-30
- Note 9: American Immigration Council (Oct. 2014),  
*available at* [http://www.immigrationpolicy.org/sites/default/](http://www.immigrationpolicy.org/sites/default/files/docs/executive_grants_of_temporary_immigration_relief_1956-present_final_4.pdf)  
[files/docs/ executive\\_grants\\_of\\_temporary\\_immigration\\_relief\\_](http://www.immigrationpolicy.org/sites/default/files/docs/executive_grants_of_temporary_immigration_relief_1956-present_final_4.pdf)  
[1956-present\\_final\\_4.pdf](http://www.immigrationpolicy.org/sites/default/files/docs/executive_grants_of_temporary_immigration_relief_1956-present_final_4.pdf)  
(*Executive Grants of Temporary Immigration Relief, 1956-Present*) ..... A-32
- Note 10: Memorandum from Paul W. Virtue, Acting Executive Associate INS  
Commissioner, to Regional Directors et al. (May 6, 1997),  
*available at* [http://www.asistahelp.org/documents/resources/Virtue\\_](http://www.asistahelp.org/documents/resources/Virtue_Memo_97pdf_53DC84D782445.pdf)  
[Memo\\_97pdf\\_53DC84D782445.pdf](http://www.asistahelp.org/documents/resources/Virtue_Memo_97pdf_53DC84D782445.pdf)  
(*Re: Supplemental Guidance on Battered Alien Self-Petitioning Process*  
*and Related Issues*) ..... A-42



- Note 14: Migration Policy Inst., Jeanne Batalova, Sarah Hooker & Randy Cappys, *DACA at the Two-Year Mark: A Nat'l and State Profile of Youth Eligible and Applying for Deferred Action* (Aug. 2014), available at <http://www.migrationpolicy.org/research/daca-two-year-mark-national-and-state-profile-youth-eligible-and-applying-deferred-action>..... A-52
- Note 15: American Immigration Council, Roberto Gonzales & Angie Bautista-Chavez, *Two Years and Counting: Assessing the Growing Power of DACA* (June 16, 2014), available at <http://www.immigrationpolicy.org/special-reports/two-years-and-counting-assessing-growing-power-daca>..... A-55
- Note 16: Dr. Raul Hinojosa-Ojeda, *From the Shadows to the Mainstream: Estimating the Economic Impact of Presidential Administrative Action and Comprehensive Immigration Reform* 17 (N. Am. Integration & Dev. Ctr., UCLA, Nov. 20, 2014), available at [http://www.naid.ucla.edu/uploads/4/2/1/9/4219226/hinojosa\\_-\\_estimating\\_the\\_economic\\_impact\\_of\\_presidential\\_administrative\\_action\\_and\\_comprehensive\\_immigration\\_reform\\_-\\_ucla\\_naid\\_center.pdf](http://www.naid.ucla.edu/uploads/4/2/1/9/4219226/hinojosa_-_estimating_the_economic_impact_of_presidential_administrative_action_and_comprehensive_immigration_reform_-_ucla_naid_center.pdf) (pages 1-11 of a 31-page document)..... A-64
- Note 19: Migration Policy Inst., *National and State Estimates of Populations Eligible for Anticipated Deferred Action and DACA Programs* (Nov. 2014) (Excel spreadsheet), available at <http://www.migrationpolicy.org/sites/default/files/datahub/US-State-Estimates-unauthorized-populations-executive-action.xlsx> ..... A-75
- Note 20: Center for American Progress, *Executive Action On Immigration Will Benefit Washington's Economy*, available at <http://www.scribd.com/doc/247296801/Economic-Benefits-of-Executive-Action-in-Washington>..... A-79
- Note 21: Center for American Progress, *Topline Fiscal Impact of Executive Action Numbers for 28 States (Executive Action on Immigration Will Benefit State Economies)*, available at <http://www.scribd.com/doc/248189539/Topline-Fiscal-Impact-of-Executive-Action-Numbers-for-28-States> ..... A-81
- Note 24: *In re Guardianship of D.S.*, 178 Wash. App. 681, 317 P.3d 489 (2013)..... A-85



RESOLUTION 2014/15-20

SUPPORTING IMMIGRANT DRIVER'S LICENSES

Board of Education  
Steven J. Carrillo, President  
Lorraine Price, Vice President  
Susan Duncan, Secretary  
Glenn Wikle, Member  
Linda M. Trujillo, Member

1 WHEREAS, legislation is again being proposed that would deny driver's licenses to undocumented  
2 immigrants; and

3  
4 WHEREAS, many of our parents do not have legal documentation although their children are U.S. citizens;  
5 and

6  
7 WHEREAS, without driver's licenses parents might not be able to take their children to and from school, thus  
8 potentially causing an increase in absenteeism; and

9  
10 WHEREAS, without driver's licenses parents might not be able to attend parent conferences and other  
11 important school meetings and events; and

12  
13 WHEREAS, without driver's licenses parents might find it difficult to take their children to see a doctor or to  
14 go to the pharmacy, thus causing a potential health risk for their children and others; and

15  
16 WHEREAS, without driver's licenses parents would not have identification required for many services their  
17 children need; and


18  
19 WHEREAS, it is safer for our students and the whole community to have drivers who are tested, licensed,  
20 registered, and insured; and

21  
22 WHEREAS, New Mexico has had an immigrant driver's license law in place for 12 years, and now other  
23 states are following our lead in requiring immigrant drivers to be licensed, regulated, and insured;

24  
25 THEREFORE, BE IT RESOLVED that the Santa Fe Public Schools Board of Education urges the  
26 Legislature to keep our current legislation providing driver's licenses for immigrants.

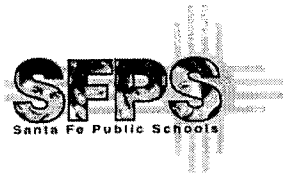
27  
28  
29 APPROVED AND ADOPTED this 27th day of January, 2015

30  
31 Attested by:

32  
33  
34  
35   
36 Steven J. Carrillo, President  
37

  
Susan Duncan, Secretary

*Exhibit B-1*



## RESOLUTION 2014/2015-18

### DEFERRED ACTION FOR CHILDHOOD ARRIVALS AND DEFERRED ACTION FOR PARENTAL ACCOUNTABILITY FAMILY ASSISTANCE

Board of Education  
Steven J. Carrillo, President  
Lorraine Price, Vice President  
Susan Duncan, Secretary  
Glenn Wikle, Member  
Linda M. Trujillo, Member

1 **WHEREAS**, in 2012 President Obama issued an executive order providing deportation relief to certain undocumented  
2 immigrants who entered the U.S. before their 16th birthday, Deferred Action for Childhood Arrivals (DACA); and  
3

4 **WHEREAS**, in 2014 President Obama issued an executive order providing deportation relief to certain undocumented  
5 immigrants who are parents of U.S. citizens or lawful permanent residents, Deferred Action for Parental Accountability  
6 (DAPA); and  
7

8 **WHEREAS**, thousands of Santa Fe Public Schools (SFPS) students and parents potentially qualify for deportation relief  
9 under these orders; and  
10

11 **WHEREAS**, DACA will enable our qualifying students to attend college, work, and pursue a career and thus encourage  
12 them to do well in school and graduate; and  
13

14 **WHEREAS**, DAPA will enable our qualifying parents to obtain better employment and provide more economic  
15 security and stability for their children and thus more support for their education; and  
16

17 **WHEREAS**, both DACA and DAPA will lessen the anxiety and fear that many of our students experience due to the  
18 fact that their parents, siblings, or they themselves could at any time be deported and thus their family members  
19 separated; and  
20

21 **WHEREAS**, SFPS currently employs an expert in immigration law in general and these executive orders in particular  
22 who has been educating families about DACA and assisting students through the DACA application process  
23 (approximately 250 youth have been assisted so far; 150 applications have been approved, 50 are pending, and 50 more  
24 are being prepared); and  
25

26 **WHEREAS**, continuing to educate and assist students and parents on DACA and also educate and assist parents on  
27 DAPA will require more resources to be put into this work; and  
28

29 **WHEREAS**, Mayor Javier Gonzales, the New Mexico Immigrant Law Center, Somos Un Pueblo Unido, and several  
30 faith communities have committed to helping support the work needed to educate and assist families on DACA and  
31 DAPA; and  
32

33 **WHEREAS**, SFPS staff also need to be educated about DACA and DAPA in order to be able to answer basic student  
34 questions and refer families for assistance;  
35

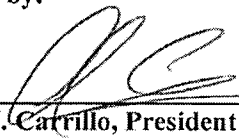
36 **THEREFORE, BE IT RESOLVED** that the Santa Fe Public Schools Board of Education directs the Superintendent to  
37 develop a plan of action to ensure that our students and parents are able to access their rights under DACA and DAPA.  
38 The plan should include, but is not limited to: training for principals, counselors, and teachers on the basics of DACA  
39 and DAPA and to whom in SFPS to refer families for assistance; workshops in our schools to educate parents and  
40 students about DACA and DAPA; and assistance to students and parents in filing applications for DACA and DAPA. It  
41 should also include funding sources for the remainder of the current school year and for the following school year.  
42  
43  
44  
45  
46  
47

*Exhibit B-2*

48  
49  
50  
51  
52  
53  
54  
55  
56

APPROVED AND ADOPTED this 16th day of December, 2014

Attested by:

  
\_\_\_\_\_  
Steven J. Carrillo, President

  
\_\_\_\_\_  
Susan Duncan, Secretary