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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

INLAND EMPIRE – IMMIGRANT YOUTH COLLECTIVE and JESUS ALONSO ARREOLA ROBLES, on behalf of himself and others similarly situated, Plaintiff, v. KIRSTJEN NIELSEN, Secretary of Homeland Security, *et al.*, Defendants.	Case No. 5:17-cv-2048- PSG-SHK **DEFENDANTS' AMENDED NOTICE OF MOTION & MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS AMENDED COMPLAINT** **Judge**: Hon. Philip S. Gutierrez **Courtroom**: 6A **Hearing**: April 16, 2018 **Time**: 1:30pm

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AMENDED NOTICE OF MOTION

PLEASE TAKE NOTICE that on April 16, 2018 at 1:30 p.m., or as soon thereafter as the parties may be heard, Defendants will bring for hearing a motion to dismiss. On February 5, 2018, Defendants filed a Notice of Motion and Memorandum of Points and Authorities in Support of Defendants' Motion to Dismiss Amended Complaint, which noticed a hearing date of March 26, 2018 [Dkt. No. 55]. This amended motion is based on the same memorandum of points and authorities filed at Dkt. No. 55, attached hereto, as well as all pleadings, papers and files in this action, and such oral argument as may be presented at the hearing on the motion. The hearing will take place before the Honorable Philip S. Gutierrez in Courtroom 6A, 350 W 1st Street, Suite 4311, Los Angeles, CA, 90012. This amended motion is made following conference between counsel for the Plaintiffs and Defendants, which took place via telephone on February 14, 2018, in which Plaintiffs' counsel indicated a conflict with the first hearing date.

DATED: February 14, 2018

Respectfully Submitted,

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MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

On December 21, 2017, organizational plaintiff Inland Empire – Immigrant Youth Collective ("Inland Empire" or "IEIYC") and individual Plaintiffs Jesús Alonso Arreola Robles ("Mr. Arreola"), José Eduardo Gil Robles ("Mr. Gil"), and Ronan Carlos De Souza Moreira ("Mr. Moreira"), filed an amended class action complaint [Dkt. No. 32], following Defendants' restoration of Plaintiff Arreola's Deferred Action for Childhood Arrivals ("DACA") and employment authorization document ("EAD"), per this Court's November 21, 2017, Order. [Dkt. No. 31].

Plaintiffs' amended complaint alleges Defendants "have targeted numerous DACA recipients and unlawfully revoked the grants of deferred action and work permits they have received even though these individuals have abided by all the program rules and have not engaged in any conduct that would disqualify them from the program." Dkt. No. 32 at ¶ 1. On this basis, Plaintiffs seek the extraordinary relief of forcing DHS to reinstate their DACA and enjoining the Government from terminating DACA in the future for the individual plaintiffs as well as for a nationwide class of those similarly situated.

However, Plaintiffs' allegations fall apart when examined in full context. Each Plaintiff was arrested for engaging in criminal activities, determined to be an enforcement priority, and placed into removal proceedings, which had the unremarkable effect of terminating their DACA. Every step of the process Defendants followed is accounted for in DACA policy and immigration law, and Plaintiffs were forewarned of the risk to their DACA for engaging in criminal activity. Plaintiffs offer no support for their claim that Defendants are "targeting" DACA grantees for wholesale automatic termination.

The Court should dismiss Plaintiffs' amended complaint as a challenge to the Government's authority to initiate removal proceedings, which this Court lacks jurisdiction to review. Furthermore, Congress has made clear that any claims the Court may find cognizable, including constitutional claims, related to the initiation or conduct of removal proceedings against Plaintiffs, must be raised *in those proceedings* before an

immigration judge, and appealed to a court of appeals through the for review process if necessary. If the Court were to find jurisdiction to hear these challenges to the initiation of removal proceedings, it should still dismiss for failing to state a claim for which relief can be granted. Deferred action is an entirely discretionary grace, not an immigration benefit nor a protection from removal.

BACKGROUND

When U.S. Immigration and Customs Enforcement ("ICE") or U.S. Customs and Border Protection ("CBP") issues a notice to appear ("NTA") to a DACA grantee, regardless of the reason, there is no requirement in the DACA SOP or elsewhere for USCIS to make a separate decision to terminate the individual's DACA or EAD.[1] Rather, the decision to issue an NTA to an individual with DACA *is* the decision to no longer defer action against that individual, and the charge selected for the NTA does not have to reflect DHS's full reasoning. Nothing restricts DHS's authority to issue an NTA because someone was previously found to warrant a favorable exercise of prosecutorial discretion in the form of deferred action, nor is a criminal conviction or criminal charge necessary to justify termination of DACA. While the Napolitano Memo and DACA SOP identify and explain threshold criteria for DACA consideration, nothing limits DHS's discretion to grant, deny, or terminate DACA on a case by case basis.[2] Nor is the DACA SOP the only authority establishing the process by which deferred action terminates.

Plaintiff Arreola had his DACA and EAD terminated automatically through the issuance of an NTA, after CBP law enforcement officers encountered him engaged in

[1] Defendants incorporate by reference the explanation of the DACA policy, the EAD application process for individuals with no lawful status, and the process by which removal proceedings are initiated through NTA issuance, provided in Defendants' Opposition to Plaintiffs Motion for Class Certification, Section II.A and B. Dkt. No. 53 at 7-13.

[2] In fact, USCIS may still grant DACA to an individual with a disqualifying criminal conviction, *See* Dkt. No. 53-1 at 70; or deny DACA to an individual with no criminal history. *Id.* at 38 ("Individuals may be considered for DACA upon showing that they meet the prescribed guidelines . . ."); *id*. at 78 ("USCIS lacks the authority to consider requests from individuals who are in immigration detention under the custody of ICE at the time of filing").

alien smuggling, the facts of which he conceded in an interview with Border Patrol Agents. *See* Dkt. 23-2 at 26, 56-57. Mr. Arreola's DACA and EAD were then reinstated on November 22, 2017, and on December 20, 2017, DHS issued a Notice of Intent to Terminate pursuant to this Court's Order. *See* Dkt. No. 31; Dkt. No. 32 at ¶ 87.

On September 20, 2017, Plaintiff Gil was arrested and charged with two felonies, including assault in the first degree and transferring a firearm without a background check to a prohibited person. *See* Dkt. No. 53-1 at 4-7, 9-15. On November 6, 2017, ICE issued Gil an NTA charging him with unlawful presence. *Id*. On November 14, 2017, USCIS issued him a Notice of Action, stating his DACA and EAD terminated automatically with the NTA. *See* Dkt. No. 32 at ¶ 109.

On November 3, 2017, Plaintiff De Souza was arrested for forgery in the first degree, a felony.[3] *See* Dkt. 53-1 at 17-18, 20-24. De Souza admitted to police that he had altered the expiration date on his driver's license due to it expiring. *Id*. On November 5, 2017, ICE issued De Souza an NTA charging unlawful presence, and on November 10, 2017, USCIS issued a Notice of Action informing De Souza his DACA and EAD terminated automatically with the NTA. Dkt. No. 32 at ¶ 129.

Organizational Plaintiff Inland Empire claims no injury of its own, and only prospective harm to its members. *See, e.g.*, Dkt. No. 32 at ¶ 135 ("Defendants' unlawful termination policies and practices are likely to harm IEIYC DACA recipients.").

SUMMARY OF THE ARGUMENT

Regardless of how the arguments are framed, Plaintiffs directly challenge DHS's authority to initiate removal proceedings, which this Court should dismiss for lack of subject matter jurisdiction pursuant to the Administrative Procedure Act ("APA") and 8 U.S.C. § 1252. By definition, a demand to restore deferred action terminated by the initiation of removal proceedings challenges the agency's determination to initiate removal proceedings. Any interpretation of these statutes that permits district court

[3] Plaintiffs incorrectly assert that Plaintiff De Souza was arrested for "possession of an altered identification document—a misdemeanor." Dkt. No. 32 at ¶ 101.

challenges to actions inextricably linked to the initiation of removal proceedings would run counter to Congress's intent, to Supreme Court case law, and to the law of this Circuit. Plaintiffs' due process challenges must also fail, because they cannot show a protected interest in DACA or EADs. In fact, reinstating Plaintiffs' EADs following the institution of removal proceedings would violate duly-enacted DHS regulations that operate independent of, and superior to, DACA policy.

Additionally, Plaintiffs Arreola and Inland Empire lack standing in this matter.

Most importantly, and contrary to Plaintiffs' unsupported allegations, DHS issued Plaintiffs NTAs based on individualized determinations that Plaintiffs' criminal conduct rendered them enforcement priorities, and it did so with the knowledge of each Plaintiffs' DACA. Thus, the decision to initiate removal proceedings preceded the consequence of Plaintiffs' DACA and EAD terminating, and no reasonable argument can be made that the terminations did not arise out of that decision, such that 8 U.S.C. § 1252(g) prevents this Court from reviewing either step. To the extent this Court may find Plaintiffs have any viable legal claims arising from the "decision[s] or action[s]" of DHS to initiate removal against these Plaintiffs, Congress enacted 8 U.S.C. §§ 1229a and 1252 to channel those claims to an immigration court and ultimately to the appropriate court of appeals.

ARGUMENT

I. Standard of Review

A. Dismissal pursuant to Fed. R. Civ. P. 12(b)(1)

Because federal courts have limited jurisdiction, a court must dismiss any case if it lacks subject matter jurisdiction over the claims. Fed. R. Civ. P. 12(b)(1); *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978). "A federal court is presumed to lack jurisdiction in a particular case unless the contrary affirmatively appears." *Stock W., Inc. v. Confederated Tribes of the Colville Reservation*, 873 F.2d 1221, 1225 (9th Cir. 1989). The elements necessary to establish standing "must be supported in the same way as any other matter on which the plaintiff bears the burden of proof." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). Moreover, when the issue of jurisdiction is separable

from the merits of the case, no presumption of truthfulness attaches to a plaintiff's allegations, and the plaintiff bears the burden of proving that jurisdiction exists. *Thornhill Publ'g Co. v. Gen. Tel. & Elecs. Corp.*, 594 F.2d 730, 733 (9th Cir. 1979).

The "irreducible constitutional minimum of standing" to assert federal court jurisdiction requires "the plaintiff must have suffered an injury in fact . . . which is . . . concrete and particularized, . . . the injury has to be fairly traceable to the challenged action of the defendant, and . . . it must be likely . . . that the injury will be redressed by a favorable decision." *Lujan*, 504 U.S. at 560 (internal citations and modifications omitted). "Allegations of possible future injury do not satisfy the requirements of Art[icle] III." *Oregon Prescription Drug Monitoring Program v. U.S. Drug Enf't Admin.*, 860 F.3d 1228, 1235 (9th Cir. 2017), citing *Clapper v. Amnesty Int'l USA*, 133 S. Ct. 1138, 1141 (2013). Finally, while an imminent future harm may establish standing, the harm alleged cannot be the result of plaintiff's own unlawful conduct. *Id*. at 1042, quoting *O'Shea v. Littleton*, 414 U.S. 488, 497 (1974).

An organization suing on its own behalf must also show that the claimed injury is "both a diversion of its resources and a frustration of its mission." *La Asociacion de Trabajadores de Lake Forest v. City of Lake Fores*t, 624 F.3d 1083, 1088 (9th Cir. 2010). An organization suing on behalf of its members must show that: "(1) its members would otherwise have standing to sue in their own right; (2) the interests it seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Int'l Union, United Auto., Aerospace & Agr. Implement Workers of Am. v. Brock*, 477 U.S. 274, 282 (1986).

B. Dismissal pursuant to Fed. R. Civ. P. 12(b)(6)

To survive dismissal under Rule 12(b)(6), "the complaint must allege sufficient facts to state a claim for relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-56 (2007). Although the Court must accept as true all well-pleaded factual allegations when determining the legal sufficiency of a claim, it need not credit

"legal conclusion couched as a factual allegation." *Id.* at 555. "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). .

II. Plaintiff Inland Empire should be dismissed for lack of standing

Plaintiff Inland Empire lacks standing on its own and lacks standing on behalf of its members. Inland Empire describes the work that it has done for and with DACA recipients, both as members and as clients, since the policy's inception. *See* Dkt. No. 32 at 29-31. However, Inland Empire makes no claim that the Government's actions have diverted its resources or frustrated its mission in the service of members who have lost DACA without advanced notice or an opportunity to respond. *See La Asociacion de Trabajadores de Lake Forest*, 624 F.3d at 1088. Nor does Inland Empire identify a single member of its organization who has lost DACA with or without advanced notice. In fact, Plaintiff is clear that its sole concern in this matter is the prospective harm its members may possibly face in the future. Dkt. No. 32 at ¶ 135 ("Defendants' unlawful termination policies and practices are likely to harm IEIYC DACA recipients."); *Or. Prescription Drug Monitoring Program*, 860 F.3d at 1235.

Thus, Inland Empire has not shown organizational injury, and it may not represent its individual members unless those members themselves would have standing as plaintiffs, and *then* only if those individual members would not be required to participate in the lawsuit. *Brock*, 477 U.S. at 282. Here, Plaintiffs' amended complaint does not establish standing for even one of Inland Empire's members. Even if it did, the very fact-specific inquiry necessary to determine why such a fictional plaintiff lost his or her DACA, and whether he or she would be entitled to additional process before such termination, would require that person to participate in the lawsuit. Plaintiffs offer no rationale to overcome these requirements. Furthermore, while Inland Empire alleges future potential harm to its members even if they do not commit any disqualifying conduct, the only present harm plaintiffs allege in their complaint is DACA termination

that was based on the unlawful conduct of the plaintiffs.[4] And a plaintiff may not assert standing based on future harm that would only occur if the plaintiff first engages in unlawful behavior. *Hodgers-Durgin, v. de la Vina*, 199 F.3d 1037, 1042 (9th Cir. 1999). Plaintiffs offer no examples of a DACA recipient whose DACA automatically terminated without having first engaged in criminal activity. Thus, they show no basis for standing on the premise that such an action might occur to one of their members sometime in the future. Because Plaintiff Inland Empire fails to meet the standing requirements for an individual or an organization, it should be dismissed from this action.

III. Plaintiff Arreola Robles should be dismissed from this action for lack of standing and because his claim is no longer ripe

Because Plaintiff Arreola's DACA and EAD were reinstated on November 22, 2017, pursuant to this Court's Order, and he subsequently filed an amended complaint on December 21, 2017, the grounds he asserted for standing in his original complaint are no longer before this Court, and he has failed to establish any injury in the amended complaint ripe for this Court's adjudication. *See* Dkt. Nos. 31, 32. As discussed in the previous section, the Court may not find standing based on the possibility of future harm to cure his present lack of standing, particularly if that possible future harm is predicated on Plaintiff's future unlawful conduct.

When "a plaintiff files a complaint in federal court and then voluntarily amends the complaint, courts look to the amended complaint to determine jurisdiction." *Rockwell Int'l Corp. v. United States*, 549 U.S. 457, 473 (2007). Thus, the fact that Plaintiff Arreola had a valid DACA grant at the time he filed his amended complaint means he lacks standing to assert any injury from the termination of his DACA in the present action.

Furthermore, where Defendants have issued Plaintiff Arreola a Notice of Intent to Terminate his DACA, along with an opportunity to respond to their intended action, the possibility that he will experience automatic termination of his DACA without such notice and opportunity in the future (or that such a termination would be based on

[4] As explained below, the particular charge of unlawful presence on each plaintiff's NTA is not the only reason the NTA was issued, and the lack of additional charges on the NTA does not infirm the process.

something other than his criminal conduct) is essentially nil. Additionally, Plaintiff Arreola's challenge to his ongoing NOIT process – intending to terminate his DACA based on the determination that he is an enforcement priority – is not ripe because Defendants' action is not final. *See* 5 U.S.C. § 704 ("Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review."); *Kings Cty. v. Surface Transp. Bd.*, 694 F. App'x 472, 473 (9th Cir. 2017) ("We have neither Constitutional jurisdiction nor statutory jurisdiction because the Declaratory Order was not final. Expressing our views regarding that order would amount to an advisory opinion, which would not resolve 'concrete legal issues, presented in actual cases, not abstractions.'") (citations omitted). Plaintiff Arreola now has the opportunity to argue to USCIS that his DACA should not be terminated. Though Defendants maintain that the decision to terminate any individual's DACA is committed to agency discretion and ultimately unreviewable, the lack of a final agency decision in Plaintiff Arreola's case is an additional basis for this Court to dismiss him from this action.

IV. This Court must dismiss the amended complaint because Plaintiffs fail to establish this Court's jurisdiction

The Court lacks jurisdiction over Plaintiff's APA and Constitutional claims. First, this Court lacks jurisdiction to review any challenge to DHS's discretionary determination to issue an NTA, which had the result of automatically terminating DACA and EAD. Second, Plaintiffs cannot state a claim because there is no protected entitlement to DACA or employment authorization. Finally, nothing in the APA or constitutional jurisprudence, nor Defendants' own policies and guidance, supports a right to review or constrain DHS's exercise of discretion or to grant Plaintiffs procedural rights other than those available through removal proceedings.

A. DHS's discretion to initiate removal proceedings and their effect on the termination of Plaintiffs' DACA is not reviewable.

The APA permits persons aggrieved by final agency action to obtain judicial review in federal court where "there is no other adequate remedy in a court." *See* 5 U.S.C. §§ 702, 704. A reviewing court shall set aside agency action found to be "arbitrary, capricious, an abuse of

discretion, or otherwise not in accordance with law," or "without observance of procedure required by law." 5 U.S.C. § 706(2)(A), (D). However, the APA precludes judicial review of agency decisions when "statutes preclude judicial review," or when the decision is "committed to agency discretion by law." 5 U.S.C. § 701(a)(1), (a)(2); *see Heckler v. Chaney*, 470 U.S. 821, 830 (1985) ("even where Congress has not affirmatively precluded review, review is not to be had if the statute is drawn so that a court would have no meaningful standard against which to judge the agency's exercise of discretion.").

Thus, there are two reasons APA jurisdiction is not available here. First, there is no separate decision to terminate DACA *in these cases* because a DHS law enforcement officer decided, in consideration of each plaintiff's criminal activity, to initiate removal proceedings and issued an NTA that automatically terminated DACA; and second, even if the Court found a separate decision was made, there is still no standard in the SOP or otherwise by which the Court may review a decision that deferring action is no longer in the Government's interest.

Additionally, the Court lacks jurisdiction over Plaintiffs' constitutional claims because Plaintiffs necessarily lack a protected constitutional interest in the process by which their DACA is terminated, because the ultimate relief they seek – deferred action – is discretionary. *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 756 (2005).

i. Judicial review is barred under 5 U.S.C. § 701(a)(1) because the INA limits review of Plaintiffs' claims, which arise from DHS's decision to commence Plaintiffs' removal proceedings.

Congress eliminated judicial review over "any cause or claim by or on behalf of any alien . . . arising from the decision or action . . . to . . . adjudicate cases . . ." 8 U.S.C. § 1252(g). The issuance of an NTA is a necessary predicate to commencing removal proceedings. 8 U.S.C. § 1229(a). Through section 1252(g), Congress explicitly precluded judicial review of any challenge *arising from* any decision or action to commence removal proceedings. *See Reno v. Am.-Arab Anti-Discrimination Comm.* ("*AADC*"), 525 U.S. 471, 483-85 (1999) (finding section 1252(g) also precludes review of the discretionary decision to *not* initiate removal proceedings); *see, e.g., Vilchiz-Soto v. Holder*, 688 F.3d 642, 644 (9th Cir. 2012) (holding section 1252(g) barred jurisdiction to review the BIA's discretionary

decision to not reopen removal proceedings to consider a DACA request).[5] The Supreme Court explained that section 1252(g) was "directed against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion." *AADC* 588 F.3d at 485 n.9; *id.* at 485 (treating "'no deferred action' decisions" as "discretionary determinations"); *cf. Silva v. United States*, 866 F.3d 938, 940 (8th Cir. 2017) (section 1252(g) precludes review of decision to execute removal order even where claim that agency lacked discretion because removal violated law).

Section 1252(g) encompasses "cause[s] or claim[s]" that *arise from* the decision "or action" to "commence proceedings" against any individual. *See, e.g., Sissoko v. Rocha*, 509 F.3d 947, 948-50 (9th Cir. 2007) (finding claim of money damages arose from decision or action to commence removal proceedings and was, thus, barred by 8 U.S.C. § 1252(g)); *see, e.g., Alcaraz v. INS*, 384 F.3d 1150, 1160-61 (9th Cir. 2004) (finding review of the reopening of removal proceedings, but not the administrative closure of proceedings, was barred from review as an action related to the decision to commence removal); *Botezatu v. INS*, 195 F.3d 311, 314 (7th Cir. 1999) ((discussing the scope of 8 U.S.C. § 1252(g) as including "various decision . . . leading up to order consequent upon final orders of deportation.") (citations and quotations omitted).[6] A DACA grant is acknowledgement that DHS is not presently pursuing removal against an individual. Thus, when DHS finds an individual has become an enforcement priority and issues an NTA, DACA will logically terminate and such consequence falls squarely within the province of section 1252(g). *See, e.g., Alcaraz*, 384 F.3d at 1160-61. To hold otherwise would render section 1252(g) a dead letter because any individual could seek to enjoin or otherwise challenge the commencement of removal proceedings through this

[5] This authority is consistent with earlier case law interpreting the 1981 Operating Instructions, a previous policy that provided guidelines for the exercise of deferred action. *See Romeiro de Silva v. Smith*, 773 F.2d 1021, 1025 (9th Cir. 1985).

[6] *Wong v. United States*, 373 F.3d 952 (9th Cir. 2004), is distinguishable from this case and *Sissoko*, where the issuance of Plaintiffs' NTAs occurred before, and were the direct cause of, termination of Plaintiffs' DACA and EADs.

type of creative pleading. *See Torres-Aguilar v. INS*, 246 F.3d 1267, 1271 (9th Cir. 2001) (holding that "a petitioner may not create the jurisdiction that Congress chose to remove simply by cloaking [a claim] in constitutional garb").[7]

Applied to the context of this case, a challenge to the decision to terminate DACA by the issuing an NTA is a necessarily a challenge that arises out of the decision or action to initiate removal proceedings because the NTA is the document that is used to initiate removal proceedings. *See* 8 U.S.C. § 1252(g). Thus, 8 U.S.C. § 1252(g) necessarily bars judicial review. *See Vilchiz-Soto*, 688 F.3d at 644.

To the extent that Plaintiffs have any viable claims, the REAL ID Act, codified at 8 U.S.C. §§ 1252(a)(5) and 1252(b)(9), bars them from raising those claims in district court, regardless of whether a final order of removal has issued. Section 1252(a)(5), entitled "[e]xclusive means of review," requires that "a petition for review filed with an appropriate court of appeals . . . shall be the sole and exclusive means for judicial review of an order of removal . . . ." 8 U.S.C. § 1252(a)(5). Section 1252(b)(9) provides "[j]udicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, *arising from any action taken or proceeding brought to remove an alien from the United States* under this subchapter shall be available only in judicial review of a final order under this section." 8 U.S.C. § 1252(b)(9) (emphasis added); *see, e.g., J.E.F.M.*, 837 F.3d at 1038 (district court lacked jurisdiction over challenge to adequacy of removal procedures, and instead court of appeals has authority to resolve questions of constitutional rights on review of a final removal order).

Importantly, the Ninth Circuit found that Section 1252(b)(9) is "a clear statutory prescription against district court review" of challenges arising from removal proceedings for plaintiffs who had not yet received final orders of removal. *See J.E.F.M.*, 837 F.3d at

[7] In analogous circumstances, the Eleventh Circuit Court of Appeals affirmed the applicability of Section 1252(g) to bar district court review of the automatic termination of discretion-based employment authorization documents following the commencement of removal proceedings, in accordance with 8 C.F.R. § 274a.14(a)(1)(ii). *See Gupta v. Holder*, No. 611CV1731ORL35GJK, 2011 WL 13174873, at *1 (M.D. Fla. Oct. 31, 2011), *aff'd sub nom. Gupta v. U.S. Atty. Gen.*, 485 F. App'x 386 (11th Cir. 2012).

1035-38 ("The minors . . . attempt to get around [section 1252(b)(9)] by claiming that they have been (*or will be*) denied meaningful judicial review in light of their juvenile status.") (emphasis added). While the Court acknowledged that "an unrepresented minor in immigration proceedings poses an extremely difficult situation," it also found "these considerations cannot overcome a clear statutory prescription against district court review. Relief is through review in the court of appeals or executive or congressional action." *Id*. at 1036-1038.[8]

Congress's intent was simple and uncontroversial: if the issue is one that can be raised in removal proceedings, and ultimately in a petition for review, then the statute precludes district court review. *See id.* at 1034 (citing H.R. Rep. No. 109-72, at 173 (statute was "intended to preclude all district court review of any issue raised in a removal proceeding")); *cf. Aguilar*, 510 F.3d at 9-10 ("Congress plainly intended to put an end to the scattershot and piecemeal nature of the review process . . . ."). This approach effectuates the general rule precluding simultaneous review of a question by both an administrative body and a federal court. *See Acura of Bellevue v. Reich*, 90 F.3d 1403, 1408-9 (9th Cir. 1996).

Here, the sequence of events could not be more clear: Plaintiffs engaged in criminal conduct, DHS determined their conduct rendered them enforcement priorities, DHS issued each an NTA, the respective NTA caused each Plaintiff's DACA and EAD to terminate, and Plaintiffs filed this challenge. There can be no doubt that DHS's discretionary decision to issue NTAs was the direct cause of Plaintiffs' DACA terminations. *See* Dkt.

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[8] The Court's previous reliance on *Singh v. Gonzales*, 499 F.3d 969 (9th Cir. 2007), to support section 1252(b)(9) applying only to a final order of removal is misplaced because that language is dicta and conflicts with the plain language of the statute. Dkt. No. 31 at 7. *Singh* brought a challenge of ineffective assistance of counsel through a habeas petition, and the Court found that the challenge was not tied to removal proceedings, so section 1252(b)(9) did not apply regardless of whether a final order had issued. *Singh*, 499 F.3d at 978-79. To interpret *Singh* as permitting district court challenges such as those raised here runs counter to Congressional intent, and would effectively excise the words "any action taken" from the statute. *See Aguilar*, 510 F.3d at 10; *cf. Martinez v. Napolitano*, 704 F.3d 620, 623 (9th Cir. 2012) (an APA claim "challeng[ing] the procedure and substance of an agency determination that is 'inextricably linked' to the order of removal" must be channeled through the petition for review process).

53-1 at 4-24. Thus, Plaintiffs' challenges necessarily arise from "action taken or proceedings brought to remove an alien," for which district courts lack jurisdiction.

ii. Judicial review of Plaintiffs' claims is also barred under 5 U.S.C. § 701(a)(2), because how and when an NTA issues is committed to agency discretion

There is no judicial review under the APA of decisions that "courts traditionally have regarded as 'committed to agency discretion.'" *Lincoln v. Vigil*, 508 U.S. 182, 192 (1993) (quoting 5 U.S.C. § 701(a)(2)). These decisions are typically unreviewable because there exists "no meaningful standard against which to judge the agency's exercise of discretion." *Chaney*, 470 U.S. at 830. This bar applies even when "the agency gives a 'reviewable' reason for otherwise unreviewable action." *ICC v. Bhd. of Locomotive Eng'rs*, 482 U.S. 270, 283 (1987) ("BLE").

The decisions committed to executive discretion include "an agency's exercise of enforcement power." *Chaney*, 470 U.S. at 831. Such judgments involve "a complicated balancing of factors which are peculiarly within [an agency's] expertise," including "whether agency resources are best spent on this violation or another, whether the agency is likely to succeed if it acts, whether the particular enforcement action requested best fits the agency's overall priorities, and, indeed, whether the agency has enough resources to undertake the action at all." *Id*. As there is "no meaningful standard against which to judge the agency's exercise of discretion" in weighing these factors, an agency's exercise of enforcement powers is "presumed immune from judicial review under § 701(a)(2)." *Id*. at 830, 832.

An agency's decision to enforce the law against a particular individual is likewise presumptively unreviewable. Just as "the decision whether or not to prosecute" presumptively "rests entirely in [the prosecutor's] discretion," *United States v. Armstrong*, 517 U.S. 456, 464 (1996) (citation omitted), an agency's decision to bring a civil enforcement action is generally not open to judicial scrutiny. Considerations such as the *Chaney* factors are equally present in enforcement decisions as in nonenforcement

decisions. *See Chaney*, 470 U.S. at 831; *see also Wayte v. United States*, 470 U.S. 598, 607-8 (1985) ("[T]he decision to prosecute is particularly ill-suited to judicial review").

One form of that broad discretion is deferred action, a "discretionary and reversible" decision to notify an alien that DHS has chosen not to seek his removal for a specific period of time. *Arpaio v. Obama*, 797 F.3d 11, 17 (D.C. Cir. 2015). Like other agency nonenforcement decisions, grants of deferred action rest on a complex balancing of policy considerations that cannot serve as "meaningful standard against which to judge the agency's exercise of discretion." *Chaney*, 470 U.S. at 831. The converse is equally true: denials of deferred action are also committed to agency discretion. *See AADC*, 525 U.S. at 485 (treating "'no deferred action' decisions" as "discretionary determinations"). Because "[g]ranting an illegally present alien permission to remain and work in this country" is fundamentally "a dispensation of mercy," there are "no standards by which judges may patrol its exercise." *Perales v. Casillas*, 903 F.2d 1043, 1051 (5th Cir. 1990) (INS's decision not to grant pre-hearing voluntary departures and work authorizations to a group of aliens was non-justiciable).

Even where an agency has promulgated regulations or provided internal guidance, decisions involving the exercise of prosecutorial discretion are generally not subject to judicial review. *See Pasquini v. Morris*, 700 F.2d 658, 659 (11th Cir. 1983) (holding that Immigration and Naturalization Service ("INS") Operating Instructions regarding deferred action did not confer substantive rights on an alien and courts could not review a claim that INS failed to comply with these internal instructions).

Thus, individual DACA terminations, especially where based on issuance of NTAs, fall squarely within that category of agency discretion for which judicial review is improper. *See Chaney*, 470 F.3d at 830; *see also Morales de Soto v. Lynch*, 824 F.3d 822, 828 (9th Cir. 2016) (noting that "the exercise of prosecutorial discretion is a type of government action uniquely shielded from and unsuited to judicial intervention"). In Plaintiffs' cases, there is no legal question with regard to the DACA guidelines, because the DACA guidelines merely allow an individual to seek a discretionary administrative

grace in the form of DACA. *See* Dkt. No. 53-1 at 38 ("Individuals may be considered for DACA upon showing that they meet the prescribed guidelines . . ."). DACA is unlike immigration benefits where eligibility is found in statute or regulation, and which Courts have found that the non-discretionary denial of such benefits may be reviewed.[9]

Here, Plaintiffs are challenging DHS's exercise of its enforcement power granted by Congress. *See* Dkt. 32 Prayer for Relief (seeking to "Enjoin Defendants from revoking the DACA grants and EADs . . . based on the filing of an NTA charging solely" unlawful presence). This is a classic challenge to DHS's exercise of its prosecutorial discretion. *See Chaney*, 470 U.S. at 831. This type of enforcement decision involves a balancing of factors committed to agency discretion by law, including how to allocate agency resources. *See id.*; *Armstrong*, 517 U.S. at 464. The question for DHS was not whether it *could* exercise its discretion in favor of the Plaintiffs, but rather whether it *should* do so in each case. Because this type of discretionary determination is committed to DHS discretion by law, this Court lacks jurisdiction to review Plaintiffs' claims.

iii. Plaintiffs cannot state a constitutional claim because the termination of DACA does not implicate a constitutional interest.

Plaintiffs assert incorrectly that "[i]ndividuals who have been granted DACA have important constitutionally protected interests in their DACA grant and employment authorization." Dkt. No. 32 at ¶ 164. However, Plaintiffs necessarily lack a protected constitutional interest in their DACA and in the process to terminate DACA because the ultimate result sought – deferred action – is discretionary, and because the Government never expressed a mutual intention to confer a protected benefit in DACA.

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[9] The Court's reliance on *United States v. Hovsepian*, 359 F.3d 1144, 1155 (9th Cir. 2004) (en banc) and *Madu v. U.S. Attorney Gen.*, 470 F.3d 1362 (11th Cir. 2006) is misplaced. In both cases, courts reviewed a "purely legal question" that set the stage for a discretionary decision. However, the DACA SOP identifies threshold criteria for DACA consideration, but it does not mandate granting DACA if those threshold criteria are met. *See* Dkt. No. 53-1 at 38 ("Individuals may be considered for DACA upon showing that they meet the prescribed guidelines . . ."). Even if the Court finds those criteria enforceable, they are not the subject of the exercises of prosecutorial discretion to issue NTAs, which terminate DACA notwithstanding compliance with the threshold criteria.

The "Due Process Clause does not protect everything that might be described as a 'benefit.'" *Castle Rock*, 545 U.S. at 756. Particular due process rights must be established on the basis of entitlement to a property or liberty interest, the risks of loss associated with deprivation of that interest, and the competing interests of the government in not providing that interest. *Landon v. Plasencia*, 459 U.S. 21, 34 (1982) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 334-335 (1976)). The Court may view DACA recipients' circumstance as unfortunate, but neither the Constitution nor Congress provides an individual in unlawful status a protected interest in living or working in the United States, or in discretionary relief from removal. *Cf. Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137, 151-52 (2002) (holding, as a general matter, an individual who is not authorized to work in the United States does not have a right to work); *see also Garcia v. Holder*, No., 07-60271, 320 F. App'x 288, 290 (9th Cir. April 9, 2009).

Nor can Plaintiffs claim an entitlement in this case that creates a Constitutional interest. "To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of *entitlement* to it." *Blantz v. Cal. Dep't of Corr. & Rehab.*, 727 F.3d 917, 922 (9th Cir. 2013) (citing *Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 577 (1972)); *see also Mendez-Garcia v. Lynch*, 840 F.3d 655, 665 (9th Cir. 2016) (underscoring that aliens cannot claim a cognizable due process interest in discretionary immigration relief or benefits). The Supreme Court, however, has held that even a practice of "generously" granting a "wholly and *expressly* discretionary state privilege" does not create a legal entitlement to that benefit. *See Regents*, 2018 WL 339144 at *4 (citing *Gerhart v. Lake Cnty., Mont.*, 637 F.3d 1013, 1020-21 (9th Cir. 2011)) ("A person's belief of entitlement to a government benefit, no matter how sincerely or reasonably held, does not create a property right if that belief is not mutually held by the government.").

Plaintiffs possess no lawful status, thus no protected interest in living or working in the United States. DACA policy has never purported to alter that, and nor may this Court.

Landon, 459 U.S. at 35 ("The role of the judiciary . . . does not extend to imposing procedures that merely displace congressional choices of policy."). Because DACA is discretionary, it does not give rise to a protected right to work in the United States. *See* Dkt. No. 16-28 at 2 ("This [DACA grant] does not constitute employment authorization, nor may it be used in place of an [EAD]."). Nor does DACA confer lawful status. *See* Dkt. No. 16-13 ("This memorandum confers no substantive right, immigration status or pathway to citizenship."). DACA is not protection from removal. *See* Dkt. No. 16-23 ("DACA is an exercise of prosecutorial discretion and deferred action may be terminated at any time, with or without a Notice of Intent to Terminate, at DHS's discretion.").

Plaintiffs' claims regarding an interest in employment authorization and other public benefits like driver's licenses are particularly misplaced, because there is no right to the receipt of either, and no judicial review of the decision to terminate an EAD once granted. See Dkt. No. 32 at ¶ 35; *Pilapil v. INS*, 424 F.2d 6, 11 (10th Cir. 1970); *see also Perales*, 903 F.2d at 1047-48 ("[T]here is nothing in the [INA] expressly providing for the grant of employment authorization . . . to aliens who are the beneficiaries of approved petitions") (vacating the challenged portion of the injunction); *Gupta*, 2011 WL 13174873 at *1 (finding a challenge to the termination of EAD upon initiation of removal proceedings was an impermissible challenge to the discretionary decision to initiate removal proceedings). In the condtext of Plaintiffs' claims here that they have a right to DACA and therefore EADs, the Ninth Circuit has refused the same proposition. *See Neri*, 229 F. App'x at 508 (an individual "has no substantive due process right to discretionary relief from removal or deportation."); *Munoz v. Ashcroft,* 339 F.3d 950, 954 (9th Cir. 2003) (finding no liberty interest in discretionary forms of relief from deportation).

In fact, every individual with employment authorization based on 8 C.F.R. § 274a.12(c), including those with deferred action, is subject to automatic termination of their EAD upon institution of removal proceedings in an immigration court. *See* 8 C.F.R. § 274a.14(a)(1)(ii); 8 C.F.R. §§ 1003.13, 1003.14. No notice or opportunity to respond is afforded to any deferred action recipient in this posture, and Plaintiffs point to nothing

that supports a contrary finding. *Cf. Gupta*, 2011 WL 13174873 at *1 (denying challenge to automatic EAD termination). Because EAD termination is not tied to operation of the DACA SOP, Plaintiffs' claims of harm regarding EAD loss must fail. Further, the DACA SOP instructs USCIS to defer to existing law and regulations where there is any conflict with the SOP. *See* Dkt. No. 16-24 at 17, DACA SOP Chapter One ("Any provision of the [INA] or 8 C.F.R. found . . . to be in conflict with this SOP will take precedence over the SOP."). Thus, it would be inappropriate for the Court to find the SOP requires a process before termination of a DACA-based EAD due to NTA issuance by CBP or ICE, which is contrary to the plain language of the duly promulgated regulation.

Furthermore, under DHS regulations, an individual with deferred action who has lost his EAD due to having been placed into removal proceedings may reapply for an EAD if he or she becomes eligible again under a category of subsection 274a.12(c). Only if employment authorization is granted again would the individual then be eligible to apply to their state authority for a driver's license or Social Security card. *ADAC,* 757 F.3d at 1061. Thus, the peripheral benefits Plaintiffs cite to illustrate the urgency of the relief they seek are two steps removed from the relief this Court can grant.[10]

For these reasons, and because Plaintiffs by definition concede removability and challenge only termination of a discretionary temporary grant of deferred action from removal, "the Court cannot conclude that the government has deprived [plaintiffs] of [their] liberty interest in remaining in the United States without due process of law." *Mendez de Leon v. Reno*, No. C 97-02482 CW, 1998 WL 289321, at *7 (N.D. Cal. Mar. 26, 1998).

B. Plaintiff's Fail to State a Claim Under the APA.

Even if this Court finds that it would have jurisdiction over any of Plaintiffs' claims, the Court should still dismiss Plaintiffs' amended complaint because Plaintiffs' fail to state a claim upon which relief can be granted. Plaintiffs cannot establish either an

[10] None of the provisions that Plaintiffs cite at 8 U.S.C. §§ 1611(b)(2)–(3) and 1621(d) depends directly on the receipt of DACA. Dkt. No. 32 at ¶ 35.

administrative or a constitutional right to receive any process regarding the termination of DACA because deferred action is necessarily an exercise of the Executive's prosecutorial discretion. *See Chaney*, 470 U.S. at 831; *Regents*, 2018 WL 339144 at *18 ("Congress has been free to constrain DHS's discretion with respect to granting deferred action, but it has yet to do so."). In fact, DHS acted based on that discretion by issuing NTAs based on Plaintiffs' criminal activity. Thus, the limited grace a temporary grant of DACA serves to recognize was overridden by the Government's determination that Plaintiffs had become enforcement priorities. *See* Dkt. No. 53-1 at 4-7, 17-18. Defendants respectfully disagree with the Court's prior order granting a preliminary injunction to Plaintiff Arreola, *see* Dkt. No. 31, and endeavor to address that order here. *Id*. at 9, 11, 12.

i. DACA termination by NTA is provided for in the DACA SOP and policy documents, and in DHS policy and regulations.

There is no support in the Napolitano Memo for the proposition that DACA policy limits ICE or CBP's authority to issue NTAs that will have the effect of terminating grants of deferred action, like DACA. *See* Dkt. No. 16-13. Contrary to the Court's previous finding, the Napolitano memo does not limit this authority only for the period "as DACA was developed." Dkt. No. 31 at 12.

Nor does DHS guidance prevent immigration enforcement agencies from terminating DACA by issuing an NTA. The authority to issue an NTA is vested with all DHS immigration officers. *See* 8 C.F.R. § 239.1(a). However, DHS divides NTA issuance responsibility between USCIS in its administrative capacity, and ICE and CBP in their law enforcement capacities. *See* 2011 NTA Memo, Dkt. No. 16-25. USCIS is required to refer all cases involving criminal conduct, not limited to Egregious Public Safety ("EPS"), to ICE. *Id*. at 5. USCIS's decision to issue an NTA on its own under such circumstances must follow ICE's lead. *Id*. at 5 & 6 ("USCIS *will not* issue an NTA in these cases if ICE declines to issue an NTA.") (emphasis added); *id*. at 2 ("USCIS must ensure that its issuance of NTAs fits within and supports the Government's overall removal priorities . . . ."). When a case is referred by USCIS, ICE may issue an NTA that

automatically terminates DACA, with no additional notice or opportunity to respond. *See* Dkt. No. 16-24 at 39.

The effect of NTA issuance on DACA termination is unremarkable, and is recognized elsewhere in the DACA SOP. *See* Dkt. No. 53-1 at 91-92 (providing that USCIS will deny, without advance notice and an opportunity to respond, a DACA request from an individual in immigration detention who ICE intends to release but who ICE indicates is an enforcement priority). While the SOP instructs USCIS to "discuss" a disagreement it may have with ICE's finding, *id*., there is no provision permitting USCIS to reverse ICE's decision. *See Vasquez v. Aviles*, 639 F. App'x 898, 901 (3d Cir. 2016) (finding no jurisdiction based on Section 1252(g) to review an ICE officer's unilateral denial of a DACA request to a detained individual because "that decision involves the exercise of prosecutorial discretion not to grant a deferred action.").[11]

Indeed, where DHS has worked to ensure that ICE's determination that someone is an enforcement priority would not be conflicted by a later discretionary exercise by USCIS to grant deferred action in the form of DACA, and where the Napolitano Memo specifically preserves the NTA authority of ICE and CBP upon consideration of the DACA guidelines, it takes a particularly strained reading of the Napolitano Memo and DACA SOP to find that ICE and CBP cannot issue NTAs that have the effect of terminating DACA. In fact, the Court's and Plaintiffs' interpretation of Defendants' guidance creates an absurd scenario in which ICE would institute new administrative removal proceedings against an individual while that individual seeks additional separate legal process regarding the termination of their DACA. That scenario also strips the

[11] The Court's prior order improperly concludes that the SOP termination chapter requires USCIS to adjudicate a termination after ICE has issued an NTA for EPS. Dkt. No. 31 at 9. While the NTA Memo states "ICE's issuance of an NTA *allows* USCIS to proceed with adjudication . . . ," Dkt. No. 16-25 at 5 (emphasis added), the guidance is optional and the DACA SOP explicitly diverges from it in important ways. The DACA SOP termination chapter instructs USCIS to follow the NTA Memo, but also states that ICE's issuance of an NTA on an EPS referral from USCIS "will result in the termination of DACA." Dkt. No. 16-24 at 38; *see also id*. at 34 ("USCIS "*will deny* the DACA request.") (emphasis added).

immigration enforcement agencies of their most critical authority. *Regents*, 2018 WL 339144, at *1 ("One of the key enforcement tools under the INA is removal, i.e., deportation. In turn, '[a] principal feature of the removal system is the broad discretion exercised by immigration officials.'"(citing *Arizona v. United States*, 567 U.S. 387, 396 (2012))).[12]

DHS's discretion to initiate removal proceedings that have the effect of terminating DACA is not impeded by DACA policy or immigration law in any way, and so this Court should dismiss Plaintiffs' amended complaint alleging otherwise.

ii. There is no requirement that an NTA charge more than unlawful presence, nor is it arbitrary to rely on the decision to issue an NTA.

Plaintiffs argue, and this Court agreed, that USCIS impermissibly relies on only unlawful presence as the charge listed in an NTA as the sole basis to terminate DACA. Dkt. No. 31 at 6, 10: Dkt. No. 32 at ¶¶ 159, 165. However, that conclusion relies on a starkly oversimplified consideration of the NTA decision process. *See, e.g.*, Dkt. No. 53-1 at 9-15, 20-24 (summaries of the information considered in Plaintiffs' NTA issuances). There is no basis in the SOP or other DACA-related guidance for the Court to find that an NTA charging removability on the basis of presence without admission is not sufficient to terminate DACA. Nor can Plaintiffs establish that an individual in receipt of an NTA based on unlawful presence cannot also have been found to be an enforcement priority.

First, the charges listed in an NTA are not dispositive of the reasons for issuing an NTA.[13] DHS is under no obligation to charge an individual with anything more than

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[12] The fact that USCIS may grant DACA to nondetained aliens in removal proceedings or with final orders of removal does not change this analysis. Just as USCIS has the discretion to grant DACA to those requestors based on the totality of circumstances, nothing in DHS policy or guidance prohibits ICE, CBP, or USCIS from similarly exercising discretion to terminate DACA on a case by case basis as an exercise of agency discretion.

[13] This proposition is wholly consistent with the denial portion of the DACA SOP, which provides that, while to be considered, the charges filed in an NTA are not determinative to the ultimate discretion decision regarding DACA. Dkt. No. 53-1 at 65 ("Do not rely solely on the grounds listed in the charging document [. . . ;] review all derogatory information in its totality and then make an informed assessment regarding the appropriate exercise of prosecutorial discretion for DACA.").

unlawful presence. *Addy v. Sessions*, 696 F. App'x 801, 804 (9th Cir. 2017) (rejecting argument that petitioner should have been charged with removability under a different statute, because "[t]he Attorney General has prosecutorial discretion over the initiation of removal proceedings, and that discretion is not reviewable."). Rather, the decision to issue an NTA is based on the immigration officer's experience and information, and – most importantly – his or her discretion. *See Hernandez v. Gonzales*, 221 F. App'x 588, 589–90 (9th Cir. 2007) ("Absent evidence to the contrary, we presume that the immigration officers properly discharged their duties when issuing Hernandez's NTA."). Notably, an NTA also need not include charges used to support the denial of relief from removal. *Salviejo–Fernandez v. Gonzales*, 455 F.3d 1063, 1066 (9th Cir. 2006) (denying due process claim where the BIA found petitioner ineligible for cancellation of removal based on a conviction not alleged in the NTA).

Here, the discretion exercised in issuing an NTA that has the effect of terminating DACA is nothing like the arbitrary process this Court cited to in *Judulang v. Holder*, 565 U.S. 42 (2011). The *Judulang* Court rejected the BIA process of interpreting and comparing the removability charges on an individual's NTA against a list of charges under 8 U.S.C. § 1182 that composed grounds for exclusion of an arriving alien, to determine whether the individual facing removal was eligible for a form of discretionary relief from removal originally reserved for arriving aliens. 565 U.S. at 489-90. The Court equated the process to flipping a coin, such that some violent criminals would be eligible for relief while some lawful permanent residents ("LPR") with lesser offenses would be excluded. *Id*. at 487 (finding the process had "no connection to the goals of the deportation process or the rational operation of the immigration laws."). Here, DACA termination does not hinge on how the NTA is selected, but rather *whether* it is selected.

Moreover, the facts here demonstrate that DHS's decision to issue NTAs that have the result of terminating DACA are not "happenstance," Dkt. No. 31 at 10; but rather, NTA issuance that results in the termination of DACA represents a valid and thoughtful exercise of agency discretion. The facts here demonstrate that immigration enforcement

officers: (1) were specifically aware of each Plaintiffs' DACA, *see* Dkt. No. 53-1 at 9-15, 20-24; (2) did not rely solely on unlawful presence in decisions to initiate removal against Plaintiffs. *Id*.; *see also* Dkt. No. 23-2 at 26; and (3) may issue NTAs after supervisory review or consultation with agency counsel. *See* Dkt. No 53-1 at 6 ¶ 11.

CONCLUSION

In sum, Plaintiffs Arreola and Inland Empire have failed to establish standing to raise the claims in their amended complaint, and all Plaintiffs have failed to establish jurisdiction for this Court to consider their challenges to the NTA process, which Congress expressly precluded through section 1252. Nor can Plaintiffs show that, in the termination of their DACA grants they were entitled to any additional process either through statute or the Constitution. For these reasons, the Court should dismiss Plaintiffs Arreola and Inland Empire and dismiss this entire action for lack of jurisdiction.

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Respectfully Submitted,

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