

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

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IN THE  
**SUPREME COURT OF THE UNITED STATES**  
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DEPARTMENT OF HOMELAND SECURITY, ET AL.,

*Petitioners,*

—v.—

REGENTS OF THE UNIVERSITY OF CALIFORNIA, ET AL.,

*Respondents.*

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DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET  
AL.,

*Petitioners,*

—v.—

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF  
COLORED PEOPLE, ET AL.,

*Respondents.*

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KEVIN K. MCALEENAN, ACTING SECRETARY OF HOMELAND  
SECURITY, ET AL.,

*Petitioners,*

—v.—

MARTIN JONATHAN BATALLA VIDAL, ET AL.

*Respondents.*

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**ON WRITS OF CERTIORARI TO THE UNITED  
STATES COURTS OF APPEALS FOR THE NINTH,  
D.C., AND SECOND CIRCUITS**  
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PRIVILEGED AND CONFIDENTIAL DRAFT

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## INTERESTS OF *AMICI CURIAE*<sup>1</sup>

Led by the Muslim Bar Association of New York, amici are American religious or religiously-affiliated organizations who represent a wide array of faiths and denominations. *Amici* include congregations and houses of worship as well as professional, civil liberties, and immigrant rights groups who work with or represent faith communities (“Religious Organizations”). *Amici* have long supported Deferred Action for Childhood Arrivals (“DACA”) as a compassionate and appropriate response to the humanitarian crisis posed by the hundreds of thousands of undocumented people brought to this country as children, before they could make choices of their own. *Amici* believe that the arbitrary rescission of DACA will indelibly harm the vitality of their spiritual communities, including by forcing committed members of their congregations and organizations to leave the country or return to the shadows. Indeed, certain *amici* have committed to providing sanctuary to those targeted for deportation. *Amici* are identified here by name, with a fuller description of their identities and interests attached to this memorandum at Appendix A.

*Amici* are: [list amici]

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<sup>1</sup> Pursuant to Sup. Ct. R. 37.6, counsel for *amici curiae* represent that they have authored the entirety of this brief, and that no person other than the *amici curiae* or their counsel has made a monetary contribution to the preparation or submission of this brief. All parties in each of the three cases have provided consent for *amici curiae* to file this brief.

## SUMMARY OF THE ARGUMENT

Since DACA's inception in 2012, American religious communities of many faiths have supported the program as a just and compassionate response to a moral and humanitarian crisis. The children and young adults eligible for and currently receiving the benefits of DACA status (often referred to as "Dreamers") were, in most cases, brought to this country as children by their parents. They have lived most of their lives in the United States, typically with no memory of any other home. Only young people who have pursued education or served in our military, and have no significant criminal record, are eligible for DACA status. Yet they now face deportation to often dangerous and unfamiliar places, or a life in the undocumented shadows.

*Amici* believe, on the basis of faith and morality, that these children and young adults must be protected. *Amici* therefore offer this brief in support of Respondents in order to address how, in their view, the Government's proposed termination of DACA (the "Termination Memo") would cause irreparable harm and constitute a severe detriment to the public. *Amici* have firsthand knowledge of the valuable contributions to faith and community made by DACA recipients and understand all too well the harm that the termination of DACA would cause. For example, ending DACA would put Nancy, an Associate Rector at amicus St. Luke's Episcopal Church in Long Beach, California, who came to the United States from Mexico at age seven, at risk of deportation. *Amici* detail the stories of Nancy and others like her in Section II(A) below to provide the

Court with a sample of the lives that are at risk of being upended. *Amici* also know, because of their religious and charitable work in Latin America and other regions, the challenges and dangers these young people face if they are deported.

*Amici* also have a direct stake in these issues beyond their religious concerns and the protection of their congregants. First, *amici* stand to lose the substantial benefits they currently enjoy as a result of the varied contributions that DACA recipients make to their congregations and institutions.

*Second*, if the Termination Memo is carried out and DACA recipients and DACA-eligible individuals are forced into hiding, *amici* will suffer an impairment of their ability to carry out their core mission to provide spiritual guidance and general assistance to people of all backgrounds and faiths.

*Third*, many *amici* have and will continue to offer sanctuary to those facing deportation. *Amici's* churches, mosques, and synagogues are ostensibly designated by U.S. Immigration and Customs Enforcement ("ICE") as sensitive locations to be avoided by enforcement officials, but ICE has shown a growing willingness to target and exploit, rather than avoid, sensitive locations. *Amici* will be on the front line of this conflict if DACA is rescinded: honoring their convictions to protect DACA recipients will risk ICE raids on or around their houses of worship.

For the reasons set forth herein and in Respondents' and other *amici's* briefs, *amici* urge the

Court to affirm the lower courts' decisions enjoining the implementation of the Termination Memo and holding that it was unlawful. This is the appropriate remedy pursuant to the Administrative Procedure Act, as described in Section III below, and is necessary to prevent irreparable harm.

## ARGUMENT

The lower courts prohibited the Government from proceeding with its planned termination of DACA. In Case Nos. 18-587 and 18-589, the lower courts found that Respondents demonstrated (1) a likelihood of success on the merits of their claims under the Administrative Procedure Act, (2) irreparable harm, and (3) that the balance of equities and the public interest favored injunctive relief. In Case No. 18-588, the lower court vacated the Termination Memo, finding that it was arbitrary and capricious. *Amici* endorse the lower courts' holdings and the arguments set forth by Respondents, and submit this brief to further illustrate the irreparable harm that implementation of the Termination Memo would cause. *Amici* also endorse the parameters of the relief ordered by the lower courts, and urge this Court to affirm the nation-wide injunction.

### I. RELIGIOUS ORGANIZATIONS SUPPORT DACA AS A JUST RESPONSE TO A HUMANITARIAN CRISIS

*Amici* object to the Government's arbitrary and ill-reasoned decision to rescind DACA on moral, spiritual, and religious grounds. Although they represent different faiths and denominations, *amici*



are in unequivocal agreement that DACA is a force for good in our society that should be protected. As *amicus* Catholic Charities Community Services of the Archdiocese of New York explains, “DACA is an important first step to acknowledging and growing the human and social contributions and needs of young immigrants and of our own communities.”<sup>2</sup> Those who are eligible for DACA or who already benefit from it “were brought to the United States” by their parents, “now have established roots, have built families, have contributed to their communities of faith, work, and family,” and their “energy, spirit, life, and heart are part of this nation, which can only benefit from their continued participation.”

For many *amici*, these convictions are deeply rooted in their faith and moral principles. Temple Sinai of Washington D.C., for example, believes that “as a Jewish institution, Biblical texts and our Jewish history inform our position on modern day immigration policy. Leviticus 19 explicitly says, ‘When a stranger sojourns with you in your land, you shall do him no wrong.’” St. Luke’s Episcopal Church in Long Beach, California, similarly states that “for us, this is a biblical rather than a political issue.” And as the Catholic mission Maryknoll attests, “recognizing the hardships and struggles of immigrant families, and the tremendous economic and social contributions Dreamers make to the United States, we feel it is unethical to send

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<sup>2</sup> Quotes from *amici* herein are drawn from interviews conducted by counsel in November and December 2017 to provide the Court with a fuller understanding of how DACA has impacted American religious communities.

Dreamers back to countries they hardly know, as well as a senseless loss to our nation.”

For others still, supporting DACA is part of their social justice mission. Christ Church Cathedral in Cincinnati has, in light of the Government’s immigration policy priorities, “focused its social justice concerns on matters of immigration and the impact that deportations or the repeal of DACA will have on God’s children.”

*Amici* and groups like them have, accordingly, objected vocally to the arbitrary repeal of the DACA program. On September 5, 2017, when the Government announced its decision to terminate DACA, countless religious groups and leaders released statements of condemnation. The United States Conference of Catholic Bishops publicly called the decision “reprehensible,” “unacceptable,” and “a heartbreaking moment in our history that shows the absence of mercy and good will.”<sup>3</sup> The Council on American-Islamic Relations described the move as a “heartless action [that] will only serve to create fear and anxiety for the Dreamers and their loved ones, and will force them back to living in the shadows, rendering them unable to contribute to our nation’s economy.”<sup>4</sup> And *amici* Union for Reform Judaism

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<sup>3</sup> United States Conference of Catholic Bishops, *USCCB President, Vice President and Committee Chairmen Denounce Administration’s Decision to End DACA and Strongly Urge Congress to Find Legislative Solution*, <http://www.usccb.org/news/2017/17-157.cfm> (Sept. 5, 2017).

<sup>4</sup> Council on American-Islamic Relations, *CAIR Condemns Trump’s Termination of DACA Program as ‘Pandering to Anti-*  
(footnote continued ...)

and Central Conference of American Rabbis declared it “morally misguided and poor public policy,” noting that “Judaism demands that we welcome the stranger and compels us to work for a just immigration system.”<sup>5</sup>

*Amici* agree wholeheartedly with these statements. Rev. Robin Hynicka of *amicus* Arch Street United Methodist Church (“UMC”) in Philadelphia, for example, describes the “mythology surrounding why people migrate” as a campaign to “criminalize immigration” and to paint all immigrants as “bad,” when in fact the “the real reasons for these migrations are not listened to, considered, or understood.” He explains: “From a faith perspective, we take a baptismal vow that states we will resist evil, injustice, and oppression in any form in which it presents itself. The current immigration system and the move to end DACA create unjust circumstances, made manifest in human suffering. The attempt to crack down on Dreamers is a serious, cynical, evil action that has nothing to do with safety or justice. We have a theological and moral obligation to oppose these forces.”

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*Immigrant Extremists*, <https://www.cair.com/press-center/press-releases/14582-cair-condemns-trump-termination-of-daca-program-as-pandering-to-anti-immigrant-extremists.html> (Sept. 5, 2017).

<sup>5</sup> Religious Action Center of Reform Judaism, *Reform Jewish Movement Assails White House Targeting of Immigrant Youth*, <https://rac.org/reform-jewish-movement-assails-white-house-targeting-immigrant-youth> (Sept. 5, 2017).

*Amici* include entities that have taken active steps to protect Dreamers. A nation-wide, interfaith network of communities and congregations known as the New Sanctuary Movement, of which many *amici* are a part, have pledged to stand in solidarity with immigrants facing deportation.<sup>6</sup> These groups provide preparedness training and legal counseling and referrals; accompany individuals to immigration hearings; run awareness programs and panel discussions; and conduct advocacy aimed at supporting immigrant communities through the lens of faith. *Amicus* New Mexico Faith Coalition for Immigrant Justice, for example, provides these services “in order to create better immigration laws and a more just system that supports the well-being of all,” and employs two DACA recipients in their three-person office. Similarly, *amicus* New Sanctuary Coalition is an interfaith network working “to reform immigration enforcement practices and policies, both locally and nationally, with a special focus on preserving family unity.” As explained below, many *amici* and congregations like them have offered themselves as places of sanctuary, providing shelter to those targeted for deportation actions.

*Amici* thus oppose with deep conviction the Government’s arbitrary decision to terminate DACA. As institutions of faith with a special interest in servicing vulnerable immigrant populations, *amici* have direct knowledge of the harm that the

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<sup>6</sup> See Sanctuary Movement, <http://www.sanctuarynotdeportation.org/>.

Government's actions will cause to them and the people with whom they live, work, and worship.

**II. TERMINATION OF DACA WILL CAUSE  
AMICI, THEIR CONGREGATIONS, AND  
THEIR COMMUNITIES IRREPARABLE  
HARM AND POSES A GRAVE THREAT TO  
PUBLIC WELFARE**

The early and arbitrary termination of DACA will not only imperil Respondents, it will directly harm *amici* and their congregants, clergy members, staff, clients, and communities. In the words of *amicus* Church Council of Greater Seattle, "DACA-recipients are our brothers and sisters, relatives, service-providers, congregational members, initiators of small business, and protectors of our communities and nation," and the Government's actions would "deprive hopeful and patriotic men and women of the opportunity to exercise their hopes and dreams, to the detriment of the common good." Like our society at large, faith communities, according to the Albuquerque Monthly Meeting of the Religious Society of Friends (Quakers), "stand to lose the tremendous investment made over many years to bring DACA recipients into adulthood with skills and multicultural perspectives that are sorely needed by the larger community and the nation."

The Government's planned actions would cause harm on various levels. First, DACA recipients are vital members of *amici's* congregations and workforces whose loss of status will not only disrupt their lives, but harm *amici* who benefit from their participation. Second, termination of the DACA program will impair the ability of *amici* and other

religiously-affiliated organizations to carry out their missions to help people of all backgrounds and faiths. Third, as institutions of faith and sensitive locations for immigration enforcement purposes, many *amici* face the grim prospect that following their spiritual calling to provide sanctuary for targeted Dreamers will result in the religious entities themselves being targeted by immigration enforcement authorities, a concern that would increase dramatically with the termination of DACA.

### **A. Direct Harm to *Amici* and Their Congregants**

To illustrate the irreparable harm at issue in this case, *amici* provide the Court with the following examples of individual DACA recipients brought to this country as children who have enriched their communities, organizations and congregations.

**Nancy.**<sup>7</sup> Nancy, Associate Rector at amicus St. Luke’s Episcopal Church in Long Beach, California, came to the United States from Mexico at age seven. Like many Dreamers, Nancy did not know she was undocumented until her junior year of high school, when she applied to college and learned what a social security number was—and that she did not have one. Nancy describes her life after learning her immigration status as “in the shadows”; she could not get a driver’s license, and could not drive a car

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<sup>7</sup> Declarations from the individual DACA recipients attesting to the information presented here are on file with counsel. The last names of these individuals have been withheld here to protect their privacy.

for fear of getting pulled over and risking deportation. For a teenager in Los Angeles, this was no idle fear.

Nonetheless, Nancy was active in her community. The Episcopal Church served as an extended family during her childhood, and by the time she turned 17 Nancy led the largest youth group in the Episcopal Diocese of Los Angeles. So great was her dedication that the Church paid for her tuition to college and seminary school, where she obtained a Master's of Divinity degree. After obtaining DACA status, Nancy was able to fulfill her dream of becoming an ordained Episcopal minister. Today, Nancy is the associate rector at *amicus* St. Luke's Episcopal Church, and the Diocese of Los Angeles's first Latina leader to have grown up in a Spanish-speaking Episcopal Church and gone on to pursue ordination. At St. Luke's, she is actively involved in immigrants' rights activism and education initiatives.

For Nancy, the Government's announcement on September 5, 2017 was "a moment of complete fear and hopelessness." She and others like her have "made a life here, trusted the system and tried to do things the right way," but now "run the risk that we will be hunted down and sent to a country that we do not know."

**Rafael.** Brought to Los Angeles at three years old, Rafael, an office assistant with *amicus* New Mexico Faith Coalition for Immigrant Justice, was born in Guanajuato, Mexico. Rafael's parents, having risked everything to bring him to the United States, sought to instill in him the values of hard work and education. They succeeded. Rafael

completed a Bachelor's Degree with a double major in History and Chicano Studies from California State University Dominguez Hills while working full time to pay his tuition and support himself. After obtaining DACA status, Rafael went on to obtain a Master's Degree in American Studies at the University of New Mexico, where he is now a Ph.D. candidate and an instructor.

Rafael's parents also instilled in him the values of Catholicism. He believes that faith-based organizations "fill the gaps of social justice and service that many times nation-states do not offer." As such, he works for *amicus* New Mexico Faith Coalition for Immigrant Justice as an office assistant. Rafael is proud to contribute to their work, which he sees as fulfilling community needs and a natural expression of his Catholic faith.

For Rafael, the end of DACA represents drastic and dangerous change. It spells the end of access to the work that he loves and a halt to his career after graduation. Moreover, it means "going back to living in the reality of survival mode," forever uncertain of his place and permanence in his own home, and without opportunity to flourish and grow.

**Andrea.** Andrea is a legal assistant at *amicus* American Friends Service Committee. Andrea was born and baptized in Ecuador, but brought to New Jersey by her parents when she was a year and a half old. Andrea grew up in the Catholic Church. She went to Sunday school, took First Communion, and received Confirmation at her church in the Newark area, where she continues to volunteer in youth groups and for fundraising activities.



Andrea's parents, like many parents of Dreamers, prioritized her education. Knowing she could not obtain financial aid, Andrea's parents, both union members, carefully saved. After Andrea earned a paralegal degree from community college, her parents put her through Rutgers University's undergraduate program. Nonetheless, until DACA, Andrea's life was one of fear and constraint. She kept her undocumented status secret, and had to refrain from the normal day-to-day activities and jobs that her friends freely engaged in.

Andrea graduated from Rutgers summa cum laude. After she obtained DACA status, she was hired as a paralegal at a law firm, and was proud to have a job and a salary. Andrea's dream is to go to law school in the United States. For her, the end of DACA puts her dream to a halt and threatens to send her to Ecuador, a place she has never set foot since she was an infant. In the face of this peril, Andrea maintains, "I love this country and I can't imagine living elsewhere."

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The harm that these individuals would suffer as a result of their loss of DACA status is readily apparent. *See Nunez v. Boldin*, 537 F. Supp. 578, 587 (S.D. Tex. 1982) ("Deportation to a country where one's life would be threatened obviously would result in irreparable injury."); *Kalaw v. Ferro*, 651 F. Supp. 1163, 1167 (W.D.N.Y. 1987) (enjoining deportation proceeding and finding irreparable harm because "petitioner's deportation would make her ineligible for any subsequent application for legalization"). *Amici* would be harmed as well; not

only do people like Nancy, Rafael and Andrea contribute richly to religious and faith-based organizations through their own individual efforts, they serve as mentors and inspire others to give back to institutions from which they have benefitted. If the Termination Memo goes into effect, nearly 800,000 Dreamers—many with stories similar to the three detailed above—will be forced out of the country or into hiding. *Amici* will suffer incalculable harm if they are deprived of the contributions and talents of these young congregants and community members.

Moreover, as *amici* know from their work in other parts of the world, Dreamers deported would face tremendous challenges and even physical danger. For example, Gerry Lee and others from *amicus* Maryknoll Office for Global Concerns have lived and worked with impoverished families in Mexico, El Salvador, Guatemala, and other countries to which DACA recipients face deportation. In Haiti, for example, “Maryknoll Sisters have witnessed the bare struggle for post-disaster survival in the massive slums of Cite Soleil, where they help residents subsist from gardens grown in discarded tires on turf fought over by rival gangs.” In El Salvador, a Maryknoll Lay Missioner witnessed “the anger and pain that pervades communities preyed upon by powerful gangs, where immediate survival forces youth to face grim choices between lives of drugs and guns—or escape.” In Guatemala, a Maryknoll Father reports on the “rising rates of femicide” and sums up what motivates millions of rural migrants in a single word: “desperation.” And along the U.S.-Mexico border, Maryknoll Missioners hear daily the

“stories of desperation from the countries to which many Dreamers might be returned,” namely, that “poverty, starvation, extortion, sexual assault, gang violence, and political oppression are among the conditions cited as triggers to leave.” In one such encounter in Nogales, Sonora, “a man travelling north with his son from Honduras merely pointed south and said, ‘There is no life there anymore.’” Children raised in America knowing no other country should not have to face deportation into such conditions.

As the D.C. District Court concluded, in rescinding DACA, the Government failed to consider the important reliance interests of Dreamers. Dreamers have relied on the protected status afforded by DACA to build their futures in the United States, make meaningful contributions to their communities, and develop important, lifelong relationships with others in this country. The Government broke its end of the bargain it struck with Dreamers by abruptly rescinding DACA. The accounts detailed above highlight how Dreamers have relied on DACA and the profoundly disruptive impact that rescission would have on Dreamers’ lives. The Termination Memo and the administrative record is devoid of any consideration of these facts. For this reason, and the reasons set forth in Respondents’ brief, the Government’s rescission of DACA is arbitrary and capricious.

### **B. Impairment of *Amici*’s Ability to Carry out Their Missions**

It goes without saying that religious and faith-affiliated organizations such as *amici* play a vital

role in society. Countless lives have been uplifted and enriched by the spiritual guidance as well as the material and legal assistance these institutions provide. Immigrants and their families—including children brought to this country at a young age—are among the groups that have benefitted most from the support furnished by *amici* and similar organizations. By aiding such vulnerable individuals, faith-based organizations including *amici* have helped to make their entire communities more prosperous, united and civically engaged than they otherwise would be.

Implementation of the Termination Memo would undermine these efforts by making it virtually impossible for *amici* to continue their outreach to Dreamers and their families, causing *amici* irreparable harm. See *Hawaii v. Trump*, 859 F.3d 741, 782-83 (finding the “State’s inability to assist in refugee resettlement” to be irreparable harm) (9th Cir.), vacated on other grounds by *Trump v. Hawaii*, 138 S. Ct. 377 (2017); *Valle Del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013) (finding irreparable harm where “organizational plaintiffs have shown ongoing harms to their organizational missions”).

*Amici* cannot reach people in need if those people are hiding in the shadows or have been deported. If the Termination Memo is implemented, *amici* and similarly-situated organizations will lose their ability carry out their core mission to assist those in the greatest need of help. This will result in the needless suffering not only of at-risk individuals, but of their communities as a whole.

**C. As Sensitive Locations for Immigration Enforcement Purposes, Some *Amici* Will Be Called upon to Provide Sanctuary While at the Same Time Risking Being Targeted for Immigration Raids**

Finally, religiously-affiliated organizations like *amici* occupy a unique position in matters of immigration enforcement, particularly with respect to DACA. Pursuant to an October 2011 memorandum by then-ICE Director John Morton, ICE is not to engage in immigration enforcement actions such as arrests, interviews, searches, or surveillance at churches, synagogues, mosques, or other houses of worship, unless exigent circumstances or other law enforcement purposes exist, or if prior approval is obtained (the “ICE sensitive locations policy”).<sup>8</sup> In 2016, while the prior administration was still in office, then-Secretary of Homeland Security Jeh C. Johnson publicly reiterated that “when enforcing the immigration laws, our personnel will not, except in emergency circumstances, apprehend an individual at a place of worship, a school, a hospital or doctor’s office or other sensitive location.”<sup>9</sup> The ICE sensitive locations

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<sup>8</sup> Memorandum from John Morton, Director, U.S. Immigration and Customs Enforcement to Field Office Directors, Special Agents in Charge, and Chief Counsel (Oct. 24, 2011), <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf>. The sensitive locations policy puts the same restrictions on raids at schools, hospitals, and other public settings.

<sup>9</sup> U.S. Dep’t of Homeland Security, Statement by Secretary Jeh C. Johnson on Southwest Border Security, <https://www.dhs.gov/news/2016/02/02/statement-secretary-jeh-c-johnson-southwest-border-security> (Feb. 2, 2016).

policy remains in effect today, at least as an official matter.<sup>10</sup>

The ICE sensitive locations policy recognizes that houses of worship are sacred spaces of sanctuary and peace, where community members can go and be without fear of harassment or arrest. Many *amici* and others like them proudly fulfill that role and have pledged to offer their churches, synagogues, and mosques as sanctuaries to those at risk of deportation. Temple Sinai DC, Christ Church Cathedral in Cincinnati, St. Luke's in Long Beach, Arch Street UMC in Philadelphia, Albuquerque Friends Meeting, the many members of *amici* New Mexico Faith Coalition for Immigrant Justice and New Sanctuary Coalition, and others have publicly declared their status as sanctuary congregations. These organizations maintain dedicated, furnished space for visitors who need protection, and rely on their congregants for support in doing so.

In each case, the decision to become a sanctuary congregation is made after careful discussion among congregations and communities, and reflects broad religious consensus on this issue. The Albuquerque Friends Meeting, for example, when called upon to respond to an urgent need for sanctuary by a community member, convened their members and attenders. “Through a process of deep discernment together—and in commitment to our Quaker values

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<sup>10</sup> See U.S. Immigration and Customs Enforcement, FAQ on Sensitive Locations and Courthouse Arrests: Does ICE's policy sensitive locations policy remain in effect?, <https://www.ice.gov/ero/enforcement/sensitive-loc>.

of Equality and Community—we were led to a profound sense of Spiritual Unity, meaning we were ‘One in the Spirit,’” and the Meeting collectively committed to providing sanctuary. Many *amici* reported that these decisions, while weighty, were not difficult to make. When Arch Street UMC was called upon to house a man in danger of immigration detention, “the conversation among the congregation wasn’t ‘will we do this,’ but how?” They provided sanctuary to the man in question for 11 months. In Phoenix, Shadow Rock United Church of Christ provided sanctuary to a man facing deportation whose wife is pregnant and young son is in the midst of leukemia treatment. The church’s reverend stated in a public interview that the man “shouldn’t be prosecuted,” but rather “lifted up, used as an example of what it means to be a father.”<sup>11</sup>

Under the current administration, however, the parameters and application of the ICE sensitive locations policy are increasingly in doubt. ICE has already begun to target areas adjacent to places of worship for enforcement actions, to worrisome effect. For example, earlier this year on a freezing cold morning in Alexandria, Virginia, a dozen ICE agents surrounded a group of Latino men as they emerged from a church hypothermia shelter where they had spent the night. Six men were arrested and taken

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<sup>11</sup> CBS News, *Undocumented immigrant, father of leukemia patient, takes refuge in Phoenix church*, <https://www.cbsnews.com/news/undocumented-immigrant-father-of-leukemia-patient-takes-refuge-in-phoenix-church/> (Feb. 12, 2018, 7:20 AM).

away in vans.<sup>12</sup> After church leaders demanded and were refused the names and locations of the men taken, Governor Terry McAuliffe and Senator Tim Kaine both sent letters to ICE inquiring about the raid and their enforcement policies near churches. ICE responded to neither.<sup>13</sup> In suburban Illinois, ICE agents tricked a worshiper into leaving a church service—by texting him from his cousin’s cell phone about a fictional car accident—and arrested him at a neighboring McDonald’s. They arrived in unmarked cars and wore vests that said “Police.” A retired ICE supervisor, interviewed after-the-fact, praised this strategy as “actually . . . quite creative.”<sup>14</sup>

ICE has shown a propensity to target sensitive or controversial locations other than religious institutions as well. In Charlotte, North Carolina, ICE conducted raids and arrests within two miles of

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<sup>12</sup> Julie Carey, NBC Washington, *ICE Agents Arrest Men Leaving Fairfax County Church Shelter*, <https://www.nbcwashington.com/news/local/ICE-Agents-Arrest-Men-Leaving-Alexandria-Church-Shelter-413889013.html> (Feb. 15, 2017).

<sup>13</sup> Alex Emmons, The Intercept, *Targeting a Sanctuary: After ICE Stakes Out a Church Homeless Shelter, Charities Worry Immigrants Will Fear Getting Help*, <https://theintercept.com/2017/02/27/after-ice-stakes-out-a-church-homeless-shelter-charities-worry-immigrants-will-fear-getting-help/> (Feb. 27, 2017).

<sup>14</sup> Odette Yousef, WBEZ 95.1 Chicago, *Amid Deportation Push, Suburban Church Grapples with Loss*, <https://www.wbez.org/shows/wbez-news/amid-deportation-push-suburban-church-grapples-with-loss/3d269fc3-04e7-4604-bae4-a376a37410c9> (Feb. 15, 2016).



a predominantly Latino elementary school.<sup>15</sup> Students witnessed the arrests as they passed by in school busses.<sup>16</sup> In El Paso, Texas, a Latina woman was taken into custody by ICE agents dressed in plain clothes after she left a courtroom in a county courthouse. The criminal complaint filed against her indicates that ICE knew she was living at a domestic and sexual abuse resource center.<sup>17</sup>

These incidents indicate that instead of abiding by the spirit of the sensitive-locations memorandum—that is, to avoid immigration enforcement at sensitive locations—ICE is using houses of worship and other locations as lures for easy, unsuspected surveillance and arrest. This puts *amici* in the untenable and unacceptable position of at once heeding their faith-based calling to provide

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<sup>15</sup> Tina Vasquez, Rewire, *Have Trump's Mass Deportations Begun? Immigration Arrests Reported Around the Country*, <https://rewire.news/article/2017/02/10/trumps-mass-deportations-begin-immigration-arrests-reported-around-country/> (Feb. 10, 2017).

<sup>16</sup> Qué Pasa Mi Gente, *Arrestos de ICE cerca de escuela elemental de mayoría hispana*, <https://charlotte.quepasanoticias.com/noticias/ciudad/local/arrestos-de-ice-cerca-de-escuela-elemental-de-mayoria-hispana> (Feb. 9, 2017), *translation available at* <https://translate.google.com/translate?hl=en&sl=es&tl=en&u=https%3A%2F%2Fcharlotte.quepasanoticias.com%2Fnoticias%2Fciudad%2Flocal%2Farrestos-de-ice-cerca-de-escuela-elemental-de-mayoria-hispana>.

<sup>17</sup> ABC-7 KVIA, *Which places are considered 'sensitive locations'?*, <http://www.kvia.com/crime/which-places-are-considered-sensitive-locations/338319025> (Feb. 16, 2017).

sanctuary while at the same time attracting the attention of those who would do harm to the people *amici* seek to protect. This crisis of conscience has sewn fear and anxiety among *amici* and their congregants and supporters. These concerns will be greatly exacerbated if the Termination Memo goes into effect and the DACA program is terminated.

### CONCLUSION

For the reasons set forth above, the Court should affirm the judgments of the Ninth, Second, and D.C. Circuits.

October 4, 2019

Respectfully submitted,

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## **CERTIFICATE OF COMPLIANCE**

I hereby certify, pursuant to Rule 33.1(g), that the attached brief is proportionally spaced; uses a typeface (Century Schoolbook) of 12 points; and contains [x] words, as counted by Microsoft Office Word 2010, which was used to produce this brief.

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