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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

REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

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

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INTRODUCTION

Plaintiffs have asked the Court to certify a nationwide class of Deferred Action for Childhood Arrivals ("DACA") recipients who seek the same relief the Court has already granted to Plaintiff Jesús Alonso Arreola Robles ("Mr. Arreola"). Plaintiffs have satisfied their burden to show that the Rule 23 requirements are met. The proposed class members—DACA recipients who, like Mr. Arreola, have had or will have their DACA and employment authorization documents ("EADs") arbitrarily and abruptly stripped away, despite having no disqualifying criminal convictions—all suffer the same harm. The government does not dispute that it has a nationwide practice of terminating DACA and work authorization without notice or process, notwithstanding recipients' continued eligibility for the program. Nor does it contest that that the DACA criteria and program rules govern USCIS's DACA determinations and are applicable to all DACA recipients, or that Plaintiffs all seek the same injunctive relief barring the government's unlawful practices.

Defendants' opposition instead rests on mischaracterizations of Plaintiffs' class definition, as well as merits arguments that the Court has already rejected. Moreover, the government presents erroneous and misleading information about Plaintiffs' cases in an attempt to make them appear dissimilar to the class. Even if this information were accurate, however, Plaintiffs would still be suitable class representatives. Indeed, Defendants' mischaracterizations only underscore the value of notice, a reasoned explanation, and an opportunity to be heard.

BACKGROUND

Plaintiffs seek certification of the following Notice Class of individuals:

> All recipients of Deferred Action for Childhood Arrivals ("DACA") who, after January 19, 2017, have had or will have their DACA grant and employment authorization revoked without notice or an opportunity to respond, even though they have not been convicted of a disqualifying criminal offense.

Dkt. 39-1, Class Cert. Mot. at 3. Plaintiffs ask the Court to declare unlawful and

enjoin Defendants' policy and practice of automatically terminating class members' DACA and work authorization without prior notice, a reasoned explanation, and an opportunity to be heard, including where Defendants have terminated DACA based solely on a Notice to Appear ("NTA") charging unlawful presence in the U.S. *See id.* at 21-22.

Three critical errors are repeated throughout Defendants' opposition:

First, Defendants incorrectly state that Plaintiffs have excluded from the Notice Class certain individuals who had their DACA terminated based on a determination that they are enforcement priorities. *See* Dkt. 53, Class Cert. Opp. at 5. To the contrary, the plain terms of the class definition include *all* individuals whose DACA was terminated without process and who lack disqualifying criminal convictions—including individuals deemed enforcement priorities. *See* Class Cert. Mot. at 3. Plaintiffs separately pled, but have not moved for certification of, an Enforcement Priority Class of individuals whose DACA was terminated based on a determination that they are enforcement priorities. *See* Dkt. 32, Am. Compl. ¶ 169. Although individuals arbitrarily labeled enforcement priorities are included in both classes, the Notice Class claims challenge the *process* by which the termination of their DACA was effectuated, whereas the Enforcement Priority Class claims challenge the enforcement priority designation as an appropriate basis for the termination.

Second, Defendants rehash their prior unsuccessful arguments that the DACA Standard Operating Procedures ("SOPs") permit termination without notice in two situations encompassed by the class definition. Defendants assert that the SOPs allow for automatic termination of DACA whenever immigration authorities issue an NTA initiating removal proceedings. *See* Class Cert. Opp. at 11-12. However, the Court already rejected this argument, holding that there is "no provision in the DACA SOPs that permits automatic termination as a result of an NTA based on unauthorized presence." PI Order at 11. Instead, there is "only one narrow circumstance in which automatic termination based on an NTA is appropriate" and that is "when an NTA is

issued after USCIS determines that a disqualifying offense or public safety concern is deemed to be 'Egregious Public Safety' ('EPS')." *Id.*; *see also* Dkt. 16-4, Kwon Decl. ¶ 21, Ex. 20 ("DACA SOPs") at 136-38; Dkt. 40-1, Class PI Mot. at 15. In all other cases, the default termination procedures apply, which include notice and an opportunity to be heard. *See* PI Order at 11; *see also* Class PI Reply at 7-8.

Further, Defendants contend that not all class members are entitled to the same relief, because in their erroneous view the SOPs permit automatic termination whenever an individual is labeled an "enforcement priority." *See* Class Cert. Opp. at 15. But Defendants' argument, even if it were correct, is irrelevant. The agency's own rules expressly state that individuals like Plaintiffs and proposed class members who continue to meet the DACA program's criteria are *not* enforcement priorities. *See* Class PI Reply at 6-7; Class PI Mot. at 4, 15 n.11; *see also Colotl v. Kelly*, 261 F. Supp. 3d 1328, 1343 (N.D. Ga. 2017), *reconsideration denied*, No. 17-cv-1670-MHC, 2017 WL 4956419 (N.D. Ga. July 31, 2017). Accordingly, it would be a violation of Defendants' own rules to designate DACA-eligible individuals as enforcement priorities. *See* Am. Compl. ¶¶ 160-62, 167, 185. In any event, the SOPs require notice and an opportunity to respond in all cases other than those in which USCIS has made an EPS determination. *See Gonzalez Torres v. U.S. Dep't of Homeland Sec.*, No. 17-cv-1840, 2017 WL 4340385, at *3 (S.D. Cal. Sept. 29, 2017); Class PI Reply at 6-8.[1]

Third, Defendants misrepresent facts about Plaintiffs and members of the proposed class in an unsuccessful effort to make them appear dissimilar. *See* Class Cert. Opp. at 2-4.[2] Notably, Defendants wrongly assert that Plaintiffs "committ[ed] crimes," even though *none* of the Plaintiffs have been convicted of the crimes alleged,

[1] *See also* DACA SOPs at 138 (directing adjudicators to refer the case to USCIS headquarters to determine whether termination is appropriate through issuance of a Notice of Intent to Terminate).

[2] As explained below, even if Defendants' misrepresentations were accurate, they would be immaterial to whether class certification is appropriate, as Defendants do not allege that Plaintiffs or other affected individuals have been convicted of a disqualifying crime.

and USCIS did not terminate their DACA on that basis, but instead terminated based on issuance of an NTA. *See* Class Cert. Mot. at 7-8.

- Plaintiff José Eduardo Gil Robles ("Mr. Gil") was never charged with any felonies, contrary to the government's allegations. In fact, Mr. Gil was charged with a single misdemeanor traffic violation for driving on a cancelled license. *See* Declaration of Maria Teresa Trafton ¶¶ 2-3, Exs. A-B. Nor has Mr. Gil been convicted of that charge. In fact, the case has been continued and the charge will be dismissed if Mr. Gil completes probation. *Id.*¶ 4, Ex. C.
- Although Plaintiff Ronan Carlos DeSouza Moreira ("Mr. Moreira") was initially arrested on suspicion of forgery, he was never charged with that crime. Instead, he was charged with a misdemeanor for possession of an altered identification document. Hausman Decl. ¶ 2, Ex. A.
- The government also misleadingly suggests that proposed class member Felipe Abonza Lopez is somehow differently situated than Plaintiffs or other proposed class members because he was arrested on suspicion of alien smuggling. However, like Mr. Arreola, Mr. Abonza Lopez was not charged with any crime, and USCIS terminated his DACA based on the issuance of an NTA charging him with unlawful presence. *See* Dkt. 39-13, Eiland Decl. ¶ 11.
- Proposed class member Daniel Ramirez Medina likewise was never charged with any crime, and USCIS terminated his DACA based on an NTA charging him with unlawful presence. *See Medina v. U.S. Dep't of Homeland Sec.*, No. 17-cv-218, 2017 WL 2954719, at *5 (W.D. Wash. Mar. 14, 2017), *report and recommendation adopted*, 2017 WL 1101370 (W.D. Wash. Mar. 24, 2017). He has steadfastly denied having any gang affiliation. *See id.*

Notwithstanding the government's misrepresentations and attempts to rely on improper post hoc rationalizations, each of these individuals is a member of the proposed class, has not been convicted of any disqualifying offense, and remains eligible for DACA.

ARGUMENT

I. The Court Should Provisionally Certify the Proposed Class for Purposes of Entering a Classwide Preliminary Injunction.

A. The Proposed Class Satisfies the Requirements of Rule 23(b)(2).

Notwithstanding Defendants' arguments to the contrary, there is no question that *all* class members have suffered the same injury here: the termination of their DACA and work authorization without process.[3] And all class members seek declaratory and injunctive relief under the APA and Due Process Clause prohibiting those practices. Thus, Plaintiffs easily satisfy Rule 23(b)(2). *See* Class Cert. Mot. at 21-23 (citing, *inter alia*, *Rodriguez v. Hayes*, 591 F.3d 1105, 1125 (9th Cir. 2010) (certification under Rule 23(b)(2) "does not require [the court] to examine the viability or bases of class members' claims for declaratory and injunctive relief," but only to look at the uniformity of relief requested)).

Defendants rely on merits arguments going to Plaintiffs' claim that the government's termination practices violate the DACA rules, attempting to suggest that certain class members are not entitled to the same relief (Class Cert. Opp. at 15), but these arguments have for the most part been previously raised and rejected. As discussed above, this Court has already rejected the government's argument that the DACA "SOPs" permit automatic termination for individuals issued an NTA charging only unlawful presence. PI Order at 11. Instead, as this Court already has held, under the SOPs, individuals issued such NTAs are entitled to notice and an opportunity to be

[3] The cases Defendants cite on injury are wholly distinguishable. *See, e.g.*, *Santos v. TWC Admin. LLC*, No. 13-cv-04799, 2014 WL 12558009, at *11 (C.D. Cal. Aug. 4, 2014) (proposed class included uninjured parties where defendants did not use challenged method for calculating commissions and bonuses during the entire class period); *Colapino v. Esquire Deposition Servs., LLC*, No. 09-cv-07584, 2011 WL 913251, at *4 (C.D. Cal. Mar. 8, 2011) (proposed class challenging fraudulent reporting by court reporting firms included uninjured parties—i.e., attorneys reimbursed by their clients for transcription fees); *Flores v. CVS Pharmacy, Inc.*, No. 07-cv-05326, 2010 WL 3656807, at *6-7 (C.D. Cal. Sept. 7, 2010) (proposed class of pharmacy employees was overbroad where some alleged class members were in fact retail store employees).

heard prior to termination. *Id.*

Similarly, contrary to the government's contentions, USCIS may not deny class members process by labeling them "enforcement priorities" because the DACA rules provide that DACA-eligible individuals are, by definition, *not* enforcement priorities. *See* Class PI Reply at 6-7. Critically, the class is defined to include only individuals who are eligible for DACA—and the DACA Memorandum explains that DHS's enforcement resources should not be expended on "these low priority cases"—referring to individuals who meet the eligibility criteria—and instead "on people who meet our enforcement priorities." Napolitano Memo, Kwon Decl. ¶ 10, Ex. 9 at 1.[4] Accordingly, because class members cannot properly be labelled "enforcement priorities," Defendant's argument is not only incorrect, it is irrelevant.

And although the SOPs permit automatic termination in EPS cases, any difference in treatment of EPS cases under USCIS's rules is irrelevant to Plaintiffs' constitutional due process claim, as well to Plaintiffs' APA claims that termination based on an NTA charging unlawful presence is arbitrary and capricious, and that Defendants impermissibly changed position without providing a good reason. Moreover, as a practical matter, most individuals who meet the EPS definition are also convicted of a disqualifying crime and would therefore be excluded from the class definition. *See* Kwon Decl. ¶ 22, Ex. 21 at 3-4. Notably, Defendants have not pointed to a single example of someone who would fall within the class definition but who received a Termination Notice from USCIS stating an EPS concern as the basis for termination.[5]

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[4] Further, as discussed above, the SOPs do not permit automatic termination for individuals deemed "enforcement priorities." As this Court has held, the SOPs require notice *except* in cases where USCIS has determined that there is an Egregious Public Safety concern and follows the appropriate procedures for termination without notice. *See* DACA SOPs at 138; PI Order at 11; *see also* Class PI Reply at 6-8; *Gonzalez Torres*, 2017 WL 4340385, at *3.

[5] Should the Court have concerns about over-breadth, however, the Court could modify the class definition to create a subclass of individuals who received or will

Nor are individualized "mini-trials" required to determine whether an individual is in fact a class member and entitled to injunctive relief, as Defendants claim. *See* Class Cert. Opp. at 15. Rather, it is administratively feasible to determine who is a class member based on clear and objective criteria and by reference to the government's own records: the individual (1) has had or will have had his or her DACA terminated without issuance of a Notice of Intent to Terminate and an opportunity to respond to the reasons for termination; and (2) the individual has not been convicted of a disqualifying crime set forth in the DACA Memorandum or SOPs. *See* Class Cert. Mot. at 19-20 (citing cases holding that administrative burden required to identify class members does not undermine certification).

Finally, Defendants complain that Jessica Colotl[6] is no longer eligible for relief because she already received notice and an opportunity to respond to her DACA termination as a result of a preliminary injunction order, and that two DACA recipients who were placed in removal proceedings had not yet received termination notices from USCIS. *See* Class Cert. Opp. at 16. But it is noncontroversial that individuals will enter and exit the class as their circumstances change over time. The class *as a whole* will continue to be subject to Defendants' unlawful termination practices, in violation of their APA and due process rights, regardless of whether every individual class member continues to need relief. *Perez-Olano v. Gonzalez*, 248

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receive Termination Notices citing an EPS determination. *See Armstrong v. Davis*, 275 F.3d 849, 871 n. 28 (9th Cir. 2001), *abrogated on other grounds by Johnson v. California*, 543 U.S. 499 (2005) ("Where appropriate, the district court may redefine the class . . . ."); *Wolph v. Acer Am. Corp.*, 272 F.R.D. 477, 482–83 (N.D. Cal. 2011) (discussing courts' broad discretion to modify a class definition and redefining class).

The SOPs also permit USCIS to automatically terminate the DACA of individuals who travel outside the United States after August 15, 2012, without first receiving permission to do so through a grant of advance parole. *See* Kwon Decl. ¶ 20, Ex. 19 at Q57. Plaintiffs did not intend to include these individuals in the class. The Court may modify the class definition to exclude this likely very small number of individuals.

[6] Even if Ms. Colotl were presently unable to secure relief through an injunction in this case, her experience is nonetheless relevant to demonstrate the numerosity of the proposed class and the existence of a nationwide policy.

F.R.D. 248, 259 (C.D. Cal. 2008) (Rule 23(b)(2) is well suited for cases where the class encompasses a "shifting population") (internal quotation marks omitted).

B. Plaintiffs' Claims Present Common Questions with Common Answers.

Defendants likewise fail to refute Plaintiffs' showing of commonality. *See* Fed. R. Civ. P. 23(a)(2). Plaintiffs argue that Defendants' practice of terminating DACA and work authorization without process violates the APA and the Due Process Clause. *See, e.g.*, *Perez-Olano*, 248 F.R.D. at 257 (even "a single" common legal issue is sufficient to satisfy the commonality requirement). These common legal questions drive resolution of the case. Indeed, should the Court agree that Defendants' termination practices are unlawful, all class members will benefit from the requested relief: a nationwide injunction preventing termination of their DACA pursuant to those practices. Thus, Plaintiffs satisfy Rule 23(a)(2). *See* Class Cert. Mot. at 14-15.

The government's argument as to commonality is largely redundant with its arguments as to Rule 23(b)(2), s*ee* Class Cert. Opp. at 20-21, and Defendants' attempts to pick out differences amongst class members fail for the same reasons set forth above. *See* Point I.A., *supra*. Defendants also contend, wrongly, that the class lacks commonality because DACA ultimately involves an individualized discretionary determination. Class Cert. Opp. at 20. But Plaintiffs are not challenging any ultimate exercise of discretion, and resolving Plaintiffs' claims does not involve individualized balancing. Instead, a single common answer—a nationwide injunction barring the government's unlawful practices permitting automatic, process-less termination—applies to the entire class.[7] *See Walters v. Reno*, 145 F.3d 1032, 1046 (9th Cir. 1998) (finding commonality satisfied with respect to process claims notwithstanding

[7] The government also notes that some class members may have removal orders, *see* Class Cert. Opp. at 21, but that is irrelevant, as such individuals may still be eligible for DACA and still may challenge its unlawful revocation. *See* Napolitano Memorandum at 3. The government also complains that the class may include individuals who are granted immigration relief or deported, but that is absurd: individuals who obtain a lawful immigration status or are deported have no need for DACA.

"[d]ifferences among the class members with respect to the merits" of their cases).

C. The Proposed Class Is So Numerous that Joinder Is Impracticable.

Defendants have failed to counter Plaintiffs' showing of numerosity. *See* Fed. R. Civ. P. 23(a)(1). Plaintiffs have identified and submitted evidence of a sizeable number of affected individuals across the country—now at least 22 DACA recipients in 10 states[8]—as well as unrebutted evidence that Defendants engage in a nationwide practice of terminating DACA without process. *See* Eiland Decl. ¶¶ 3-14; Second Declaration of Katrina L. Eiland ("Second Eiland Decl.") ¶¶ 3-8. This practice has likely already ensnared dozens of other still-eligible DACA recipients, *see* Doc. No. 23-2 ¶ 4 (confirming that there have been hundreds of terminations without notice), and places tens of thousands more at risk of losing their DACA. Notably, although Defendants possess records of all DACA terminations, Defendants have not even alleged, much less provided evidence, that the actual number of challenged terminations is insufficiently numerous. *See Civil Rights Educ. & Enf't Ctr. v. Hosp. Props. Trust*, 317 F.R.D. 91, 100 (N.D. Cal. 2016) (plaintiffs seeking only injunctive and declaratory relief "may rely on [the] reasonable inference[] . . . that the number of unknown and future members . . . is sufficient to make joinder impracticable") (internal quotation marks omitted). In addition, the prospective nature of the relief Plaintiffs seek makes joinder of all class members impracticable regardless of class

[8] Plaintiffs previously submitted evidence documenting 17 DACA recipients who have already had their DACA terminated without process, as well as two *additional* individuals who received NTAs but had not yet been terminated by USCIS. Eiland Decl. ¶¶ 3-15. Defendants suggest that the two additional individuals were included in the 17. This is not only incorrect—*see* Eiland Decl. ¶ 15—but Defendants ignore that their experiences support a reasonable inference that the challenged practices will harm additional DACA recipients in the future. Moreover, in the weeks since Plaintiffs filed this motion, Plaintiffs have learned of five additional individuals who have had their DACA terminated without process despite remaining eligible, bringing the total number of known affected DACA recipients to 22. *See* Second Eiland Decl. ¶¶ 3-8. Finally, Defendants' suggestion that Mr. Gil, Mr. Moreira, and other proposed class members are not class members because they are enforcement priorities is not only flat wrong, but it improperly relies on a post hoc rationale. *See supra* at 4; *see* Class PI Reply at 2, 5 n.2.

size. *See* Class Cert. Mot. at 13 (collecting cases). This is even more so now that the government has resumed accepting renewal applications.[9] Finally, the characteristics of the proposed class—a geographically dispersed and growing group of young adults who have abruptly lost their means of financial support—further support the impracticability of joining all of its members. *See Jordan v. Cty. of Los Angeles*, 669 F.2d 1311, 1319 (9th Cir. 1982), *vacated on other grounds*, 459 U.S. 810 (1982) (explaining that the geographical diversity of class members, difficulty of filing separate suits, and the fact that only injunctive or declaratory relief is sought weigh in favor of concluding that joinder is impracticable).

Courts in the Ninth Circuit and elsewhere frequently certify classes based on evidence of a similar number of known individuals, particularly where, as here, the class includes unknown present and future class members. *See, e.g.*, *Saravia v. Sessions*, No. 17-cv-03615, 2017 WL 5569838, at *20-21 (N.D. Cal. Nov. 20, 2017) (certifying nationwide class of unaccompanied minors based on evidence of 15 known members and likelihood of future members); *Chief Goes Out v. Missoula Cty.*, No. 12-cv-155, 2013 WL 139938, at *3 (D. Mont. Jan. 10, 2013) (numerosity satisfied by 18 current members and likelihood of future members); *McMillon v. Hawaii*, 261 F.R.D. 536, 543 (D. Haw. 2009) (numerosity satisfied based on 10 identifiable members, as well as current and future, unidentified members); *see also Bruce v. Christian*, 113 F.R.D. 554, 557, 559 (S.D.N.Y. 1986) (certifying class of "present and future" public housing tenants with 16 identified members).[10]

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[9] *See* USCIS, Deferred Action for Childhood Arrivals: Response to January 2018 Preliminary Injunction, www.uscis.gov/humanitarian/deferred-action-childhood-arrivals-response-january-2018-preliminary-injunction (visited Feb. 8, 2018).

[10] Defendants' authority is not to the contrary. *See* Class Cert. Opp. at 18 (citing *Rannis v. Recchia*, 380 Fed. App'x 646, 651 (9th Cir. 2010) (affirming numerosity finding for a class of 20 members); *Harik v. Cal. Teachers Ass'n*, 326 F.3d 1042, 1051 (9th Cir. 2003) (reversing certification of classes of union feepayers containing known membership of only seven, nine, and ten, respectively; no evidence supporting the existence of additional class members or other practicability concerns); *Santos v. TWC Admin. LLC*, No. 13-cv-04799, 2014 WL 12558009, at *14 (C.D. Cal. Aug. 4,

D. The Named Plaintiffs Satisfy Adequacy and Typicality.

The government has failed to identify any material differences or actual conflicts between Plaintiffs and the proposed class members that would defeat Plaintiffs' showing of typicality and adequacy. *See* Fed. R. Civ. P. 23(a)(3), (4). Defendants' arguments rest on the same flawed premises discussed above—i.e., that Plaintiffs are not members of the proposed class (based on Defendants' mischaracterization of their facts and the class definition) and that they are not entitled to process. Both of these arguments fail for the reasons discussed above. *See* Point I.A.; *see also* Class PI Reply at 1-2, 4-10.

The Ninth Circuit has emphasized that the typicality requirement is "permissive" and requires only that the representative's claims are "reasonably coextensive with those of absent class members; they need not be substantially identical." *Rodriguez*, 591 F.3d at 1124 (internal quotation marks and citation omitted); *see also id*. (certifying class of noncitizens detained for more than six months without a bond hearing even where proposed class members were "detained under different statutes" and were "at different points in the removal process"). "[T]ypicality is not defeated if there are legal questions common to all class members." *Ali v. Ashcroft*, 213 F.R.D. 390, 409 (W.D. Wash. 2003), *aff'd*, 346 F.3d 873 (9th Cir. 2003), *vacated on other grounds*, 421 F.3d 795 (9th Cir. 2005). Here, Plaintiffs easily satisfy this test: Plaintiffs and proposed class members have suffered the identical injury—termination of their DACA and EADs despite not being disqualified—and they bring common claims under the APA and the Due Process Clause challenging those terminations as unlawful.[11]

2014) (employing reasonable inferences to find that class was sufficiently numerous)).

[11] Even if the DACA rules permitted termination without process in some limited circumstances covered by the class definition, it would not defeat typicality or adequacy. Indeed, as explained above, it could only possibly impact Plaintiffs' claim based on the SOPs, which is just one of the several reasons why Defendants' actions violate the APA, and it would not undermine Plaintiffs' procedural due process claim.

Similarly, Defendants have pointed to no reason why Plaintiffs and proposed class members have divergent interests, such that Plaintiffs are inadequate representatives. Although Defendants state that some current members of the proposed class may be able to reapply for DACA or seek to have their DACA reinstated through other means, they fail to explain how this could create any antagonistic interests. *See Cummings v. Connell*, 316 F.3d 886, 896 (9th Cir. 2003) ("[T]his circuit does not favor denial of class certification on the basis of speculative conflicts."). Moreover, any individuals granted renewals are at risk of having their DACA unlawfully terminated once again unless Defendants' practices are enjoined. Finally, as explained above, it is routine for some individuals to enter and exit the class as new individuals are harmed and claims become moot. *See* Point I.A., *supra*.

E. Nationwide Certification Is Appropriate in Light of Defendants' Unlawful Nationwide Conduct.

Finally, Defendants present no evidence that undermines the appropriateness of nationwide certification where, as here, the government admittedly engages in the challenged practice regardless of location, and has already unlawfully terminated DACA in at least 10 states. *See* Class Cert. Mot. at 22-23; Second Eiland Decl. ¶¶ 3-8. Instead, Defendants cite authority that does not support its position.[12] In fact, courts routinely certify nationwide classes in immigration cases where, as here, the evidence supports a nationwide practice. *See Saravia*, 2017 WL 5569838, at *20; *Perez-Funez v. Dist. Dir., I.N.S.*, 611 F. Supp. 990, 1000 (C.D. Cal. 1984); *Gorbach v. Reno*, 181 F.R.D. 642, 644 (W.D. Wash. 1998); *Arnott v. U.S. Citizenship and Immigration Servs.*, 290 F.R.D. 579, 588-89 (C.D. Cal. 2012).

CONCLUSION

The Court should grant Plaintiffs' motion for class certification.

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[12] *See Califano v. Yamasaki*, 442 U.S. 682, 702-03 (1979) (affirming nationwide class certification and holding that appropriateness of nationwide certification should be evaluated on the facts of the case); *United States v. Mendoza*, 464 U.S. 154, 159-64 (1984) (evaluating non-mutual collateral estoppel against the government); Class Cert. Opp. at 5-6 (citing cases in which plaintiffs did not seek to certify a nationwide class).

Dated: February 12, 2018

Respectfully submitted,
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