

BEFORE THE IOWA SUPREME COURT

No. 15-0671

STATE OF IOWA,

Plaintiff-Appellee,
vs.

MARTHA ARACELY MARTINEZ,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT
OF MUSCATINE COUNTY
HON. STUART WERLING

BRIEF OF *AMICI CURIAE*

DREAM IOWA; CASA SIOUX COUNTY; IMMIGRANT ALLIES OF
MARSHALLTOWN; DIOCESE OF DAVENPORT IMMIGRATION
PROGRAM; CASA LATINA MARY TREGLIA COMMUNITY HOUSE;
SOUTHWEST IOWA LATINO RESOURCE CENTER; JUSTICE FOR
OUR NEIGHBORS

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IDENTITIES AND INTERESTS OF AMICI CURIAE

Amici are a group of seven Iowa-based organizations or programs that provide services, counseling, information, and assistance to Iowa's immigrant populations. *Amici* are concerned about the issues raised in this case because the impact of this prosecution, particularly if successful, will be increased fear and distrust in the immigrant population. This fear and distrust are contrary to the goals of the Department of Homeland Security's Deferred Action for Childhood Arrivals (DACA) program and will decrease the number of eligible immigrants who choose to take advantage of the program and its benefits, such as seeking authorized employment or a driver's license. Each of these organizations will be impacted by this case because many of their clients are current or potential DACA recipients who are fearful of potential repercussions to them and their families from fully participating in the DACA program. *Amici* fit the criteria set forth in Iowa Rule of Appellate Procedure 6.906(4)(a)(3) because they have a unique perspective and information that will assist this Court in assessing the ramifications of any decision rendered in the present case. *Amici* focus on the impact to the immigrant community and the context of this prosecution within the immigration arena and do not simply reiterate arguments expected to be made by the Defendant.

DREAM Iowa. DREAM Iowa is a statewide non-partisan organization that advocates for immigrant rights. DREAM Iowa strives to assist immigrants in achieving the American dream through efforts to restructure an unjust immigration system. The organization also works directly with immigrants who are eligible for administrative relief and benefits under the DACA program.

Center for Assistance, Service and Advocacy (CASA) of Sioux County. CASA is a non-profit organization in northwest Iowa that promotes healthy, diverse communities through empowerment, education, and advocacy. CASA helps connect immigrants to needed services and provide information regarding ESL classes, community meals, food pantries, GED classes, interpretation services, and the DACA program.

Immigrant Allies of Marshalltown. Immigrant Allies of Marshalltown has worked for the last five years to advocate for our immigrant neighbors through awareness and education events, including helping immigrants understand and access available avenues toward various status levels such as DACA or U Visas and helping locate reliable and reputable legal representation. Immigrant Allies is also committed to promoting multicultural understanding and connections between Marshalltown's longtime residents and newcomers to the community, as

well as advocating for policy and legislative change that would impact the daily lives of the community and the state's immigrant families.

Diocese of Davenport, Immigration Program. The Diocese of Davenport is a district of the Roman Catholic Church serving twenty-two (22) counties in Southeastern Iowa and made up of eighty (80) parishes. The Immigration Program of the Diocese of Davenport has served Southeastern Iowa's Spanish-speaking populations for over thirty years. The Program assists US Citizens and Legal Permanent Residents to petition for close relatives to achieve legal immigration status and also provides education about immigration and citizenship to immigrants and refugees. The Center serves immigrants of all legal status, including undocumented immigrants in various stages of seeking legal status.

Casa Latina Mary Treglia Community House. The Mary J. Treglia Community House (MJTCH) is a private, nonprofit organization located in Sioux City, Iowa. Since 1921, MJTCH has worked to help immigrant families achieve self-sufficiency and to strengthen diversity in the Siouxland community. MJTCH offers immigration legal services, English as a second language classes, preschool, summer camp, citizenship classes, and bilingual services.

Southwest Iowa Latino Resource Center. The Southwest Iowa Latino Resource Center is located in Red Oak, Iowa and has served Southwest Iowa's Spanish-speaking population for seventeen (17) years. The organization was born out of a need for community liaison services identified after a young pregnant woman who had recently emigrated from Mexico died in an apartment fire in Red Oak, Iowa and many other immigrants were displaced by the same tragedy. The Center links immigrants to the services they need and for which they are eligible. The Center also provides education to Iowa agencies that serve an immigrant population. The Center serves immigrants with any level of status, including those in the process of seeking status.

Justice for Our Neighbors. Justice for Our Neighbors (JFON) is a non-profit organization that provides free legal immigration services to low-income immigrants and refugees in Iowa. JFON holds outreach clinics in Des Moines, Cedar Rapids, Storm Lake, Columbus Junction, Ottumwa, and Decorah, Iowa. JFON's mission is to welcome immigrants to Iowa by providing affordable, high-quality immigration legal services to low-income immigrants, engaging in advocacy for immigrant rights, and offering education to communities of faith and the public regarding immigration

issues. JFON has assisted many young Iowans in applying for DACA status.

SUMMARY OF THE ARGUMENT

The federal government acts with broad authority to implement the nation's immigration system, including addressing when immigrants may be lawfully present in the United States and setting a comprehensive framework for whether immigrants are authorized to work in the United States. The federal government recently implemented a program called Deferred Action for Childhood Arrivals (DACA), which grants deferred action status to immigrants who came to the United States as children and who meet certain qualifying criteria. Individuals granted DACA protection are granted a two year reprieve from any deportation efforts and may also receive employment authorization. Notably, the DACA application recognizes that eligible applicants may have worked without authority prior to application and does not make lack of prior unauthorized work a disqualifying criterion for DACA protection from deportation.

Amici provide valuable insight in this case because the prosecution of Defendant Martha Martinez results from her receipt of DACA and subsequent efforts to obtain a driver's license in her true name. This case involves the State prosecution of Ms. Martinez for identity theft and forgery at the felony level based on her alleged prior employment under a false identity. The State relies on her alleged I-9, a document federal statute

expressly prohibits reliance on other than for specific federal crimes, and relies on the wages she allegedly earned under a false identity. *Amici* support the motion to dismiss filed by the Defendant on federal preemption grounds because this prosecution will interfere with the federal policy determinations illustrated in federal legislation relating to unauthorized work by immigrants and in DACA. The effects of this prosecution conflict with the goals of DACA to lift eligible applicants from constant fear and allow them to serve as productive members of their communities. *Amici* are witness to the fear and distrust already existing in the immigrant populations of Iowa. This prosecution will result in fewer DACA applications and in fewer DACA recipients choosing to apply for a driver's license—a benefit necessary for becoming a fully-integrated and productive member of the community—out of fear that such actions will result in prosecution or deportation.

ARGUMENT

A. The Federal Government Fully Occupies the Realm of Immigration, and Has Provided a Comprehensive Framework Regarding Employment of Immigrants, Including the Deferred Action Immigration Protection Program.

“A fundamental principle of the Constitution is that Congress has the power to preempt state law.” Crosby v. Nat’l Foreign Trade Council, 530 U.S. 363, 372 (2000). State law is preempted whenever it “stands as an obstacle to the accomplishment of the full purposes and objectives of Congress.” Arizona v. United States, ___ U.S. ___, 132 S.Ct. 2492, 2501 (2012). “The Supreme Court has also instructed that a preemption analysis must contemplate the practical result of the state law, not just the means that a state utilizes to accomplish the goal.” United States v. Alabama, 691 F.3d 1269, 1296 (11th Cir. 2012) cert denied ___ U.S. ___, 133 S.Ct. 2022. (2013). Therefore, “State law is preempted whenever its application would frustrate the objectives and purposes of Congress, even if the state law’s own application is frustrated by individuals’ noncompliance.” Arizona Dream Act Coalition v. Brewer, 757 F.3d 1053, 1063 (2014).

“The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.” Arizona v. U.S., 132 S. Ct. 2492, 2498 (2012). As the United States Supreme Court has

explained, the Immigration Reform and Control Act of 1986 (IRCA) provides a “comprehensive framework” regulating the employment of undocumented aliens. Id. at 2504. IRCA created an employment verification system that includes a form called the I-9, which is submitted by an employee to demonstrate his or her status. See I-9, Employment Eligibility Verification, USCIS, <http://www.uscis.gov/i-9>, (last visited Oct. 15, 2015). The law does not impose federal criminal sanctions on the employee side for aliens who engage in unauthorized work. Although federal law does make certain fraudulent acts to obtain employment a federal crime, “Congress has made clear . . . that any information employees submit to indicate their work status may not be used for purposes other than prosecution under specified federal criminal statutes for fraud, perjury, and related conduct.” Arizona, 132 S. Ct. at 2504 (citing 8 U.S.C. §§ 1324a(b)(5), (d)(2)(F)-(G)). “The legislative background of the IRCA underscores the fact that Congress made a deliberate choice not to impose criminal penalties on aliens who seek, or engage in, unauthorized employment.” Id. “Discretion in the enforcement of immigration law embraces immediate human concerns. Unauthorized workers trying to support their families, for example, likely pose less danger than alien smugglers or aliens who commit a serious crime.” Id. at 2499.

Within the immigration arena, Congress has delegated the determination of when a noncitizen may work with authorization to the Executive Branch. See 8 U.S.C. § 1324a(h)(3) (defining “unauthorized alien,” for employment purposes, as an alien who is neither a lawful permanent resident nor “authorized to be . . . employed by this chapter or by the Attorney General . . .”). The relevant regulations provide that some aliens without lawful status may still be granted work authorization, including an “alien who has been granted deferred action, an act of administrative convenience to the government which gives some cases lower priority, if the alien establishes an economic necessity for employment.” 8 C.F.R. § 274a.12(c)(14) (promulgated pursuant to 8 U.S.C. § 1101,1103, 1324a, and 48 U.S.C. § 1806)¹.

On June 15, 2012, the Department of Homeland Security announced an initiative within the immigration arena called Deferred Action for Childhood Arrivals “DACA”. This program allows qualifying individuals, all of whom came to the United States as children, to obtain deferred action

¹ “Deferred action” is one of several ways the federal government may exercise prosecutorial discretion in the deportation context. See Meissner, Comm., Memo HQOPP 50/4 (Nov. 17, 2000) (available at <http://www.legalactioncenter.org/sites/default/files/docs/lac/Meissner-2000-memo.pdf>)

status (i.e., any enforcement action against them based on their lack of legal immigration status would be deferred) for two years, subject to renewal, and allows such individuals to obtain work authorization. See generally, Consideration of Deferred Action for Childhood Arrivals (DACA), USCIS, www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-daca (last visited Oct. 15, 2015). Each one of the *Amici* joining this brief works with immigrant communities and provides information, services, and/or counseling regarding DACA.

To qualify for consideration under DACA, individuals must demonstrate that they:

1. Were under the age of 31 as of June 15, 2012;
2. Came to the United States before reaching their 16th birthday;
3. Have continuously resided in the United States since June 15, 2007, up to the present time;
4. Were physically present in the United States on June 15, 2012, and at the time of making their request for consideration of deferred action with USCIS;
5. Had no lawful status on June 15, 2012;
6. Are currently in school, have graduated or obtained a certificate of completion from high school, have obtained a general education development (GED) certificate, or are an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; and

7. Have not been convicted of a felony, significant misdemeanor, or three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety.

Id. Eligible immigrants simultaneously submit an application for DACA status and apply for employment authorization when they apply for DACA. See I-821D, Consideration of Deferred Action for Childhood Arrivals, USCIS <http://www.uscis.gov/i-821d> (last visited Oct. 15, 2015); see also Arizona Dream Act Coalition v. Brewer, 757 F.3d 1053 (9th Cir. 2014). If approved, the individual receives an Employment Authorization Document (EAD) that is coded under category code (c)(33)—the code for DACA recipients. Notably absent from consideration for DACA is a requirement that the applicant not have worked without authorization or not have made a false claim to United States citizenship. Form I-821D, the form used to apply for inclusion in the DACA program, does not require applicants to certify that they have not worked in the U.S. without permission or that they have not made a false claim to citizenship. See Application for Consideration for Deferred Action for Childhood Arrivals, USCIS (Feb 20, 2014), www.uscis.gov/sites/default/files/files/form/i-821d.pdf.

The absence of such requirement is notable because the U.S. Citizenship and Immigration Services (USCIS) (the immigration-benefits-

issuing agency of the Department of Homeland Security) has made policy determinations regarding whether such certifications are required to achieve other immigration benefits. For example, working without authorization is not a disqualifying action for adjustment of status² to permanent residence (colloquially known as a “green card”) as a spouse of a U.S. citizen, but is a disqualifying action for adjustment of status to permanent residence as a sibling of U.S. citizen. See INA §245(c)(2); 8 U.S.C. §1255(c)(2). Similarly, making a false claim to U.S. citizenship renders a person inadmissible to the United States. See INA §212(a)(6)(C)(i); 8 U.S.C. 1182(a)(6)(C)(i). These examples illustrate that the federal government has made conscious decisions about the impact and effect of prior unauthorized work or false claims to U.S. citizenship, and has decided that these are not disqualifying factors for status under DACA.

To the contrary, the requirements of qualifying for DACA often require an individual to disclose to USCIS that the applicant has worked without authorization and has used an alias and/or has worked under a different name. For example, although one of the requirements for

² “Adjustment of status” is an immigration benefit that allows a person to apply in the United States for permanent residence rather than travel outside the United States to obtain an immigrant visa at a U.S. consulate.

consideration is that an individual “had no lawful status on June 15, 2012,” applicants must provide proof of presence in the U.S. prior to age 16 and continuously for five years. USCIS instructs that “employment records (pay stubs, W-2 Forms, etc.)” may be submitted to provide proof of both requirements. See Instructions for Consideration of Deferred Action for Childhood Arrivals, USCIS, at 6-7 (June 4, 2014) <http://www.uscis.gov/sites/default/files/files/form/i-821dinstr.pdf>. In addition, Form I-821D requires the applicant to disclose any aliases or other names used. Given that the basis for the application is that the applicant lacks legal status, providing such information to the federal government is proof of unauthorized work or the use of prior false identities. The federal government has made a policy decision not to prosecute unauthorized work or use it as a disqualifying factor for DACA. See Consideration of Deferred Action for Childhood Arrivals (DACA), USCIS, www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-daca (last visited Oct. 15, 2015).

Although conduct that could result in deportation could be disclosed in a DACA application—including through discovery of an I-9 related to unauthorized employment—the federal government has prosecutorial discretion within this arena and has made judgments regarding whether

those actions factor into the decision to grant protection under DACA. USCIS may refer an individual to U.S. Immigration and Customs Enforcement (ICE) for purposes of removal proceedings, but has stated it will only do so if the case involves a criminal offense, fraud, or a threat to public safety and retains the discretion to determine whether to do so. Id. In addition, the federal statutory scheme's limitation on the use of I-9s for any purposes other than prosecution for specific federal crimes also necessarily limits this prosecutorial discretion to the federal government. 8 U.S.C. § 1324a(b)(5).

Further, the instructions for implementing DACA provide guidance for employers of DACA applicants. This guidance allows such employment to continue, provided the employer updates its I-9 information. In its “Guidance for Employers of Existing Employees,” USCIS explained that:

Employers must have a properly completed Form I-9 on file for every employee hired after November 6, 1986. Deferred action recipients who are currently working may provide updated documentation to their employers. An employer receiving updated documentation from an employee should review the employee's previously completed Form I-9 and determine whether to complete a new Form I-9 or only to complete Section 3 of the previously completed Form I-9 based on the guidelines below.

See Deferred Action for Childhood Arrivals, USCIS, (Nov. 20, 2012)

www.uscis.gov/sites/default/files/USCIS/Humanitarian/Deferred%20Action

%20for%20Childhood%20Arrivals/DACA-Fact-Sheet-I-9_Guidance-for-employers_nov20_2012.pdf.

Notably, the employer guidance includes examples of when a new Form I-9 should be completed, which include a change in the employee's name, date of birth, or social security number. Id. The guidance assumes that a false name, date of birth or social security number could have been reported to the employer.

The implementation of DACA involved specific policy decisions by the federal government. As President Obama announced on June 15, 2012, when the DACA program was launched, the individuals targeted for protection are those who—just like Martha Martinez—grew up in the U.S. through no fault of their own and consider themselves to be Americans:

These are young people who study in our schools, they play in our neighborhoods, they're friends with our kids, they pledge allegiance to our flag. They are Americans in their heart, in their minds, in every single way but one: on paper. They were brought to this country by their parents -- sometimes even as infants -- and often have no idea that they're undocumented until they apply for a job or a driver's license, or a college scholarship.

See Remarks by the President on Immigration, The White House Office of the Press Secretary, (June 15, 2012), www.whitehouse.gov/the-press-office/2012/06/15/remarks-president-immigration. In addition, President

Obama expressly affirmed that the purpose of this action was to lift these individuals from the shadows of society and from the constant fear under which they live:

Effective immediately, the Department of Homeland Security is taking steps to lift the shadow of deportation from these young people. Over the next few months, eligible individuals who do not present a risk to national security or public safety will be able to request temporary relief from deportation proceedings and apply for work authorization.

...

And I believe that it's the right thing to do because I've been with groups of young people who work so hard and speak with so much heart about what's best in America, even though I knew some of them must have lived under the fear of deportation. I know some have come forward, at great risks to themselves and their futures, in hopes it would spur the rest of us to live up to our own most cherished values. And I've seen the stories of Americans in schools and churches and communities across the country who stood up for them and rallied behind them, and pushed us to give them a better path and freedom from fear --because we are a better nation than one that expels innocent young kids.

Id.

The federal government's policy determinations in this arena must be respected. State law is preempted when it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." Arizona, 132 S.Ct. at 2501. "The federal power to determine immigration policy is well settled. Immigration policy can affect trade,

investment, tourism, and diplomatic relations for the entire Nation, as well as the perceptions and expectations of aliens in this country who seek the full protection of its laws.” Id. at 2498.

B. The Prosecution of Martha Martinez is the Result of Her Participation in the Federal DACA Program.

Martha Martinez is exactly the type of person the DACA program seeks to benefit. Ms. Martinez was brought to the United States in 1997 when she was only eleven years old. (03/25/2015 District Court Order Denying Motion to Dismiss (Order), at 1). She has lived in the United States continuously since that time. (See Order at 1). Her acceptance in the DACA program demonstrates that she was educated in the United States and the trial information indicates that she has worked for employers in Muscatine County. (Trial Information at 5). She currently lives in Muscatine County with her four children. (Trial Information at 5; Petition for Discretionary Review at 5). Ms. Martinez is the category of individuals that has come to be referred to as “dreamers.”³

This prosecution stems from Ms. Martinez’s compliance with and participation in the DACA program. She applied for and was awarded

³ The term “dreamer” is based on the Development, Relief, and Education for Alien Minors (DREAM) Act that was first proposed in 2001, which would legalize the same general class of people now benefitted by DACA.

DACA protection in 2013. (Order at 1; Trial Information at 4-5). Upon receiving her DACA approval and her employment authorization document (“EAD”), she became qualified to work legally in the United States and sought to obtain a driver’s license. (Trial Information at 5). Through the use of face-recognition software, the Iowa Department of Transportation (“DOT”) identified her as someone who had allegedly previously obtained a driver’s license in another name and initiated an investigation. (Trial Information at 4-5). Although the three year statute of limitations (Iowa Code § 802.3) had passed for any charges the State might contemplate based on the allegations that in 2003 and 2008 Ms. Martinez had obtained a driver’s license under a false identity, the State went to a former employer and obtained an I-9 allegedly previously provided by Ms. Martinez to work under the false identity and obtained pay stubs to base the charges on the time period of January 4, 2013 through June 14, 2013. (Trial Information at 1-5).

The State charged Ms. Martinez with one count under Iowa Code section 715A.8 for allegedly “fraudulently uses or attempts to use identification of another person with the intent to obtain credit, property, services or other benefit, the value of which exceeds \$1,000.” (Trial Information at 1). The Trial Information relied on the value of her pay stubs

for the \$1,000 threshold. (Trial Information at 2). The State also charged Ms. Martinez with one count under Iowa Code section 715A.2(1), 715A.2(2)(a)(4) for “fraudulently use or utter a writing, to wit: a document prescribed by statute, rule or regulation for entry into or as evidence of authorized stay or employment in the United States, knowing that said writing was forged by altering completing, authenticating or transferring to be the act of another without their permission.” (Trial Information at 1). The writing or document relied upon in the Trial Information is the I-9. (Trial Information at 4).

The record shows that Ms. Martinez was relying on the employment authorization documents obtained through DACA in her driver’s license application. (Trial Information at 4-5). When she spoke to the investigating officer, she allegedly freely disclosed to the officer that she had used another name to work and to apply for a previous driver’s license, and stated that she now was using her real name because she came to the United States before she was sixteen. (Trial Information at 4-5). Ms. Martinez allegedly told the investigator that since receiving DACA authorization, she had been employed under her true social security number but was not currently working due to a pregnancy. (Trial Information at 5). Her alleged statements indicate that DACA made her safe and not only allowed but

encouraged her to correct her records. Instead, her reliance on the federal program will ironically make her ineligible for the DACA program and may result in her deportation from the United States if this prosecution is allowed to continue.

C. The State’s Prosecution Effort is Preempted by Federal Law Because It Will Interfere with Federal Policy by Deterring Eligible Persons from Participating in DACA and/or Using DACA Benefits to the Full Extent Intended.

The prosecution of Ms. Martinez, if allowed to proceed, will have a devastating effect on the immigrant community served by *Amici*, the willingness of individuals to apply for DACA, and will impede DACA’s intended effects. Each of the *Amici* has interacted with immigrants who are eligible for DACA, but choose not to apply out of fear that doing so will bring government attention on them and their families and lead to adverse consequences such as deportation or criminal prosecution. Allowing the prosecution to proceed will justify their worst fears and undermine the federal program.

The State’s message conveyed through this prosecution—that the potential impact of applying for DACA and applying for a driver’s license is arrest and prosecution—has already traveled through Iowa’s immigrant community and impacts whether eligible immigrants decide to apply under

the program. According to a statistical assessment by the Migration Policy Institute, approximately 55% of those eligible nationwide have applied for DACA. See Jeanne Batalova, Sarah Hooker, & Randy Capps, DACA at the Two-Year Mark, A National and State Profile of Youth Eligible and Applying for Deferred Action, (August 2014), available at <http://www.migrationpolicy.org/research/daca-two-year-mark-national-and-state-profile-youth-eligible-and-applying-deferred-action>. For those who do apply, the report indicates that they have received measurable benefits towards economic self-sufficiency: 60% have secured a new job, 57% have obtained a driver's license, and 49% opened their first bank account. Id.

The impact of the State's prosecution in this action on the population served by *Amici* is substantial. The State has essentially found an end-run around the policy decision made by the federal government in DACA. Here, the State is prosecuting Martha Martinez, an individual qualifying under DACA, for unauthorized work. Through its focus on her alleged I-9 and pay stubs, the State has charged Ms. Martinez with fraudulent use of identification to obtain a benefit exceeding \$1,000. (Trial Information at 1-5). The State's action, and its decision to use the amount of her alleged wages to reach the felony level, allows the State to make her ineligible for DACA and deportable in the instance of conviction. An individual the

federal government has identified as someone who should be granted a reprieve from deportation and classified as “lawfully present” will now become deportable based on the State’s actions. See Frequently Asked Questions, USCIS, www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-process/frequently-asked-questions (last visited Oct. 15, 2015)⁴. The fear this action will instill in the immigrant population and the chilling effect it will have on qualifying individuals who would otherwise apply for DACA cannot be overstated.

Ms. Martinez is not unique. She is a typical representative of the class of persons targeted by DACA. She has spent more time in the United States than in her country of birth. She lacks legal status through no fault of her own. She had no “home” to which to return when she realized her lack of immigration status. She used whatever means necessary to support

⁴ USCIS issued clarifying FAQ Q5 in response to states, such as Iowa, that refused to issue driver’s licenses to individuals granted DACA status. Iowa had previously refused to grant those who obtained DACA status a driver’s license but, after USCIS expressly clarified that such individuals are “authorized by the Department of Homeland Security to be present in the United States and considered to be lawfully present during their deferred action” period, the Iowa DOT announced that it would begin granting licenses. See Iowa DOT Will Issue Driver’s Licenses or Nonoperator IDs to Persons Granted Deferred Action for Childhood Arrivals Status, Iowa DOT, (Jan. 23, 2013), www.news.iowadot.gov/newsandinfo/2013/01/iowa-dot-will-issue-drivers-licenses-or-nonoperator-ids-to-persons-granted-deferred-action-for-child.html.

herself and her children. Although she allegedly used a false identity there is no evidence that the identity – although not hers – belonged to another real person or that her actions harmed anyone in any way. See State v. Garcia, 788 N.W.2d 1, *3 (Iowa Ct. App. 2010) (noting that section 715A.8(2) requires the State to establish that the identification information “was of another person”); see also Flores-Figueroa v. U.S., 556 U.S. 646, 657 (2009) (holding federal statute criminalizing one who “knowingly” used a “means of identification of another person” required proof that the defendant knew the identification belonged to an actual person); compare Iowa Code § 715A.8 (“A person commits the offense of identity theft if the person fraudulently uses or attempts to fraudulently use identification information of another person, with the intent to obtain credit, property, services, or other benefit.” (emphasis added)); Iowa Code § 715A.2 (“A person is guilty of forgery if, with intent to defraud or injure anyone, or with knowledge that the person is facilitating a fraud or injury to be perpetrated by anyone, the person does any of the following: ... (a) alters a writing of another; (b) Makes, completes, executes, authenticates, issues, or transfers a writing so that it purports to be the act of another who did not authorize that act. . . .” (emphasis added)). No allegation was made that Ms. Martinez used the identity to obtain anything but a job and a driver’s license.

Additionally, persons—like Martha Martinez—who have utilized DACA to obtain an EAD and thus qualify to update their I-9s and apply for a driver’s license are readily identifiable by the code used on their EAD and through data shared by the federal government with the DOT in the driver’s license issuance process. It is unclear whether it is DOT’s usual investigative method to obtain employment records when a person appears to have used false information on a driver’s license application in the past. However, it would be possible for DOT to target DACA recipients for I-9 investigations—whether or not records revealed a false driver’s license or car registration in the past—because all of them would necessarily provide an EAD with a specific eligibility code to obtain the driver’s license.

Such an investigation would likely reveal many DACA applicants with false identities on current or past I-9s. These are, by definition, individuals who have been present in the United States, but without lawful status, for at least five years. Therefore, to the extent they have engaged in employment, sought to obtain a driver’s license (as opposed to driving without one), or registered a car, they likely did so under a false name or social security number. DACA specifically contemplates allowing these individual to step into their true name, work with authorization, and obtain a driver’s license. In Ms. Martinez’s case, however, her actions had the

opposite consequences and have resulted in her prosecution and possible deportation.

The federal government has articulated a rationale for the DACA program, which includes allowing individuals who qualify to come forward and report their presence, correct employment records and participate in our society, including seeking driving privileges and registering vehicles. It is an ameliorative program that is only focused on certain past transgressions and waives others, including work without authorization, work under a false identity, or representation of U.S. citizen status.

The law that requires the I-9 to be completed in the first place is a federal law. 8 U.S.C. §1324a(b). Iowa has no law requiring employers to collect the same information. Here, the State is attempting to pursue prosecution on that prior I-9 that the federal government is expressly allowing to be updated should Ms. Martinez have returned to work. Further, federal law actually prohibits reliance on the I-9 for any efforts outside of prosecutions for specific federal crimes. Arizona, 132 S. Ct. at 2504 (citing 8 U.S.C. §§ 1324a(b)(5), (d)(2)(F)-(G)).

Moreover, there is no allegation that Ms. Martinez did not perform the work for which she was hired. Given that she performed the work, the employer is required to pay her for it despite her lack of legal status. See

e.g. Lucas v. Jerusalem Cafe, LLC, 721 F.3d 927, 933 (8th Cir. 2013) (“[W]e hold that aliens, authorized to work or not, may recover unpaid and underpaid wages under the FLSA.”). To allege that such wages were fraudulently obtained and use their value to raise the violation to a felony is contrary to the federal scheme of regulating the field of immigrant employment. Such allegation also fails to allege the necessary intent to defraud. See State v. Hoyman, 863 N.W.2d 1, 9 (Iowa 2015) (noting distinction between intent to defraud and intent to deceive and that intent to defraud means “to mislead with the further purpose of obtaining some gain from the victim of deceit.”); compare Iowa Code § 715A.2 (“A person is guilty of forgery if, with intent to defraud or injure anyone . . .); Iowa Code § 715A.8 (“A person commits the offense of identity theft if the person fraudulently uses. . .”).

One of the goals of the DACA program is recognizing that the federal immigration laws are not designed to “remove productive young people to countries where they may not have lived or even speak the language.” See letter from J. Napolitano, Secretary of Homeland Security, regarding Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children, (June 15, 2012), <http://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion->

individuals-who-came-to-us-as-children.pdf (emphasis added). This goal also would be thwarted by the State's prosecution of Ms. Martinez. These "productive young people" provide a valuable contribution to Iowa's communities and the State of Iowa should not be able to dismantle the federal government's policy goals through prosecution such as that of Ms. Martinez⁵.

The community is already aware of prosecutions for seeking a prior driver's license or registering a car. An attorney at Justice for Our Neighbors worked with one young woman who had her efforts to participate

⁵ These "productive young people" are particularly desirable in Iowa, where rural areas and small cities are suffering from declining or aging populations creating a need for an able workforce. See Iowa Department of Public Health Center for Health Workforce Planning Issue Brief, www.idph.state.ia.us/IDPHChannelsService/file.ashx?file=DCBCB918-80F6-471B-BCC4-32F5982A3ED9 (recommending that Iowa "seek opportunities to train and employ immigrants to meet the increasing health care needs of its aging population."); What New Iowans Contribute to the State Economy, Iowa Policy Project, <http://www.iowapolicyproject.org/2014Research/140702-Immigration-xs.html> (noting that majority of Iowa's immigrants are of prime working age and are lowering the average age of the state's population and increasing overall rates of workforce participation); Iowa Farm Labor Shortage Fuels Immigrant Debate, Sioux City Journal, http://siouxcityjournal.com/iowa-farm-labor-shortage-fuels-immigrant-debate/article_db32e2b7-d390-5423-8804-ab2e2a6ec341.html (describing efforts of American Farm Bureau Federation and other agricultural groups that are pushing federal lawmakers to address the issue so that employer can have access to a legal workforce).

in DACA backfire into a criminal prosecution⁶. This young woman was brought to the United States from a Central American country as a young child. She and her family settled in a small Iowa town, where she was active in music, sports, and achieved academic success. See e.g., List Shows Which Iowa Cities Growing, Dying ..., (May 28, 2014), <http://www.kcci.com/news/is-your-town-on-this-top-10-list/26208114> (noting that “New U.S. Census data found more than 60 percent of Iowa cities lost population since 2010.”)). This high-achieving young woman was prosecuted after she received DACA and applied for a driver’s license because she had once previously registered a car in her own name but using a made-up social security number at the age of seventeen. Similarly, *Amici* have become familiar with several individuals who, after seeking a driver’s license through their status as DACA recipients, were targeted with criminal charges for previously using made-up social security numbers to register their vehicles. This case goes one step further by focusing on prior

⁶ Efforts have been made not to include identifying information of any of the individuals referenced in this brief. Unfortunately, the actions of the State demonstrate that complying with the federal law can lead to prosecution and *Amici* do not wish to expose any further individuals to such unjustified prosecution.

unauthorized employment and will further stifle attempts to take advantage of the federal DACA program.

It will not be lost on the immigrant population that the act of attempting to honor the laws of the State of Iowa by applying for driving privileges or registering a car may actually lead to a DACA recipient's prosecution and, as a consequence, ineligibility for DACA and possible deportation. A driver's license and car registration is required for insurance, which protects all Iowa residents. Ms. Martinez's prosecution will have the consequence of encouraging individuals who receive DACA to choose to remain unregistered, unlicensed, and/or uninsured and preventing those individuals from correcting employment records or from working at all. In most parts of Iowa driving is a necessity and lack of a driver's license may make an individual ineligible for a job or unable to maintain that job. See Sarah E. Hendricks, Ph.D, Drake Professor of Sociology, [Living in a Car Culture Without a License: The Ripple Effects of Withholding Driver's Licenses from Unauthorized Immigrants](#), (Perspectives April 24, 2014), available at <http://www.immigrationpolicy.org/perspectives/living-car-culture-without-license> ("State-level limitations on driver's licenses threaten to endanger public safety, undermine opportunities that immigrant populations offer their communities, and contribute to a climate of fear that

impedes the adaptation of immigrants. Restrictive driver's license policies thus produce a ripple effect, limiting the lives of individual immigrants and their families, which then affects the social and economic well-being of localities and, cumulatively, the wider U.S. society."); see also Arizona Dream Act Coalition, 757 F.3d at 1063 ("If the practical result of the application of Defendant's policy [of denying drivers' licenses to DACA recipients] is that DACA recipients in Arizona are generally obstructed from working—despite the Executive's determination, backed by a delegation of Congressional authority, that DACA recipients throughout the United States may work—then Defendant's policy is preempted.").

In the case of Ms. Martinez, the alleged crime is essentially working under the identity of another (although no actual other person has been identified). Clients of *Amici* already face hurdles for seeking employment under DACA status. A client of the Southwest Iowa Latino Resource Center, for example, was recently told by a human resources employee that she would be required to present a "green card" (proof of permanent residency) and that the documents she had through DACA would not qualify her for employment. Another employee intervened to provide accurate information and the client was able to obtain the job and now fills an important role as an interpreter for Spanish-speaking customers. The

Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) enforces the anti-discrimination provision (§ 274B) of the Immigration and Nationality Act (INA). See 8 U.S.C. § 1324b. This federal law prohibits: 1) citizenship status discrimination in hiring, firing, or recruitment or referral for a fee, 2) national origin discrimination in hiring, firing, or recruitment for a fee, 3) document abuse (unfair documentary practices during the employment eligibility verification, Form I-9, process, and 4) retaliation or intimidation). Id. One of the goals of DACA is to allow legal work in the United States in spite of past violations. Prosecutions of DACA recipients for past I-9 violations that the federal government has waived will also interfere with these federal programs.

If allowed to advance, this prosecution will directly interfere with both the letter and the spirit of DACA. *Amici* have witnessed firsthand the effect of the DOT's actions. Many immigrants who are otherwise DACA eligible choose not to apply or choose to forego a driver's license and may drive unlawfully. The potential consequence of seeking a license is more serious (felony identity theft charges) than the consequence of failing to do so (misdemeanor driving without a license). For example, an attorney for one *Amici* has worked with a young woman who graduated from an Iowa high school, is married, and has U.S. citizen children, one of whom has

serious health problems. This young woman was eligible for and received DACA status. However, despite receiving a valid social security number and work authorization, she has declined to seek a driver's license because she had previously registered a car with a made-up social security number. Therefore, she is fearful of the potential (and apparently likely) prosecution efforts if she is to seek a driver's license.

The Federal government's DACA program exists to provide lawful status to immigrants who were brought to the United States as children and have been productive citizens. By targeting these individuals for stepping up to replace a false identity or social security number with their own, the State essentially dismantles the Federal DACA program. Not only will the State potentially cause the deportation of individuals who were granted protection by DACA, it will also cause qualified individuals to choose not to take the risk of seeking DACA status and its benefits. *Amici* urge the Court to find that the prosecution of Martha Martinez is preempted by federal immigration law.

CONCLUSION

Amici urge the Court to grant the Defendant's motion to dismiss on preemption grounds because the federal government has provided a comprehensive framework for employment by immigrants, including the

recent DACA initiative. DACA is intended to alleviate fear in immigrants brought to the country as children and allow those immigrants to come out of the shadows, including through obtaining work authorization and qualifying for a driver's license. The State's prosecution interferes with those goals by creating fear that will result in fewer immigrants applying for DACA or utilizing it to more fully integrate into the community. The prosecution of Martha Martinez is an unlawful attempt to regulate immigrant employment inconsistent with the judgments made by the federal government.

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CERTIFICATE OF FILING AND CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 4th day of January, 2016, I electronically filed the foregoing Brief of *Amici Curiae* DREAM Iowa, CASA Sioux County, Immigrant Allies of Marshalltown, Diocese of Davenport Immigration Program, Casa Latina Mary Treglia Community House, Southwest Iowa Latino Resource Center, and Justice for Our Neighbors with the Clerk of the Iowa Supreme Court by using the EDMS system and all persons who have filed appearances are registered EDMS users and that service will be accomplished by the EDMS system on the following:

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**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME
LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE-STYLE
REQUIREMENTS**

The Brief of *Amici Curiae* DREAM Iowa, CASA Sioux County, Immigrant Allies of Marshalltown, Diocese of Davenport Immigration Program, Casa Latina Mary Treglia Community House, Southwest Iowa Latino Resource Center, and Justice for Our Neighbors complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because the brief used a proportionally spaced typeface and contained 6,894 words excluding the parts of the brief exempted by Iowa. R. App. P. 6.903(1)(g)(1). The brief complied with the typeface requirements of Iowa. R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because the brief had been prepared in a proportionally space typeface using Microsoft Word 2007 in font size 14 and Times New Roman type.

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