



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Nora Frimann  
City Attorney

**SUBJECT:** Amicus brief in *State of Texas et al. v. The United States of America, et al. (DACA)*      **DATE:** December 3, 2021

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## **RECOMMENDATION:**

Authorize the City Attorney to join in an Amicus Curiae brief being drafted by the County of Los Angeles and City of Los Angeles on behalf of cities and counties in support of appellants/defendants in a challenge to the legality of the DACA program in *State of Texas et al. v. The United States of America, et al.*, Case No. 21-40680 (5th Cir.).

## **BACKGROUND:**

The City of San Jose filed a lawsuit on September 14, 2017 challenging a federal administrative decision to rescind the Deferred Action for Childhood Arrivals (DACA) program without complying with the federal Administrative Procedures Act. That action was consolidated with a similar case filed by the Regents of the University of California. Other cases were filed elsewhere, including in New York and Washington D.C. The rescission was found to be unlawful for those who had been complying with and receiving the protections of the program.

Recently, the City of San Jose, along with other cities and counties, received an inquiry about joining an amicus brief being drafted by the City of Los Angeles and County of Los Angeles in support of appellants/defendants in *State of Texas et al. v. The United States of America, et al.*, Case No. 21-40680 (5<sup>th</sup> Circuit). That lawsuit, filed by the State of Texas among others, challenges the legality of the DACA program itself. The State of New Jersey, among others, intervened as defendants in the case during the past federal administration to ensure a defense of the action. The federal government is now actively defending the lawsuit on behalf of the United States.

Federal District Judge Andrew S. Hanen of the Southern District of Texas issued an order and permanent injunction in the District Court on July 16, 2021, finding that DACA as a program is unlawful. The June 15, 2012 memo of Janet Napolitano, the head of Homeland Security, was vacated along with the DACA program it created, and the

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memorandum was remanded to the Department of Homeland Security for further consideration. The federal government is enjoined from administering the DACA program under the injunction. The orders of vacatur and the permanent injunction were temporarily stayed as to existing DACA recipients pending further review by the courts.

The proposed amicus brief will be filed on behalf of cities and counties to highlight how DACA recipients have made the amici's communities more prosperous and safe, interests previously recognized by courts of appeal and the United States Supreme Court. The offices drafting the brief on behalf of participating public entities also intend to show that DACA does not confer work authorization and therefore its promulgation did not violate the Administrative Procedures Act. The brief will be filed on December 15, 2021.

### **CEQA**

Not a Project, File No. PP17-010, City Organizational and Administrative Activities resulting in no changes to the physical environment.

By: /s/ Nora Frimann  
NORA FRIMANN  
City Attorney

cc: Jennifer Maguire, City Manager

For questions, please contact NORA FRIMANN, City Attorney, at (408) 535-1900