

CHAD A. READLER  
Acting Assistant Attorney General  
WILLIAM C. PEACHEY  
Director, District Court Section  
Office of Immigration Litigation  
JEFFREY S. ROBINS  
Assistant Director  
U.S. Department of Justice  
P.O. Box 868, Ben Franklin Station  
Washington, D.C. 20044  
(202) 616-1246  
Email: jeffrey.robins@usdoj.gov  
JAMES WALKER  
Trial Attorney

Attorneys for Defendants

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

INLAND EMPIRE –  
IMMIGRANT YOUTH  
COLLECTIVE and JESUS  
ALONSO ARREOLA ROBLES,  
on behalf of himself and others  
similarly situated,

Plaintiff,

v.

ELAINE C. DUKE, Acting  
Secretary of Homeland Security, *et*  
*al.*,

Defendants.

Case No. 5:17-cv-2048-MWF-SHK

**DEFENDANTS' MEMORANDUM  
OF POINTS AND AUTHORITIES  
IN OPPOSITION TO PLAINTIFFS'  
MOTION FOR PRELIMINARY  
INJUNCTION [DKT. 16].**

**Judge:** Hon. Michael W. Fitzgerald

**Courtroom:** 5A

**Hearing:** November 20, 2017

**Time:** 10 a.m.

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## Introduction

Plaintiff Jesús Alonso Arreola Robles, (“Plaintiff” or “Mr. Arreola”) seeks the extraordinary remedy from this Court of reinstating his Deferred Action for Childhood Arrivals (“DACA”) and employment authorization (“EAD”) that were previously terminated following his arrest for engaging in criminal activity, including participating in the attempt to transport undocumented immigrants near the southern border of the United States. Dkt. No. 16-2, Memorandum of Law, at 7. Plaintiff’s motion for a preliminary injunction requires this Court to reject decades of precedent to recognize alleged rights and privileges that have never existed for Plaintiff and similarly situated individuals. Plaintiff, who has benefitted from the Government’s discretion to remain and work in the United States despite having no lawful status, had no ongoing expectation to the continuation of that grace.

Most importantly, Plaintiff’s DACA was automatically terminated by the issuance of a Notice to Appear (“NTA”) from the Department of Homeland Security (“DHS”) sub-agency, U.S. Customs and Border Protection (“CBP”). Filing of the NTA with the appropriate Department of Justice (DOJ) immigration court commences removal proceedings, *see* 8 C.F.R. §§ 1003.13, 1003.14, and results in the immediate termination of employment authorization for aliens granted deferred action, whether through DACA or otherwise. *See* 8 CFR § 274a.14(a)(1)(ii). Plaintiff cannot challenge in district court the commencement of removal proceedings by attacking the consequential termination of his DACA or EAD grant. *See* 8 U.S.C. § 1252(g) (precluding judicial review in district court of “any cause or claim . . . arising from the decision or action . . . to commence proceedings, adjudicate cases, or execute removal orders . . .”). Thus, to the extent Plaintiff has any viable legal claims arising from the “decision[s] or action[s]” of DHS in this case, they must be raised initially in immigration court and then, following administrative appeal, through a petition for review filed in the U.S. Court of Appeals for the Ninth Circuit. *See* U.S.C. § 1252(b)(9) (requiring that “[j]udicial review of all

1 questions of law and fact, including interpretation and application of constitutional and  
 2 statutory provision, arising from any action taken or proceeding brought to remove an  
 3 alien” must be made through a petition for review); *J.E.F.M. v. Lynch*, 837 F.3d 1026,  
 4 1031 (9th Cir. 2016) (applying this statutory channeling provision in the context of a  
 5 Fifth Amendment claim).

6 In order to prevail on a motion seeking a preliminary injunction, Plaintiff “must  
 7 establish” that he is likely to succeed on the merits of his claim, that he is likely to suffer  
 8 irreparable harm if the injunction is not granted, that the balance of equities is in his  
 9 favor, and that an injunction is in the public interest. *Winter v. Nat’l Res. Def. Council*,  
 11 555 U.S. 7, 20 (2008). Accordingly, Plaintiff cannot prevail on his motion because he is  
 12 not likely to succeed in obtaining review of DHS’ discretionary decision to issue an NTA  
 13 to place him in removal proceedings, and thereby automatically terminate his DACA and  
 14 related EAD. Moreover, to the extent Plaintiff asks the Court to grant a permanent  
 15 injunction at this initial stage of proceedings requiring that Plaintiff’s DACA and  
 16 employment authorization – “remain valid until August 19, 2018, so long as Plaintiff  
 17 continues to satisfy the eligibility requirements of the DACA program” – demands a  
 18 mandatory injunction that impinges on Defendants discretion – for which Plaintiff cannot  
 19 establish that the facts and the law “clearly favor” his position, which is in direct conflict  
 20 with Supreme Court precedent.

## 21 **I. Overview of Deferred Action and the DACA Policy**

22 The Immigration and Nationality Act (“INA”) charges the Secretary of Homeland  
 23 Security “with the administration and enforcement” of the INA and “all other laws  
 24 relating to the immigration and naturalization of aliens.” 8 U.S.C. § 1103(a)(1).  
 25 Individuals are removable if, *inter alia*, “they were inadmissible at the time of entry, have  
 26 been convicted of certain crimes, or meet other criteria set by federal law.” *Arizona v.*  
 27 *United States*, 132 S. Ct. 2492, 2499 (2012); *see* 8 U.S.C. §§ 1182(a), 1227(a). The  
 28 federal government cannot practicably remove every removable alien. Rather, “[a]

principal feature of the removal system is the broad discretion exercised by immigration officials.” *Arizona*, 132 S. Ct. at 2499. DHS, “as an initial matter, must decide whether it makes sense to pursue removal at all.” *Id.* “At each stage the Executive has discretion to abandon the endeavor.” *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) (“AADC”). Like other agencies exercising enforcement discretion, DHS must balance a number of factors that are within its expertise. *See Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

Deferred action is “a regular practice” in which the Secretary exercises her discretion “for humanitarian reasons or simply for [his] own convenience,” to notify an alien of a non-binding decision to forbear from seeking his removal for a designated period. *See AADC*, 525 U.S. at 483-84; 8 C.F.R. § 274a.12(c)(14) (“an act of administrative convenience to the government which gives some cases lower priority”). Through “[t]his commendable exercise in administrative discretion, developed without express statutory authorization,” *AADC*, 525 U.S. at 484 (citations omitted), a removable individual may remain present in the United States so long as DHS continues to forbear.

Deferred action does not confer lawful immigration status or provide any defense to removal. *Cf. Chaudhry v. Holder*, 705 F.3d 289, 292 (7th Cir. 2013) (discussing the difference between “unlawful presence” and “unlawful status” as two distinct concepts). An individual with deferred action remains removable at any time, and DHS has the discretion to revoke deferred action unilaterally. *See AADC*, 525 U.S. at 484-85.

On June 15, 2012, DHS issued a memorandum entitled, “Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children” (“Napolitano Memo”). *See* Dkt. No. 16-13, Pl. Exhibit 9. That memorandum outlines a policy known as Deferred Action for Childhood Arrivals (“DACA”) that is available to a certain subset of individuals unlawfully present in this country. The DACA Memo states, “[t]his memorandum confers no substantive right, immigration status or pathway to citizenship. Only the Congress, acting through its legislative authority, can confer these

rights.” *Id.* at 3. The memo does not address the topics of arrest by DHS or the grounds that DHS will consider in terminating deferred action. Rather, the memo directs U.S. Immigration and Customs Enforcement (“ICE”) and U.S. Customs and Border Protection (“CBP”) agents to “immediately exercise their discretion, on an individual basis” to determine whether to issue an NTA or defer action, without reference to whether an individual already has deferred action. *Id.* (“With respect to individuals who meet the above criteria, ICE and CBP should immediately exercise their discretion, on an individual basis, in order to prevent low priority individuals from being placed into removal proceedings.”). Thus, CBP or ICE have discretion to issue an NTA if the facts and circumstances available at the time an alien is encountered counsel against the continuation of deferred action, including where there is a criminal offense or public safety concern presented. *Id.*

In mid-August 2012, USCIS published on its website a webpage entitled, “Frequently Asked Questions,” which is now archived on the USCIS webpage. *See* Dkt. No. 16-23, Pl. Exhibit 19. These FAQs provide guidance on the DACA policy and state, “DACA is an exercise of prosecutorial discretion and deferred action may be terminated at any time, with or without a Notice of Intent to Terminate, at DHS’s discretion.” *Id.* at Q:27. The FAQs also explain that the phrase “national security or public safety threat” includes but is not limited to “gang membership, participation in criminal activities, or participation in activities that threaten the United States.” *See id.* at Q:65. The Form I-821D, entitled, “Instructions for Consideration of Deferred Action for Childhood Arrivals” states, “[i]ndividuals who receive deferred action will not be placed into removal proceedings or removed from the United States for a specified period of time, unless the Department of Homeland Security (DHS) chooses to terminate the deferral.” *See* Exhibit A, Form I-821D Instructions (January 9, 2017 version, with no changes to the relevant content).

Through an internal guidance document entitled the “National Standard Operating

1 Procedures (SOP); Deferred Action for Childhood Arrivals (DACA),” USCIS has  
 2 provided its officers with procedural guidance for terminating deferred action in three  
 3 circumstances, one of which includes issuing a Notice of Intent to Terminate (“NOIT”)  
 4 and providing a chance for a DACA recipient to respond, and two in which such notice  
 5 and an opportunity to respond is not required. *See* Dkt. No. 16-24, Pl. Exhibit F, National  
 6 Standard Operating Procedures, Deferred Action for Childhood Arrivals (“SOP”) (Aug.  
 7 28, 2013); *id.* at Appendix I.

8 Nothing in the Napolitano Memorandum limits CBP or ICE from exercising their  
 9 authority to issue an NTA. Rather, pursuant to the DACA SOP and Appendix I, when  
 11 *USCIS discovers* certain conduct that suggests DACA should be terminated, USCIS  
 12 should refer such conduct to ICE, who may issue an NTA that automatically terminates  
 13 DACA, with no additional notice or opportunity to respond. *See* Dkt. No. 16-24. USCIS  
 14 then generally sends a “Notice of Action” to the individual informing him that his  
 15 deferred action and employment authorization terminated automatically as of the date the  
 16 NTA was issued. *Id.* at 42. This “Notice of Action” serves an administrative purpose to  
 17 inform the DACA recipient that his DACA and employment authorization were already  
 18 automatically terminated due to issuance of an NTA. The Notice of Action does not itself  
 19 effectuate the termination of DACA and employment authorization.

20 On September 5, 2017, DHS announced a plan to end the DACA policy in an  
 21 orderly fashion. *See* Dkt. No. 16-18, Pl. Exhibit 14, “Memorandum on Rescission of  
 22 Deferred Action for Child Arrivals” from Elaine C. Duke, Acting Secretary of Homeland  
 23 Security, to ICE, CBP, and USCIS (Sept. 5, 2017) (“Duke Memo”). The memorandum,  
 24 *inter alia*, provides that DHS will “adjudicate – on an individual, case by case basis –  
 25 properly filed pending DACA renewal requests and associated applications for  
 26 Employment Authorization Documents . . . from *current* beneficiaries whose benefits  
 27 will expire between the date of this memorandum and March 5, 2018 that have been  
 28 accepted by the Department as of October 5, 2017.” *Id.* (emphasis added).



## II. Factual Background

Plaintiff alleges he was granted deferred action and employment authorization pursuant to DACA in 2012 and again in 2014; and that he requested renewal of DACA in 2016 and was granted deferred action and employment authorization, effective through August 19, 2018. Dkt. No. 16-2 at 6. Plaintiff also acknowledges the DACA approval letter advises that “[s]ubsequent criminal activity” is likely to result in termination of deferred action. *Id.*

On the evening of February 11, 2017, stretching into the morning of February 12, BP agents were searching an area of El Cajon, California, near the United States/Mexico International Boundary (hereinafter “the border”) known for unlawful border crossings, after finding indications that undocumented immigrants had likely recently crossed the border. *See* Exhibit B, DHS Memorandum of Investigation, Agent Statement of BP Agent F.O.,<sup>1</sup> dated February 12, 2017 (“F.O. Memo”); Exhibit C, DHS Memorandum of Investigation, BP Agent I.J., dated February 13, 2017 (“I.J. Memo”).

Around midnight, the border patrol agents encountered Plaintiff behind the wheel of a “vehicle parked on the side of the road with its lights out.” *Id.* The passenger in the vehicle, Mr. R., was later identified as an undocumented immigrant. *Id.* According to one agent, subsequent to encountering Plaintiff and Mr. R, four undocumented immigrants were detained in close proximity to Plaintiff’s vehicle, and the “identified . . . smuggler for that event . . . shows a prior apprehension event” with Mr. R. *See* Exhibit D, DHS Report of Investigation, Border Patrol Agent A.R., dated February 12, 2017 (“A.R. Report”), at 4. CBP also positively linked Mr. R.’s phone to the smuggler’s cell phone, and concluded Plaintiff and Mr. R. were likely present in that location to pick up the four undocumented immigrants. *Id.*

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<sup>1</sup> Due to the public nature of this case, names of the federal agency agents and officers are redacted here and in the attached exhibits.

1 In his initial encounter with the agents, Plaintiff first stated “he picked up [Mr. R.]  
 2 in El Cajon, California and was going to take him to Tijuana, Mexico.” Exhibit C.  
 3 However, Plaintiff “then changed his story and claimed that he was just going back home  
 4 to Hollywood, California.”<sup>2</sup> *Id.* Upon further questioning, Plaintiff stated he had just  
 5 recently picked up Mr. R. “on the side of the road,” that he knew Mr. R. was  
 6 undocumented, and that Plaintiff “was going to get paid \$100 USD to pick up an  
 7 unknown amount of illegal aliens.” *Id.*; *see also* Exhibit B. Because Plaintiff and Mr. R.  
 8 gave conflicting stories, the Border Patrol agents arrested both men and transported them  
 9 to a Border Patrol processing center, where both men separately waived their *Miranda*  
 11 rights and were administered an oath before being interviewed. Exhibit C; Exhibit E,  
 12 Transcript of Border Patrol Agent interview with Plaintiff on February 12, 2017, at 2-6;  
 13 Exhibit F, Statement of Border Patrol Agent J.H. Regarding Recorded Statement, dated  
 14 February 12, 2017 (“J.H. Statement”).

15 In his recorded interview, under oath, and after going through a number of other  
 16 stories, Plaintiff stated that he had been asked by a friend to pick up the friend’s cousin,  
 17 Mr. R, from a hotel in Sun Valley, California and drive the passenger to El Cajon to pick  
 18 up the passenger’s cousin and uncle.<sup>3</sup> *See* Exhibits E at 28-34, 37-40; F. Plaintiff admitted  
 19 he was aware he was picking up undocumented immigrants. *Id.*; *see also* Exhibit D at 3.

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21 <sup>2</sup> The Court may take judicial notice of the fact that Plaintiff’s home in Hollywood, California is  
 22 approximately 140 miles north of El Cajon, California, and the drive from one city to the other takes  
 23 approximately three hours. *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001) *overruled on*  
 24 *other grounds by Galbraith v. Cty. of Santa Clara*, 307 F.3d 1119 (9th Cir. 2002) (“[A] court may take  
 25 judicial notice of ‘matters of public record.’”) (citation omitted).

26 <sup>3</sup> The Court may also take judicial notice of the fact that Sun Valley, California is near Plaintiff’s home in  
 27 Hollywood, California, thus also approximately 140 miles and 3 hours north of El Cajon, California, where  
 28 Plaintiff first alleged to have picked up the passenger. *Lee*, 250 F.3d at 689. Plaintiff establishes a similar  
 geographic setting in a declaration filed with his Complaint, wherein he states he drove “for about three  
 and a half hours” to get from “Sun Valley, near North Hollywood” to “an address near San Diego,” where,  
 upon arrival, he was confronted by CBP. *See* Dkt. No. 16-3, Declaration of Jesus Alonso Arreola Robles,  
 at ¶¶ 19, 20, 22. San Diego, California, is approximately 15 miles from El Cajon, California.

1 At the first encounter on the side of the road, Plaintiff told agents he was to be paid \$100  
 2 for his services, *see* Exhibit C, but in his interview Plaintiff stated it was only \$40, before  
 3 ultimately admitting he was to receive \$600 for making the trip. Exhibit E at 11, 18, 30,  
 4 39; Exhibit F. The Government declined to seek Plaintiff's criminal prosecution under 8  
 5 U.S.C. § 1324,<sup>4</sup> but CBP did initiate removal proceedings against him. Exhibit D at 4.<sup>5</sup>

6 On February 12, 2017, CBP issued Plaintiff an NTA charging him as inadmissible  
 7 to the United States based on his presence without admission or parole pursuant to 8  
 8 U.S.C. § 1182(a)(6)(A)(i). *See* Exhibit G, Form I-862, Notice to Appear, dated February  
 9 12, 2017 (date stamped as filed with the Immigration Court on February 23, 2017); *see*  
 11 *also* Dkt. No. 16-11, Pl. Exhibit 7, Form I-213 Record of Deportable/Inadmissible Alien, dated  
 12 February 13, 2017, at 8 ("Arreola was processed administratively for [8 U.S.C. § 1324] Alien  
 13 Smuggling. Arreola has been approved as a Federal Interest Removal by San Diego Sector  
 14 Chief Patrol Agent R[.] B[.]").

15 On March 2, 2017, an immigration judge held a custody determination hearing and  
 16 granted Plaintiff release from immigration detention on \$2,500 bond.<sup>6</sup> Dkt. 16-10, Pl.  
 17 Exhibit 10, Bond Hearing Transcript at 59. On March 6, 2017, Plaintiff received a Notice  
 18 of Action from USCIS, notifying him that his DACA and EAD were "terminated  
 19

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20 <sup>4</sup> 8 U.S.C. § 1324(a)(1)(A)(ii) provides criminal penalties for "[a]ny person who[,] knowing or in reckless  
 21 disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law,  
 22 transports, or moves or attempts to transport or move such alien within the United States by means of  
 23 transportation or otherwise, in furtherance of such violation of law; . . . (v)(I) engages in any conspiracy  
 to commit any of the preceding acts, or (II) aids or abets the commission of any of the preceding acts . . . ."

24 <sup>5</sup> Plaintiff now alleges another new version of the facts in his sworn declaration. Plaintiff claims a friend  
 25 offered him \$600 to drive the friend's cousin from the Los Angeles area to the San Diego area to pick up  
 26 the friend's uncle and another cousin, and bring them back to the Los Angeles area. Dkt. No. 16-2 at 7.  
 27 Plaintiff now asserts the person he picked up, arguably Mr. R, entered an address near San Diego,  
 California, into Plaintiff's GPS and Plaintiff drove them there without knowing where he was going or  
 that the people he was picking up were undocumented immigrants. *Id.*

28 <sup>6</sup> As explained in greater detail below in Section II(B)(ii)(b)(5), the transcript of the bond hearing shows  
 Plaintiff misrepresented to the immigration judge a number of key facts regarding his interviews with the  
 CBP agents on the night of his arrest.

1 automatically as of the date [his] NTA was issued.” *See* Dkt. No. 16-12, Pl. Exhibit 8,  
 2 U.S. Citizenship and Immigration Services, *Notice of Action to Jesus Alonso Arreola*  
 3 *Robles Re I-821D, Deferred Action for Childhood Arrivals*, dated Mar. 6, 2017.

4 Eight months later, on October 5, 2017, Plaintiff filed a Complaint seeking an  
 5 order restoring his DACA and employment authorization, and requiring Defendants to  
 6 provide him with a further explanation for their decision and an opportunity to respond.  
 7 *See* Dkt. No. 1. On October 18, Plaintiff filed a Motion for Preliminary Injunction,  
 8 seeking to vacate Defendants’ termination of his DACA and EAD, or in the alternative,  
 9 order Defendants to temporarily reinstate his DACA and EAD and provide him an  
 11 opportunity to challenge the termination of his DACA. *See* Dkt. Nos. 16, 16-2.

## 12 **ARGUMENT**

### 13 **I. Standards of Review**

14 “The purpose of a preliminary injunction is merely to preserve the relative  
 15 positions of the parties until a trial on the merits can be held.” *Univ. of Texas v.*  
 16 *Camenisch*, 451 U.S. 390, 395 (1981). As a result, it is generally inappropriate at the  
 17 “preliminary-injunction stage to give a final judgment on the merits.” *Id.*; *see Senate of*  
 18 *State of Cal. v. Mosbacher*, 968 F.2d 974, 978 (9th Cir. 1992) (holding that “judgment on  
 19 the merits in the guise of preliminary relief is a highly inappropriate result”).

20 An injunction is “a drastic and extraordinary remedy, which should not be granted  
 21 as a matter of course.” *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 142 (2010).  
 22 A plaintiff seeking a preliminary injunction “must establish” that: (1) it is likely to  
 23 succeed on the merits of its claims; (2) it is likely to suffer irreparable harm absent  
 24 preliminary relief; (3) the balance of equities tips in its favor; and (4) an injunction is in  
 25 the public interest. *Winter*, 555 U.S. at 20; *see also Henry Schein, Inc. v. Cook*, 191 F.  
 26 Supp. 3d 1072, 1076 (N.D. Cal. 2016) (“The applicable legal standard for a motion for a  
 27 temporary restraining order is the same as that for a motion for a preliminary  
 28 injunction.”). Preliminary injunctive relief is an extraordinary remedy never awarded as

1 of right, *Winter*, 555 U.S. at 20, and the party seeking such relief bears the burden of  
 2 establishing the prerequisites to this extraordinary remedy. *Earth Island Inst. v. Carlton*,  
 3 626 F.3d 462, 469 (9th Cir. 2010).

4 Alternatively, a party must show “‘serious questions going to the merits’ and a  
 5 hardship balance that tips sharply toward the plaintiff,” as well as a likelihood of  
 6 irreparable harm, and that the injunction is in the public interest. *Alliance for the Wild*  
 7 *Rockies v. Cottrell*, 632 F.3d 1127, 1132 (9th Cir. 2011). Showing “serious questions  
 8 going to the merits” requires a plaintiff to demonstrate a “substantial case for relief on the  
 9 merits.” *Leiva-Perez v. Holder*, 640 F.3d 962, 967-68 (9th Cir. 2011).

11 Finally, to the extent that Plaintiff seeks an injunction that “orders a responsible  
 12 party to ‘take action’,” *Meghrig v. KFC W., Inc.*, 516 U.S. 479, 484 (1996), it is a  
 13 mandatory injunction. When granting mandatory injunctive relief, “courts should be  
 14 extremely cautious” and will apply a heightened standard in reviewing whether a plaintiff  
 15 has established a basis for injunctive relief. *Stanley v. Univ. of S. Cal.*, 13 F.3d 1313,  
 16 1319 (9th Cir. 1994) (internal citations omitted). Mandatory injunctions “go[ ] well  
 17 beyond simply maintaining the status quo *pendente lite* [and] is particularly disfavored.”  
 18 *Id.* at 1320 (internal citations omitted). In a mandatory injunction request, a moving party  
 19 “must establish that the law and facts *clearly favor* [their] position, not simply that [they]  
 20 [are] likely to succeed.” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015).

## 21 **II. Plaintiff Cannot Sustain the Requirements for Preliminary Relief.**

22 The factors to grant a preliminary injunction are not met here. To start, Plaintiff  
 23 cannot show irreparable harm from the loss of a peripheral benefit in work authorization  
 24 that he failed to challenge for eight months. Nor can he establish a likelihood of success  
 25 on the merits of his claim, or that the facts and law clearly favor his position, for two  
 26 important reasons. The first is that, regardless of how Plaintiff frames his argument, both  
 27 the APA and REAL ID Act preclude judicial review of the Secretary’s discretionary  
 28 decisions, including the decision to initiate removal proceedings and to terminate a grant

1 of deferred action. Further, any viable claim Plaintiff *may* have related to his removal  
 2 proceedings, including any constitutional challenges, can only be raised in immigration  
 3 court, and, if requested, through appeal to the Board of Immigration Appeals and then the  
 4 appropriate circuit court. Second, even if this Court were to find jurisdiction to consider  
 5 Plaintiff's claims, Plaintiff can establish no procedural or constitutional right to the  
 6 additional process he now seeks. Moreover, any procedural failings would not prejudice  
 7 Plaintiff where he was caught and admitted to engaging in criminal activity. Where  
 8 Plaintiff has offered no evidence or argument to overcome the facts of his criminal  
 9 activity, he cannot show that the law and facts clearly favor his position or that there he is  
 11 likely to succeed on his claim that his DACA was wrongfully terminated.

12 **A. Plaintiff Cannot Demonstrate Imminent, Irreparable Harm.**

13 The harm that Plaintiff alleges in support of his motion arises from the alleged loss  
 14 of opportunity to maintain employment through his EAD, which terminated along with his  
 15 DACA following issuance of the NTA in February 2017. Dkt. No. 16-2 at 21-22. The  
 16 Court should deny Plaintiff's motion at the outset because the imminence of the harm  
 17 Plaintiff cites is doubtful given the period of time that has elapsed between his loss of  
 18 employment authorization and the filing of this action. *See, e.g., Quach v. Bank of Am.,*  
 19 *Nat. Ass'n*, No. 12–5037 EJD, 2012 WL 4498873, at \*4 (N.D. Cal. Sept. 28, 2012)  
 20 (finding that an ex parte temporary restraining order to enjoin a foreclosure sale was not  
 21 justified where plaintiffs were aware for months of the potential trustee's sale).  
 22 Defendants terminated Plaintiff's DACA eight months ago, and Plaintiff's failure to raise  
 23 this action until now casts doubt on his claims of urgent, irreparable harm unless his  
 24 DACA and employment authorization are reinstated immediately. *See, e.g.,* Dkt. No. 16-  
 25 2 at 27 ("Time without DACA is 'productive time irretrievably lost' that Mr. Arreola  
 26 could be spending in his chosen career path . . .").

27 In addition, the degree of harm Plaintiff alleges stretches beyond the relief  
 28 provided by an order maintaining the status quo. Plaintiff asks this Court to grant him a



1 *permanent* enjoinder against Defendants terminating his DACA for the remainder of its  
 2 full term. *See* Dkt. No. 16-2 at 7 (emphasis added). While this request for complete relief  
 3 is already inappropriately raised in a motion for preliminary injunction, *see Mosbacher*,  
 4 968 F.2d at 978, Plaintiff conflates even the temporary and already extraordinary remedy  
 5 of a preliminary, mandatory injunction—one reinstating his DACA for the time necessary  
 6 to reach the merits of his claims—with a form of permanent relief he would not receive  
 7 even under the most optimal outcome on the merits. Were the Court to conclude, as the  
 8 courts in *Colotl* and *Gonzalez* did, that it has the jurisdiction to review the procedural  
 9 steps leading to a DACA termination, but not the decision itself, the most relief the Court  
 11 could grant is an order to Defendants to cure what the Court interprets as procedural  
 12 defects in the termination process. *See Colotl v. Kelly*, No. 1:17-CV-1670-MHC, 2017  
 13 WL 2889681, at \*9 (N.D. Ga. June 12, 2017) (“[Section] 1252(g) strips this Court of  
 14 jurisdiction to review the government's ultimate discretionary determination as to  
 15 Plaintiff's DACA status.”); *see also Gonzalez v. U.S. Dep't of Homeland Sec.*, No.  
 16 17CV1840 JM(NLS), 2017 WL 4340385, at \*4 (S.D. Cal. Sept. 29, 2017) (finding the  
 17 same).<sup>7</sup>

18 Thus, the irreparable harm Plaintiff claims of not having his DACA through  
 19 August 2018 is overstated at best.

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22 <sup>7</sup> Plaintiff's reliance on *Colotl v. Kelly* is misplaced. *See, e.g.*, Dkt. No. 16-2, at 2, 4, 17, 22. *Colotl* is  
 23 distinguishable. In addition to being wrongly decided, the termination of DACA there did not result from  
 24 the issuance of a Notice to Appear (“NTA”). However, here, Plaintiff's DACA was automatically  
 25 terminated by the issuance of an NTA, a process squarely supported by relevant procedures. The only  
 26 other matter raised by Plaintiff, *Gonzalez*, 2017 WL 4340385, while factually similar to the present matter,  
 27 is also inapposite and wrongly decided. Defendants dispute that court's findings, and specifically note that  
 28 the court's interpretation of 8 U.S.C. § 1252(b)(9) and reliance on *Singh v. Gonzales*, 499 F.3d 969, 978  
 (9th Cir. 2007) are contrary to *J.E.F.M.*, discussed below. Defendants also note that the court there  
 buffered *Gonzalez*'s irreparable harm claim as stemming from the announced winding down of DACA  
 which compromised his ability to request an extension of DACA prior to October 5, 2017. 2017 WL  
 4340385 at \*6-7. Here, Plaintiff's delayed claim of irreparable harm lacks the urgency the *Gonzalez* court  
 interpreted on those facts.

**B. Plaintiff is not Likely to Succeed on the Merits.**

Whether viewed as a preliminary or permanent injunction, the Court cannot grant Plaintiff relief because he cannot succeed on the merits of his claims. First, this Court lacks jurisdiction to review Plaintiff's challenge to CBP's discretionary determination to issue him an NTA, which had the result of terminating his DACA. Additionally, nothing in the APA or constitutional jurisprudence establishes a right to review or constrain DHS's exercise of discretion or to grant Plaintiff procedural rights other than those available to him through his removal proceedings. Finally, even if Plaintiff had a viable claim subject to review in this Court, he has failed to offer sufficient evidence to show he is likely to succeed on the merits.

**i. This Court Lacks Jurisdiction to Review DHS's Initiation of Removal Proceedings, and any Judicial Challenges to Removal Must be Brought in a Petition for Review.**

**a. The Court Lacks Jurisdiction under the APA.**

The APA permits persons aggrieved by final agency action to obtain judicial review in federal court where "there is no other adequate remedy in a court." *See* 5 §§ U.S.C. 702, 704. A reviewing court shall set aside agency action found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," or "without observance of procedure required by law." 5 U.S.C. § 706(2)(A), (D). However, the APA also precludes judicial review of agency decisions that are "committed to agency discretion by law." 5 U.S.C. § 701(a)(2). In *Heckler v. Chaney*, the Supreme Court held that "an agency's decision not to take enforcement action should be presumed immune from judicial review under § 701(a)(2)." 470 U.S. 821, 832 (1985).

Individual DACA decisions fall squarely within that category of agency discretion. A decision to defer action is committed to agency discretion by law because notifying an alien that DHS has decided to forbear from removing him for a designated period is an exercise of prosecutorial discretion, and a court has no meaningful standard against which to judge the agency's exercise of discretion to forbear from enforcement for that period.



1 *See Heckler*, 470 F.3d at 830; *see also Morales de Soto v. Lynch*, 824 F.3d 822, 828 (9th  
 2 Cir. 2016) (noting that “the exercise of prosecutorial discretion is a type of government  
 3 action uniquely shielded from and unsuited to judicial intervention”).<sup>8</sup> Argument pursuant  
 4 to *U.S. ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954), that Defendants failed  
 5 to follow their own procedures does not help Plaintiff because the *Accardi* doctrine is  
 6 inapplicable in the context of internal operating guidelines that preserve the exercise of  
 7 agency discretion. *See Mada-Luna v. Fitzpatrick*, 813 F.2d 1006, 1009 (9th Cir. 1987)  
 8 (finding amended Operating Instructions were “general statements of policy” because the  
 9 instructions preserved the agency’s flexibility and opportunity to make discretionary  
 11 determinations); *id.* (“a directive must not establish a binding norm and must leave  
 12 agency officials free to consider the individual facts in the various cases that arise and to  
 13 exercise discretion”) (internal citations and quotations omitted).

14 For these reasons, Plaintiff cannot establish any likelihood of success on the  
 15 merits. The APA specifically precludes review of the action that Plaintiff challenges – the  
 16 discretionary decision to issue an NTA and terminate Plaintiff’s DACA and EAD.  
 17 Moreover, as the challenged action is discretionary, there is no law to apply.

18 **b. The Court Lacks Jurisdiction under 8 U.S.C. § 1252(g), as**  
 19 **Amended by the REAL ID Act.**

20 The issuance of an NTA to an alien is a necessary predicate step to commencing  
 21 removal proceedings under 8 U.S.C. § 1229a. *See* 8 U.S.C. § 1229(a). Through the INA,  
 22 as amended by the REAL ID Act of 2005 and codified at 8 U.S.C. § 1252(g), Congress  
 23 explicitly precluded judicial review of any challenge arising from any decision or action  
 24 to commence removal proceedings. That statute states, in relevant part:

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25 <sup>8</sup> Plaintiff’s reliance on cases that discuss violations of non-discretionary procedures in agency regulations  
 26 are inapposite where deferred action and related employment authorization are entirely discretionary  
 27 concepts not tied to statute or regulation. *See* Dkt. No. 16-2 at 18, 20, *citing Singh v. Bardini*, No. 09-cv-  
 28 3382, 2010 WL 308807, at \*7 (N.D. Cal. Jan. 19, 2010) & *Singh v. Vasquez*, No. 08-cv-1901, 2009 WL  
 3219266, at \*5 (D. Ariz. Sept. 30, 2009), *aff’d* 448 F. App’x 776 (9th Cir. 2011).

1 Except as provided in this section and notwithstanding any other provision  
 2 of law (statutory or nonstatutory), including section 2241 of Title 28, or any  
 3 other habeas corpus provision, and sections 1361 and 1651 of such title,  
 4 no court shall have jurisdiction to hear any cause or claim by or on behalf  
 5 of any alien arising from the decision or action by the Attorney General to  
 commence proceedings, adjudicate cases, or execute removal orders against  
 any alien under this chapter.

6 8 U.S.C. § 1252(g).<sup>9</sup> The Supreme Court explained that § 1252(g) was “directed against a  
 7 particular evil: attempts to impose judicial constraints upon prosecutorial discretion.”  
 8 *AADC*, 525 U.S. at 485 n.9.

9 Applying 8 U.S.C. § 1252(g), the Ninth Circuit has held there is no subject matter  
 10 jurisdiction to review a decision to grant DACA. *See, e.g., Vilchiz-Soto v. Holder*, 688  
 11 F.3d 642, 644 (9th Cir. 2012); *Rodriguez v. Sessions*, No. 15-72487, 2017 WL 695192, at  
 12 \*1 (9th Cir. Feb. 22, 2017).<sup>10</sup> This precedent applies to the present case and precludes  
 13 judicial review of the decision to issue an NTA, which terminated Plaintiff’s DACA, and  
 14 which was a predicate step to commencing removal proceedings. *See, e.g., Samayoa-*  
 15 *Martinez v. Holder*, 558 F.3d 897, 901-02 (9th Cir. 2009).

16 Plaintiff may contend that the present case is distinguishable from these earlier  
 17 cases because it involves the Government’s decision to issue an NTA, and thereby  
 18 terminate DACA, rather than a determination as to whether an individual is considered  
 19 for DACA in the first place. But nothing in the language of 8 U.S.C. § 1252(g) supports  
 20

---

21  
 22 <sup>9</sup> For example, courts lack jurisdiction to review the timing of the commencement of removal proceedings.  
 23 *See Chavez-Navarro v. Ashcroft*, 57 F. App’x 349 (9th Cir. 2003). Moreover, “[a]s a general matter . . .  
 24 an alien unlawfully in this country has no constitutional right to assert selective enforcement as a defense  
 25 against his deportation.” *AADC*, 525 U.S. at 488, 491.

26 <sup>10</sup> This authority is consistent with earlier case law interpreting the 1981 Operating Instructions, a previous  
 27 policy that provided guidelines for the exercise of deferred action. That authority concluded that district  
 28 courts lack jurisdiction to review the district director’s decision not to recommend deferred action.  
*Romeiro de Silva v. Smith*, 773 F.2d 1021, 1025 (9th Cir. 1985); *see also Carranza, v. I.N.S.*, 277 F.3d 65,  
 72 (1st Cir. 2002) (supporting “general proscription against judicial review of any aspect” of prosecutorial  
 deliberations) (citing *Wayte v. United States*, 470 U.S. 598, 607-8 (1985)). Neither Plaintiff nor any recent  
 court to address these issues has distinguished DHS’s guidance regarding the DACA policy from the 1981  
 Operating Instructions.

1 such a distinction and both decisions are similar in the relevant respect – they both  
 2 involve the exercise of prosecutorial discretion. Congress had no reason to preclude  
 3 judicial review of the favorable exercise of prosecutorial discretion (where individuals  
 4 self-select whether to request DACA in light of agency guidelines) while permitting  
 5 judicial review of an agency’s decision to issue an NTA so that it may commence  
 6 removal proceedings and thereby terminate DACA (where the agency weighs competing  
 7 factors and allocates its resources). *See Heckler*, 470 U.S. at 831 (discussing the  
 8 Executive’s discretion to spend resources on “this violation or another”). If anything, the  
 9 decision to issue an NTA, which results in termination of DACA, is more closely  
 11 connected with the central purpose of 8 U.S.C. § 1252(g) – to prevent “judicial  
 12 constraints on prosecutorial discretion.” *See AADC*, 525 U.S. at 485 n.9. Thus, decisions  
 13 to issue an NTA and thereby terminate DACA are even further outside the scope of  
 14 judicial review than determinations of whether to grant DACA in the first place.

15 Additionally, the Court should reject, as contrary to 8 U.S.C. § 1252(g), Plaintiff’s  
 16 attempt to frame his challenge of the Government’s decision to initiate removal  
 17 proceedings as a challenge to the decision-making process to terminate his DACA.  
 18 Section 1252(g) is not limited to claims arising from the adjudication of cases. It broadly  
 19 precludes judicial review of “cause[s] or claim[s]” that arise from the decision “or action”  
 20 to “commence proceedings” against any alien. *See, e.g., Sissoko v. Rocha*, 509 F.3d 947,  
 21 948-50 (9th Cir. 2007) (finding claim of money damages arose from decision or action to  
 22 commence removal proceedings and was, thus, barred by 8 U.S.C. § 1252(g)).<sup>11</sup> To hold

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23  
 24 <sup>11</sup> In *Sissoko*, the Ninth Circuit held that because the plaintiff’s detention arose from the decision to  
 25 commence removal proceedings, *Bivens* jurisdiction was barred by 8 U.S.C. § 1252(g). *Sissoko*, 509 F.3d  
 26 at 949. The court distinguished between these types of claims and those raised in an earlier Ninth Circuit  
 27 case discussing 8 U.S.C. § 1252(g), *Wong v. United States*, 373 F.3d 952 (9th Cir. 2004). *Id.* In *Wong*, the  
 28 plaintiff’s counsel expressly disclaimed any challenge to the execution of removal and explained that her  
 claims only implicated “actions other than that removal, or the commencement of proceedings . . .” 373  
 F.3d at 964 (emphasis original). Thus, the claims at issue in *Wong* did not implicate the agency’s  
 prosecutorial discretion and did not pose a threat of “obstruction of the institution of removal proceedings

1 otherwise would render 8 U.S.C. § 1252(g) a dead letter because any alien could seek to  
 2 enjoin or otherwise challenge the commencement of removal proceedings through this  
 3 type of creative pleading. Lastly, Plaintiff’s claims under the APA are barred by 8 U.S.C.  
 4 § 1252(g) regardless of whether they challenge nondiscretionary rather than discretionary  
 5 duties, because 8 U.S.C. § 1252(g) does not distinguish between discretionary and  
 6 nondiscretionary duties.<sup>12</sup> *See Silva v. United States*, 866 F.3d 938, 940 (8th Cir. 2017)  
 7 (rejecting contention that § 1252(g) applies only to discretionary decisions of the  
 8 Secretary, emphasizing that § 1252(g), by its plain language, “makes no distinction  
 9 between discretionary and nondiscretionary decisions”); *see also Torres-Aguilar v. INS*,  
 11 246 F.3d 1267, 1271 (9th Cir. 2001) (holding that “a petitioner may not create the  
 12 jurisdiction that Congress chose to remove simply by cloaking [a claim] in constitutional  
 13 garb” or “through the facile device of re-characterizing” claims to avoid a clear  
 14 jurisdictional bar).

15 In sum, regardless of how Plaintiff seeks to frame the issue, 8 U.S.C. § 1252(g)  
 16 precludes judicial review of the Government’s exercise of its prosecutorial discretion.  
 17 Accordingly, the decisions of DHS to issue an NTA and place Plaintiff in removal  
 18 proceedings, and thereby terminate DACA, are not subject to judicial review, and the  
 19 Court should reject Plaintiff’s motion for preliminary relief.

21 \_\_\_\_\_  
 22 or the execution of removal orders . . . .” *Id.* at 970. *Wong* is clearly distinguishable from the present case  
 23 in which Plaintiff is directly challenging the decision to issue an NTA, which terminated DACA and  
 24 initiated the commencement of removal proceedings. As a result, his claims are barred by 8 U.S.C.  
 25 § 1252(g). *See Sissoko*, 509 F.3d at 949.

26 <sup>12</sup> To be sure, in other contexts, courts distinguish between discretionary and nondiscretionary duties. For  
 27 example, under 5 U.S.C. § 706(a)(1), a plaintiff can assert an APA claim (akin to a mandamus claim)  
 28 seeking to compel an agency to perform a duty but only if it is a duty compelled by statute (that is, a matter  
 over which the agency has no discretion). *See, e.g., Zixiang Li v. Kerry*, 710 F.3d 995, 1003 (9th Cir.  
 2013). Similarly, there are additional jurisdictional bars contained in different subsections of 8 U.S.C.  
 § 1252. *See AADC*, 525 U.S. at 486 (“[M]any provisions of IIRIRA are aimed at protecting the Executive’s  
 discretion from the courts – indeed, that can fairly be said to be the theme of the legislation.”) (emphasis  
 omitted).

**c. Any Viable Claims Must be Channeled through Plaintiff's Removal Proceedings and not this Court.**

To the extent Plaintiff has any viable claims, the REAL ID Act, codified in 8 U.S.C. §§ 1252(a)(5) and 1252(b)(9), bar him from raising his claims in district court. Under a statutory scheme designed to “put an end to the scattershot and piecemeal nature of the review process,” all claims arising from removal proceedings must be raised in immigration court and channeled through the petition for review process. *Aguilar v. Immigration & Customs Enf’t*, 510 F.3d 1, 9-10 (1st Cir. 2007). The Ninth Circuit has affirmed this channeling requirement without exception. *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1029 (9th Cir. 2016). Section 1252(a)(5), entitled “[e]xclusive means of review,” requires that “a petition for review filed with an appropriate court of appeals . . . shall be the sole and exclusive means for judicial review of an order of removal . . . .” 8 U.S.C. § 1252(a)(5). Section 1252(b)(9) provides “[j]udicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section.” 8 U.S.C. § 1252(b)(9) (emphasis added); *see, e.g., J.E.F.M.*, 837 F.3d at 1038 (explaining that, even if never raised in removal proceedings, a court of appeals has the authority to resolve questions of constitutional rights).

These channeling provisions are not limited to challenges to final orders of removal but preclude review in district court of “any” challenge “arising from any action” taken to remove an alien. *See J.E.F.M.*, 837 F.3d at 1031. The second sentence of Section 1252(b)(9) explicitly precludes jurisdiction to review (i) orders, “or [(ii)] such questions of law or fact.” *Id.* The questions of law and fact described in the preceding sentence modify those “arising from any action taken or proceeding brought to remove an alien from the United States.” *Id.* Thus, claims arising from “any action taken” to remove an alien from the United States – including the decision to issue an NTA, a necessary action toward commencing removal proceedings, and one that automatically terminates DACA –

1 are channeled through the petition for review process and cannot be brought in federal  
 2 district court. To hold otherwise would effectively excise the words “any action taken”  
 3 from the statute. *See Aguilar*, 510 F.3d at 10; *cf. Martinez v. Napolitano*, 704 F.3d 620,  
 4 623 (9th Cir. 2012) (in the context of an APA claim, ignoring how claim “is framed” for  
 5 purposes of determining whether claim must be channeled through the petition for review  
 6 process). Congress’s intent was simple: if the issue is one that can be raised in removal  
 7 proceedings, and ultimately in a petition for review, then the statute precludes district  
 8 court review). *See J.E.F.M.*, 837 F.3d at 1034 (citing H.R. Rep. No. 109-72, at 173  
 9 (statute was “intended to preclude all district court review of any issue raised in a removal  
 11 proceeding)); *cf. Aguilar*, 510 F.3d at 9-10 (“Congress plainly intended to put an end to  
 12 the scattershot and piecemeal nature of the review process. . . .”).

13 This approach effectuates the general rule precluding simultaneous review of a  
 14 question by both an administrative body and a federal court. *See Acura of Bellevue v.*  
 15 *Reich*, 90 F.3d 1403, 1408-9 (9th Cir. 1996). Moreover, there is no “general constitutional  
 16 right” for an alien to review prosecutorial deliberations in order to avert or prevent  
 17 removal proceedings. *See Carranza*, 277 F.3d at 72, citing *AADC*, 525 U.S. at 487-92.

18 Here, despite framing his argument as a challenge to his DACA termination,  
 19 Plaintiff challenges the Secretary’s discretionary decision to issue an NTA, which had the  
 20 effect of terminating his DACA. *See* Dkt. No. 16-2 at 7, 28 (“Mr. Arreola respectfully  
 21 asks this Court to . . . vacate Defendants’ unlawful revocation of his DACA and work  
 22 permit . . .”). Specifically, Plaintiff argues he has constitutional and procedural interests  
 23 in deferred action and in employment authorization that are protected by due process and  
 24 the APA. *Id.* at 21-22. But where Plaintiff challenges Defendants’ exercise of  
 25 prosecutorial discretion to issue an NTA – a predicate step in commencing removal  
 26 proceedings – which has the effect of terminating deferred action and, upon filing with  
 27 the immigration court, employment authorization, his challenge necessarily arises from  
 28 “action taken or proceedings brought to remove an alien.” *See* 8 U.S.C. §§ 1252(a)(5);



1 1252(b)(9). In fact, he is challenging the very validity of the “proceedings.” *See AADC*,  
 2 525 U.S. at 484-85 (explaining what deferred action is).<sup>13</sup>

3 The Ninth Circuit held that taken together, 8 U.S.C. §§ 1252(a)(5) and (b)(9)  
 4 “mean that *any* issue – whether legal or factual – arising from *any* removal-related  
 5 activity can be reviewed *only* through the PFR process.” *J.E.F.M.*, 837 F.3d at 1031  
 6 (emphases in original). Plaintiff may prefer that his constitutional claims be resolved now  
 7 rather than at a later date, but his preference provides no basis for this Court to exercise  
 8 jurisdiction over claims that are subject to a statutory channeling provision. *See id.* at  
 9 1035-36, 1038.

11 By arguing that Plaintiff is constitutionally entitled to deferred action (*i.e.*, that  
 12 DHS must defer acting to remove him) he is, by definition, arguing that DHS is barred  
 13 from acting to remove him. Those claims, at least in these circumstances, must be  
 14 channeled through petitions for review. *See AADC*, 525 U.S. at 485 n.9.

15 **ii. Nothing in the Constitution or APA Establishes a Right that**  
 16 **Constrains DHS’s Exercise of Discretion.**

17 Even if this Court finds that the INA’s jurisdiction-stripping and channeling  
 18 provisions might not preclude review of Plaintiff’s claims, the Court should still deny  
 19 Plaintiff’s motion for injunctive relief because Plaintiff’s merits claims fail as a matter of  
 20 law. Here, Plaintiff can establish neither a constitutional nor an administrative right to  
 21 receive any process regarding the termination or denial of DACA because deferred  
 22 action is necessarily an exercise of the Executive’s prosecutorial discretion. In fact, DHS  
 23 acted based on that discretion by issuing an NTA based on factors involving Plaintiff’s  
 24

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25  
 26 <sup>13</sup> For these reasons, Plaintiff’s reliance on *Judulang v. Holder*, 565 U.S. 42, 55 (2011) and *Villa-Anguiano*  
 27 *v. Holder*, 727 F.3d 873 (9th Cir. 2013), to support his constitutional claims is misplaced. Dkt. No. 16-2  
 28 at 14. While the courts reviewing final orders of removal can consider the application of due process with  
 regard to an exercise of discretion, Congress specifically gave circuit courts that authority pursuant to 8  
 U.S.C. § 1252(a)(2)(D) to consider “constitutional claims or questions of law raised upon a petition for  
 review.”

1 criminal activity, which put Plaintiff into removal proceedings and had the effect of  
2 terminating his DACA. *See* Dkt. Nos. 16-7, 16-11, 16-12.

3 **a. Termination of DACA does not Infringe upon an Established**  
4 **Constitutional Interest.**

5 First, the mere fact that an individual alleges an injury does not result in a loss of  
6 liberty. *Paul v. Davis*, 424 U.S. 693, 712 (1976). The cases on which Plaintiff relies to  
7 support an infringement on his liberty interest are inapposite. In *Morrissey v. Brewer*,  
8 408 U.S. 471 (1972), the Supreme Court considered the right of parolees to remain at  
9 liberty as long as the conditions of parole were not violated. However, Plaintiff cannot  
10 allege that his actual liberty is presently at issue.

11 Plaintiff's claims regarding the right to support his family conflict with the Ninth  
12 Circuit's determination that there is no "right to family unity" to reside in the United  
13 States "simply because other members of their family are citizens or lawful permanent  
14 residents." *De Mercado v. Mukasey*, 566 F.3d 810, 816 (9th Cir. 2009). The same goes  
15 for Plaintiff's claims regarding the right to earn a livelihood because there is no  
16 recognized right of aliens to work in the United States without authorization. *See Pilapil*  
17 *v. INS*, 424 F.2d 6, 11 (10th Cir. 1970), *cert denied*, 400 U.S. 908 (1970); *WJA Realty*  
18 *Ltd. P'ship v. Nelson*, 708 F. Supp. 1268, 1273 (S.D. Fla. 1989) (holding that  
19 noncitizens do not have a constitutional right to work without authorization). Thus,  
20 there is no judicial review of the decision to terminate work authorization. *See Perales*  
21 *v. Casillas*, 903 F.2d 1043, 1047-48 (5th Cir. 1990) ("[T]here is nothing in the [INA]  
22 expressly providing for the grant of employment authorization . . . to aliens who are  
23 the beneficiaries of approved petitions") (vacating the challenged portion of the  
24 injunction); *see, e.g., Kaddoura v. Gonzales*, No. C06-1402 RSL, 2007 WL 1521218, at  
25 \*4-5 (W.D. Wash. May 21, 2007) (finding a lack of judicial review). As a matter of law,  
26 a plaintiff cannot assert an established constitutional right to DACA or work  
27 authorization.  
28



**b. Termination of DACA does not Infringe upon a  
Constitutional Interest based on Entitlement.**

“To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of *entitlement* to it.” *Blantz v. Cal. Dep’t of Corr. & Rehab.*, 727 F.3d 917, 922 (9th Cir. 2013) (citing *Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 577 (1972); *see also Mendez-Garcia v. Lynch*, 840 F.3d 655, 665 (9th Cir. 2016) (underscoring that aliens cannot claim a cognizable due process interest in discretionary immigration relief or benefits).<sup>14</sup> The Supreme Court has held that even a practice of “generously” granting a “wholly and *expressly* discretionary state privilege” does not create a legal entitlement to that benefit. *See Gerhart v. Lake Cnty., Mont.*, 637 F.3d 1013, 1020-21 (9th Cir. 2011) (“A person’s belief of entitlement to a government benefit, no matter how sincerely or reasonably held, does not create a property right if that belief is not mutually held by the government.”) (citations omitted).

A property interest subject to procedural due process protection may arise where such interest is secured by “existing rules or understandings that stem from an independent source . . . .” *Roth*, 408 U.S. at 577. The independent source can be a statute, *see Goss v. Lopez*, 419 U.S. 565, 572-73 (1975); a regulation, *see Glenn v. Newman*, 614 F.2d 467, 471-72 (5th Cir. 1980), *overruled on other grounds by Shearer v. Bowen*, 216 F.3d 1080 (5th Cir. 2000); an express or implied contract, *see Perry v.*

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<sup>14</sup> The Ninth Circuit is not alone in finding aliens lack a cognizable Fifth Amendment due process interest in any form of discretionary immigration relief or benefit. *See, e.g., Salgado-Toribio v. Holder*, 713 F.3d 1267, 1271 (10th Cir. 2013); *Sanchez-Velasco v. Holder*, 593 F.3d 733, 737 (8th Cir. 2010); *Yuen Jin v. Mukasey*, 538 F.3d 143, 156-57 (2d Cir. 2008); *Khan v. Mukasey*, 517 F.3d 513, 518 (7th Cir. 2008); *Ahmed v. Gonzales*, 447 F.3d 433, 440 (5th Cir. 2006); *Hernandez v. Gonzales*, 437 F.3d 341, 345-46 (3d Cir. 2006); *Jupiter v. Ashcroft*, 396 F.3d 487, 492 (1st Cir. 2005); *Garcia v. U.S. Att’y Gen.*, 329 F.3d 1217, 1224 (11th Cir. 2003); *Smith v. Ashcroft*, 295 F.3d 425, 429-30 (4th Cir. 2002); *Ashki v. INS*, 233 F.3d 913, 921 (6th Cir. 2000); *see also Tefel v. Reno*, 180 F.3d 1286, 1301 (11th Cir. 1999) (“awarding and then revoking discretionary relief does not offend due process”).

1 *Sindermann*, 408 U.S. 593, 601-02 (1972); or a mutually explicit understanding. *Id.* at  
2 602-03. In a pair of companion cases handed down the same day, the Supreme Court  
3 explained that “government employees can have a protected property interest in their  
4 continued employment *if* they have a legitimate claim to tenure or if the terms of the  
5 employment make it clear that the employee can be fired only for cause.” *Blantz*, 727  
6 F.3d at 922-23 (comparing *Roth*, 408 U.S. 576-78, with *Perry*, 408 U.S. at 599-603).

7 For example, when a professor sued for deprivation of property without due  
8 process after his employment contract was not renewed, the Court found that the  
9 professor lacked a protected property interest in his continued employment because his  
10 employment contract was for a fixed one-year term. *Blantz*, 727 F.3d at 922-23 (citing  
11 *Roth*, 408 U.S. at 566). Similarly, when a nurse sued over her termination, relying on  
12 orientation documents that stated “termination *can* occur as a result of the performance  
13 review procedures” detailed in the document, the Ninth Circuit concluded she lacked a  
14 property interest in her continued employment because the documents “do not guarantee  
15 that every termination *must* be preceded by a peer review process or any other specified  
16 departmental procedures.” *Id.* at 924.

17 Similarly, nothing in the DACA memoranda, public Q&A, or the DACA SOP  
18 indicate any promise of benefits or entitlement to initial or continuing deferred action or  
19 DACA-based employment authorization. *See, e.g.*, Dkt. No. 16-23 (USCIS FAQ)  
20 (“DACA is an exercise of prosecutorial discretion and deferred action may be terminated  
21 at any time, with or without a Notice of Intent to Terminate, at DHS’s discretion.”). Here,  
22 the DACA guidance and policies made clear that a recipient of DACA has no  
23 constitutionally protected interest in the continuation of DACA or a constitutionally  
24 protected interest in notice prior to termination. Specifically, the 2012 Memorandum  
25 states, “[t]his memorandum confers no substantive right, immigration status or pathway  
26 to citizenship. Only the Congress, acting through its legislative authority, can confer  
27 these rights.” Dkt. No. 16-13. In addition, the USCIS FAQs specifically state that  
28

1 deferred action can be terminated before it expires, explaining, “DACA is an exercise of  
 2 prosecutorial discretion and deferred action may be terminated at any time, with or  
 3 without a Notice of Intent to Terminate, at DHS’s discretion.” Dkt. No. 16-23 at Q:27.  
 4 The USCIS FAQs further explain that the phrase “national security or public safety  
 5 threat” includes but is not limited to “gang membership, *participation in criminal*  
 6 *activities*, or participation in activities that threaten the United States.” *See id.* at Q:65  
 7 (emphasis added).<sup>15</sup> Reading these documents in context, a DACA recipient does not  
 8 have a protected property interest in the continuation of his or her DACA or DACA-  
 9 based employment authorization. *Gerhart*, 637 F.3d at 1020-21. These policies and  
 11 guidance are consistent with longstanding authority regarding the exercise of  
 12 prosecutorial discretion in the context of immigration law. *See AADC*, 525 U.S. at 484  
 13 (recognizing that deferred action is a “commendable exercise in administrative discretion,  
 14 developed without express statutory authorization”).

15 Accordingly, the Court should deny Plaintiff’s motion for emergency relief because  
 16 his claims fail as a matter of law.

17 **c. The APA Affords Plaintiff no Actionable Interest Regarding**  
 18 **the Termination of DACA or Employment Authorization.**

19 Assuming jurisdiction *arguendo*, there is no basis to conclude that Defendants  
 20 failed to comply with any procedures requiring notice to a DACA recipient before  
 21 issuing an NTA that terminates DACA, or to issue a notice of the termination of that  
 22 DACA. The USCIS FAQ specifically states that DACA “may be terminated at any time,  
 23 with or without a Notice of Intent to Terminate, at DHS’s discretion.” Dkt. No. 16-23 at  
 24 Q:27. Contrary to Plaintiff’s assertions, while USCIS procedural guidance provides  
 25 generally for a review process in certain circumstances when USCIS terminates  
 26 deferred action, when DHS terminates deferred action through the issuance of an NTA,

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27 <sup>15</sup> Although criminal activity “*can*” result in termination, it is not the case that “every termination *must* be  
 28 preceded” by criminal activity. *See Blantz*, 727 F.3d at 924. The Government retains the discretion to  
 terminate DACA for other reasons.

1 there is no requirement to provide notice or an opportunity to respond. *See* Dkt. No. 16-  
2 2 at 25.

3 For example, where CBP or ICE issues a Notice to Appear, the DACA SOP  
4 provides that DACA and the EAD terminate automatically.<sup>16</sup> Dkt. No. 16-24 at 38, 42.  
5 CBP or ICE may decide to issue an NTA, and USCIS will generally issue a Notice of  
6 Action informing the individual that his DACA and Employment Authorization  
7 Document terminated automatically due to the NTA. Dkt. No. 16-24 at 42 (“On [Date  
8 NTA served on alien], [ICE] issued you a Notice to Appear (NTA). . . . USCIS is  
9 notifying you that your deferred action as a childhood arrival and your employment  
10 authorization terminated automatically as of the date your NTA was issued.”). The  
11 determination to issue the NTA remains within the discretion of the agency. 8 C.F.R.  
12 § 239.1(a) (“Any immigration officer, or supervisor thereof, performing an inspection of  
13 an arriving alien at a port-of-entry may issue a notice to appear to such alien.”); *see, e.g.,*  
14 *Villa-Anguiano*, 727 F.3d at 878 (discussing historic roots of this discretion).  
15

16 Plaintiff’s argument that DHS internal procedures require notice and an  
17 opportunity to respond in every DACA termination is incorrect, and it is based on a  
18 selective interpretation of those procedures. *See, e.g.,* Dkt. No. 16-2 at 9, 13.  
19 Importantly, the DACA SOP was written by USCIS for USCIS agents and officers, and  
20 it does not encroach on the authority of ICE or CBP to arrest, detain, or issue an NTA to  
21 an individual. *Id.* at 9, citing Dkt. No. 16-24 at 16 (“This SOP describes the procedures  
22 Service Centers are to follow when adjudicating DACA requests.”). In defining DACA  
23 policy, the 2012 DHS memorandum instructed ICE and CBP to “immediately exercise  
24 their discretion on an individual basis” in determining when to issue an NTA or defer  
25

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26 <sup>16</sup> While the DACA SOP states the EAD terminates when the NTA is issued, the EAD regulation states  
27 EAD termination occurs when the NTA is served on an immigration court. 8 C.F.R. § 274a.14(a)(1)(ii).  
28 Here, the NTA issued on February 12, 2017, the NTA was served on the immigration court on February  
23, and Plaintiff received the Notice of Action informing him his DACA and EAD terminated on March  
6. Thus, any discrepancy between the SOP and the regulation did not impact Plaintiff.

1 action. Dkt. No. 16-13. Defendant DHS’s reading of its own authority to provide for  
 2 automatic termination of DACA with the issuance of NTAs is well supported by  
 3 Defendant’s consistent practice, and is thus “entitled to substantial weight.” *See* Exhibit  
 4 H, Declaration of Ron Thomas at ¶ 4; *Chemehuevi Indian Tribe v. Brown*, No.  
 5 EDCV161347JFWMRWX, 2017 WL 2971864, at \*8 (C.D. Cal. Mar. 30, 2017) (“The  
 6 agency's consistent practice of approving compacts with duration provisions . . . in an  
 7 area within its expertise is itself entitled to at least traditional deference under *Skidmore*  
 8 *v. Swift & Co.*, 323 U.S. 134 (1944), due, in part, to the agency's specialized experience  
 9 in matters relating to Indian gaming.”).

11 Here, Defendants obtained information through Plaintiff’s arrest and detention  
 12 process, including an interview in which Plaintiff first lied about and later admitted to  
 13 his illegal activity. The information before the Border Patrol agents was that: 1)  
 14 Plaintiff was encountered in the middle of the night in a parked car on the side of the  
 15 road, about a mile from the border; 2) in the company of a known smuggler; 3) in close  
 16 proximity to four undocumented immigrants who were intercepted with another  
 17 smuggler with ties to Plaintiff’s companion, and; 4) in the course of questioning  
 18 Plaintiff, including under oath, he lied repeatedly about his knowledge and involvement  
 19 in the situation. *See* Exhibits E and F. Defendants reasonably relied on these facts to  
 20 find that Plaintiff was involved in a human smuggling operation, and led to the  
 21 discretionary determination to issue an NTA, which simultaneously terminated  
 22 Plaintiff’s DACA and EAD. The Notice of Action that Plaintiff received following the  
 23 NTA was drawn directly from Appendix I of the DACA SOP. *See* Dkt. No. 16-24.

24 Defendants exercised their discretion to decline to prosecute the criminal charges  
 25 and instead initiated removal proceedings against Plaintiff by issuing an NTA. *See*  
 26 Exhibit D at 4 (“Prosecution for [8 U.S.C. § 1324] Alien Smuggling was declined for  
 27 ARREOLA.”); *id.* (“Assistant Chief Border Patrol Agent R[Y.] approved removal  
 28 proceedings for ARREOLA in the furtherance of the United States Government

1 interest.”). This process is consistent with the Napolitano Memorandum and consistent  
 2 agency practice, and as prescribed in Chapter 14 and Appendix I of the DACA SOP, the  
 3 issuance of the NTA immediately terminated Plaintiff’s DACA, with no additional notice  
 4 or opportunity to respond required. Per the SOP, the NTA also terminated Plaintiff’s  
 5 employment authorization. Thus, Plaintiff has no basis to allege a violation of internal  
 6 operating procedures.

7 The Court should deny Plaintiff’s requested relief because there is no basis to  
 8 conclude that Defendants failed to provide required notice to a DACA recipient before  
 9 issuing an NTA or to provide an opportunity to challenge the reasons for the NTA  
 11 issuance.

12 **iii. Plaintiff Cannot Overcome the Significant Facts Supporting the**  
 13 **Decision to Issue an NTA and Terminate his DACA and EAD.**

14 Were the Court to find jurisdiction to hear Plaintiff’s claim, and further find a  
 15 procedural interest in Plaintiff’s DACA and employment authorization, the Court should  
 16 still deny the motion because Plaintiff has failed to demonstrate any likelihood of  
 17 success on the merits of his claim. *See Earth Island Inst.*, 626 F.3d at 469 (“the party  
 18 seeking such relief bears the burden of establishing the prerequisites to this  
 19 extraordinary remedy.”).

20 Plaintiff argues that notice and an opportunity to respond to the termination of his  
 21 DACA would “allow him to demonstrate that CBP’s suspicions were mistaken, as the  
 22 government’s own immigration judge concluded, and that he has not engaged in any  
 23 disqualifying criminal activity (or even been charged with any crime) and remains  
 24 eligible for DACA.”<sup>17</sup> Dkt. No. 16-2 at 25. However, Plaintiff has provided no evidence

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25 <sup>17</sup> Plaintiff repeatedly mischaracterizes the immigration judge’s determination that the Border Patrol report  
 26 lacked enough detail to conclude specifically that Plaintiff “admitted to smuggling aliens for financial  
 27 gains” for the purpose of denying bond. *See* Dkt. No. 16-2 at 59. Here, Plaintiff asserts instead that the  
 28 immigration judge “rejected the government’s allegation and concluded that CBP had been mistaken.” *Id.*  
 at 6, 25; *see also id.* at 19 (the immigration judge “rejected the government’s allegations that Mr. Arreola



1 or argument beyond: 1) the assertion that an immigration judge granted him bonded  
 2 release from immigration detention; and 2) that he was not criminally prosecuted for his  
 3 involvement in transporting smuggled aliens. *Id.* Neither of Plaintiff's assertions satisfy  
 4 his burden to demonstrate a likelihood of prevailing on the merits of his claim.

5 First, the transcript of the bond hearing shows Plaintiff misrepresented to the  
 6 immigration judge a number of key facts regarding his interviews with the Border Patrol  
 7 agents on the night of his arrest. Plaintiff told the immigration judge that he was  
 8 forthcoming with the Border Patrol agents and admitted he was offered \$600 to transport  
 9 the passenger from Sunny Valley to El Cajon to pick up additional passengers. Dkt. No.  
 11 16-10 at 17. Plaintiff did not inform the judge that he lied at the initial encounter,  
 12 claiming he was offered \$100, or that he lied repeatedly under oath in his interview with  
 13 CBP, claiming he was paid only \$40. *See* Exhibits B; E at 11, 18-19. Plaintiff also  
 14 informed the judge he had picked up the passenger in Sun Valley, California, and drove  
 15 the passenger the three and one half hours to the destination, Dkt. No. 16-10 at 18, but did  
 16 not inform the judge that he lied to Border Patrol agents under oath, telling them he only  
 17 recently picked the passenger up nearby. *See* Exhibits B; E at 10-13, 20, 28. Plaintiff told  
 18 the judge he was not aware the people he was asked to pick up were undocumented, *id.* at  
 19 17, which the judge relied on to question the veracity of CBP's conclusion that Plaintiff  
 20 was involved in smuggling. *Id.* at 59. In fact, Plaintiff stated under oath he was aware the  
 21 people were undocumented. Exhibits B; E at 29-30.

22 Thus, there are a number of critical inconsistencies in Plaintiff's testimony to the  
 23 immigration judge, and the judge did not review the contradictory evidence in the video  
 24 of Plaintiff's sworn statement. The transcript of that interview shows Plaintiff was not  
 25 credible in his encounter with CBP and is not credible in the story he now alleges. The  
 26 immigration judge's limited finding that it was not clear that CBP did not "make a leap"

27 \_\_\_\_\_  
 28 had committed any criminal conduct."); *id.* at 25 (the immigration judge "concluded . . . that he has not  
 engaged in any disqualifying criminal activity"); *id.* at 27 (the immigration judge found "the CBP's  
 allegations against him were unfounded").

1 in finding Plaintiff knew he was being paid to pick up undocumented immigrants is based  
 2 on insufficient and inaccurate information, and thus inadequate to show Plaintiff is likely  
 3 to prevail on the merits of his claim.

4 Plaintiff's second claim, that he has not been criminally prosecuted, is irrelevant  
 5 here. CBP is well within its authority to issue an NTA, which automatically terminates  
 6 DACA, based on the substantial circumstantial evidence demonstrating Plaintiff's  
 7 complicity in criminal activity, outlined herein, along with his videotaped admission to  
 8 knowingly participating in the criminal activity in exchange for money, and Plaintiff's  
 9 repeated dishonesty about the matter while under oath.<sup>18</sup> As Plaintiff points out, "[t]he  
 11 [DACA] approval notice informed Mr. Arreola that his deferred action could be  
 12 terminated if he engaged in "[s]ubsequent criminal activity." Dkt. No. 16-2 at 11.  
 13 Termination of DACA does not require an indictment or a conviction, and thus the  
 14 absence of such does not establish a likelihood of Plaintiff's success on the merits here.

15 **iv. Plaintiff cannot Show Prejudice from the Termination of his DACA**  
 16 **and EAD, such that any Additional Process would have Achieved a**  
 17 **Different Outcome.**

18 Even if the Court found merit in Plaintiff's claim and determined he was entitled to  
 19 greater process, Plaintiff would still have to show prejudice, "which means that the  
 20 outcome of the proceedings *may have been affected* by the alleged violation." *Zolotukhin*  
 21 *v. Gonzales*, 417 F.3d 1073, 1076 (9th Cir. 2005) (internal quotation omitted) (emphasis  
 22 in original). The Ninth Circuit has held that "[w]hen it is necessary to demonstrate

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23  
 24 <sup>18</sup> Determinations whether to charge an alien with particular grounds of removability in an NTA are  
 25 subject to prosecutorial discretion. *See, e.g., Matter of Bahta*, 22 I. & N. Dec. 1381, 1391-92 (BIA 2000).  
 26 Similarly, and also responsive to Plaintiff's claims here, determinations not to pursue criminal prosecution  
 27 are also a matter of prosecutorial discretion for a variety of reasons. *See Wayte v. United States*, 470 U.S.  
 28 at 607-608 ("Such factors as the strength of the case, the prosecution's general deterrence value, the  
 Government's enforcement priorities, and the case's relationship to the Government's overall enforcement  
 plan are not readily susceptible to the kind of analysis the courts are competent to undertake.").  
 Accordingly, that Plaintiff has not been criminally charged for his conduct and such conduct was not  
 asserted as ground of removability here is of no consequence.



1 prejudice as a result of a constitutional violation, the alien must show that the inadequate  
 2 procedures occurred in a manner so as *potentially* to affect the outcome of the  
 3 proceedings.” *Walters v. Reno*, 145 F.3d 1032, 1044 (9th Cir. 1998) (emphasis added)  
 4 (citations omitted). Thus, “there must be *plausible scenarios* in which the outcome of the  
 5 proceedings would have been different, absent the constitutional violation.” *Id.* (emphasis  
 6 added). A similar harmless error standard would apply to finding of a procedural  
 7 violation under the APA. *Lyon v. U.S. Immigration & Customs Enf’t*, 171 F. Supp. 3d  
 8 961, 981–82 (N.D. Cal. 2016) (The APA instructs reviewing courts to take “due account  
 9 . . . of the rule of prejudicial error.”) (citing 5 U.S.C. § 706).

11 Where a procedural error occurs, the doctrine of “harmless error” requires a  
 12 determination that the error “had no bearing on the procedure used or the substance of  
 13 [the] decision reached.” *Cal. Wilderness Coal. v. U.S. Dept. of Energy*, 631 F.3d 1072,  
 14 1092 (9th Cir. 2011); *see also Lyon*, 171 F. Supp. 3d at 981–82 (where an agency error  
 15 “did not affect the outcome, if it did not prejudice the petitioner, it would be senseless to  
 16 vacate and remand for reconsideration.”) (citing *PDK Laboratories Inc. v. U.S. D.E.A.*,  
 17 362 F.3d 786, 799 (D.C. Cir. 2004)); *see also Kazarian v. U.S. Citizenship and*  
 18 *Immigration Servs.*, 596 F.3d 1115, 1122 (9th Cir. 2010) (harmless error where agency  
 19 denied a visa application based on an erroneous interpretation of its regulations, where  
 20 under proper interpretation it still would have been denied).

21 Plaintiff claims, with no support, that providing him “a reasoned explanation for  
 22 the government’s actions and an opportunity to present arguments and evidence . . . will  
 23 allow him to demonstrate that CBP’s suspicions were mistaken . . . and that he has not  
 24 engaged in any disqualifying criminal activity (or even been charged with any crime) and  
 25 remains eligible for DACA.” Dkt. No. 16-2 at 25. However, as described herein,  
 26 Defendants relied on significant evidence, including multiple inconsistent statements  
 27 from Plaintiff, in deciding to issue an NTA and therefore terminate his DACA. Where  
 28 Plaintiff has offered nothing more than an immigration judge’s favorable bond

1 determination based on a limited understanding of the facts, Plaintiff fails to establish any  
2 likelihood Defendants would come to a different conclusion regarding the issuance of the  
3 NTA (and resulting termination of DACA), were the Court to order such a re-  
4 adjudication of his claim.

5 Where Plaintiff cannot show how additional process would alter the decision to  
6 issue an NTA (and therefore terminate DACA), the Court should deny his motion.

7 **B. The Remaining Preliminary Injunction Factors Favor Defendants.**

8 Where the Government is the opposing party, the balance of equities and public  
9 interest factors merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). Defendants have strong  
10 interests in enforcing U.S. immigration laws effectively and consistent with the statutory  
11 removal scheme. *See AADC*, 525 U.S. at 490 (“There is always a public interest in  
12 prompt execution of removal orders: The continued presence of an alien lawfully deemed  
13 removable undermines the streamlined removal proceedings IIRIRA established, and  
14 “permit[s] and prolong[s] a continuing violation of United States law.”). These interests  
15 outweigh the harms alleged by Plaintiff, especially considering the amount of time that  
16 has passed since Defendants first terminated Plaintiff’s DACA through the initiation of  
17 removal proceedings. Moreover, Plaintiff’s effort to reinterpret DHS’s consistent position  
18 regarding NTA issuance and DACA termination would create absurd results wherein  
19 DHS’ regulations regarding the termination of employment authorization upon the  
20 initiation of removal proceedings would be ignored and individuals could use the fact of  
21 their continued DACA, while responding to a notice of intent to terminate, to frustrate  
22 ICE’s removal efforts.

23  
24 Finally, Plaintiff utilized his DACA and EAD to engage in the criminal activity  
25 that led Defendants to initiate his removal. The public interest in this case weighs heavily  
26 against allowing Plaintiff to maintain a government grace that he may again abuse for the  
27 purpose of breaking the law. For these additional reasons, Plaintiff’s motion should be  
28 denied.

**CONCLUSION**

Where Plaintiff cannot meet the lesser burden of establishing a likelihood of success on the merits of his claim to be granted a temporary injunction, he surely cannot meet the higher standard necessary to obtain a permanent reversal of Defendants' termination of his DACA through issuance of an NTA. For this reason and the reasons outlined herein, the Court should deny Plaintiff's motion and dismiss his claims.

Dated: October 30, 2017

Respectfully submitted,

CHAD A. READLER  
Acting Assistant Attorney General

WILLIAM C. PEACHEY  
Director  
District Court Section  
Office of Immigration Litigation

/s/ Jeffrey S. Robins  
JEFFREY S. ROBINS  
Assistant Director  
U.S. Department of Justice  
P.O. Box 868, Ben Franklin Station  
Washington, D.C. 20044  
(202) 616-1246  
jeffrey.robins@usdoj.gov

JAMES WALKER  
Trial Attorney

*Attorneys for Defendants*

CHAD A. READLER  
Acting Assistant Attorney General  
WILLIAM C. PEACHEY  
Director, District Court Section  
Office of Immigration Litigation  
JEFFREY S. ROBINS  
Assistant Director  
U.S. Department of Justice  
P.O. Box 868, Ben Franklin Station  
Washington, D.C. 20044  
(202) 616-1246  
Email: jeffrey.robins@usdoj.gov  
JAMES WALKER  
Trial Attorney

Attorneys for Defendants

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

INLAND EMPIRE –  
IMMIGRANT YOUTH  
COLLECTIVE and JESUS  
ALONSO ARREOLA ROBLES,  
on behalf of himself and others  
similarly situated,

Plaintiff,

v.

ELAINE C. DUKE, Acting  
Secretary of Homeland Security, *et*  
*al.*,

Defendants.

Case No. 5:17-cv-2048-MWF-SHK

**DECLARATION OF JAMES J.  
WALKER IN SUPPORT OF  
DEFENDANTS' OPPOSITION TO  
PLAINTIFF'S MOTION FOR A  
PRELIMINARY INJUNCTION.**

**Judge:** Hon. Michael W. Fitzgerald

**Courtroom:** 5A

**Hearing:** November 20, 2017

**Time:** 10 a.m.

1 I, James J. Walker, pursuant to 28 U.S.C. § 1746, hereby declare:

- 2 1. I am employed as a Trial Attorney for the Department of Justice, Civil Division,  
3 Office of Immigration Litigation, and have been assigned as counsel for Defendants in  
4 *Inland Empire Immigrant Youth Collective et al v. Elaine C. Duke et al*, Case No.  
5 5:17-cv-2048-MWF-SHK. As such, I have personal knowledge of the following facts  
6 and could testify regarding these facts if called to do so.
- 7 2. Attached as Exhibit A is a true, correct, and complete copy of USCIS Form I-821D  
8 Instructions, Instructions for Consideration of Deferred Action for Childhood Arrivals  
9 (January 9, 2017, version, with no changes to the relevant content).
- 11 3. Attached as Exhibit B is a true, correct, and complete copy of DHS Memorandum of  
12 Investigation, Agent Statement of Border Patrol Agent F.O., dated February 12, 2017.
- 13 4. Attached as Exhibit C is a true, correct, and complete copy of DHS Memorandum of  
14 Investigation, Border Patrol Agent I.J., dated February 13, 2017.
- 15 5. Attached as Exhibit D is a true, correct, and complete copy of DHS Report of  
16 Investigation, Border Patrol Agent A.R., dated February 12, 2017.
- 17 6. Attached as Exhibit E is a true, correct, and complete copy of Transcript of Border  
18 Patrol Agent interview with Plaintiff on February 12, 2017.
- 19 7. Attached as Exhibit F is a true, correct, and complete copy of Statement of Border  
20 Patrol Agent J.H. Regarding Recorded Statement, dated February 12, 2017.
- 21 8. Attached as Exhibit G is a true, correct, and complete copy of Form I-862, Notice to  
22 Appear, dated February 12, 2017 (date stamped as filed with the Immigration Court on  
23 February 23, 2017).
- 24 9. Attached as Exhibit H is a true, correct, and complete copy of Declaration of USCIS  
25 Chief Ron Thomas, dated October 30, 2017.
- 26  
27  
28

1 I declare under penalty of perjury that the foregoing is true and correct and  
2 that this declaration was executed under the laws of the United States on this 30th day of  
3 October, 2017, in Washington, D.C.

4  
5 DATED: October 30, 2017

/s/ James J. Walker

JAMES J. WALKER

Trial Attorney

U.S. Department of Justice

Civil Division

Office of Immigration Litigation

District Court Section

P.O. Box 868, Ben Franklin Station

Washington, D.C. 20044

Phone: (202) 532-4468

Fax: (202) 305-7000

Email: james.walker3@usdoj.gov

Attorney for Defendants

1 CHAD A. READLER  
Acting Assistant Attorney General  
2 WILLIAM C. PEACHEY  
Director, District Court Section  
Office of Immigration Litigation  
3 JEFFREY S. ROBINS  
Assistant Director  
4 U.S. Department of Justice  
P.O. Box 868, Ben Franklin Station  
5 Washington, D.C. 20044  
(202) 616-1246  
6 Email: jeffrey.robins@usdoj.gov  
7 JAMES WALKER  
Trial Attorney  
8

9 Attorneys for Defendants

11 UNITED STATES DISTRICT COURT  
12 CENTRAL DISTRICT OF CALIFORNIA  
13

14 INLAND EMPIRE –	)	Case No. 5:17-cv-2048-MWF-SHK
15 IMMIGRANT YOUTH	)	
16 COLLECTIVE and JESUS	)	
17 ALONSO ARREOLA ROBLES,	)	<b>DEFENDANTS' EXHIBITS.</b>
18 on behalf of himself and others	)	
19 similarly situated,	)	<b>Judge:</b> Hon. Michael W. Fitzgerald
	)	<b>Courtroom:</b> 5A
20 Plaintiff,	)	<b>Hearing:</b> November 20, 2017
	)	<b>Time:</b> 10 a.m.
21 v.	)	
	)	
22 ELAINE C. DUKE, Acting	)	
23 Secretary of Homeland Security, <i>et</i>	)	
24 <i>al.</i> ,	)	
	)	
25 <u>Defendants.</u>	)	



**EXHIBITS**

- Exhibit A:** Form I-821D Instructions (January 9, 2017, version, with no changes to the relevant content);
- Exhibit B:** DHS Memorandum of Investigation, Agent Statement of Border Patrol Agent F.O., dated February 12, 2017;
- Exhibit C:** DHS Memorandum of Investigation, Border Patrol Agent I.J., dated February 13, 2017;
- Exhibit D:** DHS Report of Investigation, Border Patrol Agent A.R., dated February 12, 2017;
- Exhibit E:** Transcript of Border Patrol Agent interview with Plaintiff on February 12, 2017;
- Exhibit F:** Statement of Border Patrol Agent J.H. Regarding Recorded Statement, dated February 12, 2017.
- Exhibit G:** Form I-862, Notice to Appear, dated February 12, 2017 (date stamped as filed with the Immigration Court on February 23, 2017).
- Exhibit H:** Declaration of USCIS Chief Ron Thomas, dated October 30, 2017.

# Exhibit A

Form I-821D Instructions (January 9, 2017, version, with no changes to the relevant content)



## Instructions for Consideration of Deferred Action for Childhood Arrivals

Department of Homeland Security  
U.S. Citizenship and Immigration Services

USCIS  
**Form I-821D**  
OMB No. 1615-0124  
Expires 01/31/2019

### What is the Purpose of this Form?

An individual may file Form I-821D, Consideration of Deferred Action for Childhood Arrivals, to request that U.S. Citizenship and Immigration Services (USCIS) exercise prosecutorial discretion in his or her favor under the Deferred Action for Childhood Arrivals (DACA) process, including consideration for Renewal of deferred action. USCIS considers deferring action (including Renewal of deferred action) on a case-by-case basis, based on the guidelines in the **What is a Childhood Arrival for Purposes of This Form** section of these instructions. Deferred action is a discretionary determination to defer removal of an individual as an act of prosecutorial discretion. Individuals who receive deferred action will not be placed into removal proceedings or removed from the United States for a specified period of time, unless the Department of Homeland Security (DHS) chooses to terminate the deferral. See the Secretary of Homeland Security's memorandum issued on June 15, 2012 (Secretary's memorandum), upon which the DACA process is based, at [www.uscis.gov/childhoodarrivals](http://www.uscis.gov/childhoodarrivals).

### When Should I Use Form I-821D?

Use this form to request consideration of Initial DACA or Renewal of DACA. Deferred action is a discretionary determination to defer removal action of an individual as an act of prosecutorial discretion. All individuals filing Form I-821D, whether for an Initial or a Renewal of deferred action, must also file Form I-765, Application for Employment Authorization, and Form I-765 Worksheet, Form I-765WS. See the **Evidence for Initial Requests Only** and **Evidence for Renewal Requests Only** sections of these instructions for more information.

**CAUTION:** If you file this request more than 150 days prior to the expiration of your current period of deferred action, USCIS may reject your submission and return it to you with instructions to resubmit your request closer to the expiration date. **USCIS encourages renewal requestors to file as early in the 150-day period as possible - ideally, at least 120 days prior to the DACA expiration date.**

**NOTE:** If you have received DACA and you are filing within one year after your last period of deferred action expired, please follow the instructions provided below for renewal requestors.

**NOTE:** If U.S. Immigration and Customs Enforcement (ICE) initially deferred action in your case and you are seeking a Renewal, you must file Form I-821D and select and complete **Item Number 2**, in **Part 1**, of Form I-821D. You must also respond to ALL subsequent questions on the form. You must also submit documentation to establish how you satisfy the guidelines as if you were filing an Initial request for consideration of deferred action.

If you are currently in immigration detention, you may not request consideration of DACA or Renewal of DACA from USCIS. If you think you meet the guidelines of this process, you should identify yourself to your deportation officer.

### What is a Childhood Arrival for Purposes of This Form?

An individual may be considered for Initial DACA if he or she:

1. Was under 31 years of age as of June 15, 2012;
2. Came to the United States before reaching his or her 16th birthday;
3. Has continuously resided in the United States since June 15, 2007, up to the present time;

4. Was present in the United States on June 15, 2012 and at the time of making his or her request for consideration of deferred action with USCIS;
5. Had no lawful status on June 15, 2012;  
**NOTE:** No lawful status on June 15, 2012 means that:
  - A. You never had a lawful immigration status on or before June 15, 2012; or
  - B. Any lawful immigration status or parole that you obtained prior to June 15, 2012 had expired as of June 15, 2012.
6. Is currently in school, has graduated or obtained a certificate of completion from high school, has obtained a general educational development (GED) certificate, or is an honorably discharged veteran of the U.S. Armed Forces or U.S. Coast Guard; and
7. Has not been convicted of a felony, a significant misdemeanor, or three or more misdemeanors, and does not otherwise pose a threat to national security or public safety.

An individual may be considered for **Renewal** of DACA if he or she met the guidelines for consideration of Initial DACA (see above) AND he or she:

1. Did not depart the United States on or after August 15, 2012 without advance parole;
2. Has continuously resided in the United States since he or she submitted his or her most recent request for DACA that was approved up to the present time; and
3. Has not been convicted of a felony, a significant misdemeanor, or three or more misdemeanors, and does not otherwise pose a threat to national security or public safety.

#### Who May File Form I-821D?

1. **Childhood Arrivals Who Have Never Been in Removal Proceedings.** If you have never been in removal proceedings, submit this form to request that USCIS consider deferring action in your case. You must be 15 years of age or older at the time of filing and meet the guidelines described in the Secretary's memorandum to be considered for deferred action.
2. **Childhood Arrivals Whose Removal Proceedings Were Terminated.** If you were in removal proceedings which have been terminated by the immigration judge prior to this request, you may use this form to request that USCIS consider deferring action in your case. You must be 15 years of age or older at the time of filing and meet the guidelines described in the Secretary's memorandum to be considered for deferred action.
3. **Childhood Arrivals In Removal Proceedings, With a Final Removal Order, or With Voluntary Departure.** If you are in removal proceedings, have a final order of removal, exclusion, or deportation issued in any other context, have a voluntary departure order, or if your proceedings have been administratively closed, you may use this form to request that USCIS consider deferring action in your case, even if you are under 15 years of age at the time of filing. For the purpose of this form, "removal proceedings" includes exclusion or deportation proceedings initiated before April 1, 1997, an Immigration and Nationality Act (INA) section 240 removal proceeding, expedited removal, reinstatement of a final order of exclusion, deportation, or removal, an INA section 217 removal after admission under the Visa Waiver Program, removal as a criminal alien under INA section 238, or any other kind of removal proceeding under U.S. immigration law in any other context (e.g., at the border or within the United States by an immigration agent).
4. **Childhood Arrivals Whose Case Was Deferred and Who Are Seeking Renewal of DACA.** If USCIS or ICE deferred action in your case under DACA, you may use this form to request consideration of Renewal of DACA from USCIS.

## General Instructions

USCIS provides forms free of charge through the USCIS website. In order to view, print, or fill out our forms, you should use the latest version of Adobe Reader, which can be downloaded for free at <http://get.adobe.com/reader/>.

Each request must be properly signed and accompanied by Form I-765 with fees and Form I-765WS. If you are under 14 years of age, your parent or legal guardian may sign the request on your behalf. A designated representative may sign if the requestor is unable to sign due to a physical or developmental disability or mental impairment. A photocopy of a signed request or typewritten name in place of a signature is not acceptable. This request is not considered properly filed until accepted by USCIS.

**Evidence.** You must submit all required evidence and supporting documentation with your request at the time of filing. See the **Evidence for Initial Requests Only** and **Evidence for Renewal Requests Only** sections of these instructions for more details.

You should keep all documents that support how you meet the DACA guidelines so you can provide them if they are requested by USCIS.

**NOTE:** If you are submitting a **Renewal Request** for consideration of DACA to USCIS, you do not need to re-submit documents you already submitted with your previous DACA requests.

**Biometric Services Appointment.** Individuals requesting DACA must provide fingerprints, photographs, and signatures (biometrics). You may receive a notice scheduling you to appear at an Application Support Center (ASC) for biometrics collection. Failure to comply with the notice may result in the denial of your deferred action request. USCIS may, in its discretion, waive the collection of certain biometrics.

**Copies.** You may submit a legible photocopy of any document, unless you are specifically required to file an original document with this request. Original documents submitted when not required may remain a part of the record, and USCIS will not automatically return them to you.

**Translations.** Any document you submit to USCIS that contains a foreign language must have a full English translation. The translator must certify that the English translation is complete and accurate, and that he or she is competent to translate from the foreign language into English.

An example of a certification would read, "I [typed name], certify that I am fluent (conversant) in the English and [insert other language] languages, and that the above/attached document is an accurate translation of the document attached entitled [name of document]." The certification should also include the date, the translator's signature and typed name, and the translator's address.

**Advance Parole.** If you wish to file a request for Advance Parole, please follow the instructions for filing Form I-131, Application for Travel Document. You can get the most current information on how to apply for advance parole by visiting the USCIS website at [www.uscis.gov/i-131](http://www.uscis.gov/i-131) or calling the National Customer Service Line at 1-800-375-5283 or 1-800-767-1833 (TTY for the hearing impaired). Customer service officers are available Monday - Friday from 8 a.m. - 6 p.m. in each U.S. time zone.

**Travel Warning.** On or after August 15, 2012, if you travel outside of the United States before USCIS has determined whether to defer action in your case, you will not be considered for deferred action. Even after USCIS has deferred action in your case under DACA, you should not travel outside the United States unless you have been issued an Advance Parole Document by USCIS. Deferred action will terminate automatically if you travel outside the United States without obtaining an Advance Parole Document from USCIS. In addition, leaving the United States, even with an Advance Parole Document, may impact your ability to return to the United States.



## How To Fill Out Form I-821D

1. This form consists of eight parts. Requestors for Initial DACA and those requestors seeking Renewal of DACA should fill out most parts. However, only requestors for Initial DACA should complete **Part 3**. See below for greater detail.

**Part 1. Information About You.** All requestors must complete this part.

**Part 2. Residence and Travel Information.** All requestors must complete this part. Please be aware that Initial requestors must provide more extensive information than Renewal requestors.

**Part 3. For Initial Requests Only.** Renewal requestors should skip this part.

**Part 4. Criminal, National Security, and Public Safety Information.** All requestors must complete this part.

**Part 5. Statement, Certification, Signature, and Contact Information of the Requestor.** All requestors must complete this part.

**Part 6. Contact Information, Certification, and Signature of the Interpreter.** Any requestor using an interpreter must complete this part.

**Part 7. Contact Information, Declaration, and Signature of the Person Preparing this Request, If Other than the Requestor.** If you had someone else prepare your request, he or she must complete this part.

**Part 8. Additional Information.** Any requestor may complete this part if additional space is needed.

2. Further Information on filling out Form I-821D:

A. Type or print legibly in black ink.

B. If you need extra space to complete any item within this request, use **Part 8. Additional Information** and make additional copies of this sheet as needed. Type or print your name and Alien Registration Number (A-Number) (if any) at the top of each sheet; indicate the **Page Number**, **Part Number**, and **Item Number** to which your answer refers; and sign and date each sheet.

C. Answer all questions fully and accurately. If an item is not applicable or the answer is “none,” type or print “N/ A,” unless otherwise directed.

D. All dates must be entered as mm/dd/yyyy. You may provide approximate dates if you do not know the exact date. Do not leave a date response blank.

E. **Processing Information.** You must provide the biometrics information requested in **Part 1, Item Numbers 15. - 20.** Providing this information as part of your request may reduce the time you spend at your USCIS ASC appointment.

F. **Part 5. Statement, Certification, Signature, and Contact Information of the Requestor.** Select the box that indicates whether someone interpreted this form for you. If applicable, the attorney, accredited representative, or other individual who helped prepare this form for you must complete **Part 7.** and sign and date the form. Every request must contain the requestor’s original signature. A photocopy of a signed request or a typewritten name in place of a signature is **not** acceptable. Sign and date the form and provide your daytime telephone number, mobile telephone number, and email address. If you are under 14 years of age, your parent or legal guardian may sign the request on your behalf. A designated representative may sign if the requestor is unable to sign due to a physical or developmental disability or mental impairment.

G. **Part 6. Contact Information, Certification, and Signature of the Interpreter.** If you used an interpreter to read the instructions and complete the questions on this form, the interpreter must fill out **Part 6.** The interpreter must provide his or her full name, the name of his or her business or organization, an address, a daytime telephone number, and an email address. He or she must also sign and date the form.

**H. Part 7. Contact Information, Declaration, and Signature of the Person Preparing this Request, If Other Than the Requestor.** If the person who completed this request, is someone other than the person named in **Part 1.**, he or she must complete this section of the request, provide his or her name, the address of his or her business or organization (if any), and his or her contact information. If the person completing this request is an attorney or accredited representative, he or she must submit a completed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, along with this request. Further, the attorney or accredited representative, and anyone who assisted in preparing your request, must sign and date the request. This section of the request **MUST** contain the original signature of the attorney or accredited representative, and anyone who assisted in preparing your request. A typewritten name in place of a signature is not acceptable.

### Evidence for Initial Requests Only

**NOTE:** If you are submitting an **Initial Request** for consideration of DACA to USCIS, you will need to submit documents showing how you believe you have satisfied each DACA guideline.

1. What documents should you submit with your Form I-821D?
  - A. You do not need to submit original documents unless USCIS requests them.
  - B. Evidence and supporting documents that you file with your Form I-821D should show that you are at least 15 years of age at the time of filing, if required (see the **Who May File Form I-821D** section of these instructions for more information), and that you meet all of the following:
    - (1) Were born after June 15, 1981 (i.e., You were not age 31 or older on June 15, 2012);
    - (2) Arrived in the United States before 16 years of age;
    - (3) Have continuously resided in the United States since June 15, 2007, up to the present time;
    - (4) Were present in the United States on June 15, 2012, and at the time of making your request for consideration of deferred action with USCIS;
    - (5) Had no lawful status on June 15, 2012; and
    - (6) Are currently in school, graduated or received a certificate of completion from high school, obtained a GED certificate or other equivalent state-authorized exam in the United States, or that you are an honorably discharged veteran of the U.S. Armed Forces or U.S. Coast Guard.
2. What documents do you need to provide to prove identity?
 

Submit copies of any of the following:

  - A. Passport;
  - B. Birth certificate accompanied by photo identification;
  - C. Any national identity document from your country of origin bearing your photo and/or fingerprint;
  - D. Any U.S. government immigration or other document bearing your name and photograph (e.g., EADs, visas, driver's licenses, non-driver cards);
  - E. Any school-issued form of identification with photo;
  - F. Military identification document with photo;
  - G. State-issued photo ID showing date of birth; or
  - H. Any other document with photo that you believe is relevant.

**NOTE:** Expired documents are acceptable.



**3. What documents may show that you came to the United States before your 16th birthday?**

Submit copies of any of the following documents:

- A.** Passport with an admission stamp indicating when you entered the United States;
- B.** Form I-94, I-94W, or I-95 Arrival-Departure Record;
- C.** Any Immigration and Naturalization Service (INS) or DHS document stating your date of entry (e.g., Form I-862, Notice to Appear);
- D.** Travel records, such as transportation tickets showing your dates of travel to the United States;
- E.** School records (e.g., transcripts, report cards) from the schools that you have attended in the United States, showing the names of the schools and periods of school attendance;
- F.** Hospital or medical records concerning treatment or hospitalization, showing the names of the medical facilities or physicians and the dates of the treatment or hospitalization;
- G.** Official records from a religious entity in the United States confirming your participation in a religious ceremony, rite, or passage (e.g., baptism, first communion, wedding); or
- H.** Any other document that you believe is relevant.

**4. If you left the United States for some period of time before your 16th birthday and returned on or after your 16th birthday to begin your current period of continuous residence, what documents may show that you established residence before your 16th birthday?**

Submit copies of any of the following documents:

- A.** School records (e.g., transcripts, report cards) from the schools that you have attended in the United States, showing the names of the schools and periods of school attendance;
- B.** Employment records (e.g., pay stubs, W-2 Forms, certification of the filing of Federal income tax returns, state verification of the filing of state income tax returns, letters from employers, or, if you are self employed, letters from banks and other firms with whom you have done business);
- C.** Documents evidencing that you were physically present in the United States for multiple years prior to your 16th birthday; or
- D.** Any other relevant document.

**5. What documents may show that you continuously resided in the United States since June 15, 2007, up to the present date?**

Submit copies of any relevant documents such as:

- A.** Rent receipts, utility bills (e.g., gas, electric, phone), or receipts or letters from companies showing the dates during which you received service. You may submit this documentation even if it only has the name of your parents or legal guardians, as long as you also submit other evidence (e.g., third party documentation) that connects you to your residence at that address;
- B.** Employment records (e.g., pay stubs, W-2 Forms, certification of the filing of Federal income tax returns, state verification of the filing of state income tax returns, letters from employers, or, if you are self employed, letters from banks and other firms with whom you have done business);

**NOTE:** In all of these documents, your name and the name of the employer or other interested organization must appear on the form or letter, as well as relevant dates. Letters must include: your address at the time of employment, exact periods of employment, periods of layoff, and duties with the employer. Letters must also be signed by the employer and include the employer's contact information.

- C.** School records (e.g., transcripts, report cards) from the schools that you have attended in the United States, showing the names of the schools and periods of school attendance;

- D. Military records (e.g., Form DD-214, Certificate of Release or Discharge from Active Duty; NGB Form 22, National Guard Report of Separation and Record of Service; military personnel records; or military health records);
- E. Hospital or medical records concerning treatment or hospitalization, showing the names of the medical facilities or physicians and the dates of the treatment or hospitalization;
- F. Official records from a religious entity in the United States confirming your participation in a religious ceremony, rite, or passage (e.g., baptism, first communion, wedding);
- G. Money order receipts for money sent in or out of the country; passport entries; birth certificates of children born in the United States; dated records of bank transactions; correspondence between you and another person or organization; automobile license receipts, title, vehicle registration, etc.; deeds, mortgages, rental agreements, contracts to which you have been a party; tax receipts; insurance policies; receipts; postmarked letters; or
- H. Any other relevant document.

**6. Do brief departures interrupt continuous residence?**

A brief, casual, and innocent absence from the United States will not interrupt your continuous residence. If you were absent from the United States for any period of time, your absence will be considered brief, casual, and innocent, if it was on or after June 15, 2007, and before August 15, 2012, and:

- A. The absence was short and reasonably calculated to accomplish the purpose for the absence;
- B. The absence was not because of an order of exclusion, deportation, or removal;
- C. The absence was not because of an order of voluntary departure or an administrative grant of voluntary departure before you were placed in exclusion, deportation, or removal proceedings; and
- D. The purpose of the absence and/or your actions while outside of the United States were not contrary to law.

**In Part 3. Arrival/Residence Information**, list all your absences from the United States since June 15, 2007. Include information about all your departure and return dates, and the reason for your departures. Documents you can submit that may show your absence was brief, casual, and innocent include, but are not limited to:

- A. Plane or other transportation tickets or itinerary showing the travel dates;
- B. Passport entries;
- C. Hotel receipts showing the dates you were abroad;
- D. Evidence of the purpose of the travel (e.g., you attended a wedding or funeral);
- E. Copy of Advance Parole Document issued by USCIS; and
- F. Any other evidence that could support a brief, casual, and innocent absence.

**7. What documents may demonstrate that you were present in the United States on June 15, 2012?**

Submit copies of any relevant documents such as:

- A. Rent receipts, utility bills (e.g., gas, electric, phone), or receipts or letters from companies showing the dates during which you received service. You may submit this documentation even if it only has the name of your parents or legal guardians, as long as you also submit other evidence (e.g., third party documentation) that connects you to your residence at that address;
- B. Employment records (e.g., pay stubs, W-2 Forms, certification of the filing of Federal income tax returns, state verification of the filing of state income tax returns, letters from employers, or, if you are self employed, letters from banks and other firms with whom you have done business);

**NOTE:** In all of these documents, your name and the name of the employer or other interested organization must appear on the form or letter, as well as relevant dates. Letters must include: your address at the time of employment, exact periods of employment, periods of layoff, and duties with the employer. Letters must also be signed by the employer and include the employer's contact information.

- C. School records (e.g., transcripts, report cards) from the schools that you have attended in the United States, showing the names of the schools and periods of school attendance;
- D. Military records (e.g., Form DD-214, Certificate of Release or Discharge from Active Duty; NGB Form 22, National Guard Report of Separation and Record of Service; military personnel records; or military health records);
- E. Hospital or medical records concerning treatment or hospitalization, showing the names of the medical facilities or physicians and the dates of the treatment or hospitalization;
- F. Official records from a religious entity in the United States confirming your participation in a religious ceremony, rite, or passage (e.g., baptism, first communion, wedding);
- G. Money order receipts for money sent in or out of the country; passport entries; birth certificates of children born in the United States; dated records of bank transactions; correspondence between you and another person or organization; automobile license receipts, title, vehicle registration, etc.; deeds, mortgages, rental agreements, contracts to which you have been a party; tax receipts; insurance policies; receipts; postmarked letters; or
- H. Any other relevant document.

**8. What documents may show you had no lawful status on June 15, 2012?** (Submit documents if you were admitted or paroled, or otherwise obtained a lawful immigration status, on or before June 15, 2012, or you were or are in removal proceedings.)

Submit copies of any of the following documents:

- A. Form I-94, I-94W, or I-95 Arrival/Departure Record showing the date your authorized stay expired;
- B. If you have a final order of exclusion, deportation, or removal issued as of June 15, 2012, submit a copy of that order and related charging documents, if available;
- C. An INS or DHS charging document placing you into removal proceedings, if available; or
- D. Any other document that you believe is relevant to show that on June 15, 2012, you had no lawful status.

**9. What documents may demonstrate that you: a) are currently in school in the United States at the time of filing; b) have graduated or received a certificate of completion or a certificate of attendance from a U.S. high school, a U.S. public or private college or university, including community college; or c) have obtained a GED certificate or other equivalent state-authorized exam in the United States?** (If applicable)

USCIS recognizes that schools, educational programs, school districts, and state education agencies around the country issue educational records in a variety of formats. USCIS does not require educational records to be presented in any particular format.

- A. To be considered “currently in school,” you are to demonstrate that you are currently enrolled in one of the following:
  - (1) A U.S. public, private, or charter elementary school, junior high or middle school, high school, secondary school, alternative program, or home school program meeting state requirements;
  - (2) An education, literacy, or career training program (including vocational training) that has a purpose of improving literacy, mathematics, or English or is designed to lead to placement in post-secondary education, job training, or employment, and where you are working toward such placement, and that the program:
    - (a) Is administered by a non-profit entity; or
    - (b) Is funded in whole or in part by Federal, state, local, or municipal funds; or
    - (c) Is of demonstrated effectiveness;

- (3) An education program in the U.S. assisting students in obtaining a regular high school diploma or its recognized equivalent under state law (including a certificate of completion, certificate of attendance, or alternate award), or in passing a GED exam or other equivalent state-authorized exam, and that the program:
- (a) Is administered by a non-profit entity; or
  - (b) Is funded in whole or in part by Federal, state, local, or municipal funds; or
  - (c) Is of demonstrated effectiveness;
- (4) A U.S. public or private college or university including community college.

Evidence of enrollment may include, but is not limited to: school registration cards, acceptance or other letters demonstrating enrollment or attendance, current transcripts, report cards, progress reports, or other documents issued by a school district, state education agency, school, or program. These documents should show your name; the name of the school district, or state educational agency, school, or program issuing the record; the dates or time periods of enrollment you are seeking to establish; and your current educational or grade level.

If you have been accepted for enrollment and your classes have not yet begun, you may submit an acceptance letter with evidence that you have registered for classes or any other relevant evidence showing you have committed to starting classes on a certain date, including, for example, a copy of your tuition bill, your class schedule, or your Individualized Educational Program.

If you are enrolled in an educational, literacy, or career training program (including vocational training or an ESL course), evidence that the program is funded in whole or in part by Federal, state, local, or municipal funds includes a letter or other documentation from an authorized representative of the program that includes information such as: your name and date of enrollment, the duration of the program and expected completion date, the program's source of public funding, and the program's authorized representative's contact information.

If you are enrolled in an education, literacy, or career training program that is not publicly funded, evidence that the program is of demonstrated effectiveness may include information from an authorized school representative relating to: the duration of the program's existence; the program's track record in placing students in employment, job training, or post-secondary education; receipt of awards or special achievement or recognition that indicate the program's overall quality; and/or any other information indicating the program's overall quality.

- B.** Evidence to show that you meet the educational guideline because you have "graduated from school" or "obtained a GED certificate" or other equivalent state-authorized exam in the United States includes, but is not limited to:
- (1) A high school diploma from a U.S. public or private high school or secondary school;
  - (2) A recognized equivalent of a U.S. high school diploma under state law, including a GED certificate or other equivalent state-authorized exam, a certificate of completion, or a certificate of attendance;
  - (3) A transcript that identifies the date of graduation or program completion;
  - (4) An enrollment history that shows the date of graduation or program completion;
  - (5) A degree from a public or private college or university or a community college; or
  - (6) An alternate award from a U.S. public or private high school or secondary school.

These documents should show your name; the name of the U.S. school district, educational agency, school, or program issuing the record; the dates or time periods of enrollment you are seeking to establish; and your date of graduation or completion.

**10. What documents may demonstrate that you are an honorably discharged veteran of the U.S. Armed Forces or U.S. Coast Guard? (If applicable)**

Submit copies of the following documents:

- A.** Form DD-214, Certificate of Release or Discharge from Active Duty;
- B.** NGB Form 22, National Guard Report of Separation and Record of Service;

- C. Military personnel records;
- D. Military health records; or
- E. Any other relevant document.

**11. What additional documents should you submit if you are currently or have been in removal proceedings?**

Submit a copy of the removal order, any document issued by the immigration judge, or the final decision of the Board of Immigration Appeals (BIA), if available. If you have not been in removal proceedings, this question does not apply to you.

**12. What evidence should I submit to demonstrate my criminal history?**

If you have been arrested for or charged with any felony (i.e., a Federal, state, or local criminal offense punishable by imprisonment for a term exceeding one year) or misdemeanor (i.e., a Federal, state, or local criminal offense for which the maximum term of imprisonment authorized is one year or less but greater than five days) in the United States, or a crime in any country other than the United States, you must submit evidence demonstrating the results of the arrest or charges brought against you. If the charges against you were handled in juvenile court, and the records are from a state with laws prohibiting their disclosure, this evidence is not required.

- A. If you have ever been arrested for any felony or misdemeanor in the United States, or a crime in any country other than the United States, and no charges were filed, submit an original official statement by the arresting agency or applicable court order confirming that no charges were filed for each arrest. If you are unable to provide such documentation or if it is not available, you must provide an explanation, including a description of your efforts to obtain such evidence, in **Part 8. Additional Information**.
- B. If you have ever been charged with or convicted of a felony or misdemeanor in the United States, or a crime in any country other than the United States, submit an original or court-certified copy of the complete arrest record and disposition for each incident (e.g., dismissal order, conviction and sentencing record, acquittal order). If you are unable to provide such documentation or if it is not available, you must provide an explanation, including a description of your efforts to obtain such evidence, in **Part 8. Additional Information**.
- C. If you have ever had any arrest or conviction vacated, set aside, sealed, expunged, or otherwise removed from your record, submit:
  - (1) An original or court-certified copy of the court order vacating, setting aside, sealing, expunging, or otherwise removing the arrest or conviction; or
  - (2) An original statement from the court that no record exists of your arrest or conviction.

If you are unable to provide such documentation or if it is not available, you must provide an explanation, including a description of your efforts to obtain such evidence, in **Part 8. Additional Information**.

**NOTE: You do not need to submit documentation concerning minor traffic violations such as driving without a license unless they were alcohol - or drug-related.**

**Evidence for Renewal Requests Only**

**NOTE:** If you are submitting a **Renewal Request** for consideration of DACA to USCIS, you do not need to re-submit documents you already submitted with your previous DACA requests.

If you are seeking a **Renewal** of DACA, respond to all questions, except where the section or question indicates “For Initial Requests Only.”

If you are currently in exclusion, deportation, or removal proceedings, see **Item Number 11.** (above) for additional guidance.

If you have any criminal history, see **Item Number 12.** (above) for additional guidance.



With your Renewal request, you only need to submit any new documents pertaining to removal proceedings or criminal history that you have not already submitted to USCIS. If USCIS needs more documentation from you, USCIS will send a Request for Evidence to you explaining the needed information. However, you should submit new documents if any of the following situations apply to you:

1. You are currently in exclusion, deportation, or removal proceedings (please note, you do not need to submit these documents if your case was administratively closed); or
2. You have been charged with, or convicted of, a felony or misdemeanor (please note, you do not need to submit these documents if you already submitted them with a previous DACA request).

**NOTE:** You should keep all documents that support how you meet the DACA guidelines so you can provide them if they are requested by USCIS.

If ICE initially deferred action in your case and you are seeking a Renewal, you must select and complete **Item Number 2.** in **Part 1.** of Form I-821D. You must also respond to **ALL** subsequent questions on the form. You must also submit documentation to establish how you satisfy the guidelines as if you were filing an Initial request for consideration of deferred action.

**NOTE:** You do not need to submit documentation concerning minor traffic violations such as driving without a license unless they were alcohol-or drug- related.

#### **Additional Information Relevant to ALL Requests for DACA**

##### **1. What other factors will USCIS consider when making a determination on deferred action?**

USCIS will also conduct a background check. USCIS may consider deferring action in your case even if you have been arrested or detained by any law enforcement officer and charges were filed, or if charges were filed against you without an arrest. USCIS will evaluate the totality of the circumstances in reaching a decision on deferred action.

In accordance with the Secretary's memorandum, if USCIS determines that you have been convicted of a felony, a significant misdemeanor, or three or more misdemeanors not occurring on the same date and not arising out of the same act, omission, or scheme of misconduct, or that you otherwise pose a threat to national security or public safety, USCIS is unlikely to defer action in your case. See the Frequently Asked Questions at [www.uscis.gov/childhoodarrivals](http://www.uscis.gov/childhoodarrivals).

Even if you satisfy the threshold criteria for consideration of DACA, USCIS may deny your request if it determines, in its unreviewable discretion, that an exercise of prosecutorial discretion is not warranted in your case.

##### **2. What else should you submit with Form I-821D?**

USCIS will not consider deferring action in your case unless your Form I-821D is accompanied by Form I-765, with fees, and Form I-765WS. If you do not include Form I-765 with all applicable fees with your Form I-821D, your entire submission will be rejected.

**Optional E-Notification of Request Acceptance.** You may submit Form G-1145, Notification of Application/Petition Acceptance, an optional form, which will notify you electronically when USCIS accepts your request for DACA.

#### **What is the Filing Fee?**

There is no filing fee for Form I-821D. However, you must submit both filing and biometric services fees with Form I-765. Read Form I-765 filing instructions for complete information at [www.uscis.gov/I-765](http://www.uscis.gov/I-765).

## Where to File?

Please see our USCIS website at [www.uscis.gov/I-821D](http://www.uscis.gov/I-821D) or call the USCIS National Customer Service Center at **1-800-375-5283** for the most current information about where to file this form. For TTY (deaf or hard of hearing) call: **1-800-767-1833**.

## Address Changes

You must inform USCIS if you change your address. For information on filing a change of address, go to the USCIS website at [www.uscis.gov/addresschange](http://www.uscis.gov/addresschange) or contact the USCIS National Customer Service Center at **1-800-375-5283**. For TTY (deaf or hard of hearing) call: **1-800-767-1833**.

**NOTE:** Do not submit a change of address request to USCIS Lockbox facilities because these facilities do not process change of address requests.

## Processing Information

**Initial Processing.** Once your request has been received by USCIS, USCIS will check the request for completeness. If you do not completely fill out the form, USCIS may deny or reject your request.

**Requests for More Information, Including Biometrics or Interview.** We may request more information or evidence, or we may request that you appear at a USCIS office for an interview. We may also request that you provide the originals of any copies you submit. We will return these originals when they are no longer needed.

If the same documents are required for both Form I-821D and Form I-765 that are filed together, the documents only have to be submitted once.

At the time of any interview or other appearance at a USCIS office, USCIS may require that you provide biometric information (e.g., photograph, fingerprints, signature) to verify your identity and update your background information.

**Decision.** USCIS will review your request to determine whether the exercise of prosecutorial discretion is appropriate in your case. Each case will be considered on an individual, case-by-case basis. Even if you satisfy the threshold criteria for consideration of DACA, USCIS may determine, in its unreviewable discretion, that deferred action is not warranted in your case. You will be notified of the decision in writing. There is no motion to reopen/reconsider the decision and there is no right to appeal.

## USCIS Forms and Information

To ensure you are using the latest version of this form, visit the USCIS website at [www.uscis.gov](http://www.uscis.gov) where you can obtain the latest USCIS forms and immigration-related information. If you do not have Internet access, you may order USCIS forms by calling our toll-free number at **1-800-870-3676**. You may also obtain forms and information by calling the USCIS National Customer Service Center at **1-800-375-5283**. For TTY (deaf or hard of hearing) call: **1-800-767-1833**.

As an alternative to waiting in line for assistance at your local USCIS office, you can now schedule an appointment through our Internet-based system, **InfoPass**. To access the system, visit our website at [infopass.uscis.gov](http://infopass.uscis.gov). Use the **InfoPass** appointment scheduler and follow the screen prompts to set up your appointment. **InfoPass** generates an electronic appointment notice that appears on the screen.



## Penalties

If you knowingly and willfully provide materially false information on Form I-821D, you will be committing a Federal felony punishable by a fine, or imprisonment up to five years, or both, under 18 U.S.C. Section 1001. In addition, individuals may be placed into removal proceedings, face severe penalties provided by law, and be subject to criminal prosecution.

## USCIS Privacy Act Statement

**AUTHORITIES:** The information requested on this form, and the associated evidence, is collected under the Immigration and Nationality Act, section 101, et seq.

**PURPOSE:** The primary purpose for providing the requested information on this form is to determine if you should be considered for deferred action as a childhood arrival. The information you provide will be used in making a decision whether to defer removal action in your case as an exercise of prosecutorial discretion.

**DISCLOSURE:** The information you provide is voluntary. However, failure to provide the requested information, and any requested evidence, may delay a final decision in your case or result in denial of your request.

**ROUTINE USES:** The information you provide on this form may be shared with other Federal, state, local, and foreign government agencies and authorized organizations following approved routine uses described in the associated published system of records notices [DHS/USCIS-007 - Benefits Information System and DHS/USCIS-001 - Alien File, Index, and National File Tracking System of Records which can be found at [www.dhs.gov/privacy](http://www.dhs.gov/privacy)].

## Other Disclosure Information

Information provided in this request is protected from disclosure to ICE and U.S. Customs and Border Protection (CBP) for the purpose of immigration enforcement proceedings unless the requestor meets the criteria for the issuance of a Notice To Appear or a referral to ICE under the criteria set forth in USCIS' Notice to Appear guidance ([www.uscis.gov/NTA](http://www.uscis.gov/NTA)). The information may be shared with national security and law enforcement agencies, including ICE and CBP, for purposes other than removal, including for assistance in the consideration of deferred action for childhood arrivals request itself, to identify or prevent fraudulent claims, for national security purposes, or for the investigation or prosecution of a criminal offense. **The above information sharing clause covers family members and guardians, in addition to the requestor.**

This policy, which may be modified, superseded, or rescinded at any time without notice, is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

## Paperwork Reduction Act

An agency may not conduct or sponsor an information collection, and a person is not required to respond to a collection of information, unless it displays a currently valid OMB control number. The public reporting burden for this collection of information is estimated at 3 hours per response, including the time for reviewing instructions and completing and submitting the form. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: U.S. Citizenship and Immigration Services, Regulatory Coordination Division, Office of Policy and Strategy, 20 Massachusetts Ave NW, Washington, DC 20529-2140; OMB No. 1615-0124. **Do not mail your completed Form I-821D to this address.**

**Reminder**

***For Initial and Renewal Request***

- ☐ Did you submit Form I-765 along with the filing and biometric services fees (\$495) required for the application or employment authorization, and did you also submit a completed Form I-765WS?
- ☐ Did you answer every relevant **Item Number**?
- ☐ Did you provide an original, handwritten signature and date your request?
- ☐ Did you submit the necessary documents? For Initial requests, did you submit documents to meet each guideline? For Renewal requests, see the section titled Evidence for Renewal Requests Only.
- ☐ If you were issued a final order of exclusion, deportation, or removal, did you include a copy of that final order (if available and if you had not already submitted it to USCIS)?
- ☐ If your exclusion, deportation, or removal proceedings were terminated by an immigration judge, did you include a copy of the immigration judge's termination order (if available and if you had not already submitted it to USCIS)?
- ☐ If you have ever been arrested for, charged with, or convicted of any felony or misdemeanor in the United States or any crime in any country other than the United States, did you submit an original, official, or court-certified document that shows your complete arrest record and final disposition for each incident (if available and if you had not already submitted it to USCIS)?

***For Initial Requests Only***

- ☐ Did you submit evidence to show that you came to the United States while under 16 years of age?
- ☐ Did you submit evidence to prove your identity, date of initial entry, and continuous residence from June 15, 2007 (or earlier) up to the present time?
- ☐ Did you submit evidence that you are currently in school, have a GED certificate, have graduated or received a certificate of completion from high school, or are an honorably discharged veteran of the U.S. Armed Forces or U.S. Coast Guard?
- ☐ Did you provide evidence showing that you had no lawful status as of June 15, 2012?

# Exhibit B

DHS Memorandum of Investigation, Agent Statement of Border Patrol Agent  
F.O., dated February 12, 2017

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# Exhibit C

DHS Memorandum of Investigation, Border Patrol Agent I.J., dated February  
13, 2017

U.S. Department of Homeland Security

## MEMORANDUM OF INVESTIGATION

File Number	Title: PRIMARY SUBJECT: JESUS ARREOLA-LOPEZ	Control Office SDC/ECJ
<p>RE: BPA [REDACTED] Memorandum of Investigation</p> <p>-----</p> <p>On February 12, 2017, I, Border Patrol Agent BPA [REDACTED] [REDACTED] was performing my assigned line-watch duties in the El Cajon, California Border Patrol Substation. At approximately 12:21 a.m., I responded to assist Border Patrol Agent BPA [REDACTED] [REDACTED] who was on a consensual encounter with a driver of a 2014 Toyota Camry at the location [REDACTED] with Border Patrol Agents as "Lone Pine." This area is approximately 8 miles east of the Tecate, California Port of Entry and approximately 1 mile north of the United States/Mexico International Boundary.</p> <p>At approximately 12:23 a.m. I arrived [REDACTED] [REDACTED] BPA [REDACTED] and began to assist with questioning. (BPA) [REDACTED] informed me that the BPA [REDACTED] [REDACTED] was [REDACTED] tracking a group of possibly illegal aliens that had recently crossed the United States illegally directly south of where he observed a 2014 Toyota Camry parked on the side of the road. (BPA) [REDACTED] lastly advised me that the vehicle was occupied by two subjects and that they are giving conflicting stories concerning their reasoning for being in the area.</p> <p>I began to question the passenger of the vehicle later who was identified as [REDACTED] as to his place of birth and citizenship. [REDACTED] freely stated that he was born in [REDACTED] that he has immigration documents that would allow him to enter or remain in the United States legally. [REDACTED] stated that the driver of the vehicle later identified as Jesus Alonso ARREOLA-Robles, had just recently picked him up.</p> <p>At this time, I began to ask ARREOLA what he was doing in the area and where was he headed. ARREOLA initially stated that he picked up [REDACTED] in El Cajon, California and was going to take him to Tijuana, Mexico. ARREOLA then changed his story and claimed that he was just going back home to Hollywood, California. I then told ARREOLA that he was in Campo, California and that he is giving conflicting statements. ARREOLA then freely admitted that he had just recently picked up RIOS on the side of the road. ARREOLA stated that he knew RIOS was an illegal alien and he was going to get paid \$100 USD to pick up an unknown amount of illegal aliens.</p> <p>At approximately 12:31 a.m., I placed both subjects under arrest and transported them to the El Cajon Substation Processing Center in Campo, California.</p>		
Investigator BORDER PATROL AGENT [REDACTED]		Date February 13, 2017

# Exhibit D

DHS Report of Investigation, Border Patrol Agent A.R., dated February 12,  
2017



U.S. Department of Homeland Security

## REPORT OF INVESTIGATION

Title PRIMARY SUBJECT: JESUS ARREOLA-LOPEZ		File Number Event No: [REDACTED] [REDACTED]	Date 02/12/2017 Report Number [REDACTED]
Special Agent: (Name) [REDACTED] Border Patrol Agent		(Signature) [REDACTED]	Office SDC/ECJ
Approved by: (Name and Title) [REDACTED] SUPERVISORY BORDER PATROL AGENT		(Signature) [REDACTED]	Office SDC/ECJ

SYNOPSIS  
ALIEN SMUGGLING CASE

**PRINCIPAL** ORGANIZATION Unknown  
NAME JESUS ALONSO ARREOLA-ROBLES A# [REDACTED] D/POB [REDACTED]  
ALIAS [REDACTED] RACE W SEX M HT 70 WT 260 EYES BRO HAIR BLK  
ADDRESS (US) [REDACTED] FOREIGN S/N [REDACTED]  
NORTH HOLLYWOOD, CALIFORNIA 91601  
IMM STAT Inadmissible Alien SS# [REDACTED] FIN [REDACTED]

**ASSOCIATE**  
NAME [REDACTED] A# [REDACTED] D/POB [REDACTED]  
ALIAS [REDACTED] RACE W SEX M HT 62 WT 110 EYES BRO HAIR BLK  
ADDRESS (US) IN DHS CUSTODY FOREIGN [REDACTED]  
[REDACTED]  
IMM STAT Inadmissible Alien SS# [REDACTED] FIN [REDACTED]

☒ Continued on attached continuation page

## ALIENS

NUMBER IN LOAD 0 NATIONALITY [REDACTED] INTENDED DEST LOS ANGELES, CALIFORNIA  
CHARGE PER ALIEN \$600.00 DATE/PLACE OF ENTRY 02/12/2017 TECATE, CALIFORNIA  
PLACE OF ARREST STATE ROUTE 94 & ROPE ROAD, CAMPO, CALIFORNIA  
DATE OF ARREST 02/12/2017 0031 ARREST [REDACTED]  
VEHICLE(S) USED 2014 TOYOTA CAMRY BLK VIN: [REDACTED] LIC# CA [REDACTED]

TOTAL NUMBER OF PRINCIPALS/ASSOCIATES 2 DEPORTABLE/INADMISSABLE 2 NON-DEPORTABLE 0  
TOTAL NUMBER OF CONVEYANCES SEIZED 1 ESTIMATED TOTAL VALUE \$10,875.00

RECRUITING PROCEDURES-TRAVEL TO BORDER AREA-TO WHOM PAYMENT MADE-STAGING AREAS-MANNER OF ENTRY  
DROP HOUSES-HOW CHECKPOINTS AVOIDED-ROUTE TO POINT OF ARREST-CONTACTS AT DESTINATION

U.S. Department of Homeland Security

Continuation Page for Form

G166F

Alien's Name	[REDACTED]	Date	02/12/2017
<p>INCIDENT COORDINATES: ----- Latitude: 32.59941 Longitude: -116.49525</p> <p>US ADDRESS: [REDACTED] A-ROBLES [REDACTED]</p> <p>NORTH HOLLYWOOD, CALIFORNIA 91601</p> <p>US ADDRESS: [REDACTED] OBLES [REDACTED]</p> <p>NORTH HOLLYWOOD, CALIFORNIA 91601</p> <p>ASSISTING ASSETS: ----- None</p> <p>Narrative Title: Report of Investigation ----- On February 12, 2017, Border Patrol Agent (BPA) [REDACTED] was performing his assigned line-watch duties in the El Cajon area of operation. Approximately 12:00 a.m., BPA Oleson advised agents in the area that he had discovered footprints near the Border Road heading in a northern direction away from the U.S./Mexico border.</p> <p>At approximately 12:05 a.m., BPA [REDACTED] responded to as [REDACTED] PA [REDACTED] on State Route 94 near an area commonly referred to as "Lone Pine." As BPA [REDACTED] approached the area he observed a black 2014 Toyota Camry (CA: [REDACTED]) parked at [REDACTED] the lights out with two individuals inside. Lone Pine is approximately eight miles east of the Tecate, California Port of Entry, and approximately one mile north of the United States-Mexico International Boundary.</p> <p>AGENT'S NO [REDACTED] the area where BPA [REDACTED] encountered the Toyota Camry is near the location where BPA [REDACTED] was tracking the [REDACTED] of suspected illegal aliens. This area is a well-documented [REDACTED] tion for alien smuggling activities.</p>			
Signature	[REDACTED]	Title	Border Patrol Agent

U.S. Department of Homeland Security

Continuation Page for Form

G166F

Alien's Name	[REDACTED]	Date	02/12/2017
<p>BPA Ocampo approached the two individuals [REDACTED] amry, later identified as Jesus Alonso ARREOLA-Robles (driver) and [REDACTED] (passenger), and identified himself as a United States Border Patrol [REDACTED] interviewed the two individuals where he noted numerous inconsistencies in their story leading him to strongly suspect they were involved in smuggling activities.</p> <p>BPA [REDACTED] requested assistance from additional agents in the area in interviewing ARREOLA and [REDACTED] BPA [REDACTED] responded to assist.</p> <p>At approximately 12:23 a.m., BPA [REDACTED] arrived on scene with BPA [REDACTED] BPA [REDACTED] arrived and began to question the passenger in the vehicle, [REDACTED] as to his name of birth and citizenship. [REDACTED] freely stated that he was born in [REDACTED] ana, Mexico, and that he has no documentation documents that would allow him to enter or remain in the United States legally. [REDACTED] stated that the driver of the vehicle, ARREOLA, had just recently picked him up.</p> <p>At approximately 12:31 a.m., BPA [REDACTED] placed both subjects under arrest and transported them to the El Cajon Border Patrol Station Processing Center in Campo, California.</p> <p>As [REDACTED] and ARREOLA were received at the processing center, protocols were observed in compliance with the CBP National Standards on Transport, Entry, Detention, and Search policy. A risk assessment was conducted prior to placing [REDACTED] and ARREOLA in a holding room.</p> <p>Neither [REDACTED] nor ARREOLA expressed any concerns while being held in the facility.</p> <p>Principal #1          Jesus Alonso ARREOLA-Robles          DOB [REDACTED] 4          A: [REDACTED]          FIN [REDACTED]          FBI# [REDACTED]</p> <p>During a recorded statement, ARREOLA read his Miranda Rights per Service form [REDACTED] at [REDACTED] m. by Border Patrol Agent [REDACTED] and witnessed by Border Patrol Agent [REDACTED] ARREOLA stated that he understood his rights and wanted to speak to an attorney without a lawyer present. ARREOLA stated that he was smuggling illegal aliens for financial gain.</p> <p>(See G-166C RE: Defendant Statement RE: Jesus Alonso ARREOLA-Robles)</p> <p>Materi [REDACTED]          Pedro [REDACTED]          DOB [REDACTED]          A: [REDACTED]          FIN [REDACTED]</p> <p>During a recorded statement, RIOS was read his consular rights at 4:52 a.m. by Border</p>			
Signature	[REDACTED]	Title	Border Patrol Agent

U.S. Department of Homeland Security

Continuation Page for Form

G166F

Alien's Name		[REDACTED]		Date	02/12/2017
Patrol Agent [REDACTED] and witnessed by [REDACTED]		[REDACTED]		1 Agent [REDACTED]	
stated that h [REDACTED] t [REDACTED] ights and declined to speak to the Mex [REDACTED] o [REDACTED] . [REDACTED]					
(See G-166C RE: Material Witness Statement RE: [REDACTED])					
[REDACTED] has no petitions filed on his behalf and he has expressed no fear of persecution or ure upon being returned to his home country of Mexico.					
[REDACTED] also requested a Voluntary Return to Mexico. Based on [REDACTED] unaccompanied juvenile us a [REDACTED] consistent with CBP and GoM repatriation agreemen [REDACTED] d procedures for the Sector; [REDACTED] is being turned over to the San Ysidro, California Port of Entry Admissibility Enforcem [REDACTED] Unit (AEU) for repatriation to Mexico.					
It is wor [REDACTED] oting that four illegal aliens from Mexico were apprehended in close proximity to wher [REDACTED] encounte [REDACTED] entified foot guide smuggler for that [REDACTED] (FINS: [REDACTED] shows a prior apprehension event with [REDACTED] d also b [REDACTED] that the El Cajon S [REDACTED] n Anti-Smuggling [REDACTED] terrence Unit (ASI [REDACTED] able to positively link [REDACTED] cellular telephone with that of the [REDACTED] t guide, [REDACTED] for today's smuggling e [REDACTED] All indications point towards [REDACTED] and ARRE [REDACTED] ng in the area to [REDACTED] additional four illegal aliens found nearb [REDACTED] d processed under ENFORCE Event: [REDACTED] .					
[REDACTED] y (CA: [REDACTED] VIN: [REDACTED] R/O: Jesus AREOLA-Robles, [REDACTED] North [REDACTED] d, Cal [REDACTED] currently being processed ent of Homeland Security.					
Prosecution for 8 USC 1324 Alien Smuggling was declined for ARREOLA.					
Assistant Chief Border Patrol Agent [REDACTED] approved removal proceedings for ARREOLA in the furtherance of the United Sta [REDACTED] t interest.					
ARREOLA is currently being processed for Removal Proceedings.					
Signature [REDACTED]			Title Border Patrol Agent		

# Exhibit E

Transcript of Border Patrol Agent interview with Plaintiff on February 12,  
2017

-----x

UNITED STATES OF AMERICA, :

Plaintiff, :

v. :

JESUS ALONSO ARREOLA ROBLES, :

Defendant. :

-----x

Campo, California

Sunday, February 12, 2017

Statement of:

JESUS ALONSO ARREOLA ROBLES,

the Defendant, called for oral examination by Border

Patrol Agents [REDACTED] [REDACTED] [REDACTED] and [REDACTED]

[REDACTED] at Processing Substation, El Cajon Border

Patrol Station, Campo, California, beginning at 6:04

a.m.:

1 P R O C E E D I N G S

2 AGENT [REDACTED] Go ahead and have a seat on the  
3 bench over there.

4 Just to confirm, you are most comfortable  
5 speaking in English; right?

6 MR. ROBLES: Yes.

7 AGENT [REDACTED] Okay. All right. The following  
8 statement is under oath before me, Border Patrol  
9 Agent [REDACTED] [REDACTED] witnessed by Border Patrol  
10 Agents [REDACTED] [REDACTED] and [REDACTED] [REDACTED] at El  
11 Cajon Border Patrol Station's processing  
12 substation in Campo, California. The statement is  
13 being given by Defendant Jesus Alonso Arreola  
14 Robles in the case of the United States v. Jesus  
15 Alonso Arreola Robles. The date is February 12th,  
16 2017. The time now is 6:04 a.m.

17 The following advisal of rights and any  
18 statements are being recorded by audio and video  
19 tape. Do you understand?

20 MR. ROBLES: Yes.

21 AGENT [REDACTED] Are you under the influence of  
22 any drugs or alcohol at this time?



1 MR. ROBLES: No.

2 AGENT [REDACTED] All right. Yeah. Earlier, you  
3 were given a notice of rights in which you asked  
4 to return to your country as soon as possible.  
5 You must --

6 AGENT [REDACTED] Hold on. I'm sorry. That's  
7 not right.

8 AGENT [REDACTED] Consulate.

9 AGENT [REDACTED] The Consulate, yes. Skip that  
10 one.

11 AGENT [REDACTED] Cancel that?

12 AGENT [REDACTED] Yep.

13 AGENT [REDACTED] Since you are not a citizen of  
14 the United States, once you are arrested and  
15 detained, you have the right to ask us to notify a  
16 consular representative from your country here in  
17 the United States if you wish. Among other  
18 things, the consular or official from your country  
19 can help you regarding legal matters, contact your  
20 family, or visit you in jail. If you decide that  
21 we contact the consular officials from your  
22 country, you can ask now or at any time in the

1 future. After you have contacted the consular  
2 officials, they will be able to call or visit you.  
3 Do you understand this right?

4 MR. ROBLES: Yeah.

5 AGENT [REDACTED] All right. Do you wish to speak  
6 with a consular representative from your country?

7 MR. ROBLES: No.

8 AGENT [REDACTED] The time now is 6:05 a.m.

9 AGENT [REDACTED] Any statements you have made  
10 prior to this interview will not be used against  
11 you. You will now be read your Miranda rights.  
12 Before you ask me any questions, you must  
13 understand your rights.

14 You have the right to remain silent. Anything  
15 you say can be used against you in court or in any  
16 immigration or administrative proceeding.

17 You have the right to talk to a lawyer for  
18 advice before we ask you any questions and to have  
19 him with you during your questioning. If you  
20 cannot afford a lawyer, one will be appointed for  
21 you before any questioning if you wish. If you  
22 decide to answer questions now without a lawyer

1 present, you will still have the right to stop  
2 answering questions at any time. You will also  
3 have the right to stop answering at any time when  
4 you want to talk to a lawyer. Do you understand  
5 your rights?

6 MR. ROBLES: Yes.

7 AGENT [REDACTED] All right. So right here, as  
8 it says, "Do you understand your rights?" Go  
9 ahead and circle "Yes" and then put your initials.

10 "And then are you willing to answer my  
11 questions without an attorney present at this  
12 time?" Circle your answer and then initial there.  
13 Okay? All right. So I have to ask them.

14 "Are you willing to answer my questions  
15 without an attorney present at this time?" All  
16 right.

17 AGENT [REDACTED] Just to clarify, you said yes?

18 MR. ROBLES: Uh-huh. Yeah.

19 AGENT [REDACTED] Sir, I now proceed to state  
20 Bureau of Customs and Border Protection is  
21 authorized by the law to administer oaths and take  
22 testimony in conjunction with enforcement of

1 immigration and nationality laws of the United  
2 States. Are you willing to answer my questions  
3 under oath?

4 MR. ROBLES: Yeah.

5 AGENT [REDACTED] Raise your right hand.

6 WHEREUPON,

7 JESUS ALONSO ARREOLA ROBLES

8 called as a witness, and having been sworn,  
9 was examined and testified as follows:

10 EXAMINATION

11 BY AGENT:

12 Q What is your true and correct name?

13 A What?

14 Q What is your proper name? What is your  
15 name?

16 A Jesus Alonso Arreola Robles.

17 Q Have you ever used any other names?

18 A No.

19 Q Of what country are you a citizen?

20 A Mexico.

21 Q And what is your date and place of birth?

22 A May 14, 1994.

1 Q Okay. In what place?

2 A Roanodurano (ph).

3 Q Do you have an immigration status or have  
4 any claims been filed on your behalf?

5 A I don't know. Like what?

6 BY AGENT:

7 Q Immigration status. We are basically  
8 asking if you applied for any legal status other  
9 than your current DACA status that you have. No?

10 A I recently applied for a permanent so I  
11 could visit my grandpa in Mexico who is dying.

12 Q Okay.

13 A That's the most recent I applied for.

14 BY AGENT:

15 Q When are you going to return to Mexico  
16 for that?

17 A They said I have to go like in three  
18 months, but I have to get the permit first.

19 Q You have to go within three months or you  
20 have to leave?

21 A I have to get the permit first so I could  
22 go. They said I was going to have to wait like

1 three months.

2 Q Okay. How long do you plan on staying in  
3 Mexico?

4 A Well, we are going to visit him for like  
5 two weeks and then come back.

6 Q Okay. All right. When did you last  
7 enter the United States?

8 A When I was one.

9 Q And have you lived in the United States  
10 previously?

11 A Yeah, my whole life.

12 Q What is the address of your current place  
13 of residence? And how long have you lived there?

14 A [REDACTED] I have  
15 lived there like 13-14 years.

16 Q What city and state is that in?

17 A North Hollywood, California.

18 Q Do you have anything to help you prove  
19 your residence or verify the dates of your  
20 residence here: school records, financial  
21 records?

22 A Oh, yeah, I have.

1 Q What kind of stuff do you have?

2 A Well, I had an IAP. That's it, I guess.

3 Q Are you currently enrolled in school?

4 A No.

5 Q Are you a high school graduate or have  
6 you obtained a general education development, your  
7 GED?

8 A High school graduate.

9 Q High school? Now, in what month and year  
10 did you graduate?

11 A I graduated in June 2002.

12 Q What is the name and address of the  
13 school you attended?

14 A I went out to Vineland.

15 Q What's that?

16 A I went out to Vineland. East Valley High  
17 School.

18 Q What city is that in?

19 A North Hollywood.

20 Q Have you ever been arrested by the police  
21 or any other law enforcement in the United States?

22 A No.



1 Q Have you ever served in the armed forces  
2 or Coast Guard of the United States?

3 A No.

4 Q All right. What was going on tonight?  
5 What was the -- tell me what happened tonight.

6 A I just saw a guy. He asked me for a  
7 ride.

8 Q Where was that at?

9 A I don't know the streets of San Diego.

10 Q Was it downtown San Diego or --

11 A No. It was kind of by the apartment.

12 Q By the home?

13 A Uh-huh.

14 Q I mean, what were you doing, like bound  
15 or stopped somewhere?

16 A No. Visit my cousin. As I was leaving,  
17 he saw me and came over to the side. And he asked  
18 me in Spanish to give him a ride. I'm like "All  
19 right." I don't know (inaudible).

20 Q This is a guy you didn't know at all who  
21 just --

22 A I don't know.

1 Q You were just driving him to Mexico?

2 A No, I wasn't driving to Mexico.

3 Q Where were you taking him?

4 A To the -- because I can't -- I can't go  
5 out.

6 Q Where specifically did he say he wanted a  
7 ride to?

8 A He said to the (inaudible).

9 BY AGENT:

10 Q Did he say why?

11 A No. I didn't ask him.

12 BY AGENT:

13 Q And, I mean, was he giving you anything  
14 for this ride?

15 A He gave me 40 bucks.

16 Q So do you know anything about him?

17 A No.

18 Q No? What did you guys talk about on the  
19 way?

20 A Well, he was just telling me about his  
21 life, you know, I just suppose, that he was born  
22 in Sun Valley and that he lived with his family

1           there all his life. And then he came back, and  
2           that was it.

3           Q     So you said that he was born in Tijuana  
4           and he lived there his entire life? So then Sun  
5           Valley?

6           A     Uh-huh.

7           Q     Where is that at?

8           A     That's in North Hollywood.

9           Q     North Hollywood?

10          A     Yeah. So he said -- when I told him  
11          where I was from, he goes, "Oh," this and that.  
12          That's what. Like he didn't live there. He just  
13          -- he was just born there, and then he needed to  
14          get --

15          Q     He told us he was born in Mexico.

16          A     Oh, really?

17          Q     Yeah.

18          A     That's what he told me.

19          Q     I understand. Well, when did you pick  
20          him up? About what time?

21          A     11:30.

22          Q     You picked him up at 11:30?

1 A Or 11:00. I didn't see the time.

2 Q Okay. Well, when did you leave your  
3 friend's house?

4 A My cousin's house?

5 Q Cousin.

6 A Yeah. I left at like at 10:00.

7 Q 10:00? So what did you do after you  
8 left?

9 A I went and grabbed something to eat, and  
10 that's when I saw him.

11 Q Where did you grab something to eat?

12 A Subway.

13 Q Subway? What else was around at that  
14 Subway? What other businesses?

15 A There was a gas station, a Shell.

16 Q A Shell gas station? Is that the only  
17 gas station or is there another one around?

18 A That's the only one I saw there.

19 Q No? And there were no other plans down  
20 here or anything, just giving a stranger a ride  
21 for 40 bucks? What is your financial situation?

22 A My financial situation?

1 Q Yes.

2 A What do you mean?

3 Q Are you hurting for money? Have you got  
4 a job?

5 A Yes, Uber and I work at the Chateau  
6 Marmont.

7 Q What do you do at the Chateau -- what is  
8 it?

9 A I'm in the kitchen.

10 Q Chateau what's the name?

11 A Chateau Marmont, Los Angeles.

12 Q I am sorry. The door just closed.

13 A The Chateau Marmont.

14 Q Vermont?

15 A Chateau Marmont.

16 Q Marmont?

17 A Yeah.

18 Q Okay. You work in the kitchen?

19 A Yeah.

20 Q Do they pay you good?

21 A Fourteen bucks.

22 Q Fourteen bucks an hour?

1 A Uh-huh.

2 Q How many hours of work do you work?

3 A About 40, 40.

4 Q That is a decent chunk of change, man.

5 That plus Uber?

6 A Yeah.

7 Q What do you make doing Uber?

8 A When I'm not lazy, 400 a week.

9 Q Yeah? Who do you live with?

10 A My parents.

11 Q You live with your parents? Do you pay  
12 them rent?

13 A Yeah.

14 Q How much do you pay them?

15 A Six hundred.

16 Q Six hundred a month?

17 A Uh-huh.

18 Q So you work 40 hours a week every week?

19 A Uh-huh.

20 Q Fourteen hours. How -- that is -- \$40 to  
21 drive somebody to Tecate. Were you doing anything  
22 else? Do you know anybody in Tecate?



1 A No, nobody.

2 Q No? That seems kind of --

3 AGENT: Strange?

4 AGENT: Strange, yeah.

5 BY AGENT:

6 Q Where are you from again?

7 A North Hollywood.

8 Q North Hollywood. So from North  
9 Hollywood, where did you go? You went back home  
10 or where did you go?

11 A I went to my cousin's.

12 Q You have a cousin here at home?

13 A Yes.

14 Q So we take him home. He is going to be  
15 here?

16 A Yeah.

17 Q That is in (inaudible). What is his  
18 address? Where is he located at?

19 A I don't know his address.

20 Q Then how did you get there?

21 A I called him, and he told me how to get  
22 there.

1 Q Have you got his number?

2 A Yeah.

3 Q Who is he?

4 A [REDACTED] cousin.

5 Q Like I say, so you are in another home,  
6 turn around, you see somebody or what do you --

7 A I went to go eat, and then he saw me.

8 Q Eat where?

9 A Subway.

10 Q You went to Subway?

11 A Uh-huh.

12 Q And then you saw him? He went to Subway?  
13 Eating there or what?

14 A That's what I'm saying. He saw me there.  
15 He came up there.

16 Q What was your cousin's name?

17 A [REDACTED] cousin.

18 Q That is when you talked to him?

19 A Yeah.

20 Q Hmm. When did you talk to him for these  
21 directions? Because I'm not seeing them.

22 A No?

1 Q No, not seeing them in your call log,  
2 texts. No, I'm not seeing any directions. When  
3 did you talk to him to get these directions?

4 A In the morning.

5 Q In the morning? Today?

6 A No. Yesterday.

7 Q Yesterday morning?

8 A Yeah.

9 Q And he is in here as [REDACTED] huh?

10 A Yeah.

11 Q I'm not seeing a [REDACTED] at all.

12 BY AGENT:

13 Q You are not at home. You are in a city  
14 that you don't even know. You are all the way  
15 from home, the L.A. area, come down here. You  
16 think you are just going to pick up a random dude,  
17 and he is going to bring him here to pick up  
18 without knowing him? Do you think I am going to  
19 believe that?

20 A Well, extra money.

21 Q Forty bucks?

22 A To me, it's something.

1 Q That is gas back and forth, man?

2 A Yeah. Well, that's --

3 Q That is not extra money.

4 A No. That's my gas to get over there and  
5 back.

6 Q That is your time for free.

7 BY AGENT:

8 Q So how did you know where to go in  
9 Tecate?

10 A He gave me the directions.

11 Q He gave you directions? Did he like tell  
12 you like "Make a right here, and go down this way"  
13 and stuff like that?

14 A Yeah.

15 Q Did he say why he wanted to go to Tecate?

16 A No, just telling me "I want to go back to  
17 Mexico."

18 BY AGENT:

19 Q So he wanted to go back to Mexico. We  
20 found in your phone a dropped pin at an address  
21 that is not on the border.

22 A That's -- he put it.

1 Q So you gave him your phone?

2 A Yeah, using it.

3 Q He was using it to do what?

4 A To get the (inaudible).

5 Q Well, you said he was going back to  
6 Mexico and the pin is in Mexico.

7 A I just went where he wanted me to go.

8 Q For free?

9 A No. For \$10.

10 Q For gas money?

11 BY AGENT:

12 Q You said that he is from Sun Valley?

13 A Yeah.

14 Q Why have you got a pin in Sun Valley that  
15 you put pretty recently? Is that where you picked  
16 him up at?

17 A No.

18 Q Are you sure?

19 A Yeah.

20 Q What were you doing up in Sun Valley with  
21 an address pinned to Sun Valley right before you  
22 pinned an address in --

1 A I was at my cousin's.

2 Q Come on, man.

3 A No. For real.

4 Q Is this dude illegal?

5 A Who?

6 Q The dude that was in your car.

7 A I'm pretty sure, pretty sure.

8 BY AGENT:

9 Q Why are you sure? Did he tell you he was  
10 illegal?

11 A He doesn't know English.

12 Q Did you try to speak in English with him?

13 A Yeah. He didn't speak nothing.

14 Q That's not a very good story.

15 A Yeah, I know.

16 AGENT: No.

17 BY AGENT:

18 Q Do you remember your talk you had with  
19 the agent on the side of the road?

20 A Yeah.

21 Q Did you say anything about picking  
22 anybody up?

1 A No, not that --

2 Q Are you sure?

3 A Just what I'm telling you in this place.

4 AGENT: It is not the same story.

5 AGENT: No.

6 AGENT: Whatever you told him you are not  
7 telling us. So we didn't know about it.

8 AGENT: A little bit different.

9 AGENT: So we will give you a chance to go  
10 ahead and say -- you have to tell the truth. All  
11 right? Like say if you are in a building, you are  
12 in front of three federal agents here. That is  
13 the time you can make it now. So I am going to  
14 give you a chance again to start all over again.  
15 We already know what is going on here. We know  
16 there is voice and the text. We already know  
17 links. We already know what is going on. All  
18 right? We have been doing this for a while. You  
19 don't come out of here not knowing and give  
20 somebody a ride on the south side.

21 AGENT: After midnight.

22 AGENT: You could have died. I know what you



1 are doing hanging around with drug gangsters  
2 walking around. You are drinking and driving. I  
3 have seen it before. I have seen the pictures. I  
4 have seen the videos. I am going to give you a  
5 chance again to start all over again.

6 THE WITNESS: I am telling the truth already.

7 BY AGENT:

8 Q Okay. We will start with a good  
9 question. Who is at ( [REDACTED] )

10 A [REDACTED].

11 Q You don't have a contact, but they know  
12 you.

13 A What?

14 Q Yes.

15 A I don't know.

16 Q You don't? Hmm.

17 BY AGENT:

18 Q Tell me what you were really doing out  
19 there.

20 A I was just dropping him off.

21 Q Dropping him off at a location that is  
22 not at the border?

1 A That's where he wanted to go.

2 Q Why didn't he get out? Why were you guys  
3 just sitting there? Why didn't he get out and go  
4 when you got there? Just hanging out for 10  
5 minutes?

6 A I don't know. He was just calling  
7 somebody to come out.

8 Q To come what? Come and do --

9 A I don't know. He was just calling  
10 somebody.

11 Q Now, here is something. Do you know  
12 [REDACTED] (ph)?

13 A What?

14 Q You have a nickname. Do you know [REDACTED]  
15 [REDACTED]

16 A I haven't (inaudible) didn't even get to  
17 call. He just went back in --

18 BY AGENT:

19 Q So he tried to call somebody. He had no  
20 signal. So you just sat there thinking a signal  
21 might show up or --

22 A No. He got out of the car. That's when

1 he ran into the agent.

2 BY AGENT:

3 Q Why wasn't he using his phone?

4 A He used his phone.

5 Q Then why is he using your phone?

6 A No. Well, he tried on mine, and then he  
7 used mine to call, too. But they didn't pick up.  
8 So we just went outside. And that's when they ran  
9 into him.

10 Q Now, the only -- you said he used your  
11 phone for the call, huh?

12 A Yeah.

13 Q The only call anywhere close to that is  
14 you called [REDACTED] who is one of your contacts,  
15 unless he was calling one of your contacts.

16 A No.

17 Q That is the only call around that time.  
18 The only call around that time was --

19 BY AGENT:

20 Q Who is [REDACTED]

21 BY AGENT:

22 Q -- calls to your contacts. So what call

1 did he make that just isn't in your phone?

2 A It is there.

3 Q No.

4 A Well, what are you --

5 Q You have got [REDACTED] at 12:13. You have got  
6 another call at 12:30, but that was already after.

7 A It was before that.

8 Q Nope.

9 A I do.

10 Q You have got [REDACTED] Was he calling your  
11 babe?

12 A No.

13 Q That would be a weird call for him to  
14 make.

15 A Are you sure you are on the recent calls?

16 Q Yep.

17 Q So why is your mom the same as [REDACTED]

18 A It's [REDACTED] and Mom.

19 BY AGENT:

20 Q How do you think she would feel if she  
21 knew you were in this situation right now?

22 A Very bad.

1 Q Why?

2 A I don't know. Would you be proud of  
3 seeing your son here?

4 AGENT: It is pretty easy to not be here.

5 BY AGENT:

6 Q What gets me about it is you are  
7 basically in. You have the status. And you are  
8 going to throw it all away for smuggling aliens?

9 A No, I did not smuggle aliens.

10 Q I mean, we have all of the evidence,  
11 really, that we need. And you know what? The  
12 problem is when we take -- because this DVD -- I  
13 told you it is being recorded, right? We take  
14 this DVD. And the judge gets to see it.  
15 Everybody gets to see it. And they have you here  
16 now. Why on videotape? Do you think that your  
17 mom is going to be happy about that?

18 A No.

19 Q It is very easy. Just tell us what we  
20 need to know. We might be able to, you know --

21 AGENT: It goes a lot smoother.

22 BY AGENT:

1 Q Goes a lot smoother. All right? So just  
2 start from the beginning and tell me exactly how  
3 it went down.

4 A All right. We had -- I was in Sun  
5 Valley.

6 Q You picked up?

7 A In Sun Valley.

8 Q Yes.

9 A Over here. He was coming to get some  
10 shit.

11 Q What was he coming to get?

12 A I think his Uncle [REDACTED] (ph). I don't  
13 know. It's like let's get you --

14 BY AGENT:

15 Q Oh, so he didn't get (inaudible)?

16 A Yeah. (Inaudible.)

17 Q (Inaudible.)

18 A It was his uncle.

19 Q Uncle?

20 BY AGENT:

21 Q Where were you supposed to take him?

22 A Back.

1 Q Back up to Sun Valley?

2 A Uh-huh.

3 Q Same place? How did he get a hold of you  
4 in the first place?

5 A It is my friend's cousin.

6 BY AGENT:

7 Q So you know what? So you know his name  
8 and everything else, right?

9 A No, I don't.

10 Q What is his name?

11 A I don't know.

12 Q You are going to pick up somebody. You  
13 are going to bring him by here. And you don't  
14 know his name?

15 A He told me in the beginning, but I don't  
16 remember. He only told me one time. So that was  
17 just (inaudible).

18 BY AGENT:

19 Q Where was his uncle coming from?

20 A He was supposed to be in that spot where  
21 we were at.

22 Q Okay. But he is illegal or whatever?



1 A Yes.

2 Q He just jumped the fence? Is what you  
3 are saying?

4 A Uh-huh.

5 Q All right. So \$600. How much is his  
6 uncle paying?

7 A I don't know.

8 Q Six hundred is pretty high. So you were  
9 going pick him up and take him back to Sun Valley?

10 A Uh-huh.

11 Q Both of them?

12 A Yeah.

13 Q And where are they staying?

14 A In a motel.

15 Q What?

16 A In a motel.

17 Q Do you know the name of the motel?

18 A It's the place where I picked him up.

19 Q Is that where it is? Are you sure he  
20 wasn't coming over with his cousin gone? His  
21 cousin is here, too.

22 A I don't know his cousin.

1 Q I am telling you his cousin is here, too.

2 A I don't know.

3 BY AGENT:

4 Q Well, let me just make it easy on you  
5 here.

6 A He just told me his uncle.

7 Q Okay. We already know that [REDACTED] was  
8 coming to get in your car.

9 A Brian?

10 Q Yeah.

11 A That's --

12 Q They said it to you like you knew who  
13 they were. No? And I am telling you this because  
14 you already said -- you already mentioned this. I  
15 mean, this is already on record. You already  
16 mentioned the status you picked up. You knew he  
17 was illegal. He doesn't speak English, correct?

18 A Uh-huh.

19 Q Yet, all the cases -- well, you are  
20 talking to this person on the south side English.

21 Do I make myself clear?

22 A Yes.

1 Q Does that make any sense? Okay. Okay.  
2 There is a cousin, right? So you know. You knew.

3 A His cousin is not here. I took him to  
4 his other cousin.

5 Q On the other side?

6 A Yeah.

7 Q In Mexico?

8 A No. On this side.

9 Q On this side?

10 A Yeah.

11 Q Oh. All right.

12 BY AGENT:

13 Q So how did they originally contact you?

14 A They just called me.

15 Q So you know them from before?

16 A Yeah, I knew.

17 Q How did you originally meet them?

18 A High school. Well, this one or my --

19 Q The guy that was in the vehicle with you.

20 A I hadn't really known him today --  
21 yesterday.

22 Q How did you meet him?

1           A    Because when I took my friend. It's his  
2   cousin.

3           Q    So you know his cousin?

4           A    Yeah.

5           Q    And you went to high school with his  
6   cousin?

7           A    Yeah.

8           Q    Okay. What is his cousin's name?

9           A    [REDACTED] (ph).

10          Q    [REDACTED]

11          A    Yeah.

12          Q    Okay. How did he get you to come pick  
13   the kid up?

14          A    Well, he called me, and he asked me. I  
15   know I need the money. So I said yeah, took it.

16          Q    Yeah. I will be honest with you. We are  
17   really not after people who just come to pick up  
18   family members and stuff like that. I mean, it is  
19   not like you are, you know, smuggling drugs or  
20   anything like that. So it is like not too big of  
21   a deal. If you help us out in any way, it will  
22   probably be a little bit smoother for you in the

1 future. Is there -- did they use any nicknames  
2 from anybody --

3 A No.

4 Q -- that was planning to help you out or  
5 help him out?

6 A No, they have no nicknames.

7 Q No? Did he actually use your phone at  
8 all?

9 A Yeah, he did.

10 Q And he is the one that dropped the pin?

11 A Yeah.

12 Q Okay. Why that pin? Why there?

13 A That's where his uncle was to meet us up.

14 Q Was his uncle supposedly already there or  
15 was he --

16 A Yes.

17 Q -- waiting for you to get there?

18 A He said he was already there.

19 Q How long were you waiting there?

20 A No. We had already got there when they  
21 caught us.

22 Q Okay.

1 A We didn't really wait long.

2 Q All right.

3 BY AGENT:

4 Q Like I said, whatever you say here is  
5 confidential. Nobody is going to know anything.  
6 They are not going to know anything unless you  
7 tell them. But if anything, you have got to --

8 A I will find --

9 Q -- help us. Help us out, right? I mean,  
10 you have got already DACA. That is easy to get  
11 away. You can take a week quick. All of that has  
12 happened already.

13 A Yeah.

14 Q So you have got to act. You can take the  
15 14 days that you asked. We can take a -- we can  
16 tell you what it will do, too. If you help us,  
17 help us out a little bit -- like I said,  
18 everything is confidential. Not everybody gives  
19 me a (inaudible) back. You know? Help us out.

20 BY AGENT:

21 Q Tell me who this guy is right here, that  
22 number.

1           A    Yeah.  That's one of those numbers he  
2           dialed.

3           Q    That he dialed?

4           A    Yes.

5           Q    Which other numbers did he dial?

6           A    This one.

7           Q    [REDACTED]

8           A    Yeah.  And this one, too.  I've never  
9           seen this number.

10          Q    You have never seen either of these  
11          numbers?

12          A    No.

13          Q    [REDACTED]

14          A    Yeah.

15          Q    Or what does that one say?  [REDACTED]

16          [REDACTED]?

17          A    Yeah.  I don't know those numbers.

18          Q    Okay.  So you said that you picked him up  
19          at around 11 o'clock, and you said that you have  
20          never seen these numbers.  I have an 8:47 p.m.  
21          from one of the numbers you have just told me --

22          A    May I see?



1 Q -- that you didn't recognize, [REDACTED]  
2 [REDACTED].

3 A Yeah.

4 Q What is the cousin's name -- I mean, the  
5 number? The cousin's number is [REDACTED].  
6 Where is 477 out of? Do you know, 477?

7 A It says Mexico.

8 Q Mexico? It does say that. Okay.

9 AGENT: I really have to use the restroom. I  
10 will be back.

11 (Pause.)

12 BY AGENT:

13 Q So you are saying his cousin, he lives  
14 here, right, in the States, where? Sun Valley?  
15 What is his name? Is it Khan? What is his name?

16 A [REDACTED]

17 Q What is it?

18 A [REDACTED]

19 Q [REDACTED] So he is the one who told  
20 you pretty much?

21 A Yeah.

22 Q And what did he say, "I'm going to have

1           you take my cousin with you. He knows the area"?

2           A     Yeah, "He knows it."

3           BY AGENT:

4           Q     Where did you pick him up at? Is that a  
5           business, a house?

6           A     Who, the cousin?

7           Q     This address here, the 8065 in Sun  
8           Valley?

9           A     That's a motel.

10          Q     It is what?

11          A     A motel.

12          Q     Do you know why he was staying in a  
13          motel?

14          A     His whole family is there.

15          Q     In the motel?

16          A     Uh-huh.

17          Q     When you picked him up, was it a room?  
18          Was he waiting on the side?

19          A     Waiting outside.

20          Q     Do you know the name of the motel?

21          BY AGENT:

22          Q     So how many people were you picking up?

1 A Two.

2 Q Two?

3 BY AGENT:

4 Q Earlier you said it was his uncle. Who  
5 else? Did he say?

6 A His uncle and his other cousin.

7 BY AGENT:

8 Q What is the other cousin's name?

9 A I don't know.

10 Q Earlier you said that you were just  
11 picking up his uncle and you were getting \$600.  
12 Was the \$600 for each of them? Was it \$600 total?

13 A Total.

14 Q And they were going to pay you what, when  
15 you delivered? Did they already pay you?

16 A Yeah. When I dropped them off, yes.

17 Q Back at the motel?

18 A Uh-huh.

19 Q So where were you supposed to take his  
20 uncle?

21 A Back to the hotel.

22 Q Oh, to the hotel in Sun Valley?

1 A Sun Valley.

2 BY AGENT:

3 Q Who is this one here? Do you know?

4 A No.

5 Q Not much at all? And it was just the  
6 uncle and the cousin supposedly you were picking  
7 up? There was no mention of anybody else?

8 A That was it.

9 Q And the plan was you pulled up, they were  
10 going to be there?

11 A And just take them by Sun Valley.

12 Q And before have you ever done this?

13 A No. This is the first time.

14 Q First time?

15 BY AGENT:

16 Q [REDACTED] like [REDACTED] (ph)?

17 A What?

18 Q [REDACTED] who is it?

19 A [REDACTED]

20 Q Yes.

21 A Can I see that name?

22 Q What?

1 A Can I see that name?

2 Q No. It is the same thing as what I am  
3 telling you.

4 A [REDACTED]

5 Q [REDACTED] You know who it is. You know.

6 A I don't know what you are talking about.  
7 Okay.

8 BY AGENT:

9 Q He is not in your contacts?

10 A [REDACTED] No. No, I don't know [REDACTED] I  
11 am putting that on everything. I don't know

12 [REDACTED]

13 BY AGENT:

14 Q So where is this number coming from, 664?

15 A Mexico.

16 Q Six, six, four (inaudible). Somebody is  
17 talking in here.

18 A Who is it?

19 Q I just want to know the -- which --

20 A It is probably whoever he called.

21 Q The what?

22 A The number that he called.

1 Q It is all English.

2 A Is it [REDACTED] or it was his cousin on  
3 that?

4 Q It is on [REDACTED] in your list.

5 A [REDACTED]

6 Q Yes.

7 A I don't have Litto in my contacts.

8 Q But you know who it is, even though -- I  
9 know you don't have him.

10 A Can you tell me the real name?

11 AGENT: Anything else to ask?

12 AGENT: What?

13 AGENT: Anything else you want to ask him?

14 AGENT: No.

15 AGENT: Why don't you go ahead and wrap it up?

16 AGENT: The number didn't get called. That  
17 was just a text message. Okay.

18 AGENT: Wrap up the finishing stuff. Yeah.  
19 You can maybe read that. Read that and then the  
20 bottom.

21 AGENT: Right.

22 BY AGENT:

1 Q Do you have any fear of persecution or  
2 torture should you be removed from the United  
3 States?

4 A No.

5 Q Is there anything else you would like to  
6 say at this time?

7 A Anything else? Am I going to get  
8 deported?

9 AGENT: Well, that is not up to us. We  
10 collect as much evidence as we can, and we present  
11 it. Well, we will pass it on. And other people  
12 make those decisions.

13 BY AGENT:

14 Q All right. Were all of the statements  
15 you gave today voluntary?

16 A Yes.

17 AGENT: This concludes the sworn statement.  
18 The date is February 12th, 2017.

19 AGENT: The time now is 6:44 a.m. Thank you.  
20  
21  
22



CERTIFICATE OF TRANSCRIBER

I, SARAH VEACH, do hereby certify that this transcript was prepared from audio to the best of my ability.

I am neither counsel for, related to, nor employed by any of the parties to this action, nor financially or otherwise interested in the outcome of this action.

October 27, 2017



DATE

SARAH VEACH

# Exhibit F

Statement of Border Patrol Agent J.H. Regarding Recorded Statement, dated  
February 12, 2017

U.S. Department of Homeland Security

## MEMORANDUM OF INVESTIGATION

File Number	Title: PRIMARY SUBJECT: JESUS ARREOLA-LOPEZ	Control Office SDC/ECJ
<p>Defendant Statement Jesus Alonso ARREOLA-Robles</p> <p>-----</p> <p>Defendant Statement: Jesus Alonso ARREOLA-Robles</p> <p>Location: El Cajon Station's Forrest Gate Processing Station</p> <p>Time/Date: 02/12/2017 6:05 a.m.</p> <p>Taken By: Border Patrol Agent J [REDACTED]</p> <p>Witnessed By: Border Patrol Agent [REDACTED]</p> <p>Summary By: Border Patrol Agent [REDACTED]</p> <p>On February 12, 2017, I, Border Patrol Agent J [REDACTED] H [REDACTED] conducted a video-taped statement in [REDACTED] h language of Jesus Alonso ARREOLA-Roble [REDACTED] hi [REDACTED] video-taped statement was witnessed by [REDACTED] [REDACTED]. ARREOLA was advised of his Miranda Rights at 6:07 a.m.</p> <p>ARREOLA stated that he understood his rights and that he was willing to answer any questions without an attorney present.</p> <p>ARREOLA stated that his true and correct name is Jesus Alonso ARREOLA-Robles, and that he was born in Durango, Mexico on May 14, 1994. ARREOLA stated that he has been living in the United States for 21 years, and was in possession of an Employment Authorization Card, and a Social Security card for work authorization.</p> <p>When questioned in regards to his purpose in the Campo area, ARREOLA stated that [REDACTED] a cousin o [REDACTED] igh school classmate, had offered him six hundred dollars to pick up [REDACTED] at the border. [REDACTED] instructed ARREOLA to drive to the Mountain View Motel in Sun Vall [REDACTED] San Fern [REDACTED] rd., wh [REDACTED] ARREOLA would pick up an individual later identified as [REDACTED]. ARREOLA claims that [REDACTED] input a location into the map on his phone, 30105 Highw [REDACTED] then told ARREOLA th [REDACTED] they would be driving there to pick up his cousin and uncle, whom ARREOL [REDACTED] admitted to knowing they were illegal. ARREOLA claims that once they reached the location that [REDACTED] stepped out of the car and attempted to make a pho [REDACTED] all, and when he said he had no signal th [REDACTED] asked to use ARREOLA's phone. ARREOLA claims that [REDACTED] called a couple numbers, and while dialing, Border Patrol Agents stopped to talk with them. AR [REDACTED] A claims that he was to be paid the six hundred dollars when he returned with the people he picked up at the Mountain View Motel in Sun Valley.</p> <p>The interview was concluded and ARREOLA was served with his Lujan Castro rights and written 214 at 6:41 a.m.</p>		
Investigator BORDER PATROL AGENT [REDACTED]	Date February 12, 2017	

# Exhibit G

Form I-862, Notice to Appear, dated February 12, 2017  
Declaration of USCIS Chief Ron Thomas, dated October 30, 2017

U.S. Department of Homeland Security

Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID: [REDACTED] FINS #: [REDACTED] File No: [REDACTED]  
DOB: [REDACTED]/1994 Event No: [REDACTED]

In the Matter of:

Respondent: JESUS ALONSO ARREOLA-ROBLES currently residing at:

IN DHS CUSTODY

(Number, street, city and ZIP code)

(Area code and phone number)

- ☐ 1. You are an arriving alien.  
☒ 2. You are an alien present in the United States who has not been admitted or paroled.  
☐ 3. You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States;
2. You are a native of MEXICO and a citizen of MEXICO ;
3. You arrived in the United States at or near SAN YSIDRO, CALIFORNIA, on or about January 1, 1995;
4. You were not then admitted or paroled after inspection by an Immigration Officer.

RECEIVED  
IMMIGRATION REVIEW  
COURT  
SAN YSIDRO, CA  
FEB 28 AM 10:10  
DEPARTMENT OF JUSTICE

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:  
212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

- ☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.  
☐ Section 235(b)(1) order was vacated pursuant to: ☐ 8CFR 208.30(f)(2) ☐ 8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:  
A PLACE TO BE SET

on a date to be set at a time to be set to show why you should not be removed from the United States based on the  
(Date) (Time)

charge(s) set forth above.

ACTING WATCH COMMANDER

(Signature and Title of Issuing Officer)

Date: February 12, 2017

San Diego, California

(City and State)

See reverse for important information

**Notice to Respondent**

**Warning:** Any statement you make may be used against you in removal proceedings.

**Alien Registration:** This copy of the Notice to Appear served upon you is evidence of your alien registration while you are under removal proceedings. You are required to carry it with you at all times.

**Representation:** If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 3.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

**Conduct of the hearing:** At the time of your hearing, you should bring with you any affidavits or other documents, which you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear and that you are inadmissible or removable on the charges contained in the Notice to Appear. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge.

You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of departure voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

**Failure to appear:** You are required to provide the DHS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

**Mandatory Duty to Surrender for Removal:** If you become subject to a final order of removal, you must surrender for removal to one of the offices listed in 8 CFR 241.16(a). Specific addresses on locations for surrender can be obtained from your local DHS office or over the internet at <http://www.ice.gov/about/dro/contact.htm>. You must surrender within 30 days from the date the order becomes administratively final, unless you obtain an order from a Federal court, immigration court, or the Board of Immigration Appeals staying execution of the removal order. Immigration regulations at 8 CFR 241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Act.

**Request for Prompt Hearing**

To expedite a determination in my case, I request an immediate hearing. I waive my right to a 10-day period prior to appearing before an immigration judge.

Before:

*J. Hobles*

(Signature of Respondent)

*Border Patrol Agent*

(Signature and Title of Immigration Officer)

Date: *2/12/2017*

**Certificate of Service**

This Notice To Appear was served on the respondent by me on February 12, 2017, in the following manner and in compliance with section 239(a)(1)(F) of the Act.

- ☒ in person ☐ by certified mail, returned receipt requested ☐ by regular mail  
☐ Attached is a credible fear worksheet.  
☒ Attached is a list of organizations and attorneys which provide free legal services.

The alien was provided oral notice in the Spanish language of the time and place of his or her hearing and consequences of failure to appear as provided in section 240(b)(7) of the Act.

*J. Hobles*  
(Signature of Respondent if Personally Served)

*[Redacted]*  
BORDER PATROL AGENT  
(Signature and Title of officer)

# Exhibit H

Declaration of USCIS Chief Ron Thomas, dated October 30, 2017



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

INLAND EMPIRE – IMMIGRANT	)	
YOUTH COLLECTIVE and JESUS	)	
ALONSO ARREOLA ROBLES, on	)	
behalf of himself and others similarly	)	Case No. 5:17-cv-2048-MWF-SHK
situated,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
ELAINE C. DUKE, Acting Secretary	)	
of Homeland Security, <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	
	)	

---

**DECLARATION OF RON THOMAS**

I, Ron Thomas, hereby make the following declaration with respect to the above captioned matter.

1. I have been the Chief of the Office of Security and Fraud (SCO) within the Service Center Operations Directorate (SCOPS) for U.S. Citizenship and Immigration Services (USCIS), a component within the U.S. Department of Homeland Security (DHS) since 2007. In this position, I provide oversight and direction to the Background Check Units and Center Fraud Detection Operations within the Security and Fraud Divisions at the five service centers located in California, Nebraska, Texas, Vermont, and Virginia. Within my Office at SCOPS



I oversee the operations in the National Security Branch and the Fraud Detection Branch within SCOPS.

2. I make this declaration on the basis of my personal knowledge and information made available to me in the course of my official duties.

3. In my capacity as Chief of SCO/SCOPS, I am familiar with the DHS Deferred Action for Childhood Arrivals (DACA) policy that USCIS, in conjunction with other immigration components of DHS, has been implementing since June 15, 2012. In particular, I am familiar with the policies and practices governing termination of DACA for individual recipients.

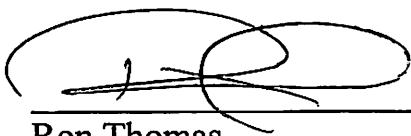
4. The issuance of a Notice To Appear (NTA) by U.S. Immigration and Customs Enforcement (ICE) or U.S. Customs and Border Protection (CBP) automatically terminates DACA. USCIS sends a Notice of Action informing the DACA recipient that his or her DACA, and related Employment Authorization Document, have automatically terminated following the issuance of an NTA by ICE or CBP. This has been USCIS' practice since FY 2013 when such terminations began.

5. My team conducted preliminary research on DACA termination cases where USCIS had issued a Notice of Action informing the DACA recipient that his or her DACA had automatically terminated upon issuance of an NTA by ICE or CBP. We looked at whether USCIS sent the Notice of Action after it learned ICE or CBP

issued an NTA , or USCIS sent a Referral to ICE first, that then resulted in ICE or CBP issuing an NTA. Conducting a more fulsome review of all automatic terminations of DACA would be burdensome, because it would involve a manual review of hundreds of cases. Therefore, my team pulled a small selection of cases from each fiscal year (FY) since the inception of DACA for which we have termination data available. My team has confirmed that USCIS issued automatic DACA termination notices upon CBP or ICE issuance of an NTA at least four times in FY 2013, once in FY 2014, three times in FY 2015, three times in FY 2016, and three times in FY 2017. None of these fourteen cases involved a USCIS referral to ICE prior to issuance of the NTA by CBP or ICE.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 30th day of October of 2017.

A handwritten signature in black ink, consisting of a stylized 'R' and 'T' with a horizontal line through them, positioned above a solid horizontal line.

Ron Thomas