No. 18-16981

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CRISTA RAMOS, *et al.*,
Plaintiffs and Appellees,

v.

KIRSTJEN NIELSEN, IN HER OFFICIAL CAPACITY AS SECRETARY OF HOMELAND SECURITY, *et al.*,
Defendants and Appellants.

On Appeal from the United States District Court
for the Northern District of California
No. 3:18-cv-01554-EMC
Hon. Edward M. Chen, Judge

AMICUS CURIAE BRIEF OF THE STATES OF CALIFORNIA, DISTRICT OF COLUMBIA, MASSACHUSETTS, CONNECTICUT, DELAWARE, HAWAII, ILLINOIS, IOWA, MAINE, MARYLAND, MICHIGAN, MINNESOTA, NEVADA, NEW JERSEY, NEW MEXICO, NEW YORK, NORTH CAROLINA, OREGON, RHODE ISLAND, VERMONT, VIRGINIA, AND WASHINGTON IN SUPPORT OF PLAINTIFFS AND APPELLEES

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

STATUTES

REGULATORY MATERIALS

OTHER AUTHORITIES

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

INTRODUCTION AND INTEREST OF AMICI STATES

Collectively, the Amici States[1] are home to hundreds of thousands of people from El Salvador, Haiti, Nicaragua, and Sudan who hold Temporary Protected Status ("TPS")—a legal status provided to foreign nationals who are present in the United States when their countries of origin become unsafe and it would be dangerous for them to return. The Amici States constitute seven of the top ten states of residence of TPS recipients, and have welcomed over 58 percent of the total.[2] TPS holders are nurses, roofers, pastors, chefs, bus drivers, teachers, landscapers, and child care providers. They are homeowners, business owners, union members, class presidents, and civic leaders. They are our neighbors, co-workers, family members, and friends.

The Department of Homeland Security's ("DHS") termination of TPS would strip these community members of legal authorization to work and could result in their removal to countries that are unsafe and unprepared to receive them. Many

[1] The States are California, the District of Columbia, Massachusetts, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Rhode Island, Vermont, Virginia, and Washington. The District of Columbia is included as an "Amici State" for the purposes of this brief.

[2] Ctr. for Migration Studies, *Data Tables Offer Detailed Characteristics of Temporary Protection Status Recipients from El Salvador, Honduras and Haiti by State*, http://cmsny.org/tpstablesbystate/. Nationals from these three countries make up more than 90 percent of the entire TPS population.

TPS holders would presumably be removed or otherwise have no choice but to leave; others would go into the shadows; all would lose the right to remain legally in the United States and support themselves and their families under the terms of TPS. The result would be harm to the welfare of TPS holders and their families, shuttered businesses, labor shortages, and greater strain on public and private social services.

Already, TPS terminations are hurting our economy and civil society, as the prospect of widespread removal has left whole communities uncertain, confused, and afraid. The district court acknowledged these harms and enjoined these terminations on a nationwide basis, taking note of the potential of TPS terminations to inflict even greater damage in the months ahead, including considerable harm to a wide range of Amici States' interests. ER 10, 14, 42–43 (noting potential harm to States' workforces, economies, and tax bases, as well as harm to employers from employee turnover; strain on public resources from loss of employer-sponsored health care and increased foreclosures; and loss of TPS recipients' civic and community involvement). Further, Amici States have an interest in ensuring that federal agencies refrain from actions that are arbitrary, capricious, and violate the law and Constitution. Accordingly, Amici States have a profound interest in this matter and in ensuring that the injunction here is maintained on a nationwide basis pending a final adjudication.

ARGUMENT

The court below was well within its discretion to find that the balance of equities tips in favor of an injunction here.[3] ER 14–15. As plaintiffs discuss in their brief, defendants "never dispute [p]laintiffs' 'compelling case' or the court's extensive findings" regarding the equitable factors. Appellees' Br. 24. Amici States write to emphasize one of those factors in particular, namely whether preliminary injunctive relief is in the public interest.

In addition, the record amply supports applying the injunction on a nationwide basis.[4] Given the evidence of widespread harm that would be caused if the TPS terminations were allowed to go forward, including the impact on Amici States throughout the country, defendants' argument that the injunction should be limited to "the individual plaintiffs and their relatives," Appellants' Br. 57, is untenable.

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[3] *See Regents of the Univ. of Cal. v. U.S. Dep't of Homeland Sec.*, 908 F.3d 476, 493 (9th Cir. 2018) (noting abuse of discretion standard for review of preliminary injunction).

[4] *See id.* at 512 (noting abuse of discretion standard for issuance of nationwide injunction).

I. THE DISTRICT COURT CORRECTLY FOUND THAT AN INJUNCTION WAS IN THE PUBLIC INTEREST GIVEN THE SERIOUS AND IRREPARABLE HARM DHS'S POLICY WILL INFLICT ON INDIVIDUALS, FAMILIES, COMMUNITIES, AND THE AMICI STATES

One of the factors in entering a preliminary injunction is whether the "injunction is in the public interest." *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 20 (2008); *see also* ER 8 (citing *Alliance for the Wild Rockies v. Pena*, 865 F.3d 1211, 1217 (9th Cir. 2017)). The public interest is particularly relevant in cases where the impact of an injunction reaches beyond the parties and carries a potential for public consequences. *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1139 (9th Cir. 2009). In cases like this one, which affects many non-parties (including Amici States), courts consider the hardship to third parties as part of the public interest analysis. *See Golden Gate Rest. Ass'n v. City & Cnty. of San Francisco*, 512 F.3d 1112, 1126–27 (9th Cir. 2008).

The court below ruled correctly that an injunction is in the public interest here, focusing on the significant harm that Amici States would suffer without preliminary relief. ER 10–11, 14. The overwhelming majority of TPS holders have lived here for many years—in some instances, decades. For example, on average, Salvadoran recipients have lived in the United States for 21 years and Haitian

recipients for 13 years.[5] These individuals have built lives in the United States. They have started families, founded businesses, bought homes, joined churches, received degrees, and advanced in their careers. They contribute to our economy and civic life in countless ways, both quantifiable and intangible. The preliminary injunction prevents needless harm not only to TPS holders, but to those who rely on them for care, friendship, family and community cohesion, and economic vitality. Considering these harms, the district court found that "[p]laintiffs and amici have established without dispute that local and national economies will be hurt if hundreds of thousands of TPS beneficiaries are uprooted and removed," ER 2, and noted multiple times that DHS had not contested that these harms would occur. ER 2, 10, 11.

On the other side of the ledger, the court below correctly found little to no legally cognizable harm to the federal government from entry of the injunction. *See* ER 13–14 (dismissing defendants' assertions of harm to public interest from entry of injunction); *id.* at 14 ("The bottom line is there is nothing in the record establishing the continued presence of TPS beneficiaries in the United States causes harm to the country"). Defendants do not even argue against this conclusion on appeal, as noted in plaintiffs' brief. Appellees' Br. 24.

[5] Nicole Prchal Svajlenka et al., *TPS Members Are Integral Members of the U.S. Economy and Society*, Ctr. Am. Progress (Oct. 20, 2017), https://tinyurl.com/TPSCAP.

The district court's conclusion was correct. As this Court has held, "the government[] . . . cannot suffer harm from an injunction that merely ends an unlawful practice . . . ." *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013) (citing *Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983)).[6] The only harm to the federal government here would be some period of delay in effectuating the TPS terminations if its actions are ultimately found to have been legal, a harm of vanishing significance when juxtaposed with the harms that will befall plaintiffs, Amici States, and others if TPS is terminated for the countries at issue. *See also* ER 13 (stating district court's intention to minimize any such prejudice to the government by expediting trial and final adjudication). TPS recipients have been vetted extensively—and, in many instances, repeatedly—and their individual status is subject to withdrawal if they lose eligibility by, for example, being convicted of a felony.[7] As such, TPS recipients do not present a public safety or national security threat such that immediate termination of their status is required; and as

[6] *See also NAACP v. Trump*, 321 F. Supp. 3d 143, 148 (D.D.C. 2018) (finding lack of injury to federal government from order "simply correct[ing] the improper exercise of [DHS] authority" in case relating to rescission of Deferred Action for Childhood Arrivals ["DACA"]).

[7] *See* Am. Immigr. Council, *Fact Sheet: Temporary Protected Status in the United States* (Oct. 23, 2017), https://tinyurl.com/AIC-TPS (noting that TPS holders are subjected to background checks every time their TPS is renewed); 8 U.S.C. §§ 1254a(c)(2)(B)(i), 1254a(c)(3)(A).

the district court observed, defendants cannot "in good faith" argue to the contrary. ER 12–13.[8]

This Court and numerous others have consistently taken the kinds of public harms asserted by Amici States here into account when assessing whether to issue a preliminary injunction. These include harms to family members, economic and employment-based harms, increased public health care expenses, public health harms, loss of critically needed care, and public safety harms. All of these harms will be imposed on the Amici States and their residents if the injunction against the TPS terminations at issue is lifted.

A. Families Will Be Torn Apart and Forced Back to Dangerous Counties.

Courts have repeatedly held that harms to families should be considered when a court considers granting a preliminary injunction. *See, e.g.*, *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017) (citing "indirect hardship to [plaintiffs'] friends and family members," including harm to children who "had to receive counseling because of the trauma of their government-compelled

[8] *See also Batalla Vidal v. Nielsen*, 279 F. Supp. 3d 401, 436 (E.D.N.Y. 2018) (entering injunction against rescission of DACA, holding that DHS's interest in ending program was "not so compelling" because, *inter alia*, former DACA recipients would not be enforcement priorities and DHS could revoke specific recipients' deferred action and work authorization if needed).

separation from their father") (citing *Golden Gate Rest. Ass'n*, 512 F.3d at 1126); *Doe v. Trump*, 288 F. Supp. 3d 1045, 1084 (W.D. Wash. 2017) (citing "public interest in uniting families") (citation omitted).[9] Here, the injuries to families that would occur if TPS were terminated are obvious and devastating.

Having lived and worked legally in the United States for years, many TPS holders have gotten married, had children, and raised families in the Amici States. Hundreds of thousands of children have been born to TPS holders in the United States.[10] *See* ER 8–9. As a result, hundreds of thousands of people live in "mixed-

[9] *See also Hawaii v. Trump*, 878 F.3d 662, 699 (9th Cir. 2017), *rev'd and remanded on other grounds*, 138 S. Ct. 2392 (2018) (holding that harm caused to third parties by "prolonged separation from family members" due to immigration decisions is cognizable) (citation omitted); *Washington v. Trump*, 847 F.3d 1151, 1169 (9th Cir. 2017) (citing "separated families" due to Muslim travel ban); *Int'l Refugee Assistance Project v. Trump*, 857 F.3d 554, 612 (4th Cir. 2017), *vacated and remanded on other grounds* sub nom. *Trump v. Int'l Refugee Assistance*, 138 S. Ct. 353 (2017) ("the public has an interest . . . in avoiding separation of families") (citation omitted); *Ms. L. v. U.S. Immig. and Customs Enf. ("ICE")*, 310 F. Supp. 3d 1133, 1148 (S.D. Cal. 2018) (citing "relationship between parent and child" in family separation context).

[10] TPS holders from El Salvador and Haiti have almost 220,000 United States citizen children, over 50,000 of whom live in California. Ten percent of Salvadoran and nine percent of Haitian TPS holders are married to a legal U.S. resident. Robert Warren & Donald Kerwin, *A Statistical and Demographic Profile of the US Temporary Protected Status Populations from El Salvador, Honduras, and Haiti*, 5 J. MIGRATION & HUM. SECURITY 577, 577–78, 581 (2017), http://journals.sagepub.com/doi/pdf/10.1177/233150241700500302; Ctr. Am. Progress, *TPS Holders in California, Temporary Protected Status: State-by-State Fact Sheets* (Oct. 20, 2017), https://tinyurl.com/CAP-CA-TPS.

status" households, where one or both parents hold TPS, while some or all of their family members, including children and spouses, are U.S. citizens.

Terminating TPS guarantees that these "mixed-status" families will—at the very least—face agonizing choices. Namely, if they lose TPS status, parents will face the difficult options of (1) returning to their country of origin alone, leaving their children behind; (2) taking their U.S. citizen children with them to a dangerous country that the children do not know, and where their safety cannot be ensured; or (3) staying in the United States and retreating into the shadows, knowing that they cannot work legally and could be removed at any time. *See* ER 2 ("Many [TPS beneficiaries] have U.S.-born children; those may be faced with the Hobson's choice of bringing their children with them (and tearing them away from the only country and community they have known) or splitting their families apart"), 8. These are choices no parent should have to face, yet DHS's terminations would force hundreds of thousands of families to make these decisions immediately if the injunction is lifted.

Indeed, the prospect of confronting these choices is already harming children. Due to fears about family members' removal, children across the country are experiencing serious mental health problems, including depression, anxiety,

self-harm, and regression.[11] Studies show that children's concerns about their parents' immigration status can impair their socioemotional and cognitive development.[12] And perhaps unsurprisingly, children whose immigrant mothers are subject to removal have higher incidence of adjustment and anxiety disorders.[13]

Of course, these harms are worsened when fears of forcible separation come to fruition. In one study, children with parents who had been removed refused to eat, pulled out their hair, had persistent stomach-aches and headaches, engaged in substance abuse, lost interest in daily activities, and had trouble maintaining positive relationships with non-removed parents.[14] These traumatic childhood experiences can also inflict lasting harm, including severe impairments of a child's self-worth and ability to form close relationships later in life, increased anxiety,

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[11] Wendy Cervantes et al., *Our Children's Fear: Immigration Policy's Effects on Young Children*, Ctr. Law & Soc. Pol'y (Mar. 2018), https://tinyurl.com/ChildFears.

[12] Hirokazu Yoshikawa, IMMIGRANTS RAISING CITIZENS: UNDOCUMENTED PARENTS AND THEIR YOUNG CHILDREN 120–36 (2011).

[13] Jens Hainmueller et al., *Protecting Unauthorized Immigrant Mothers Improves Their Children's Mental Health*, SCIENCE (Aug. 31, 2017), https://tinyurl.com/HainScience (concluding that "[p]arents' unauthorized status is . . . a substantial barrier to normal child development and perpetuates health inequalities through the intergenerational transmission of disadvantage").

[14] Heather Koball et al., *Health and Social Service Needs of US-Citizen Children with Detained or Deported Immigrant Parents*, Migration Pol'y Inst. 5 (Sept. 2015), https://tinyurl.com/MIRFinal.

and depression.[15] Studies of adults who were separated from their families as children have shown negative outcomes on measures of mental health and substance abuse,[16] marital success,[17] and intellectual ability,[18] as well as higher rates of chronic illnesses such as diabetes and heart disease.[19]

In addition to threatening children's health, removing a family's primary wage-earner can lead to economic hardship and loss of housing for remaining family members, which in turn can put the care of children, seniors, and disabled family members at serious risk.[20] As a result, many families will be forced to seek

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[15] Kristen Lee Gray, *Effects of Parent-Child Attachment on Social Adjustment and Friendship in Young Adulthood*, Cal. Poly. St. U., San Luis Obispo (June 2011), https://tinyurl.com/j3lgrno.

[16] Karti Räikönnen et al., *Risk of Severe Mental Disorders in Adults Separated Temporarily from Their Parents in Childhood: The Helsinki Birth Cohort Study*, 45 J. Psychiatric Res. 332 (2011); Moises Velasquez-Manoff, *Finland Saved These Children From War, Did It Hurt Them in the Process?*, N.Y. TIMES (Sept. 19, 2018), https://tinyurl.com/NYT-Fam-Sep.

[17] Anu-Katriina Pesonen et al., *Reproductive Traits Following a Parent-Child Separation Trauma During Childhood: A Natural Experiment During World War II*, 20 Am. J. Hum. Biology 345 (2007) (finding higher rates of divorce).

[18] Anu-Katriina Pesonen et al., *Intellectual Ability in Young Men Separated Temporarily from Their Parents in Childhood,* 39 Intelligence 335 (2011) (showing severe decline in verbal ability and moderate impairments in general intelligence and mathematics).

[19] Velasquez-Manoff, *supra* note 16.

[20] Randy Capps et al., *Implications of Immigration Enforcement Activities for the Well-Being of Children in Immigrant Families: A Review of the Literature*, Migration Pol'y Inst. (Sept. 2015), https://tinyurl.com/CappsMPI.

increased social services, stretching the limited resources of the Amici States should the decision to rescind TPS take effect. For example, as of 2011, more than 5,000 children nationally were estimated to be living in foster care due to their parents' detention or removal.[21] With long-term foster care estimated to cost about $25,000 per child per year,[22] these immigration enforcement actions cost state and local governments $125 million dollars annually.[23] That burden could substantially increase if TPS holders lose status and are forced to separate from their families.

All of these harms are exacerbated by the fact that—despite DHS's determination to the contrary—returning TPS holders to their countries of origin would "pose a serious threat to their personal safety."[24] *See* ER 8 ("TPS beneficiaries . . . face removal to countries . . . which may not be safe"), 32 (quoting U.S. Customs and Immigration Service ("USCIS") statement that "it remains unsafe for individuals to return to Sudan"), 34 (discussing "unsafe areas [of Sudan] where conflict persisted"). The United States itself (via experts at the

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[21] Seth Freed Wessler, *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System*, Applied Res. Ctr. 22 (Nov. 2011), https://tinyurl.com/ARCFam.

[22] Nicholas Zill, *Better Prospects, Lower Cost: The Case for Increasing Foster Care Adoption*, Nat'l Council for Adoption (May 1, 2011), https://tinyurl.com/ZillFoster.

[23] *See also* Section C, *infra*, for a discussion of increased public health care costs to states and their political subdivisions if TPS holders are left without legal status.

[24] 8 U.S.C. § 1254a(b)(1)(A).

State Department) warned that the affected countries do not have the ability to ensure that large numbers of TPS beneficiaries and their U.S. citizen children can safely return. Specifically, the State Department concluded that:

- "Haiti continues to lack the capacity to ensure that the large population [of] TPS beneficiaries currently residing in the United States can return in safety."
- "El Salvador. . . continue[s] to have [one] of the world's highest homicide rates, and weak law enforcement capabilities and inadequate government services will make it difficult for [its] government[] to ensure the protection of returning citizens—no less the U.S. citizen children who may accompany their parents."
- "El Salvador remains unable, due to ongoing security and economic conditions, to handle adequately the precipitous return of its nationals . . . . including a significant amount of children, most of whom are dual U.S.-Salvadoran nationals . . . . Parents in many communities in El Salvador fear boys may be targeted for gang recruitment and girls may be forced

into sexual relations with gang members. Many parents in El Salvador refuse to even send their children to school out of fear of the gangs."[25]

In addition, the State Department has issued a "Level 3: Reconsider Travel" advisory for Sudan, citing, *inter alia*, civil unrest and terrorism.[26] Indeed, some areas of Sudan (including Darfur) where "violent crime, such as kidnapping, armed robbery, home invasion, and carjacking, is particularly prevalent" are under a "Level 4: Do Not Travel" advisory. The State Department will not allow family members under 21 years of age (still less young children) to accompany U.S. government employees to Sudan.

Nicaragua is also under a Level 3 advisory, due to, *inter alia*, crime and civil unrest.[27] Conditions are so severe that on July 6, 2018, the U.S. government ordered non-emergency personnel to leave the county. Although this order was lifted several months later, conditions remain very dangerous. According to the State Department, "armed and violent uniformed police or civilians . . . acting as parapolice" engage in arbitrary detentions and searches, as well as land seizures. Government and "affiliated armed groups" have been reported to detain

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[25] U.S. Dep't of State, *Recommendations Regarding TPS for Haiti, Honduras, and El Salvador* (Oct. 31, 2017), https://tinyurl.com/TPS-St-Dept.

[26] U.S. Dep't of State, *Sudan Travel Advisory* (Dec. 27, 2018), https://tinyurl.com/Sud-trv-adv.

[27] U.S. Dep't of State, *Nicaragua Travel Advisory* (Sept. 12, 2018), https://tinyurl.com/Nic-trv-adv.

individuals with "unfounded charges of terrorism, money laundering, and organized crime . . . . Violent crime, such as sexual assault and armed robbery, is common."

Although defendants claim to have received and reviewed input from "other appropriate U.S. Government agencies" in the course of their decisions to terminate TPS,[28] they ignored not only these warnings from State Department experts, but the in-depth, fact-specific research of USCIS professionals as well. In fact, there is significant documentation of communications among decisionmakers and staff in the Administration that show an irregular departure from the normal process, with key department officials repeatedly disregarding their staff's consensus view that the TPS countries were far too dangerous for people to safely return. *See* ER 31–37 (discussing how political appointees ignored or "repackaged" data and analysis from career staff showing continued unsafe country conditions to fit pre-ordained termination result). These warnings show that the impossible choices faced by TPS holders are literally matters of life and death.

B. Amici States' Economies and Workforces Will Suffer.

Courts have also taken economic and employment-based harms into account when assessing the propriety of issuing a preliminary injunction. *See, e.g.*, *Alliance*

[28] *See, e.g.*, Termination of Designation of El Salvador for TPS, 83 Fed. Reg. 2654, 2655 (Jan. 18, 2018).

for the Wild Rockies v. U.S. Forest Serv., 2016 U.S. Dist. LEXIS 78984, at *16 (D. Idaho June 14, 2016) (denying injunction against project on National Forest land, citing "employment and economic benefits to the surrounding communities"); *Colo. River Indian Tribes v. DOI*, 2015 U.S. Dist. LEXIS 182548, at *107 (C.D. Cal. June 11, 2015) (citing job creation in analysis of public interest factor); *Earth Island Inst. v. Quinn*, 2014 U.S. Dist. LEXIS 105647, at *22 (E.D. Cal. July 31, 2014) (citing potential job losses in analysis of injunction against timber harvesting project).[29] Here, state workforces and economies will suffer if the preliminary injunction is reversed.

The national labor force participation rate for TPS holders from El Salvador is 88 percent, and for TPS holders from Haiti 81 percent, significantly higher than the overall national rate (63 percent).[30] Over ten years, loss of legal status for TPS holders (including Honduran TPS holders as well) is projected to cost $132.6 billion in GDP (due to lost earnings as well as decreased industry outputs),[31] $5.2

[29] *See also City of Sausalito v. O'Neill*, 386 F.3d 1186, 1199 (9th Cir. 2004) (citing *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 184 (2000)) (recognizing economic harm as injury to municipality).

[30] Warren & Kerwin, *supra* note 10 at 577, 582.

[31] Svajlenka, *supra* note 5 (data in appendix: https://tinyurl.com/CAP-APPX).

billion in Social Security and Medicare contributions,[32] and $733 million in employers' turnover costs.[33]

This impact will be felt most acutely in fields where TPS holders are concentrated, including construction, hospitality, food service, landscaping, child care, and retail.[34] These jobs may prove difficult to fill, leading to a lack of needed services and economic strain. For example, an estimated 37,000-70,000 construction workers are TPS holders.[35] In the Los Angeles and District of Columbia metropolitan areas, almost one in five TPS holders (16,000 individuals) works in construction.[36] More broadly, almost 16 percent of employed African-born immigrants (including Sudanese immigrants) work in construction,[37] as do 17,000 Nicaraguan immigrants.[38] Construction companies in the District of

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[32] Amanda Baran & Jose Magaña-Salgado, *Economic Contributions by Salvadoran, Honduran, and Haitian TPS Holders*, Immigrant Legal Resource Ctr. 7 (Apr. 2017), https://tinyurl.com/TPSEcon.

[33] *Id.* at 8.

[34] Warren & Kerwin, *supra* note 10 at 583–84.

[35] Kim Slowey, *DACA Expiration, TPS Elimination Threaten 100K+ Construction Jobs*, Construction Dive (Jan. 24, 2018), https://tinyurl.com/TPSConst.

[36] New Am. Econ. Res. Fund, *How Temporary Protected Status Holders Help Disaster Recovery and Preparedness* (Nov. 6, 2017), https://tinyurl.com/NewAmTPS.

[37] Kristen McCabe, *African Immigrants in the United States*, Migration Pol'y Inst. (July 21, 2011), https://tinyurl.com/Afr-immig.

[38] Gustavo López, *Hispanics of Nicaraguan Origin in the United States, 2013*, Pew Research Ctr. (Sept. 15, 2015), https://tinyurl.com/Nic-constr.

Columbia area estimate that termination of TPS will cause them to lose 20 percent of their skilled workforce.[39] The loss of these workers would hurt the construction industry, which is already "having trouble hiring workers."[40] Among other things, this labor shortage jeopardizes the Amici States' ability to prepare for natural disasters,[41] as well as rebuild after them. For example, in the last year alone, record-breaking wildfires have destroyed over 20,000 structures in California.[42] The shortage also impacts public safety at construction sites, with contractors in a recent industry survey citing a lack of skilled workers as the top factor increasing worksite safety risks.[43]

The Amici States will also suffer by losing TPS holders as homeowners. Thirty-two percent of TPS holders from El Salvador and Haiti have mortgages,[44]

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[39] D.C. Council, Rep. on PR-22-448 at 9, 37, & 58 (Nov. 21, 2017).

[40] USG Corp. & U.S. Chamber of Comm., *Commercial Construction Index (Third Quarter 2018)* 12, https://tinyurl.com/CommerceCCIQ3 (94% of contractors reporting difficulty finding workers); Slowey, *supra* note 35.

[41] New Am. Econ. Res. Fund, *supra* note 36.

[42] Cal. Dep't of Forestry & Fire Prot., *Top 20 Largest California Wildfires* (Dec. 12, 2018), http://tinyurl.com/LgstFiresCA; Louis Hansen, *Another problem for fire victims — shortage of construction workers*, SAN JOSE MERCURY NEWS, Aug. 2, 2018, https://tinyurl.com/Merc-Contstr.

[43] USG Corp., *supra* note 40 at 2, 7, 9 (80% of contractors reporting labor shortage as factor impacting safety, with over half of these listing as top factor).

[44] Warren & Kerwin, *supra* note 10 at 582.

and almost 42 percent of Nicaraguan immigrants are homeowners,[45] an important measure of their economic contribution to the Amici States. Salvadoran TPS homeowners pay an estimated $100 million in property taxes annually, including up to $32 million in the Los Angeles area alone.[46] These homeowners' loss of status could lead to job loss or removal, which cause more foreclosures.[47] In turn, foreclosures create severe hardship for families and require more local resources to be spent to address the effects of foreclosure, including declining property values, abandoned homes, crime and social disorder.[48]

C. Public Health and Vulnerable Populations' Access to Critical Care Will Suffer, and the States' Healthcare Costs Will Increase.

Public health harms, vulnerable populations' access to needed care, and increased public health care expenses are also relevant when considering whether a preliminary injunction is in the public interest. *See Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1139 (9th Cir. 2009) (citing potential impact on "health of state residents") (quotation marks omitted); *Planned Parenthood of Greater Wash. & N.*

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[45] López, *supra* note 38, https://tinyurl.com/Nic-homeowner.

[46] Zillow Res., *TPS-Protected Salvadoran Homeowners Paid Approx. $100M in Property Taxes Last Year* (Jan. 8, 2018), https://tinyurl.com/zillow-tax.

[47] *See* Jacob S. Rugh & Matthew Hall, *Deporting the American Dream: Immigration Enforcement and Latino Foreclosures*, 3 SOC. SCI. 1053 (2016), https://tinyurl.com/Rugh-frclse.

[48] G. Thomas Kingsley et al., *The Impacts of Foreclosures on Families and Communities*, The Urb. Inst. 13 (May 2009), https://tinyurl.com/GTKUrban.

Idaho v. U.S. Dep't of Health and Hum. Servs., 2018 U.S. Dist. LEXIS 69213, at *43 (E.D. Wash. Apr. 24, 2018) (finding that public interest served by issuing injunction to prevent termination of federal pregnancy prevention program); *Ross v. Inslee*, 2014 U.S. Dist. LEXIS 151364, at *23 (E.D. Wash. Oct. 24, 2014) (citing public interest "in assuring that people with mental health issues receive adequate treatment"); *Tutor Time Learning Ctrs., LLC v. KOG Indus.,* 2012 U.S. Dist. LEXIS 162124, at *21 (E.D.N.Y. Nov. 13, 2012) (holding that injunction which would impinge on parents' ability to secure new childcare services was contrary to the public interest); *Golden Gate Rest. Ass'n*, 512 F.3d at 1126 (citing municipality's "overall health care expenses").[49] All of these types of harm will be experienced by the Amici States and their residents if the injunction is overturned.

1. The TPS terminations will harm public health and strain state resources.

When TPS holders lose work authorization, many will lose employer-sponsored health insurance for themselves and their families, hindering their access to health care.[50] For example, studies show that children of undocumented

[49] *See also United States v. Odessa Union Warehouse Co-op*, 833 F.2d 172, 176 (9th Cir. 1987) (citing "the public interest in the purity of its food") (citing *Smith v. California*, 361 U.S. 147, 152 (1959)).

[50] *See, e.g.*, Decl. of Anne McCleod, *Regents v. U.S. Dep't of Homeland Security*, 3:17-cv-05211, ECF No. 118-1 (App. 789–90) (N.D. Cal. Nov. 1, 2017); Decl. of Jesse M. Caplan, *New York v. Trump*, 1:17-cv-05228, ECF No. 55-83 (E.D.N.Y.

immigrants are often sicker when seeking emergency room care and frequently miss their preventive annual exams.[51] In the same vein, undocumented women are less likely to receive needed healthcare and preventive screenings than the general U.S. population; this leads to significantly higher rates of adverse conditions, including cervical cancer and birth complications, neonatal morbidity, respiratory distress syndrome, and seizures for newborns.[52] All these individual health problems accumulate, creating public health consequences that could have been prevented if patients had increased access to preventive and routine care.

Further, fewer individuals with employer-sponsored health insurance increases Amici States' costs to provide care to uninsured residents—including emergency health insurance, payments to hospitals and community health centers, and funding for public health programs that serve underinsured patients.[53]

Oct. 4, 2017); Meredith L. King, *Immigrants in the U.S. Health Care System*, Ctr. for Am. Progress (June 2007), https://tinyurl.com/ImmHealth.

[51] King, *supra* note 50; K. Yun et al., *Parental Immigration Status Is Associated with Children's Health Care Utilization*, 17 MATERN. CHILD HEALTH J. 1913, 1913–21 (2013).

[52] Am. C. of Obstetricians & Gynecologists, *Health Care for Unauthorized Immigrants*, Comm. Op. No. 627, 125 OBSTET. GYNECOL. 755 (2015), https://tinyurl.com/ACOG627.

[53] *See, e.g.*, Cong. Budget Off., *The Impact of Unauthorized Immigrants on the Budgets of State and Local Governments* 8 (Dec. 2007), https://tinyurl.com/CBOImm (stating that county governments that share a border with Mexico incurred almost $190 million in costs for providing uncompensated care to unauthorized immigrants in 2000, representing about one-quarter of all

2. Vulnerable Residents Will Suffer from Disruptions in Care Provided by TPS Holders.

Terminating TPS will also disrupt child care facilities, nursing homes, home healthcare companies, and hospitals, many of which rely on TPS holders in their workforce. This will put some of the States' most vulnerable populations at risk.

Almost seven percent of female TPS holders work in child care,[54] including 6,100 TPS holders from El Salvador and Haiti alone.[55] Children rely on these providers for care and education, and parents require these services to maintain their own employment. Losing child care workers will be disruptive for the children and families they serve and for the economy, especially given how difficult it is for parents to find affordable, trustworthy, and convenient child care.[56]

TPS terminations will also hurt seniors and people with disabilities. Studies show that 77,400 direct care workers across the country are immigrants from Haiti

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their uncompensated health costs); Caplan Decl., *supra* note 50 (discussing fiscal harms to Massachusetts when immigrants lose employer-sponsored health insurance).

[54] Cecilia Menjívar, *Temporary Protected Status in the United States: The Experiences of Honduran and Salvadoran Immigrants*, U. Kan. Ctr. Migration Res. 14 (May 2017), http://ipsr.ku.edu/migration/pdf/TPS_Report.pdf.

[55] Warren & Kerwin, *supra* note 10 at 583–84.

[56] NPR, Robert Wood Johnson Found., Harv. T.H. Chan Sch. of Pub. Health, *Child Care and Health in America* (Oct. 2016), https://tinyurl.com/RWJchildcare.

and El Salvador.[57] In Massachusetts alone, nursing facilities employ about 4,300 Haitians.[58] If TPS holders can no longer legally work in these jobs, vulnerable residents will lose the services of health care workers with whom they have established trusting relationships. This loss of care could cause a serious deterioration in their physical and mental health. Moreover, it may be difficult for employers to fill the positions TPS holders are forced to leave. Workers in direct care fields generally receive low wages and no or minimal benefits, and the work is physically and emotionally demanding. As a result, turnover in the industry is high. In Massachusetts, one in seven certified nursing assistant positions is vacant, leaving a shortage of 3,000 workers.[59] Making matters worse, the demand for direct care assistance is increasing with a growing elderly population.[60] If home

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[57] Robert Espinoza, *Immigrants and the Direct Care Workforce*, Paraprofessional Healthcare Inst. (June 2017), https://tinyurl.com/PHI-Immig.

[58] Marva Serotkin & Tara Gregorio, *Nursing Facilities, and their Residents, Will Feel Impact if Haitians' Status Ends*, BOSTON GLOBE, Dec. 4, 2017, https://tinyurl.com/Serotkin.

[59] Melissa Bailey, *As Trump Targets Immigrants, Elderly Brace to Lose Caregivers*, KAISER HEALTH NEWS, Mar. 26, 2018, https://tinyurl.com/KHNImmig.

[60] In California and Massachusetts, the position of home health aide is the fastest growing job, predicted to grow by 41% and 38%, respectively, in the next few years. Cal. Employ. Dev. Dep't, *2016-2026 Statewide Employment Projections Highlights*, https://tinyurl.com/CALabMar ("CA Long-Term" tab); Mass. Exec. Off. of Labor & Workforce Dev., *Labor Market Information: Most Job Openings for Massachusetts*, https://tinyurl.com/MASSLabMar.

care positions go unfilled, patients who would otherwise be able to stay in their homes may be forced to move to nursing facilities, incurring higher costs for them and the Amici States and, in many cases, significantly decreasing patients' quality of life.[61]

D. Public Safety Will Suffer.

Finally, consideration of public safety harms is relevant in determining whether a preliminary injunction is in the public interest. *See Spiegel v. City of Houston*, 636 F.2d 997, 1002 (5th Cir. 1981) (finding injunction's impact on overbroad range of law enforcement practices contrary to public interest); *Earth Island Inst. v. Elliott*, 290 F. Supp. 3d 1102, 1125 (E.D. Cal. 2017) (examining public safety implications of proposed injunction on Forest Service tree removal project).[62]

The signatories to this brief are Attorneys General, most of whom serve as the Amici States' chief law enforcement officers. In that role, the Attorneys General are dedicated to ensuring that police and prosecutors are able to do their jobs to protect public safety. Terminating TPS will make that job harder because

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[61] *See, e.g.*, Christine Olsen et al., *Differences in quality of life in home-dwelling persons and nursing home residents with dementia – a cross-sectional study*, 16 BMC GERIATRICS 137 (2016), https://tinyurl.com/NursHomeQual.

[62] *See also City of Sausalito*, 386 F.3d at 1198 (addressing alleged "public safety" harms to municipality).

former TPS holders and their families will be less likely to report crime, even if they are victims, after they lose legal status.[63] In cities throughout California, law enforcement officials have reported precipitous drops in domestic violence reports by Latino residents as compared to 2016 levels, before the current Administration came to power.[64] Reports from non-Latino residents have remained stable during the same period, suggesting that fear of removal is driving the reluctance of victims to come forward, testify in court, or even seek safety in a domestic violence shelter.[65] When law enforcement is unable to obtain evidence of crimes and maintain witness cooperation at trial, public safety suffers.[66] Under these

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[63] Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement*, Dep't of Urb. Plan. & Pol'y, U. of Ill. at Chi. (May 2013), https://tinyurl.com/InsecComm (70 percent of undocumented immigrants reporting they are less likely to contact law enforcement if they were victims of a crime "for fear they will ask me or other people I know about our immigration status").

[64] James Queally, *Fearing Deportation, Many Domestic Violence Victims Are Steering Clear of Police and Courts*, L.A. TIMES, Oct. 9, 2017, https://tinyurl.com/Queally (citing police department data showing an 18% decline in reports in San Francisco, 13.3% in San Diego, and 3.5% in Los Angeles).

[65] *Id*.

[66] *See, e.g.*, Tom K. Wong, *The Effects of Sanctuary Policies on Crime and the Economy*, Ctr. for Am. Progress (Jan. 26, 2017), https://tinyurl.com/WongSanctuary (finding sanctuary counties have lower crime rates than comparable nonsanctuary counties). *See also* Queally, *supra* note 64 (quoting San Francisco District Attorney George Gascon's concern that "severe injury or homicide" can result when domestic violence is unreported).

conditions, the Amici States will have more difficulty enforcing their criminal codes, a core aspect of state sovereignty. *See, e.g.*, *Alfred L. Snapp & Son, Inc. v. P.R.* ex rel. *Barez*, 458 U.S. 592, 601 (1982).

II. THE RECORD SUPPORTS APPLYING THE INJUNCTION ON A NATIONWIDE BASIS.

For the first time on appeal, defendants argue that the injunction should be limited in scope to "the individual plaintiffs and their relatives." Appellants' Br. 57. Defendants argue that the court below did not "make findings to justify application of the injunction beyond the plaintiffs." *Id.* at 55. But the record before the court contains robust evidence justifying the nationwide scope of the injunction. Among other things, the district court found that a nationwide injunction was warranted because of the widespread harms that rescinding TPS would cause to the workforce (particularly the "construction, hospitality, food service, landscaping, home health care, child care, and retail industries") and the economy (noting projected $132.6 billion national loss in GDP, $5.2 billion loss in Social Security and Medicare contributions, and $733 million in employers' turnover costs). ER at 10.

The court also relied on evidence showing that the decision to terminate TPS would strain state and local government resources by increasing the funds they spend on health care and causing them to lose property tax revenues (the latter estimated at $100 million nationally from Salvadoran TPS holders alone). *Id.* The

court further found that "TPS beneficiaries also contribute to their communities in other less tangible, but equally important, ways;" and that a large percentage of TPS holders nationally are civically active and volunteer in their communities. *Id.* And the record also shows that terminating TPS makes communities less safe, because it will lead at least some former TPS holders to stop cooperating with local law enforcement for fear of being removed. *See* States' Amicus Brief (ECF 121-1) at 13; City and County Amicus Brief (ECF 106-1) at 7–9.

Thus, when the district court issued the injunction, it had considerable evidence of the substantial harms that would result from TPS termination on a nationwide basis. This Court should uphold the nationwide scope injunction. *See Regents*, 908 F.3d at 511–12 (affirming nationwide injunction); *Cf. City & Cty. of San Francisco v. Trump*, 897 F.3d 1225, 1244–45 (9th Cir. 2018) (remanding for additional record development "on the nationwide impact of the Executive Order"); *California v. Azar*, 911 F.3d 558, 584 (9th Cir. 2018) (narrowing injunction to plaintiff states because record was not developed on harm to other states) (citing *San Francisco*, 897 F.3d at 1244–45).

CONCLUSION

The order granting a preliminary injunction should be affirmed.

Dated: February 7, 2019

Respectfully submitted,

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STATEMENT OF RELATED CASES

The Amici States are not aware of any related cases, as defined by Ninth Circuit Rule 28-2.6, that are currently pending in this Court.

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FOR THE NINTH CIRCUIT

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I certify that on February 7, 2019, I electronically filed the foregoing document with the Clerk of the Court of the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. I certify that all other participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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