Jennifer Chang Newell (SBN 233033)
jnewell@aclu.org
Katrina L. Eiland (SBN 275701)
keiland@aclu.org
ACLU FOUNDATION
IMMIGRANTS' RIGHTS PROJECT
39 Drumm Street
San Francisco, CA 94111
Telephone: (415) 343-0770
Facsimile: (415) 395-0950

Michael K. T. Tan*
mtan@aclu.org
David Hausman*
dhausman@aclu.org
ACLU FOUNDATION
IMMIGRANTS' RIGHTS PROJECT
125 Broad Street, 18th Floor
New York, NY 10004
Telephone: (212) 549-2660
Facsimile: (212) 549-2654

Attorneys for Plaintiffs (Additional counsel listed on following page)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

INLAND EMPIRE – IMMIGRANT YOUTH COLLECTIVE, et al., on behalf of themselves and others similarly situated,

Plaintiffs,

v.

KIRSTJEN NIELSEN, Acting Secretary, U.S. Department of Homeland Security, et al.,

Defendants.

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

PLAINTIFFS' MOTION FOR A CLASSWIDE PRELIMINARY INJUNCTION

Judge: Hon. Philip S. Gutierrez
Courtroom: 6A
Hearing: February 26, 2018
Time: 1:30 p.m.

Ahilan T. Arulanantham (SBN 237841)
aarulanantham@aclusocal.org
Michael Kaufman (SBN 254575)
mkaufman@aclusocal.org
Dae Keun Kwon (SBN 313155)
akwon@aclusocal.org
ACLU FOUNDATION OF SOUTHERN CALIFORNIA
1313 West 8th Street
Los Angeles, CA 90017
Telephone: (213) 977-5232
Facsimile: (213) 977-5297

Attorneys for Plaintiffs

*admitted *pro hac vice*

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD: PLEASE TAKE NOTICE that on February 26, 2018, or at the nearest available date at which counsel may be heard, in Courtroom 6A of the above-referenced court located at the First Street Courthouse, 350 West First Street, Los Angeles, California 90012, Plaintiffs will, and hereby do, move this Court to grant a classwide preliminary injunction vacating and enjoining Defendants' unlawful revocation of Plaintiffs' and proposed class members' Deferred Action for Childhood Arrivals ("DACA") and related Employment Authorization Documents ("EADs") and enjoining Defendants from revoking Plaintiffs' and proposed class members' DACA and EADs pursuant to their unlawful policies and practices in the future.

The Motion is based on this Notice of Motion; the accompanying Memorandum of Points and Authorities, the supporting declarations, all pleadings and papers filed in this action, and such additional papers and arguments as may be presented at or in connection with the hearing.

Dated: December 29, 2017

Respectfully submitted,

/s/ Jennifer Chang Newell
Jennifer Chang Newell
Katrina L. Eiland
Michael K. T. Tan*
David Hausman*
ACLU FOUNDATION
IMMIGRANTS' RIGHTS PROJECT

Ahilan T. Arulanantham
Michael Kaufman
Sameer Ahmed
Dae Keun Kwon
ACLU FOUNDATION
OF SOUTHERN CALIFORNIA

Attorneys for Plaintiffs
*Admitted *pro hac vice*

Jennifer Chang Newell (SBN 233033)
jnewell@aclu.org
Katrina L. Eiland (SBN 275701)
keiland@aclu.org
ACLU FOUNDATION
IMMIGRANTS' RIGHTS PROJECT
39 Drumm Street
San Francisco, CA 94111
Telephone: (415) 343-0770
Facsimile: (415) 395-0950

Michael K. T. Tan*
mtan@aclu.org
David Hausman*
dhausman@aclu.org
ACLU FOUNDATION
IMMIGRANTS' RIGHTS PROJECT
125 Broad Street, 18th Floor
New York, NY 10004
Telephone: (212) 549-2660
Facsimile: (212) 549-2654

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Judge: Hon. Philip S. Gutierrez
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aarulanantham@aclusocal.org
Michael Kaufman (SBN 254575)
mkaufman@aclusocal.org
Dae Keun Kwon (SBN 313155)
akwon@aclusocal.org
ACLU FOUNDATION OF SOUTHERN CALIFORNIA
1313 West 8th Street
Los Angeles, CA 90017
Telephone: (213) 977-5232
Facsimile: (213) 977-5297

Attorneys for Plaintiffs

*Admitted *pro hac vice*

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INTRODUCTION

In its order of November 20, 2017, this Court granted a preliminary injunction enjoining Defendants' unlawful termination of Deferred Action for Childhood Arrivals ("DACA") and employment authorization for Plaintiff Jesús Alonso Arreola Robles ("Mr. Arreola"). The Court held that Defendants' automatic termination of Mr. Arreola's DACA based on the filing of a Notice to Appear ("NTA") that charged him with removal for being present in the United States without admission was arbitrary and capricious and contrary to law in violation of the Administrative Procedure Act ("APA"). *See* Doc. No. 31, Order Granting Pl.'s Mot. for Prelim. Inj. ("PI Order") at 3-13. Defendants' revocation of his DACA, despite the absence of any disqualifying convictions, also violated the APA by arbitrarily reversing, without a reasoned explanation, the agency's decision to grant him DACA in the first place. *See id.* at 10-11. And Defendants' failure to provide Mr. Arreola with notice and an opportunity to respond to its termination decision violated the rules of the DACA program. *See id.* at 10-11.

Mr. Arreola's example reflects Defendants' widespread practice of unlawfully revoking similarly situated immigrants' DACA grants and work permits without process, even though they continue to meet the requirements of the DACA program. Like Mr. Arreola, Plaintiff José Eduardo Gil Robles lost his DACA after being charged with driving after cancellation of his license, and Plaintiff Ronan Carlos De Souza Moreira lost his DACA after being charged with possession of an altered identification document—both misdemeanor offenses that do not disqualify them from DACA. Indeed, Defendants have *admitted* that U.S. Citizenship and Immigration Services ("USCIS") has a practice of automatically terminating DACA based solely on the issuance of an NTA and argued that, under its own policies, USCIS may terminate DACA without providing individuals notice or an opportunity to respond. *See* Doc. No. 23-2 (Decl. of Ron Thomas) at 79-81. Countless young immigrants have been unlawfully stripped of their DACA and work authorization

pursuant to Defendants' policies and practices or face the unlawful termination of their DACA in the future.

As this Court has already recognized, Defendants' revocation of proposed class members' DACA and employment authorization is arbitrary, capricious, contrary to law, and conflicts with the government's own rules, in violation of the APA. The revocation also violates the Fifth Amendment's Due Process Clause. As with Mr. Arreola, Defendants' actions have caused proposed class members ongoing irreparable harm, including severe emotional distress and loss of employment and the ability to support themselves and their families. Issuance of a preliminary injunction is particularly urgent here. Because of the imminent end of the DACA program, proposed class members have only limited time remaining on their DACA grants and will lose that limited time absent preliminary relief from this Court.

For these reasons, and because they satisfy the other injunction factors, Plaintiffs respectfully ask this Court to grant a classwide preliminary injunction; vacate and enjoin Defendants' unlawful revocation of Plaintiffs Gil's, Plaintiff Moreira's, and proposed class members' DACA and work permits; and enjoin Defendants from revoking Plaintiffs' and proposed class members' DACA and work permits pursuant to their unlawful policies and practices in the future.

BACKGROUND[1]

I. The DACA Program

Deferred action is a longstanding form of administrative action by which the federal Executive Branch decides, for humanitarian or other reasons, to refrain from seeking a noncitizen's removal and to authorize his continued presence in the United States. *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 484 (1999). On

[1] Along with Plaintiffs' Motion for Class Certification filed this same day, Plaintiffs have filed declarations in support of both that motion and the instant motion. Those declarations are the Declaration of Katrina L. Eiland, Declaration of José Eduardo Gil Robles, and Declaration of Ronan Carlos De Souza Moreira, cited herein. Plaintiffs incorporate these declarations by reference.

June 15, 2012, the Secretary of the Department of Homeland Security ("DHS") announced DACA—a deferred action program specifically for young immigrants who came to the United States as children and are present in the country without formal immigration status.[2]

Under DACA, young immigrants who entered the United States as children who meet specified educational and residency requirements, and who pass extensive criminal background checks, are eligible to receive deferred action. Napolitano Memo at 1-2. These enumerated eligibility criteria include the requirements that DACA recipients not have been convicted of a felony, significant misdemeanor,[3] or multiple other misdemeanors. *Id*.

A predicate for eligibility for the DACA program is that the individual must lack a lawful immigration status (because he or she is present without admission, or overstayed a visa). Kwon Decl. ¶ 21, Ex. 20 at 44 (DHS DACA Standard Operating Procedures). In addition, the fact that a noncitizen is, has been, or will be in removal proceedings does not disqualify the individual from the program. Napolitano Memo at 2.

Deferred action through DACA is provided for a renewable period of two years, and DACA recipients may obtain an Employment Authorization Document ("EAD") and a Social Security Number. *See id.*at 3. A decision to grant or deny a deferred

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[2] *See* Doc. No. 16-4, Declaration of Dae Keun Kwon ("Kwon Decl.") ¶ 10, Ex. 9 at 2 (Janet Napolitano, Memorandum on Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children (June 15, 2012)) ("Napolitano Memo"). Plaintiffs incorporate by reference Doc. Nos. 16-4 to 16-29 (Kwon Decl. and exhibits).

[3] A significant misdemeanor is a conviction for an offense of "domestic violence; sexual abuse or exploitation; burglary; unlawful possession or use of a firearm; drug distribution or trafficking; or, driving under the influence; or . . . [a conviction] for which the individual was sentenced to time in custody of more than 90 days." Kwon Decl. ¶ 20, Ex. 19 at 19-20 (U.S. Citizenship and Immigration Services, Frequently Asked Questions about Deferred Action for Childhood Arrivals (updated Oct. 6, 2017)).

action application or renewal is independent of any proceedings in immigration court; a noncitizen who is in removal proceedings can apply for DACA separately and simultaneously. *Id.*at 2. *See also, e.g.*, *Gonzalez Torres v. DHS*, No. 17-cv-1840, 2017 WL 4340385, at *6 (S.D. Cal. Sept. 29, 2017) (noting that "an immigration judge has no jurisdiction to reinstate DACA status, or to authorize an application for renewal of DACA status"). USCIS is the division of DHS responsible for evaluating requests for DACA. DHS' DACA Standard Operating Procedures ("DACA SOPs") set forth the procedures that the agency must follow in adjudicating and granting DACA applications, as well as in terminating DACA and EADs granted through the program. *See* PI Order at 2; Kwon Decl. ¶ 21, Ex. 20 ("DACA SOPs") at 16 ("This SOP is applicable to all Service Center personnel performing adjudicative and clerical functions or review of those functions. Personnel outside of Service Centers performing duties related to DACA processing will be similarly bound by the provisions of this SOP."); *id.* ("This SOP describes the procedures Service Centers are to follow when adjudicating DACA requests."). *See also Colotl v. Duke*, No. 17-cv-1670, 2017 WL 2889681, at *4 (N.D. Ga. June 12, 2017); *Gonzalez Torres*, 2017 WL 4340385, at *3.

On February 20, 2017, DHS Secretary John Kelly issued a memorandum setting forth DHS' new immigration enforcement priorities.[4] However, "by its own terms, [the Kelly memorandum] has no application to the DACA program." *See, e.g.*, *Colotl*, 2017 WL 2889681, at *12.[5]

[4] Declaration of Katrina L. Eiland ("Eiland Decl.") ¶ 18, Ex. 3, at 2 (Memorandum from John Kelly, Enforcement of the Immigration Laws to Serve the National Interest (Feb. 20, 2017)).

[5] *Accord* Eiland Decl. ¶ 17, Ex. 2 at 7 (U.S. Department of Homeland Security, Q&A: DHS Implementation of the Executive Order on Enhancing Public Safety in the Interior of the United States (Feb. 21, 2017)) ("Q22: Do these memoranda affect recipients of Deferred Action for Childhood Arrivals (DACA)? A22: No.").

On September 5, 2017, DHS announced that it was rescinding the DACA program and winding it down.[6] Although the program is soon ending, DHS officials have confirmed that the same program rules continue to apply until it ends. PI Order at 1-2.[7]

II. Defendants' Unlawful DACA Termination Practices

Defendants have engaged in a widespread practice of unlawfully revoking individuals' DACA grants and work permits without process, even though these individuals have not violated the terms of the program and continue to be eligible for it.

Multiple DACA recipients around the country have been detained by immigration authorities since President Trump took office. For example, in early September, ten DACA recipients were detained for hours by CBP at a checkpoint in Texas even though they have valid DACA.[8] Although they were ultimately released,

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[6] Kwon Decl. ¶ 15, Ex. 14 (Memorandum from Acting Secretary Elaine C. Duke, Rescission of the June 15, 2012 Memorandum Entitled "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children" (Sept. 5, 2017)).

[7] *See also* Kwon Decl. ¶ 16, Ex. 15 at 15 (*Press Briefing by Press Secretary Sarah Sanders and Homeland Security Advisor Tom Bossert, 9/8/2017, #11*, The White House, Office of the Press Secretary (explaining that "[d]uring this six-month time, there are no changes that are being made to the program at this point"); Kwon Decl. ¶ 17, Ex. 16 (Testimony of Michael Dougherty, Assistant Secretary of DHS, Committee of the Judiciary, Oversight of the Administration's Decision to End Deferred Action for Childhood Arrivals (Oct. 3, 2017), https://www.c-span.org/video/?435059-1/trump-administration-officials-testify-decision-rescind-daca at 56:46) ("Dougherty Statement") (stating, in response to Senator Feinstein's question about the status of DACA recipients during the phasing out of the program: "We rely on guidance that was put in place in 2012 when the DACA program was instantiated. That's available on USCIS's website and will tell you what the priorities are for Immigration Customs enforcement and what they are for the Department at large. Those priorities have not changed.").

[8] Eiland Decl. ¶ 23, Ex. 8 (Lorenzo Zazueta-Castro, *UPDATED: Family, Immigration Attorney: DACA Recipients Being Held at Checkpoint*, The Monitor,

CBP scrutinized their records, presumably looking for a reason to hold them and revoke their DACA. *See also* Eiland Decl. ¶¶ 2-15 (providing examples). Indeed, immigration officers have been expressly instructed to screen any DACA recipient they encounter in the field for potential enforcement actions.[9]

According to government data, DACA revocations increased by 25 percent after President Trump's inauguration.[10] Since January, there have been numerous cases in which immigration authorities have targeted DACA recipients by revoking their DACA grants and work permits, without providing any notice or process, even though they have engaged in no disqualifying conduct and continue to be eligible for the program. Indeed, Plaintiffs' counsel are aware of at least 17 cases nationwide. *See* Eiland Decl. ¶¶ 2-15 (providing examples).

Critically, Defendants have admitted in the course of the instant litigation that USCIS has a practice of automatically terminating DACA based solely on the issuance of a Notice to Appear ("NTA"), and have taken the position that under its own policies, USCIS may terminate DACA without providing any notice or meaningful process. *See* Doc No. 23-2 at 79-81 (Decl. of Ron Thomas) ("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. . . . This has been USCIS' practice since FY 2013 when such terminations began.").

Sept. 11, 2017, http://www.themonitor.com/news/article_1ced27f4-970e-11e7-a609-47c4564b53ec.html).

[9] Eiland Decl. ¶ 21, Ex. 6 (Valerie Gonzalez, Border Patrol Memo States Procedures to Process all DACA Recipients, KRGV, Sept. 25, 2017, http://www.krgv.com/story/36450600/border-patrol-memo-states-procedures-to-process-all-daca-recipients); Eiland Decl. ¶ 22, Ex. 7 (Valerie Gonzalez, Tweet, Sept. 25, 2017, https://twitter.com/ValOnTheBorder/status/912505757958119426).

[10] Eiland Decl. ¶ 20, Ex. 5 (Keegan Hamilton, *Targeting Dreamers*, Vice News, Sept. 8, 2017, https://news.vice.com/story/ice-was-going-after-dreamers-even-before-trump-killed-daca).

The named Plaintiffs' experiences illustrate Defendants' practices and the harms they inflict. Plaintiff José Eduardo Gil Robles ("Gil"), now 24 years old, has lived in the United States since he was five. Declaration of José Eduardo Gil Robles ("Gil Decl.") ¶ 1. He has five younger siblings, all of whom are U.S. citizens, and is very active in his Catholic church. *Id.* ¶¶ 3, 5. USCIS granted him DACA in 2015 and renewed it in August 2017. *Id.* ¶¶ 9, 10. Until he lost his DACA, he worked at a logistics company, and paid about half his family's rent and bills. *Id.* ¶¶ 11-12. On September 20, 2017, he was arrested and ultimately charged with driving on a cancelled license, which was linked to the validity of his first DACA grant. *Id.* ¶ 14. Even if convicted, the offense would not have disqualified him for DACA. But a month later, he was arrested at work by immigration agents, who placed him in removal proceedings. *Id.* ¶ 15. Like Mr. Arreola, whose preliminary injunction motion this Court already granted, Mr. Gil found out that USCIS automatically terminated his DACA upon the issuance of a Notice to Appear in removal proceedings—even though Mr. Gil was charged only with presence without admission. *Id.* ¶¶ 15, 22. Losing his DACA has caused Mr. Gil to lose his job and has harmed his family, which relied on him for support. *Id.* ¶¶ 24-26. It has also caused him emotional harm, leading him to become hopeless and depressed. *Id.*

Plaintiff Ronan Carlos De Souza Moreira ("Moreira") lives in the Atlanta area with his family, most of whom are U.S. citizens or lawful permanent residents. Declaration of Ronan Carlos De Souza Moreira ("Moreira Decl.") ¶¶ 1, 5-6. He is 24 years old and has lived in the United States since middle school, becoming a youth leader in his church, volunteering and traveling, and rising to the position of installation manager at a flooring firm. *Id.* ¶¶ 2-3, 6, 9. The government approved Mr. Moreira's application for DACA three times—in 2013, 2015, and 2017. *Id.* ¶ 7; *see also id.* ¶ 27, Ex. C. But after being charged with possession of an altered identification document—a misdemeanor that would not per se render him ineligible for DACA even if he were convicted—Mr. Moreira lost his DACA without any

notice, process, or explanation. *Id.* ¶¶ 14, 18-19. Like Mr. Arreola and Mr. Gil, Mr. Moreira found out that his DACA was automatically terminated upon the issuance of a Notice to Appear in removal proceedings—even though Mr. Moreira was charged only with overstaying a visa. *Id.* The loss of DACA has upended Mr. Moreira's life, causing him emotional harm and leaving him unable to plan for the future. *Id.* ¶¶ 20-22.

ARGUMENT

The Court should issue a preliminary injunction. To prevail, Plaintiffs must show: (1) a likelihood of success on the merits, (2) likely irreparable harm in the absence of such relief, (3) that the balance of equities tips in their favor, and (4) that an injunction is in the public interest. *Arizona Dream Act Coalition v. Brewer*, 757 F.3d 1053, 1060 (9th Cir. 2014) (citing *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008)). Plaintiffs satisfy all four factors.

I. THE PLAINTIFF CLASS IS LIKELY TO SUCCEED ON THE MERITS.

Plaintiffs and the proposed class are likely to succeed on their APA claims, which are substantially the same as the claims raised by Plaintiff Arreola, and as to which this Court has already found a substantial likelihood of success. *See* PI Order at 3-13. The proposed Plaintiff class is also likely to succeed on the merits of the procedural due process claim.

First, as this Court has concluded, Defendants' practice of automatically terminating DACA when immigration authorities file a NTA—including based solely on presence without admission to the United States or overstaying a visa—is arbitrary and capricious and contrary to law in violation of the APA. *See* PI Order at 8-13.

Second, Defendants' practice of revoking DACA for individuals who lack any disqualifying criminal convictions without process is unlawful under the APA because

it reflects the agency's reversal of its decision to grant DACA in the first place, without providing a reasoned explanation for the change. *See* PI Order at 10-11.

Third, Defendants' failure to provide DACA recipients with notice and an opportunity to respond violates the rules governing the DACA program, *see* PI Order at 10-11, is arbitrary and capricious and contrary to law in violation of the APA, and violates the Due Process Clause.

A. DHS' Automatic Termination of DACA Based Solely on the Issuance of an NTA Is Arbitrary and Capricious in Violation of the APA.

For multiple reasons, Defendants' practice of terminating DACA based solely on the issuance of an NTA charging the DACA recipient with presence without admission or overstaying a visa is arbitrary and capricious and contrary to law in violation of the APA. 5 U.S.C. § 706(2)(A). *See* PI Order at 8-13.

The Supreme Court has made clear that under § 706(2)(A), "agency action must be based on non-arbitrary, 'relevant factors.'" *Judulang v. Holder*, 565 U.S. 42, 55 (2011) (citation omitted). *Judulang* emphasized that "courts retain a role, and an important one, in ensuring that agencies have engaged in reasoned decisionmaking." *Id.* at 53. "When reviewing an agency action, [courts] must assess, among other matters, 'whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment.'" *Id.* (citation omitted).

In *Judulang*, the Supreme Court considered a Board of Immigration Appeals ("BIA") rule governing eligibility for a form of relief—suspension of deportation—which was not provided for in the Immigration and Nationality Act, and was therefore entirely discretionary. 565 U.S. at 46-47. Although the relief was ultimately within the agency's discretion, the Court made clear that the rules applied by the agency with respect to that relief must still reflect reasoned decisionmaking. The Court emphasized that "[a] method for disfavoring deportable aliens . . . that neither focuses on nor relates to an alien's fitness to remain in the country—is arbitrary and capricious." *Id.* at 55. The Supreme Court ultimately invalidated the BIA rule because it was based on

"a matter irrelevant to the alien's fitness to reside in this country," and concluded that the BIA therefore "has failed to exercise its discretion in a reasoned manner." *Id.* at 53. *See also* PI Order at 8-9 (discussing *Judulang*).

Defendants' practice of terminating DACA based solely on the issuance of an NTA charging unlawful presence in the United States fails this test for multiple reasons. *First*, as this Court has concluded, DHS' practice is arbitrary and irrational because "a noncitizen's deportability due to unauthorized presence in the United States . . . provides no relevant basis for terminating DACA." PI Order at 9. As the Court has explained, the Napolitano Memorandum and DACA SOPs "enumerate the relevant considerations for a DACA grant, and not only is unauthorized presence an unmentioned factor, but the program was *specifically designed* for persons without lawful immigration status." PI Order at 9. Nothing in those rules suggests that the fact that a noncitizen is subject to removal because he lacks a lawful immigration status is a basis for denial or termination. Indeed, the DACA rules indicate the opposite—the fact that a person is present without admission or has overstayed his visa is irrelevant. *See, e.g.*, DACA SOPs at 44. This is because the lack of a lawful immigration status in the United States is a predicate for eligibility for DACA and is a fact that is therefore true of every DACA recipient. *Id.* Because the lack of a lawful immigration status is a factor common to every single DACA recipient, and is wholly irrelevant to whether an individual is eligible for DACA, the issuance of an NTA charging presence without admission or visa overstay does not provide a reasoned basis for terminating DACA.

Second, as this Court has concluded, "[t]he program's rules also make clear that even noncitizens who are, have been, or will be placed in removal proceedings are nonetheless eligible for DACA." PI Order at 9. The rules thus reinforce the conclusion that an NTA based on presence without admission to the United States does not provide a reasoned basis for termination. The Napolitano Memorandum itself requires that the eligibility "criteria are to be considered whether or not an individual is already in removal proceedings or subject to a final order of removal." Napolitano Memo at 2.

See also Kwon Decl. ¶ 17, Ex. 16 (Dougherty Statement) ("The 2012 memorandum also made clear that individuals could be considered for DACA even if they were already in removal proceedings or were subject to a final removal order."). Implementing this command, the SOPs provide that "[i]ndividuals in removal proceedings may file a DACA request." DACA SOPs at 71. Indeed, even individuals with final removal orders can be granted DACA. *See, e.g.*, *id.* at 74 (providing that individuals with final removal orders may be considered for DACA); *id.* at 75 (providing that an individual who has been removed after issuance of a final removal order, re-entered, and is subject to reinstatement of that removal order continues to be eligible for DACA). *Cf. Matter of Quintero*, 18 I. & N. Dec. 348, 350 (BIA 1982) (explaining in context of removal proceedings that "the respondent can request deferred action status at any stage in the proceeding"). Further, the DACA SOPs provide that if an NTA is issued against a DACA applicant while his application is pending with USCIS—even if the NTA is based on a public safety concern—USCIS should "proceed with adjudication . . . , taking into account the basis for the NTA." *See* Kwon Decl. ¶ 22, Ex. 21 (Revised Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Removable Aliens (Nov. 7, 2011)) , at 4 ("ICE's issuance of an NTA allows USCIS to proceed with adjudication . . . , taking into account the basis for the NTA"); DACA SOPs at 93 (providing that if ICE accepts a case referred to it by USCIS during the DACA application process, then USCIS "will follow the standard protocols outlined in the November 7, 2011 NTA memorandum").

In such cases, USCIS is required to review all relevant circumstances, and may grant the DACA request "[i]f a DACA requestor has been placed in proceedings on a ground that does not adversely impact the exercise of prosecutorial discretion." DACA SOPs at 75. *See also* PI Order at 9; DACA SOPs at 74 (providing that for DACA applicants with final removal orders, "[f]inal removal orders . . . should be reviewed carefully to examine the underlying grounds for removal"). As this Court

has concluded, given that the filing of an NTA against a DACA applicant, or even the issuance of a final order of removal against a DACA applicant, does not render the individual ineligible for the program, DHS' practice of automatically terminating DACA on this basis is arbitrary and irrational. PI Order at 9-10.

Third, DHS' practice of automatically and categorically terminating DACA based on an NTA is arbitrary and capricious because the agency fails, despite proposed class members' continued eligibility for the program, to consider the relevant facts and circumstances and exercise its individualized discretion. This failure to consider each individual's specific circumstances undermines the very purpose of the DACA program. *See* Napolitano Memorandum at 2 (explaining that "[o]ur Nation's immigration laws . . . . are not designed to be blindly enforced without consideration given to the individual circumstances of each case"). The agency's failure to exercise its individualized discretion is also inconsistent with its own rules, as described above. Those rules make clear that if someone is the subject of an NTA, USCIS should consider all of the relevant circumstances, including the ground for removal charged in the NTA, to determine whether DACA is appropriate or whether the individual is disqualified. The DACA rules also make clear that when the ground in the NTA does not adversely impact a DACA grant—including, presumably, when the ground is one that all or most DACA recipients could be charged with—the individual is not disqualified from DACA.

Fourth, and as this Court has held, USCIS' practice of terminating DACA automatically based on the filing of an NTA is arbitrary and capricious because it leaves the question of whether an individual continues to warrant a DACA grant and EAD solely up to a CBP or ICE officer's charging decision in issuing an NTA. PI Order at 10. In *Judulang*, the Supreme Court emphasized that an additional reason why the BIA's rule was impermissibly arbitrary was that under the rule, whether a noncitizen would be granted discretionary relief may "rest on the happenstance of an immigration official's charging decision." 565 U.S. at 57. *See also id.* at 58

(recognizing "the high stakes for an alien who has long resided in this country," and noting that the Court has "reversed an agency decision that would 'make his right to remain here dependent on circumstances so fortuitous and capricious'") (quoting *Delgadillo v. Carmichael*, 332 U.S. 388, 391 (1947)). The same is true here: where a class member's "DACA [i]s revoked automatically due to the issuance of the NTA, everything h[angs] on the fortuity of one CBP officer's decision." PI Order at 10.

Fifth, in terminating proposed class members' individual DACA grants and EADs and finding that the issuance of an NTA automatically renders them ineligible for DACA, DHS is departing from its prior position without "a reasoned analysis for the change," in violation of the APA. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42 (1983). *See also* PI Order at 10-11; 5 U.S.C. § 706(2)(A). An agency may depart from its prior decision, but it is black letter law that if it does so, it "is obligated to supply a reasoned analysis for the change." *State Farm*, 463 U.S. at 42. *See also FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) ("[T]he agency must show that there are good reasons for the new policy.").

In these cases, DHS has previously determined that the individual proposed class member is eligible for and warrants a DACA grant on at least one occasion, and in many cases on multiple occasions. The agency reached these individual determinations after evaluating each DACA applicant's school records and other circumstances, as well as conducting extensive background checks. PI Order at 10.

In terminating DACA, the agency is abruptly reversing course. The agency does so even though now, as before, each proposed class member continues to be eligible for DACA. Nonetheless, USCIS provides class members with a boilerplate one-sentence statement that his or her DACA and EAD have been "terminated automatically" because a NTA was issued. *See, e.g.*, Kwon Decl. ¶ 9, Ex. 8; Moreira Decl. ¶ 26, Ex. B; Gil Decl. ¶ 30, Ex. B. As this Court has concluded, USCIS's one-sentence explanation fails to provide "good reasons" for the agency's change in

position, as required by the APA. PI Order at 10. *See also Fox Television Stations, Inc.*, 556 U.S. at 515; *Organized Vill. of Kake v. U.S. Dep't of Agric.*, 795 F.3d 956, 968 (9th Cir. 2015) (explaining that the agency is "required to provide a 'reasoned explanation . . . for disregarding' the 'facts and circumstances' that underlay its previous decision") (citations omitted). As this Court explained, "[g]iven that *all* DACA recipients are necessarily removable due to their unauthorized presence, the agency's reliance on an NTA citing . . . presence without admission simply fails to explain, much less justify, an agency's decision to reverse course and terminate [] DACA." PI Order at 10-11 (internal quotation marks and citation omitted).

As this Court has recognized, the agency's failure to explain its decision is also invalid because it fails to mention, let alone account for, each proposed class member's "substantial reliance interests." PI Order at 11. Plaintiffs and the proposed class members have lived in the United States since a young age, and have relied on DACA to build a life, obtain rewarding employment as young adults, and help support themselves and their families. *See Fox Television Stations, Inc*., 556 U.S. at 515 (explaining that an agency must give a "more detailed justification" for a policy change if its "prior policy has engendered serious reliance interests that must be taken into account"). DHS' failure to provide a reasoned explanation for its change in position is arbitrary and capricious. *See, e.g.*, *Organized Vill. of Kake*, 795 F.3d at 967-68 (holding that the defendant agency failed to provide "good reasons" for reversing its old policy).

For all these reasons, DHS' practices of changing its position without providing a reasoned explanation and terminating Plaintiffs' and class members' DACA based merely on an NTA charging unlawful presence is arbitrary and capricious in violation of the APA.

B. DHS' Revocation of Class Members' DACA and EAD Without Process Violates the Agency's Own Procedures and Procedural Due Process.

1. DHS' Revocation Without Notice Violates Its Own Rules and the APA.

DHS' automatic termination of proposed class members' DACA and EAD without notice or an opportunity to be heard also violates DHS' own rules and is therefore arbitrary and capricious under the APA.

The DACA SOPs provide that USCIS generally will not terminate a recipient's DACA and EAD without prior notice and an opportunity to respond. *See, e.g.*, DACA SOPs Chapter 14, Termination, at 136-38 (if DACA granted in error, or granted as a result of fraud, officer is directed to issue a "Notice of Intent to Terminate," allow recipient "33 days to file a brief or statement contesting the grounds cited in [the notice]," and terminate only where the adverse grounds are not overcome). *See also Colotl*, 2017 WL 2889681, at *7 ("[T]he SOP provides that, in the usual circumstance, a termination of an individual's DACA status will not occur without prior notice to that individual."). As this Court has recognized, "unless there are criminal, national security, or public safety concerns, the DACA termination guidelines prescribe the issuance of a Notice of Intent to Terminate and require that the individual should be allowed 33 days to file a brief or statement contesting the grounds cited." PI Order at 11 (internal quotation marks and citation omitted). Although the DACA SOPs contain a procedure for termination of DACA if ICE issues an NTA, such termination is permitted only under narrow circumstances involving certain serious public safety concerns, and only after DHS follows specific procedures. *See Gonzalez Torres*, 2017 WL 4340385, at *6 (finding that USCIS' termination of DACA in response to "NTA issued by USCBP in connection with removal proceedings" charging recipient with being present without admission did not comply with DACA SOPs); *see also* DACA SOPs Chapter 14, Termination, at 137 (enumerating procedures to be followed in cases involving disqualifying criminal offenses or public safety concerns).[11]

[11] Defendants may attempt to argue that, where a noncitizen otherwise eligible for DACA is an enforcement priority under the Kelly Memorandum, the DACA rules do not require notice and an opportunity to respond prior to termination. However, the

In sum, because Defendants' practice of terminating DACA without process violates Defendants' own termination procedures, the practice is arbitrary and capricious. *See Gonzalez Torres*, 2017 WL 4340385, at *5 ("Defendants' failure to follow the termination procedures set forth in the DACA SOP is arbitrary, capricious, and an abuse of discretion."); *Colotl*, 2017 WL 2889681, at *12 n.6 ("Defendants' actions were likely arbitrary and capricious in violation of the APA by . . . terminating her DACA status in contravention of DHS's own procedures.").

2. DHS' Practice of Revoking DACA Without Process Violates Procedural Due Process.

In addition to violating its own procedures, DHS' practice of revoking DACA without providing any process violates proposed class members' procedural due process rights. Plaintiffs and the proposed class members have gained a protected interest in their DACA, which authorized them to live and work in the United States until the expiration date of their DACA grants, and therefore have a right to a fair procedure before it can be revoked. Yet DHS has reversed these decisions without providing Plaintiffs and proposed class members with adequate notice, a reasoned explanation, or an opportunity to present arguments and evidence to demonstrate that they remain eligible for the program and did not engage in any disqualifying criminal activity.

The Constitution "imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests." *Mathews v. Eldridge*, 424 U.S.

Kelly Memorandum on its face makes clear that the new enforcement priorities do not affect the DACA program. *See Colotl*, 2017 WL 2889681, at *12 (holding that "the Kelly Memo, by its own terms, has no application to the DACA program"); *id.* at *7 (emphasizing that the Kelly Memorandum "specifically excludes" the DACA program); *id.* at *8 (noting that DHS's public guidance is "clear and unambiguous" that the Kelly Memorandum does not affect the DACA program); *Colotl v. Kelly*, No. 1:17-cv-01670-MHC (N.D. Ga. July 31, 2017) (Doc. No. 43) (Order Denying Reconsideration at 7-8). Moreover, applying the Kelly Memorandum to revoke DACA based on conduct or criminal history that the DACA SOPs and DACA Memorandum provide is not disqualifying is inconsistent with the program rules.

319, 332 (1976). Regardless of whether the individual had a claim of entitlement before it was granted, once an important benefit is conferred, recipients have a protected property interest sufficient to require a fair process before the government may take it away. *See Bell v. Burson*, 402 U.S. 535, 539 (1971) (holding that,"[o]nce [driver's] licenses are issued, . . . their continued possession may become essential in the pursuit of a livelihood," such that they cannot "be taken away without" due process); *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (holding that parole revocation requires due process; parolees may "have been on parole for a number of years and may be living a relatively normal life[,]" all the while "[having] relied on at least an implicit promise that parole will be revoked only if [the parolee] fails to live up to the parole conditions"); *Nnebe v. Daus*, 644 F.3d 147, 158-69 (2d Cir. 2011) (recognizing that taxi drivers have a protected property interest in the continued possession of their operating licenses and remanding to determine if suspension hearing satisfied due process); *Singh v. Bardini*, No. 09-cv-3382, 2010 WL 308807, at *7 (N.D. Cal. Jan. 19, 2010) ("Even if there is no constitutional right to be granted asylum, that does not mean that, once granted, asylum status can be taken away without any due process protections.") (internal citation omitted).

Plaintiffs and the proposed class members' DACA and EADs are essential to their ability to remain lawfully present in the United States and earn a livelihood to support themselves and their families. *See Alaska Airlines, Inc. v. Long Beach*, 951 F.2d 977, 986 (9th Cir. 1991) (finding ordinance permitting airport to automatically reduce flights already allocated to air carriers by license violated air carriers' due process rights where allocations were crucial to enterprise); *Jones v. City of Modesto*, 408 F. Supp. 2d 935, 951 (E.D. Cal. 2005) (finding that city could not revoke existing massage license without due process) (citing *Greenwood v. Fed. Aviation Admin.*, 28 F.3d 971, 975 (9th Cir. 1994) ("The Ninth Circuit specifically recognized that an existing license, in contrast to an applied for license, constitutes a legitimate entitlement of which one cannot be deprived without due process.")). Plaintiffs and

the proposed class members have reasonably relied on the implicit promise that they could retain their DACA grants and EADs so long as they satisfied the program's eligibility requirements. *See Morrissey*, 408 U.S. at 482. The government's reversal of its previous decision that they were eligible for and warranted DACA inflicts precisely the kind of "serious loss" that requires due process protections. *Mathews*, 424 U.S. at 348 (internal quotation marks omitted).

Determining the procedure necessary to meet constitutional standards requires evaluation of three distinct factors:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Id. at 335.

Evaluation of these factors demonstrates that Plaintiffs and the proposed class members must be afforded at least the pre-termination process that DHS generally provides for under its own rules—i.e., adequate notice of the allegedly adverse grounds and an opportunity to respond and contest the decision. The private interest at stake could not be more significant. The termination of DACA rescinds proposed Plaintiffs and class members' authorization to live and work in the United States—the country they have called home from a young age. Instead of following its own prescribed process, DHS's practice is to terminate proposed class members' DACA without notice. The lack of any opportunity to contest the termination decision creates an unacceptably high risk of erroneous deprivation. *See 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. Aug. 31, 2011) ("[T]here is a substantial risk of erroneous deprivation through the procedures utilized by INS in rescinding asylum via a mailed letter. This manner of termination does not account for anything other than post hoc notice that . . . he or she is no longer entitled to protection."). Providing Plaintiffs and proposed class members

with a reasoned explanation for the government's actions and an opportunity to present arguments and evidence could make all the difference, because it will allow proposed class members to demonstrate that they have not engaged in any disqualifying criminal activity (or even been charged with any crime) and remain eligible for DACA. Indeed, Mr. Arreola's circumstances highlight the value of the "an opportunity to contest the [termination] determination at a meaningful time," as he would have been able to show that CBP's allegations had been mistaken, as the immigration judge had concluded. *See Villa-Anguiano v. Holder*, 727 F.3d 873, 882 (9th Cir. 2013). *See also id.*at 881 (holding that BIA "must consider all favorable and unfavorable factors relevant to the exercise of its discretion; failure to do so constitutes an abuse of discretion"). And both Mr. Gil and Mr. Moreira could demonstrate that the minor offenses that they have been charged with do not disqualify them from DACA, and that they have deep family ties, strong work histories, and other positive equities favoring continuation of DACA in the totality of the circumstances. *See* Gil Decl. ¶¶ 1-6, 11-14; Moreira Decl. ¶¶ 1-6, 9-14, 21. The fact that DHS' rules already provide for these basic pre-deprivation protections in most circumstances reinforces both that the value of such safeguards is high, and that providing such limited process would not place undue fiscal or administrative burdens on the government. *Vasquez*, 2009 WL 3219266, at *6 ("To conclude, all of the *Mathews* factors weigh in favor of a finding that due process requires more than sending an after the fact letter of rescission when the government terminates a grant of asylum.").

II. THE PLAINTIFF CLASS IS SUFFERING IRREPARABLE HARM.

Absent an injunction, Plaintiffs and the proposed class will continue to experience irreparable harm that cannot be cured by their ultimate success on the merits in this case.

There is no question that revocation of proposed class members' DACA and loss of their EADs has derailed their careers and undermined their employment.

Indeed, a recent survey concluded that, like Plaintiffs, 91 percent of DACA recipients were employed, including at top Fortune 500 companies such as Walmart, Apple, General Motors, Amazon, JPMorgan Chase, Home Depot, and Wells Fargo. Sixty-nine percent of DACA recipients reported that their earnings "helped [them] become financially independent."[12] Stripping DACA recipients of their DACA and EADs directly results in loss of employment and earnings, as well as lost opportunities to gain education and experience: 94% of DACA recipients have "pursued educational opportunities that [they] previously could not" because of DACA.[13] As this Court has held, "the deprivation of Plaintiff's earnings and job opportunities caused by the loss of his DACA and EAD constitutes irreparable harm." *See* PI Order at 13-14. Consistent with this Court's holding, the Ninth Circuit has made clear that the "loss of opportunity to pursue [one's] chosen profession" constitutes irreparable harm. *Enyart v. Nat'l Conference of Bar Exam'rs, Inc.*, 630 F.3d 1153, 1165 (9th Cir. 2011); *see also Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 543 (1985) ("We have frequently recognized the severity of depriving a person of the means of livelihood."). The harms faced by Plaintiffs illustrate the adverse effects on proposed class members of losing one's DACA and EAD. For example, because he lost his EAD, Mr. Arreola had to leave his job as a cook at Chateau Marmont, and because CBP took possession of his car, he has been unable to work as a driver. Arreola Decl. ¶ 40. *See also, e.g.*, Gil Decl. ¶ 24. The classwide effects are similar.[14]

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[12] *See* Eiland Decl. ¶ 31, Ex. 16 at 3, 4 (Tom K. Wong et al, *DACA Recipients' Economic and Educational Gains Continue to Grow*, Center for American Progress, Aug. 28, 2017, https://www.americanprogress.org/issues/immigration/news/2017/08/28/437956/daca-recipients-economic-educational-gains-continue-grow/).

[13] *Id.* at 4.

[14] *See, e.g.*, Eiland Decl. ¶ 31, Ex. 16; Eiland Decl. ¶ 39, Ex. 24 (Raul Hinojosa-Ojeda, *The Economic Benefits of Expanding the Dream: DAPA and DACA Impacts on Los Angeles and California*, North American Integration and Development Center, UCLA, Jan. 26, 2015, http://www.naid.ucla.edu/uploads/4/2/1/9/4219226/central_valley_final.pdf).

Such loss of employment is more than enough to justify an injunction in this circuit. In *Arizona Dream Act Coalition v. Brewer*, 757 F.3d 1053 (9th Cir. 2014), for example, the Ninth Circuit reversed a district court's denial of a preliminary injunction on harm grounds, and held that the DACA recipients had established irreparable harm because the defendants' policy had "diminished [plaintiffs'] opportunity to pursue their chosen professions." *Id.* at 1068. *See also* PI Order at 13-14; *Enyart*, 630 F.3d at 1165; *Gonzalez Torres*, 2017 WL 4340385, at *6 (finding that irreparable harm caused by defendants' termination of DACA without notice "includes the loss of employment, a core benefit under DACA" and that such "deprivation of employment impacts Plaintiff's ability to financially provide for himself and his family"). Moreover, setbacks at an early stage in proposed class members' careers may never be recoverable. Time without DACA is "productive time irretrievably lost" that the proposed class members could be spending in their chosen career paths, building toward the future for themselves and their families. *Chalk v. United States Dist. Court*, 840 F.2d 701, 710 (9th Cir. 1988). *See also Arizona Dream Act Coal.*, 757 F.3d at 1068 ("The irreparable nature of Plaintiffs' injury is heightened by Plaintiffs' young age and fragile socioeconomic position. Setbacks early in their careers are likely to haunt Plaintiffs for the rest of their lives.").

In addition, losing DACA has rendered many proposed class members' ineligible for driver's licenses, which in the vast majority of states are conditioned on showing lawful presence in the United States.[15] Indeed, 90 percent of DACA recipients obtained driver's licenses or state identification card for the first time after receiving DACA.[16] Without driver's licenses, proposed class members are unable to

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[15] *See* Eiland Decl. ¶ 32, Ex. 17 at 2 (Nat'l Immigration Law Center, *Access to Driver's Licenses for Immigrant Youth Granted DACA*, May 31, 2015, https://www.nilc.org/issues/drivers-licenses/daca-and-drivers-licenses/).

[16] *See* Eiland Decl. ¶ 42, Ex. 27 at 4 (Tom K. Wong et al, *New Study of DACA Beneficiaries Shows Positive Economic and Educational Outcomes, Center for American Progress*, Oct. 18, 2016,

accomplish the basic tasks of everyday life, such as driving to school, church, or the grocery store or taking their siblings or children to daycare or the doctor's office.

Finally, the abrupt revocation of proposed class members' DACA and EADs also causes emotional distress. *See, e.g.*, Arreola Decl. ¶ 40; Gil Decl. ¶ 26 (loss of DACA has left plaintiff feeling "depressed" and "hopeless and stressed"); Moreira Decl. ¶ 20, 22 (describing fear and depression resulting from uncertainty following the loss of DACA). These harms are common to the class. Numerous studies have shown that both DACA recipients themselves and their family members—especially their children—suffer psychological harm from the fear and uncertainty that accompany the loss of benefits.[17] Thus even if the proposed class members could later recover their lost income, their emotional distress in the interim constitutes an irreparable injury in itself. *See Chalk*, 840 F.2d at 709. *See also Colotl*, 2017 WL 2889681, at *12 ("Plaintiff's emotional distress . . . is another factor in determining that Plaintiff will suffer irreparable injury without the entry of a preliminary injunction.").[18]

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https://www.americanprogress.org/issues/immigration/news/2016/10/18/146290/new-study-of-daca-beneficiaries-shows-positive-economic-and-educational-outcomes/)

[17] *See, e.g.*, Eiland Decl. ¶ 40, Ex. 25 at 3 (Anna Maria Barry-Jester, *The End of DACA Will Ripple Through Families and Communities*, FiveThirtyEight, Sept. 6, 2017, https://fivethirtyeight.com/features/the-end-of-daca-will-ripple-through-families-and-communities/) (describing, *inter alia*, anxiety suffered by children of undocumented parents); Eiland Decl. ¶ 41, Ex. 26 at 1 (Dinah Wiley, *New Study Findings on Mixed-Status Immigrant Families: Threat of Family Separation Affects Health of the Children*, Georgetown University Health Policy Institute Center for Children and Families, June 13, 2013, https://ccf.georgetown.edu/2013/06/13/new-study-findings-on-mixed-status-immigrant-families-threat-of-family-separation-affects-health-of-the-children/) (describing, *inter alia*, anxiety suffered by children of undocumented parents); Declaration of Jens Hainmueller and Duncan Lawrence (describing declarants' research, published in *Science*, demonstrating that mothers' eligibility for DACA improves the mental health of their children).

[18] *See* Eiland Decl. ¶ 33, Ex. 18 (Tiziana Rinaldi, *DACA recipients saw their mental health improve. Now, advocates fear its end will have the opposite effect*, PRI, Nov. 22, 2017, https://www.pri.org/stories/2017-11-22/study-found-daca-improved-mental-health-its-recipients-which-why-researchers) (termination of DACA causes DACA recipients to lose "ontological security" and potential "distress, negative

III. THE REMAINING FACTORS SUPPORT PRELIMINARY RELIEF.

Preliminary relief will not harm the government. The government will not be adversely affected by enjoining the revocation of Plaintiffs' and class members' DACA, since the proposed class includes only individuals who remain eligible for the program.

By contrast, the public interest strongly favors a preliminary injunction. The public interest is served when the government complies with its obligations under the APA and the Constitution and follows its own procedures. As the Ninth Circuit has emphasized, "[I]t is clear that it would not be equitable or in the public's interest to allow the state . . . to violate the requirements of federal law, especially when there are no adequate remedies available." *Arizona Dream Act Coal.*, 757 F.3d at 1069 (citation and internal quotation marks omitted) (alteration and ellipsis in original). *See also Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) ("[I]t is always in the public interest to prevent the violation of a party's constitutional rights.") (citation and internal quotation marks omitted); *Colotl*, 2017 WL 2889681, at *12 ("[T]he public has an interest in government agencies being required to comply with their own written guidelines instead of engaging in arbitrary decision making.").

Further, stripping class members of their professions and authorization to work is not in the public interest. The vast majority (71%) of DACA recipients have been able to help their families financially through their earnings; [19] job loss means that many DACA recipient's families would lose a crucial support, and many of those family members are U.S. citizens—78% of DACA recipients have an American citizen spouse, sibling, or child.[20] For example, Mr. Arreola's family relies on him heavily. He plays a critical role in the care of his sister who has serious disabilities,

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emotions, depression and anxiety") (quoting Catlin Patler, Ph.D).

[19] *See* Eiland Decl. ¶ 31, Ex. 16 at 3.

[20] *See* Eiland Decl. ¶ 49, Ex. 34, at 2 (U.C. San Diego U.S. Immigration Policy Center, *DACA Stats and Facts*, dacastatsandfacts.com).

and he contributes to the support of his family. Arreola Decl. ¶¶ 4-5, 16. He was also a valued employee at the Chateau Marmont. *Id.* ¶¶ 14, 40-41. *See also, e.g.*, Gil Decl. ¶¶ 11, 24.

Moreover, recent studies have estimated that DACA recipients as a whole have contributed billions of dollars to the U.S. economy, contributing not only their labor and productivity, but buying homes, cars, and other goods and services; stripping proposed class members of their DACA and EADs would harm the public interest by decreasing class members' contribution to the economy.[21] Economists have estimated that DACA would contribute $280 billion to $460 billion to GDP over the next decade, including $60 billion in lost taxes.[22] The government's policy of revoking class members' DACA also imposes high costs on employers, who must search for new employees at a time of low unemployment and high demand for skilled labor.[23]

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[21] *See, e.g.*, Eiland Decl. ¶ 34, Ex. 19 at 2 (Nicole Prchal Svajlenka, Tom Jawetz, and Angie Bautista-Chavez, *A New Threat to DACA Could Cost States Billions of Dollars*, Center for American Progress, July 21, 2017, https://www.americanprogress.org/issues/immigration/news/2017/07/21/436419/new-threat-daca-cost-states-billions-dollars/); Eiland Decl. ¶ 35, Ex. 20 at 2 (Silva Mathema, *Ending DACA Will Cost States Billions of Dollars*, Center for American Progress, January 9, 2017, https://www.americanprogress.org/issues/immigration/news/2017/01/09/296125/ending-daca-will-cost-states-billions-of-dollars/); Eiland Decl. ¶ 36, Ex. 21 at 1-3 (Ian Salisbury, *The Insane Economic Cost of Ending DACA*, Time, Sept. 7, 2017, http://time.com/money/4928394/daca-economic-cost-trump/).

[22] *Id*. *See also, e.g.*, Eiland Decl. ¶ 43, Ex. 28 at 1-3 (John W. Shoen, *US GDP would take a hit from DACA deportations, report finds,* CNBC, Aus. 8, 2017, https://www.cnbc.com/2017/08/31/u-s-gdp-would-take-a-hit-from-daca-deportations-report-finds.html); Eiland Decl. ¶ 44, Ex. 29 (Chad Stone, *The High Costs of Ending DACA*, US News & World Report, Sept. 29, 2017, https://www.usnews.com/opinion/economic-intelligence/articles/2017-09-29/why-ending-daca-and-deporting-dreamers-makes-no-economic-sense); Eiland Decl. ¶ 45, Ex. 30 at 1-2 (Alana Abramson, *Here's How Much Money Rescinding DACA Could Cost the U.S. Economy*, Fortune, Sept. 6, 2017, http://fortune.com/2017/09/05/daca-donald-trump-economic-impact/).

[23] *See* Eiland Decl. ¶ 46, Ex. 31 at 3 (Julissa Arce, *Ending This Immigration Program would Devastate the Economy*, Fortune, July 21, 2017,

Enjoining the government's policy of revoking DACA without justification would serve the public interest, protecting American families and businesses and requiring the government to comply with the APA and the Constitution.

CONCLUSION

For the reasons given, the Court should grant (1) Plaintiffs' Motion for a Classwide Preliminary Injunction, (2) vacate and enjoin Defendants' unlawful revocation of Plaintiffs Gil's and Moreira's DACA and EADs, as well as the DACA and EADs of proposed class members whose DACA has been terminated since January 19, 2017, and (3) enjoin Defendants from terminating Plaintiffs' and proposed class members' DACA and EADs pursuant to their unlawful policies in the future.

Dated: December 29, 2017

Respectfully submitted,

/s/ Jennifer Chang Newell
Jennifer Chang Newell
Katrina L. Eiland
Michael K. T. Tan*
David Hausman*
ACLU FOUNDATION
IMMIGRANTS' RIGHTS PROJECT

Ahilan T. Arulanantham
Michael Kaufman
Dae Keun Kwon
ACLU FOUNDATION
OF SOUTHERN CALIFORNIA

Attorneys for Plaintiffs

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http://fortune.com/2017/07/21/daca-dream-act-2017-new-immigration-news/) (estimating the cost to employers in having to find and replace their employees if the DACA program is rescinded at around $3.4 billion); Eiland Decl. ¶ 47, Ex. 32 at 2 (Paul Davidson, *DACA's end would hurt the economy*, USA TODAY, Sept. 8, 2017, https://www.usatoday.com/story/money/2017/09/08/dacas-end-would-hurt-economy-hiring/638835001/) (describing DACA importance for U.S. businesses struggling to find high-skilled employees).

Jennifer Chang Newell (SBN 233033)
jnewell@aclu.org
Katrina L. Eiland (SBN 275701)
keiland@aclu.org
ACLU FOUNDATION
IMMIGRANTS' RIGHTS PROJECT
39 Drumm Street
San Francisco, CA 94111
Telephone: (415) 343-0770
Facsimile: (415) 395-0950

Michael K. T. Tan*
mtan@aclu.org
David Hausman*
dhausman@aclu.org
ACLU FOUNDATION
IMMIGRANTS' RIGHTS PROJECT
125 Broad Street, 18th Floor
New York, NY 10004
Telephone: (212) 549-2660
Facsimile: (212) 549-2654

Attorneys for Plaintiffs (Additional counsel listed on following page)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

INLAND EMPIRE – IMMIGRANT YOUTH COLLECTIVE, et al., on behalf of themselves and others similarly situated,

Plaintiffs,

v.

KIRSTJEN NIELSEN, Secretary, U.S. Department of Homeland Security, et al.,

Defendants.

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

[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR A CLASSWIDE PRELIMINARY INJUNCTION

Judge: Hon. Philip S. Gutierrez
Courtroom: 6A
Hearing: February 26, 2018
Time: 1:30 p.m.

Ahilan T. Arulanantham (SBN 237841)
aarulanantham@aclusocal.org
Michael Kaufman (SBN 254575)
mkaufman@aclusocal.org
Dae Keun Kwon (SBN 313155)
akwon@aclusocal.org
ACLU FOUNDATION OF SOUTHERN CALIFORNIA
1313 West 8th Street
Los Angeles, CA 90017
Telephone: (213) 977-5232
Facsimile: (213) 977-5297

Attorneys for Plaintiffs

* Admitted *pro hac vice*

[PROPOSED] ORDER

The Court has considered the parties' briefing, evidence, arguments, and authorities cited in support of their positions. Upon due consideration, the Court hereby **GRANTS** Plaintiffs' Motion for a Classwide Preliminary Injunction. Defendants and their agents, employees, assigns, and all those acting in concert with them are enjoined as follows:

1. It is hereby **ORDERED** that Defendants are preliminarily enjoined from terminating grants of Deferred Action for Childhood Arrivals ("DACA") and related employment authorization documents ("EADs") of class members absent a fair procedure that complies with the Department of Homeland Security ("DHS") DACA Standard Operating Procedures as well as the Memorandum from Janet Napolitano, Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children (June 15, 2012), *available at* https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf, and which includes, at a minimum, notice, a reasoned explanation, and an opportunity to be heard prior to termination.

2. It is hereby **ORDERED** that Defendants are preliminarily enjoined from terminating grants of DACA and related EADs based solely on the issuance of a Notice to Appear ("NTA") that charges the DACA recipient as removable due to his or her presence in the United States without admission or having overstayed a visa.

3. It is hereby **ORDERED** that Defendants' decisions after January 19, 2017 to terminate the DACA grants and EADs of class members, without notice, a reasoned explanation, or an opportunity to respond prior to termination, are preliminarily enjoined. Defendants immediately will restore those individuals' DACA and EADs, subject to their original date of expiration.

4. It is hereby **ORDERED** that Defendants accept and adjudicate any applications to renew DACA by individuals whose DACA grant and EAD would have expired on or before March 5, 2018, but were unable to apply for or obtain a renewal as a result

of Defendants' unlawful revocation decision, consistent with the terms of this Order.

Implementation Procedures

5. Within seven days of this Order, the parties will meet and confer to develop a notice that explains the requirements of this Order and provides class members with contact information for Class Counsel. Within 14 days of this Order, Defendants will send the notice to all individuals whose DACA grant and EAD was revoked after January 19, 2017 without advance issuance of a Notice of Intent to Terminate ("NOIT") and provide copies of those notices to Class Counsel.

Within 14 days of this Order:

6. Defendants shall identify all DACA recipients whose DACA grant and EAD was revoked after January 19, 2017 without issuance of a NOIT and determine if they have been convicted of a disqualifying criminal offense. If the individual has not been convicted of a disqualifying criminal offense, Defendants immediately will restore the individual's DACA grant and issue the individual a new EAD.

7. If the individual's restored DACA grant and EAD have expired as of the date of this Order or will expire on or before March 5, 2018, Defendants will permit the individual 60 days from the date of this Order to submit a DACA renewal application to U.S. Citizenship and Immigration Services. If the individual's restored DACA grant and EAD expired on or before the date of this Order, Defendants temporarily will restore that individual's DACA grant and EAD for the 60-day period to submit a renewal application.

8. Defendants shall provide Class Counsel with a list of all DACA recipients whose DACA grant and EAD was revoked after January 19, 2017 without issuance of a NOIT. That list shall include the following information for each person:

- Name, Alien Number, Mailing Address, and Phone Number;
- The date the individual's most recent DACA grant and EAD was granted;
- The date the individual's most recent DACA grant and EAD was set to expire;
- The date the individual's most recent DACA grant and EAD was revoked;

- Whether the individual was found to have a disqualifying criminal conviction and, if so, what conviction(s);
- If applicable, the date the individual's DACA grant and EAD was restored.

For each such person, Defendants also will provide Class Counsel with copies of the Notices of Action previously terminating the person's DACA grant and EAD, as well as the Notices of Action and EADs for individuals whose DACA grants and EADs are restored pursuant to this Order, including those DACA grants and EADs that are temporarily restored pursuant to paragraph 7.

IT IS SO ORDERED.

DATED: _____, 2018

_____
THE HONORABLE PHILIP S. GUTIERREZ
UNITED STATES DISTRICT JUDGE

Jennifer Chang Newell (SBN 233033)
jnewell@aclu.org
Katrina L. Eiland (SBN 275701)
keiland@aclu.org
ACLU FOUNDATION
IMMIGRANTS' RIGHTS PROJECT
39 Drumm Street
San Francisco, CA 94111
Telephone: (415) 343-0770
Facsimile: (415) 395-0950

Michael K. T. Tan*
mtan@aclu.org
David Hausman*
dhausman@aclu.org
ACLU FOUNDATION
IMMIGRANTS' RIGHTS PROJECT
125 Broad Street, 18th Floor
New York, NY 10004
Telephone: (212) 549-2660
Facsimile: (212) 549-2654

Attorneys for Plaintiffs (Additional counsel listed on following page)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

INLAND EMPIRE – IMMIGRANT YOUTH COLLECTIVE, et al., on behalf of themselves and others similarly situated,

Plaintiffs,

v.

KIRSTJEN NIELSEN, Secretary, U.S. Department of Homeland Security, et al.,

Defendants.

Case No. 5:17-cv-02048-PSG-SHK

DECLARATION OF JENS HAINMUELLER AND DUNCAN LAWRENCE IN SUPPORT OF PLAINTIFFS' MOTION FOR A CLASSWIDE PRELIMINARY INJUNCTION

Judge: Hon. Philip S. Gutierrez
Courtroom: 6A
Hearing: February 26, 2018
Time: 1:30 p.m.

Ahilan T. Arulanantham (SBN 237841)
aarulanantham@aclusocal.org
Michael Kaufman (SBN 254575)
mkaufman@aclusocal.org
Dae Keun Kwon (SBN 313155)
akwon@aclusocal.org
ACLU FOUNDATION OF SOUTHERN CALIFORNIA
1313 West 8th Street
Los Angeles, CA 90017
Telephone: (213) 977-5232
Facsimile: (213) 977-5297

Attorneys for Plaintiffs

* Admitted *pro hac vice*

We, Jens Hainmueller and Duncan Lawrence, declare and state as follows:

1. Jens Hainmueller is a Professor of Political Science and Faculty Co-director of the Immigration Policy Lab ("IPL") at Stanford University, Stanford, California. Duncan Lawrence is the Executive Director of IPL. We write this declaration in our personal capacity as experts in support of Plaintiffs.

a. Jens Hainmueller is a Professor of Political Science at Stanford University and is the Co-founder and Faculty Co-director of IPL. Mr. Hainmueller received his PhD from Harvard University and also studied at the London School of Economics, Brown University, and the University of Tübingen. Before joining Stanford, he served on the faculty of the Massachusetts Institute of Technology. He has published more than 40 articles in peer-reviewed journals. A copy of his curriculum vitae is attached (Exhibit A).

b. Duncan Lawrence is the Executive Director of IPL. Mr. Lawrence received his PhD in political science from the University of Colorado Boulder, and has published several peer-reviewed articles on immigration. A copy of his curriculum vitae is attached (Exhibit B).

2. In 2017, we (along with other colleagues) co-authored a peer-reviewed study about the intergenerational effects of parental immigration status on children's health. This study was published in *Science*, and a copy is attached to this declaration (Exhibit C).

3. Our study focused on the Deferred Action for Childhood Arrivals (DACA) program, which is one of the most extensive policies directed toward unauthorized immigrants in recent decades. It builds on prior studies that have found that DACA is related to higher rates of employment and improved health outcomes.

4. Our study used data from Emergency Medicaid, a government program that provides coverage for emergencies and labor and delivery services for low-income individuals who are not eligible for Medicaid. The program serves unauthorized immigrants and lawful permanent residents with less than 5 years of residency. Estimates from states such as California indicate that 90 to 99% of Emergency Medicaid recipients are unauthorized immigrants. In addition, because U.S.-born children of unauthorized immigrants are U.S. citizens, they are eligible for full-scope Medicaid benefits (if meeting all requirements) and can be tracked with Medicaid claims data. We limited our sample to children whose mothers were under age 31 as of June 15, 2012—a date tied to the DACA eligibility criterion announced when DACA was adopted on June 15, 2012. Our data did not reflect whether mothers apply for DACA, but given that mothers who were born just before or after the DACA birthdate cutoff are similar in confounding characteristics, we can isolate the intention-to-treat effect of DACA eligibility on the health of their children.

5. Using this sampling criteria, we used Medicaid claims data from Oregon to identify 5,653 mothers born between 1980 and 1982 who were covered by Emergency Medicaid and gave birth to 8,610 children between 2003 and 2015. We then tracked the children's mental health outcomes by using their Medicaid claims. The children in our sample were born in Oregon and are therefore U.S. citizens by birth; 49% are female, 73% are Hispanic, and they were between 0 and 12 years old in 2015.

6. Although parental DACA eligibility could affect a broad range of child health outcomes, we focused on the impacts on children's mental health. Because DACA offered the mothers immediate relief from the risk of deportation, maternal stress might have declined, and their children would no longer have had to fear being separated from them. Therefore, the children's mental well-being could have improved. Moreover, examining mental health disorders that originate in childhood is important because they are associated with long-term health issues, low education,

and welfare dependence, which generate considerable private and social costs. Our main child outcome is a broad measure of any diagnoses of adjustment disorder, acute stress disorder, or anxiety disorder, measured using all diagnoses in the International Classification of Diseases 9 (ICD-9) categories 309, 308, and 300:

a. Adjustment disorder is a reaction to an identified stressor, leading to an inability to function normally. It is diagnosed on the basis of symptoms of anxiety, depressed mood, and conduct disturbances and often results in considerable impairment in important areas of functioning, such as social activities, school performance, and sleep.

b. Acute stress disorder can be a precursor to a diagnosis of a more lasting posttraumatic stress disorder (included in the ICD-9 category 309, adjustment disorder). It is characterized by symptoms or behaviors similar to those that arise from exposure to a traumatic or stressful event, but acute stress disorders cannot (by definition) last longer than 1 month.

c. Anxiety disorders are characterized by excessive fear, anxiety, and related behavioral disturbances that can lead to substantial distress or impairment. An external stressor might not be clearly identified, and anxiety disorders can be caused by environmental, genetic, or physiological factors.

These mental health disorders in childhood are associated with considerable developmental, psychosocial, and psycho-pathological complications for children and their families.

7. We found that mothers' eligibility for DACA protection led to a significant improvement in their children's mental health. Specifically, Mothers' DACA eligibility reduced adjustment and anxiety disorder diagnoses in their children by 4.3 percentage points ($P = 0.023$) from a baseline rate of 7.9% among children of ineligible mothers at the threshold. This reduction represents more than a 50% drop

in the rate of these disorders (albeit with a wide 95% confidence interval (CI) for the magnitude of the estimated effect) and provides evidence that mothers' DACA eligibility sharply improved their children's mental health.

8. The causal link between parental DACA eligibility and positive child mental health outcomes is based on the idea that the DACA birthdate cutoff is an arbitrary date, and, therefore, children of ineligible mothers born just before the birthdate cutoff should be similar in all respects, including in possible confounding characteristics, to children of DACA-eligible mothers born just after the cutoff. We corroborated this continuity assumption by testing for differences in the prevalence of disorder diagnoses in the children during a similar time period pre-DACA (2003 to quarter 2, 2012) and at the cutoff date. We confirmed that there were no discernible difference in the prevalence of disorder diagnoses at the same cutoff date for the pre-DACA period. The difference in diagnosis rates at the cutoff was a statistically insignificant 0.4 percentage points. All our tests suggested that we can isolate the causal effects of mothers' DACA eligibility at the birthdate cutoff.

9. We also confirmed that there were no discernible differences in diagnoses at the same birthdate cutoff among children of mothers who were covered by standard Medicaid at the time they gave birth. These mothers should not be affected by DACA eligibility, given that standard Medicaid in Oregon is open only to low-income U.S. citizens and long-term lawful permanent residents. This check again underscores that, in the absence of changes in DACA eligibility, there is no evidence of confounders associated with having a mother who is born just before or after the cutoff date that could explain the observed post-DACA difference in child mental health outcomes.

10. Because health care utilization could be affected by immigration status, we also checked for the possibility that the drop in diagnoses reflects a DACA-induced change in health care visits, which could affect the probability of detection of mental health disorders. We found no support for this. Mothers' DACA eligibility had no

discernible impact on their children's health care utilization during the post-DACA period, as measured either by the total number of visits, the number of emergency room (ER) and urgent care visits, or the number of outpatient visits. Consistent with this, in a non-prespecified analysis, we also found that the effects of mothers' DACA eligibility on child mental health were similar when we restricted the sample to children who had at least one health care visit in the post-DACA period.

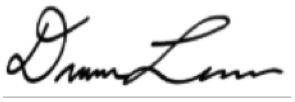
11. Our results provide causal evidence supporting the theory that parental unauthorized immigration status has important intergenerational effects on the well-being and development of children in immigrant families. Protecting unauthorized immigrants from deportation led to immediate and sizable improvements in the mental health of their U.S. citizen children. This suggests that parents' unauthorized status is a substantial stressor that stymies normal child development and perpetuates health inequalities by transferring parental disadvantages to children.

12. Our findings have important implications for DACA policy. Prior research has suggested that early childhood exposure to stress and adversity does not only cause poor health and impaired development in the short term; the issues can also persist into adulthood. Anxiety and psychosocial stress have been identified as risk factors for depression, substance abuse, cardiovascular diseases, and obesity. Treatment of mental disorders also carries considerable economic costs. Prior research indicates that they account for the highest total health care expenditures of all children's medical conditions and that they are associated with poor long-term outcomes for school performance and welfare reliance. By reducing mental health problems, deferred action can therefore have important multiplier effects through improving the future prospects of the children of unauthorized immigrants.

13. Conversely, the termination of recipients' DACA is likely to erode the mental health gains we measured and lead to corresponding economic and public health costs in both the short-term and long term.

We declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was executed on December 20, 2017 in Stanford, California.

JENS HAINMUELLER



DUNCAN LAWRENCE