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 ALBERTO LUCIANO GONZALEZ TORRES

9 **UNITED STATES DISTRICT COURT**  
 10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 ALBERTO LUCIANO GONZALEZ  
 12 TORRES,

Plaintiff,

13 vs.

14 U.S. DEPARTMENT OF  
 15 HOMELAND SECURITY; U.S.  
 CITIZENSHIP AND IMMIGRATION  
 16 SERVICES; U.S. IMMIGRATION  
 AND CUSTOMS ENFORCEMENT;  
 17 U.S. CUSTOMS AND BORDER  
 PROTECTION; Does 1-10, inclusive,

18 Defendants.

Case No. --- '17CV1840 JM NLS

**COMPLAINT FOR  
 DECLARATORY AND  
 INJUNCTIVE RELIEF**

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1 Plaintiff Alberto Luciano Gonzalez Torres (“Mr. Gonzalez”) brings this  
2 Complaint seeking declaratory and injunctive relief.

3 Mr. Gonzalez is a two-time Deferred Action for Childhood Arrivals  
4 (“DACA”) and employment authorization recipient. DACA status made him  
5 “lawfully present” in the United States for its duration.

6 For the reasons set forth below, Mr. Gonzalez seeks a declaration that  
7 Defendants’<sup>1</sup> “automatic” termination of his DACA status (and attendant  
8 employment authorization and other benefits)—without notice, opportunity to  
9 contest, or opportunity to appeal—simultaneous to CBP’s issuance of a Notice to  
10 Appear (“NTA”) charging nothing more than unlawful presence in the United  
11 States:

12 (1) failed to adhere to the mandatory agency guidelines and policies set forth  
13 in DHS’s DACA Standard Operating Procedures (“DACA SOP”);

14 (2) was arbitrary, capricious, and an abuse of discretion, in violation of the  
15 Administrative Procedure Act (“APA”); and

16 (3) violated Mr. Gonzalez’s Fifth Amendment Procedural Due Process  
17 rights.

18 In each of these ways, the termination of Mr. Gonzalez’s DACA status  
19 violated the APA, 5 U.S.C. § 706(2), and must be declared unlawful and set aside.  
20 Mr. Gonzalez seeks an order restoring his DACA status and employment  
21 authorization while the Government provides him adequate notice of its intent to  
22 terminate his benefits, a reasoned basis for its decision, and an opportunity to  
23 respond with arguments and evidence demonstrating his continued DACA  
24 eligibility and that he merits the Government’s continued favorable exercise of  
25 deferred action.

26 \_\_\_\_\_  
27 <sup>1</sup> Defendants U.S. Department of Homeland Security (“DHS”), U.S. Citizenship  
28 and Immigration Services (“USCIS”), U.S. Immigration and Customs Enforcement  
 (“ICE”), and U.S. Customs and Border Protection (“CBP”) are referred to  
 collectively as “the Government” unless addressed specifically.

1 **INTRODUCTION**

2 Mr. Gonzalez was born in Mexico and brought to the United States at  
3 approximately 8 years old—16 years ago. Since that time, he has never left  
4 California, has no criminal history, and has been a productive member of his San  
5 Diego community.

6 Mr. Gonzalez attended elementary and middle school in San Diego, where  
7 he graduated on time from high school in 2011. In January 2013, the Government  
8 granted him permission to live and work in the United States pursuant to its DACA  
9 program. The Government renewed Mr. Gonzalez’s DACA status in December  
10 2014 until December 22, 2017. Both times, he was subject to the Government’s  
11 rigorous biographic and biometric background checks, and paid \$495 fees.

12 Prior to receiving DACA status, during the period from 2011 to 2013, Mr.  
13 Gonzalez was unable to secure employment because he was unwilling to  
14 misrepresent his immigration status. But thanks to his DACA-related employment  
15 authorization, Mr. Gonzalez quickly found lawful employment with an airline  
16 supply company in 2013. He was tasked with stocking food and supplies on  
17 commercial flights for American Airlines. In addition to the rigorous vetting  
18 process he had undergone to obtain—and then renew—his DACA status and  
19 employment authorization, Mr. Gonzalez’s airline industry job required him to  
20 meet strict security protocols, including background checks and drug tests. He  
21 passed them all.

22 On May 6, 2016, Mr. Gonzalez was detained by immigration officers while  
23 dog-sitting at a house where CBP later alleged that undocumented immigrants  
24 were present. The very next day, CBP issued him a Notice to Appear. The NTA’s  
25 sole charge was unlawful presence in the United States under Section 212 of the  
26 Immigration and Nationality Act (“INA”). *See* 8 U.S.C. § 1182(a)(6)(A)(i)  
27 (“present in the United States without being admitted or paroled”). The NTA did  
28 not allege any other criminal or unlawful activity.





1 homeland security and public safety.” U.S. Immigration and Customs  
2 Enforcement, “Who We Are.”<sup>4</sup>

3 8. CBP is a law enforcement agency within DHS that “is charged with  
4 keeping terrorists and their weapons out of the U.S. while facilitating lawful  
5 international travel and trade.” U.S. Customs and Border Protection, “About  
6 CBP.”<sup>5</sup> CBP issued Mr. Gonzalez’s NTA charging unlawful presence in the  
7 United States.

8 9. Defendants Does 1-10 are currently unidentified individuals whose  
9 actions, in addition to those of named Defendants, gave rise to Mr. Gonzalez’s  
10 claims.

## 11 **STATEMENT OF FACTS**

### 12 **Establishment and Terms of the DACA Program**

13 10. On June 15, 2012, then-Secretary of Homeland Security Janet  
14 Napolitano issued a memorandum establishing the DACA program. *See* June 15,  
15 2012 Memorandum from Janet Napolitano to ICE, CBP, and USCIS, “Exercising  
16 Prosecutorial Discretion with Respect to Individuals Who Came to the United  
17 States as Children” (“DACA Memo”).<sup>6</sup> The DACA Memo explained that the  
18 “Nation’s immigration laws . . . are not designed to be blindly enforced without  
19 consideration given to the individual circumstances of each case” and that  
20 “additional measures are necessary to ensure that our enforcement resources are  
21 not expended on . . . low priority cases.”

22 11. Accordingly, the Government enacted a program of deferred action  
23 for individuals who were brought to the United States as children and meet specific  
24 criteria. Deferred action is a well-established form of administrative action by  
25 which the Executive Branch decides, for humanitarian or other reasons, to refrain  
26

27 <sup>4</sup> <https://www.ice.gov/about> (last visited Sept. 7, 2017).

28 <sup>5</sup> <https://www.cbp.gov/about> (last visited Sept. 7, 2017).

<sup>6</sup> <https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf>.

1 from seeking an individual’s removal from the country and authorizes his  
2 continued lawful presence for a specified period.

3 12. A recipient of deferred action is eligible to receive employment  
4 authorization. 8 C.F.R. § 274a.12(c). The DACA Memo directed USCIS to  
5 “accept applications to determine whether [DACA recipients] qualify for work  
6 authorization during [their] period of deferred action.”

7 13. President Obama explained that the Government instituted DACA  
8 because “it makes no sense to expel talented young people, who, for all intents and  
9 purposes, are Americans – they’ve been raised as Americans; understand  
10 themselves to be part of this country . . . [and] want to staff our labs, or start new  
11 businesses, or defend our country.” Accordingly, the President explained that  
12 DHS would be “taking steps to lift the shadow of deportation from these young  
13 people” and giving them “a degree of relief and hope.” The White House, Office  
14 of the Press Secretary, “Remarks by the President on Immigration” (“Obama  
15 Remarks”) (June 15, 2012).<sup>7</sup>

16 14. The DACA Memo established that the following criteria “should be  
17 satisfied” for DACA eligibility:

- 18 • came to the United States under the age of 16;
- 19 • continuously resided in the United States for at least 5 years preceding the date  
20 of the memorandum and was present in the United States on the date of the  
21 memorandum;
- 22 • is currently in school, has graduated from high school, has obtained a general  
23 education development certificate, or is an honorably discharged veteran of the  
24 Coast Guard or Armed Forces of the United States;
- 25 • has not been convicted of a felony offense, a significant misdemeanor offense,  
26 or multiple misdemeanor offenses, and does not otherwise pose a threat to national  
27 security or public safety; and

28 <sup>7</sup> <https://obamawhitehouse.archives.gov/the-press-office/2012/06/15/remarks-president-immigration>.

- 1 • is not above the age of 30.

2 15. The DACA Memo also directed that “[n]o individual should receive  
3 deferred action . . . unless they first pass a background check.”

4 16. USCIS was tasked with implementing the DACA program, including  
5 collection of forms, documents, and fees and issuance of DACA approval and  
6 employment authorization notices. It promulgated a public policy document  
7 detailing how the DACA program operates. *See* USCIS, “DACA Frequently  
8 Asked Questions” (“DACA FAQ”).<sup>8</sup>

9 17. Deferred action is available for 2 years, subject to renewal upon  
10 reapplication. A DACA recipient must reapply, pass another round of background  
11 checks, and pay another \$495. Renewal requires that the recipient “met the  
12 guidelines for consideration of Initial DACA” and:

- 13 • did not depart the United States on or after August 15, 2012 without advance  
14 parole;
- 15 • has continuously resided in the United States since submitting his most recent  
16 request for DACA that was approved up to the present time; and
- 17 • has not been convicted of a felony, a significant misdemeanor, or 3 or more  
18 misdemeanors, and does not otherwise pose a threat to national security or public  
19 safety.

20 18. A DACA recipient “may obtain employment authorization from  
21 USCIS provided [he or she] can demonstrate an economic necessity for  
22 employment.” DACA FAQ, Q4. Upon approval, the recipient is issued an  
23 Employment Authorization Document (“EAD”).

24 19. Even an individual who (1) is in removal proceedings, (2) has a final  
25 order of removal, or (3) has a voluntary departure order is eligible to apply for and  
26 be granted DACA status. *See* DACA FAQ, Q10.

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28 <sup>8</sup> <https://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-process/frequently-asked-questions> (updated Sept. 6, 2017; last visited Sept. 7, 2017).

1 **Reaffirmation, Continuation, and Elimination of the DACA Program**

2 20. From January to September 5, 2017, the Trump Administration  
3 continued to process and grant new DACA applications, renewal applications, and  
4 EADs.

5 21. On September 5, DHS announced a plan to phase out the DACA  
6 program over a two year period. *See* Sept. 5, 2017 Memorandum from Elaine C.  
7 Duke to ICE, CBP, and USCIS, “Memorandum on Rescission of Deferred Action  
8 for Child Arrivals” (“Duke Memo”).<sup>9</sup>

9 22. The rescission reversed the current Administration’s several public  
10 assurances that DACA remained its policy.

11 23. On February 20, 2017, then-Secretary of Homeland Security (and  
12 current White House Chief of Staff) John Kelly issued a memorandum setting forth  
13 DHS’s immigration enforcement priorities. *See* Feb. 20, 2017 Memorandum from  
14 John Kelly to ICE, CBP, and USCIS, “Enforcement of the Immigration Laws to  
15 Serve the National Interest” (“Kelly Memo”).<sup>10</sup> The Kelly Memo “immediately  
16 rescinded” “all existing conflicting directives, memoranda, or field guidance  
17 regarding the enforcement of our immigration laws and priorities for removal,” but  
18 specifically exempted the June 15, 2012 DACA Memo.

19 24. On June 15, 2017, DHS issued public guidance, explaining that  
20 “DACA recipients will continue to be eligible as outlined in the June 15, 2012  
21 memorandum”; EAD recipients “will be eligible to seek a two-year extension upon  
22 their expiration”; and “[n]o work permits will be terminated prior to their current  
23 expiration dates.” DHS, “Frequently Asked Questions: Rescission of  
24 Memorandum Providing for Deferred Action for Parents of Americans and Lawful  
25 Permanent Residents (‘DAPA’)” (June 15, 2017).<sup>11</sup>

26 <sup>9</sup> <https://www.dhs.gov/news/2017/09/05/memorandum-rescission-daca>.

27 <sup>10</sup> [https://www.dhs.gov/sites/default/files/publications/17\\_0220\\_S1\\_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf](https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf).

28 <sup>11</sup> <https://www.dhs.gov/news/2017/06/15/frequently-asked-questions-rescission-memorandum-providing-deferred-action-parents>.

1           25. On April 21, 2017, President Trump—using the common term for  
2 undocumented immigrants brought to the United States as children—assured that  
3 the Administration is “not after the dreamers.” He was asked, “that’s going to be  
4 the policy of your administration to allow the dreamers to stay?” The President  
5 responded unequivocally: “Yes. Yes. That’s our policy.” He elaborated: “The  
6 dreamers should rest easy. OK? I’ll give you that. The dreamers should rest  
7 easy.” Associated Press, “Transcript of AP Interview with Trump” (“Trump  
8 Interview”) (published Apr. 23, 2017).<sup>12</sup>

### 9 **DACA Application and Renewal Process**

10           26. A DACA applicant must submit to USCIS: (1) Form I-821D,  
11 Consideration of Deferred Action for Childhood Arrivals; (2) Form I-765,  
12 Application for Employment Authorization; (3) Form I-765WS, Worksheet  
13 establishing economic need for employment; and (4) extensive documentation to  
14 establish that he or she meets the DACA Memo’s eligibility criteria and USCIS’s  
15 implementing criteria. *See* DACA FAQ, Q7, Q28-Q41.

16           27. A DACA applicant “must undergo biographic and biometric  
17 background checks before USCIS will consider [his or her] request.” DACA FAQ,  
18 Q22. This involves checking biographic and biometric information “against a  
19 variety of databases maintained by DHS and other federal government agencies.”  
20 DACA FAQ, Q23.

21           28. To be considered, an applicant must also pay a \$495 fee, which  
22 “cannot be waived.” USCIS, “I-821D, Consideration of Deferred Action for  
23 Childhood Arrivals.”<sup>13</sup>

24           29. A DACA renewal applicant must submit the same forms, undergo  
25 another round of biographic and biometric background checks, and pay another  
26 \$495 fee. USCIS, Form I-821D, OMB No. 1615-0124.<sup>14</sup>

27  
28 <sup>12</sup> <https://www.apnews.com/c810d7de280a47e88848b0ac74690c83>.

<sup>13</sup> <https://www.uscis.gov/i-821d> (updated Sept. 5, 2017; last visited Sept. 7, 2017).

1           30. If the background checks or other information indicate that the  
2 applicant’s presence “threatens public safety or national security,” deferred action  
3 will be denied absent “exceptional circumstances.” Indicators of such a threat  
4 include gang membership, participation in certain criminal activities, or  
5 participation in activities that threaten the United States. DACA FAQ, Q65.

6           31. In 2015, USCIS further screened all individuals who had been granted  
7 DACA status “to identify records that contained information indicating known or  
8 suspected gang association.” Apr. 17, 2015 Letter from USCIS Director Leon  
9 Rodriguez to Senate Judiciary Chairman Charles E. Grassley.<sup>15</sup>

10           32. Even an individual (1) in removal proceedings, (2) with a final order  
11 of removal, or (3) with a voluntary departure order may apply for and be granted  
12 DACA status. *See* DACA FAQ, Q7. In support, such an individual can provide  
13 USCIS with “initial evidence” and “supporting documents” to plead eligibility and  
14 controvert Government allegations against that person.

15 **The Government’s DACA Termination Guidelines and Policies**

16           33. The DACA SOP governs USCIS’s implementation of the DACA  
17 program. It incorporates the 2011 USCIS Memo and the relevant procedures set  
18 forth therein.

19           34. Under the DACA SOP, “[i]f disqualifying criminal offenses or public  
20 safety concerns . . . arise after” DACA status is granted, USCIS must issue the  
21 recipient a “Notice of Intent to Terminate” (“NOIT”) and “allow [him or her] 33  
22 days to file a brief or statement contesting the grounds cited” therein. DHS,  
23 “National Standard Operating Procedures, Deferred Action for Childhood  
24 Arrivals” (“DACA SOP”), Chapter 14 (Aug. 28, 2013).

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27 <sup>14</sup> [https://www.uscis.gov/system/files\\_force/files/form/i-821dinstr.pdf?download=1](https://www.uscis.gov/system/files_force/files/form/i-821dinstr.pdf?download=1)  
28 (updated Jan. 9, 2017; expires Jan. 31, 2019; last visited Sept. 7, 2017).

<sup>15</sup> [https://www.judiciary.senate.gov/imo/media/doc/2015-04-17%20USCIS%20to%20CEG%20\(DACA%20for%20Gang%20Member\).pdf](https://www.judiciary.senate.gov/imo/media/doc/2015-04-17%20USCIS%20to%20CEG%20(DACA%20for%20Gang%20Member).pdf).

1           35. The exception to this rule is when USCIS follows a specific protocol  
2 for cases involving Egregious Public Safety (“EPS”) concerns. If USCIS suspects  
3 that a particular DACA recipient poses an EPS concern, it must send the case to  
4 the Background Check Unit (“BCU”) DACA Team for consideration. If BCU  
5 suspects an EPS concern, it must refer the case to ICE to make a determination.  
6 DACA SOP, Chapter 14; Nov. 7, 2011 USCIS Policy Memorandum (“USCIS  
7 Memo”) at 3.<sup>16</sup>

8           36. “All EPS cases must be referred to ICE” for “an opportunity to decide  
9 if, when, and how to issue an NTA . . . . USCIS will not issue an NTA in these  
10 cases if ICE declines to issue an NTA. . . . This referral process is utilized in order  
11 to give ICE the opportunity to determine the appropriate course of action before  
12 USCIS adjudicates the case.” USCIS Memo at 4. If, and only if, ICE issues an  
13 NTA on the basis of an EPS concern, USCIS may then terminate an individual’s  
14 DACA status without providing prior notice or an opportunity to be heard. ICE’s  
15 issuance of an NTA after an EPS referral is meant to allow USCIS to “proceed  
16 with adjudication, . . . taking into account the basis for the NTA.” USCIS Memo at  
17 4.

18           37. Neither the DACA SOP nor the USCIS Memo authorizes termination  
19 without notice when CBP issues an NTA. In that instance, an NOIT and 33 days  
20 to respond are required. DACA SOP, Chapter 14 and Appendix I.

21           38. An EPS referral does not require being charged or convicted of any  
22 crime. It requires only “information *indicat[ing]* the alien is *under investigation*  
23 *for, has been arrested for (without disposition), or has been convicted of*” one of a  
24 list of crimes, defined in Section 101 of the INA. USCIS Memo at 3.

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28 [https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static\\_Files\\_Memoranda/NTA%20PM%20%28Approved%20as%20final%2011-7-11%29.pdf](https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/NTA%20PM%20%28Approved%20as%20final%2011-7-11%29.pdf).

1           39. The USCIS Memo suggests that the determination to “investigate” or  
2 “arrest without disposition” a DACA recipient for one of the specific crimes may  
3 have been made by any single local, state, or federal law enforcement agent.

4           40. USCIS affords a DACA recipient no opportunity to contest the  
5 grounds for an EPS referral.

### 6 **The Government’s Representations to DACA Applicants and Recipients**

7           41. DACA status confers numerous benefits on a recipient as part of the  
8 Government’s recognition that the United States “continue[s] to benefit . . . from  
9 the contributions of those young people who have come forward and want nothing  
10 more than to contribute to our country and our shared future.” Dec. 30, 2016  
11 Letter from then-Secretary of Homeland Security Jeh Charles Johnson to  
12 Representative Judy Chu (“Johnson Letter”) at 2.<sup>17</sup>

13           42. In 2016, over 100 members of Congress sought confirmation that  
14 DACA applicants’ personal identifying information would be safeguarded. The  
15 Government affirmed that its “representations” that such information would not be  
16 used for “other immigration-related purposes . . . must continue to be honored.”  
17 The Government understands that “DACA applicants most assuredly relied” on its  
18 representations. Dec. 30, 2016 Johnson Letter at 1-2.

19           43. More broadly, the DACA SOP codified the Government’s  
20 commitment to the DACA program, effectively limiting the exercise of agency  
21 discretion with “nearly 150 pages of specific instructions” for granting, denying,  
22 and terminating deferred action. *Texas v. U.S.*, 809 F.3d 134, 173 (5th Cir. 2015)  
23 (citing the DACA SOP as evidence that DACA is not a truly discretionary  
24 program), *aff’d by an equally divided Court*, 136 S. Ct. 2271 (2016).

25           44. Executive and Legislative Branch officials from both political parties  
26 have reinforced the promises of the DACA program. They have publicly

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28 <https://chu.house.gov/sites/chu.house.gov/files/documents/DHS.Signed%20Response%20to%20Chu%2012.30.16.pdf>.

1 acknowledged that hundreds of thousands of DACA applicants and recipients have  
2 relied on the Government (1) to honor the benefits conferred by DACA and (2)  
3 implement and enforce it without policies or actions that are arbitrary, capricious,  
4 an abuse of discretion, contrary to internal guidelines, or unconstitutional.

5 • In January 2017, Speaker of the House Paul Ryan said that the Government  
6 must ensure “that the rug doesn’t get pulled out from under” DACA recipients and  
7 their families, because they have “organize[d] [their] li[ves] around” the DACA  
8 program. CNN, “Transcripts: Town Hall Meeting with House Speaker Paul Ryan”  
9 (Jan. 12, 2017).<sup>18</sup>

10 • In February 2017, Arizona Congressman Raul Grijalva called on the  
11 Government to “honor its word to protect” those who came forward “expecting”  
12 the Government to uphold its “commitment.” Congressional Progressive Caucus,  
13 “Congressional Progressive Caucus Leaders Respond to ICE Arrest of DACA  
14 Recipient” (Feb. 16, 2017).<sup>19</sup>

15 • In March 2017, then-DHS Secretary Kelly reaffirmed that DACA status “is a  
16 commitment . . . by the government towards the DACA person.” Ted Hesson and  
17 Seung Min Kim, “Wary Democrats Look to Kelly for Answers on Immigration,”  
18 Politico (Mar. 29, 2017).<sup>20</sup>

19 • And in April 2017, President Trump reiterated that “[D]reamers should rest  
20 easy.” Apr. 21, 2017 Trump Interview.

21 45. However, on September 5, 2017, DHS announced President Trump’s  
22 plan to phase out the DACA program over the next two years. Current DACA  
23 recipients whose status expires before March 5, 2018 have until October 5, 2017 to  
24 apply to USCIS for a two-year renewal.

25  
26 <sup>18</sup> <https://transcripts.cnn.com/TRANSCRIPTS/1701/12/se.01.html>.

27 <sup>19</sup> <https://cpc-grijalva.house.gov/press-releases/congressional-progressive-caucus-leaders-respond-to-ice-arrest-of-daca-recipient/>.

28 <sup>20</sup> <https://www.politico.com/story/2017/03/wary-dems-look-to-kelly-for-answers-on-immigration-236673>.

## 1 **Benefits Conferred by the Government on DACA Recipients**

2 46. DACA status confers numerous benefits on a recipient. Chief among  
3 them is USCIS's explanation that a DACA recipient "is authorized by DHS to be  
4 present in the United States, and is therefore considered by DHS to be lawfully  
5 present during the period deferred action is in effect." DACA FAQ, Q1; *see*  
6 *Arizona Dream Act Coalition v. Brewer*, 757 F.3d 1053, 1058-59 (9th Cir. 2014)  
7 ("DHS considers DACA recipients not to be unlawfully present in the United  
8 States because their deferred action is a period of stay authorized by the Attorney  
9 General.") (citing 8 U.S.C. § 1182(a)(9)(B)(ii) and 8 C.F.R. § 214.14(d)(3)); *Texas*  
10 *v. U.S.*, 809 F.3d at 148 ("[L]awful presence" has "significant legal  
11 consequences.").

12 47. Because DACA recipients are lawfully present, the Government has  
13 directed ICE and CBP "to prevent qualifying individuals from being apprehended,  
14 placed into removal proceedings, or removed." DACA FAQ, Q9.

15 48. DACA recipients are also eligible for a DACA-specific EAD "for the  
16 period of deferred action," for which they would otherwise be ineligible. DACA  
17 FAQ, Q1; *see* 8 C.F.R. § 274a.12, Category (c)(33).<sup>21</sup>

18 49. DACA recipients may apply for certain federal public benefits for  
19 which they would otherwise be ineligible, including Social Security retirement  
20 benefits, Social Security disability benefits, and Medicare Part A health insurance  
21 benefits. *See* 8 U.S.C. § 1611(b)(2)-(3). They may also be eligible for state public  
22 benefits, including a driver's license or unemployment insurance. *See* 8 U.S.C. §  
23 1621(d). *Accord Texas v. U.S.*, 809 F.3d at 148.

24 50. DACA recipients, by virtue of obtaining Social Security Numbers, are  
25 also afforded ancillary benefits that are typically unavailable or difficult to obtain  
26 for undocumented immigrants, including opening a bank account, obtaining a

27 \_\_\_\_\_  
28 <sup>21</sup> <https://www.uscis.gov/working-united-states/information-employers-employees/employer-information/employment-authorization> (updated Jan. 27, 2015; last visited Sept. 7, 2017).

1 credit card, starting a business, purchasing a home or car, and obtaining financial  
2 aid for higher education.

3 51. DACA recipients do not accrue time for unlawful presence for  
4 admissibility purposes under 8 U.S.C. § 1182(a)(9)(B)(i). *See* DACA FAQ, Q5.  
5 And—prior to the September 5 change in policy—for certain humanitarian,  
6 educational, and employment purposes, recipients could briefly leave the country  
7 and legally return, a benefit the Government does not afford to those it does not  
8 deem lawfully present. *See* DACA FAQ, Q57.

9 52. In short, “lawful presence removes the categorical bar” to certain  
10 public benefits and participation in several crucial elements of social, civic, and  
11 economic life in the United States. *Texas v. U.S.*, 809 F.3d at 148.

12 53. In other words, the Government has taken steps to “lift the shadow of  
13 deportation from these young people” and given them “a degree of relief and  
14 hope.” June 15, 2012 Obama Remarks. As a result of DACA, hundreds of  
15 thousands of Dreamers “have been able to enroll in colleges and universities,  
16 complete their education, start businesses that help improve our economy, and give  
17 back to our communities as teachers, medical professionals, engineers, and  
18 entrepreneurs—all on the books.” Dec. 30, 2016 Johnson Letter at 2.

### 19 **Mr. Gonzalez’s DACA Status and Employment Authorization**

20 54. Mr. Gonzalez graduated on time from Altus Charter High School in  
21 San Diego in 2011. Despite the support of his family and friends, he was unable to  
22 secure lawful employment from 2011 to 2013 because he was unwilling to  
23 misrepresent his immigration status to prospective employers.

24 55. In 2013, Mr. Gonzalez learned of the DACA program. He expended  
25 significant time and resources filling out the USCIS forms; gathering the necessary  
26 supporting evidence and documentation; attending a biometrics appointment where  
27 his photograph and fingerprints were taken; and paying the \$495 filing fee.

28

1           56. Mr. Gonzalez provided the Government his birth certificate; school  
2 records from childhood to graduation, including report cards and certificates of  
3 achievement; several years of his family's tax returns; and his prior addresses, all  
4 of which are in San Diego.

5           57. Ultimately, the Government granted Mr. Gonzalez DACA status and  
6 employment authorization on January 22, 2013, valid until January 21, 2015.

7           58. In 2014, Mr. Gonzalez timely applied for renewal of his DACA status  
8 and EAD, again complying with the paperwork and biographic and biometric  
9 background checks, and paying a second fee. Upon review of these materials, the  
10 Government granted Mr. Gonzalez's renewal application, deeming him lawfully  
11 present and authorized to work in the United States until December 22, 2017.

12           59. In 2015, USCIS further screened all individuals who had been granted  
13 DACA status "to identify records that contained information indicating known or  
14 suspected gang association." Apr. 17, 2015 Letter from USCIS Director Leon  
15 Rodriguez to Senate Judiciary Chairman Charles E. Grassley.<sup>22</sup>

16           60. The Government therefore confirmed, on at least 3 separate occasions,  
17 that Mr. Gonzalez is deserving of DACA benefits and does not pose a threat to  
18 national security or public safety.

19           61. In an apparent oversight, on June 25, 2017—over a year after  
20 automatically terminating his DACA status and EAD—USCIS sent Mr. Gonzalez  
21 a notice to timely submit his DACA and EAD renewal applications ahead of their  
22 December expiration.

### 23 **Mr. Gonzalez's Employment**

24           62. With EAD in hand, Mr. Gonzalez sought and quickly obtained  
25 employment in 2013. He was hired to perform food and equipment setup and  
26 stocking for Gate Gourmet, a provider of airline catering and provision services.  
27 Because he was preparing trays that were carried on commercial aircraft, Mr.

28 <sup>22</sup> [https://www.judiciary.senate.gov/imo/media/doc/2015-04-17%20USCIS%20to%20CEG%20\(DACA%20for%20Gang%20Member\).pdf](https://www.judiciary.senate.gov/imo/media/doc/2015-04-17%20USCIS%20to%20CEG%20(DACA%20for%20Gang%20Member).pdf).

1 Gonzalez's employer required that he pass additional security tests, including  
2 interviews, drug tests, security clearance protocols, and EAD verification. He  
3 passed all of them.

4 63. Mr. Gonzalez was a dutiful and trusted employee for nearly 3 years.  
5 He was primarily responsible for provisioning 7 flights, 5 nights a week for  
6 American Airlines, but was often tasked with helping others who were responsible  
7 for Canada Air, Delta, Hawaiian, United, and US Airways. From the time he was  
8 hired to the time of his inexplicable arrest and detention, Mr. Gonzalez worked 5  
9 nights a week from approximately 7:00 p.m. to 4:00 a.m. Upon coming home to  
10 his shared apartment, he often slept most of the day before returning to work in the  
11 evening.

12 64. The money Mr. Gonzalez made at Gate Gourmet went toward  
13 supporting his family. He was also saving up to buy his own car, but after he was  
14 detained, his family was forced to divert those savings to securing his release.

15 65. When Mr. Gonzalez was released from his month-long detention, he  
16 voluntarily informed Gate Gourmet that his EAD had been terminated. He had to  
17 be let go, but his employer asked him to reapply when his EAD or other  
18 employment authorization is restored.

### 19 **Mr. Gonzalez's Arrest, Detention, and Release**

20 66. On May 6, 2016, an acquaintance known to Mr. Gonzalez only as  
21 "Adolfo" asked him to come to his home and care for his dogs for the afternoon  
22 while Adolfo was out of town. Mr. Gonzalez agreed, having previously done so  
23 without issue. His sister dropped him off at Adolfo's home sometime between  
24 11:30 a.m. and 1:00 p.m.

25 67. Mr. Gonzalez entered the unlocked home and was surprised to  
26 discover that 2 people were already there. One was a man whom Mr. Gonzalez  
27 recognized as "Romeo," and the other was a woman he did not know.  
28

1           68. Having fed and cleaned up after the dogs, and realizing that others  
2 were there to look after them, Mr. Gonzalez considered leaving. But he was  
3 without transportation.

4           69. For the rest of the afternoon, Mr. Gonzalez kept to himself, passing  
5 the time watching movies and television while he waited for his sister to pick him  
6 up and take him to his regular early-evening-to-early-morning work shift. At  
7 approximately 4:00 p.m., a law enforcement officer knocked on the front door and  
8 asked to enter the house. Mr. Gonzalez felt it was inappropriate to allow them into  
9 someone else's home unless they had a search warrant. He said so to the officers,  
10 who stopped trying to enter the house and stopped speaking to him. But Mr.  
11 Gonzalez noticed that the officers continued to surround the house.

12           70. About an hour later, a man Mr. Gonzalez did not recognize arrived at  
13 the house with the law enforcement officers. He identified himself as the owner  
14 and asked Mr. Gonzalez to exit.

15           71. By that time, Mr. Gonzalez knew he would soon have to leave for  
16 work. His manager had an unforgiving policy toward tardiness, and Mr. Gonzalez  
17 believed he would have little difficulty resolving the situation with law  
18 enforcement and being allowed to go to work.

19           72. Mr. Gonzalez (and Romeo) exited the house. Relying on the  
20 Government's assurances—publicly and in his DACA approval notices—that  
21 DACA status barred his apprehension as long as he had not committed any crimes,  
22 which he had not, Mr. Gonzalez informed the officers of his DACA status and of  
23 his need to get to work.

24           73. Mr. Gonzalez had his DACA EAD with C-33 classification with him.  
25 He handed it to one of the officers for verification.

26           74. After that officer walked away, a second officer told Mr. Gonzalez  
27 that he would be detained. Mr. Gonzalez asked why, to which the officer replied  
28

1 that he was in the country illegally and his DACA status did not matter. A third  
2 officer abruptly grabbed Mr. Gonzalez by the arm and handcuffed him.

3 75. Romeo was taken away in handcuffs, and the officer who threatened  
4 Mr. Gonzalez with detention and the officer who handcuffed him went inside the  
5 house.

6 76. Mr. Gonzalez sat on the front porch—handcuffed—unable to see  
7 inside the house. He heard no sounds coming from inside the house. He did not  
8 see or hear anyone else go in or out of the house. Within a couple of minutes—  
9 without further questioning or explanation—the officer who was checking Mr.  
10 Gonzalez’s immigration status put him in a police car and took him away. Mr.  
11 Gonzalez did not see that officer speak to or engage with anyone who went inside  
12 the house.

13 77. Mr. Gonzalez was taken to a detention facility, where he was  
14 questioned by a handful of officers, one at a time. They did not ask any specific or  
15 pointed questions. Mr. Gonzalez repeatedly answered to the effect of, “I don’t  
16 understand why I’m being detained.”

17 78. During the questioning, officers threatened to detain his family  
18 members.

19 79. Seeing and fearing the officers’ hostility and willingness to threaten  
20 him and his family for reasons he did not understand, Mr. Gonzalez handed over  
21 his phone.

22 80. The officers looked through the contacts and communications, asking  
23 who certain names were. Mr. Gonzalez gave them the boring answers: “my soccer  
24 buddy,” “my ex-girlfriend,” “my brother,” and so on. Mr. Gonzalez saw the  
25 disappointment in the officers’ faces as they scoured the phone’s contents.

26 81. For 2 or 3 days, Mr. Gonzalez was denied food, deliberately woken up  
27 with loud bangs by officers (who laughed at his shocked fear), and threatened with  
28 detention of his family. After that, the officers apparently lost interest in Mr.

1 Gonzalez. He was transferred to a second facility. For approximately a week he  
2 was ignored. No one came to question him, and his requests for an explanation or  
3 right to call his family simply went unanswered. Subsequently, Mr. Gonzalez was  
4 transferred to a third facility, where he was finally permitted to contact his family  
5 after approximately 10 days in detention.

6 82. For the final three or more weeks of Mr. Gonzalez's detention, law  
7 enforcement officers continued to ignore him. The questioning ceased entirely.  
8 After the initial 2 days of threats, abuse, and unsubstantiated accusations, officers  
9 apparently determined that Mr. Gonzalez had no part in the events at Adolfo's  
10 house that concerned them and was not a person of interest.

11 83. On June 1, 2016—nearly a month after his unwarranted and unlawful  
12 arrest and detention—Immigration Judge McSeveney ordered Mr. Gonzalez  
13 released from custody on a mere \$5,000 bond. The Judge stated that Mr. Gonzalez  
14 was not a danger to the public. DHS waived appeal, and Mr. Gonzalez was finally  
15 released on June 3, 2016.

#### 16 **USCIS's Automatic Termination of Mr. Gonzalez's DACA Status and EAD**

17 84. On May 7, 2016—the day after Mr. Gonzalez's arrest—CBP issued  
18 him an NTA. Its sole charge is that Mr. Gonzalez is unlawfully present in the  
19 United States under Section 212 of the INA, 8 U.S.C. § 1182(a)(6)(A)(i). The  
20 NTA made no other allegations of wrongdoing or unlawful behavior, let alone  
21 criminality.

22 85. On May 23, 2016, USCIS sent Mr. Gonzalez a Notice of Action,  
23 explaining that:

- 24 • “On May 7, 2016, *Customs and Border Protection (CBP)* issued you a Notice  
25 to Appear (NTA).”
- 26 • “USCIS is notifying you that your deferred action as a childhood arrival and  
27 your employment authorization *terminated automatically* as of the date your NTA  
28 [for unlawful presence] was issued.”

1 • “An appeal or motion to reopen/reconsider this notice of action may not be filed  
2 on behalf of the requestor.”

3 **CAUSES OF ACTION**

4 **COUNT ONE**

5 **Administrative Procedure Act – Arbitrary and Capricious Action**

6 86. Mr. Gonzalez repeats and incorporates by reference each and every  
7 preceding allegation as if fully set forth herein.

8 87. This Count seeks declaratory and injunctive relief under the APA.

9 88. The APA provides that courts “shall hold unlawful and set aside  
10 agency action, findings, and conclusions found to be arbitrary, capricious, an abuse  
11 of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

12 89. The termination of Mr. Gonzalez’s DACA status and work  
13 authorization constitutes final agency action that cannot be appealed, as stated in  
14 USCIS’s May 23, 2016 Notice of Action.

15 90. Agencies must provide “reasoned explanation[s]” for their actions,  
16 and courts must reverse agency actions for which they cannot discern a reason.  
17 The Government has provided no explanation—let alone a reasoned one—for its  
18 automatic termination of Mr. Gonzalez’s DACA status and EAD in violation of  
19 multiple provisions of the DACA SOP and USCIS Memo, which establish the  
20 binding process for DACA termination.

21 91. The DACA SOP and USCIS Memo typically require USCIS to issue a  
22 DACA beneficiary an NOIT and 33 days to respond before determining whether to  
23 terminate DACA status. But USCIS did not provide Mr. Gonzalez with notice or  
24 an opportunity to respond before terminating his DACA status. Termination may  
25 proceed without notice when USCIS follows the protocol for EPS cases, *see supra*  
26 ¶¶ 34-39, including referral of the case to BCU and ultimately to ICE and the  
27 issuance of an NTA by ICE based on alleged EPS concerns. But USCIS did not  
28 follow the protocol for EPS cases, nor did ICE issue Mr. Gonzalez an NTA based

1 on a finding that his was an EPS case. Neither the DACA SOP nor the USCIS  
2 Memo provides for “automatic” termination without notice when CBP issues an  
3 NTA based on unlawful presence. But USCIS terminated Mr. Gonzalez’s DACA  
4 status automatically upon CBP’s issuance of an NTA that listed unlawful presence  
5 as its sole basis. Moreover, USCIS’s own guidelines make clear that, even upon  
6 ICE’s issuance of an NTA in an EPS case, USCIS should proceed by “taking into  
7 account the basis for the NTA.” USCIS Memo at 4. By adopting an unwritten  
8 “policy” of automatic termination regardless of the basis for an NTA and  
9 regardless of the issuing agency, USCIS expressly eschewed any consideration of  
10 the basis for the NTA.

11 92. In at least these ways, USCIS’s termination of Mr. Gonzalez’s DACA  
12 status violated established procedure for DACA termination and, for that reason,  
13 was arbitrary and capricious.

14 93. USCIS’s termination of Mr. Gonzalez’s DACA status was also  
15 arbitrary and capricious because USCIS failed to exercise its discretion through  
16 reasoned decision-making and merely terminated his status “automatically” based  
17 on a CBP officer’s decision to issue an NTA for unlawful presence, which is not  
18 even a relevant factor in the determination of DACA eligibility.

19 94. The termination decision is also arbitrary and capricious because: (a)  
20 USCIS failed to articulate any reason for terminating DACA benefits; (b) DACA  
21 status is expressly available to those who are subject to NTAs and thus cannot  
22 terminate automatically upon the issuance of an NTA; (c) it purports to rest on a  
23 practice that finds no support in procedures that govern DACA termination and  
24 constitutes an abrupt departure from established termination practice; (d) it would  
25 make termination hinge on an immigration official’s decision to issue an NTA  
26 without any allegation of wrongdoing; and (e) “automatic” termination does not  
27 involve the exercise of discretion, which is required before USCIS may terminate  
28 DACA status.



1 attachments of normal life.” *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).

2 Where, as here, an individual reasonably relies on a conferred status to pursue  
3 these activities, that status cannot be revoked without due process. *See Bell v.*  
4 *Burson*, 402 U.S. 535, 539 (1971).

5 103. DACA status also confers property interests, which “extend beyond  
6 tangible property and include anything to which a plaintiff has a legitimate claim  
7 of entitlement . . . [as] created [by] . . . rules or understandings that secure certain  
8 benefits and that support claims of entitlement to those benefits.” *Nozzi*, 806 F.3d  
9 at 1191.

10 104. Mr. Gonzalez possessed a property interest in his DACA status and  
11 the numerous benefits conferred by it, including employment authorization,  
12 eligibility for federal and state public benefits, and the ability to leave the country  
13 and return legally under certain circumstances.

14 105. While the Government may argue that DACA status confers no  
15 substantive rights or benefits, “the identification of property interests under  
16 constitutional law turns on the substance of the interest recognized, not the name  
17 given that interest by the state.” *Newman v. Sathyavaglswaran*, 287 F.3d 786, 797  
18 (9th Cir. 2002). The “mutually explicit understandings” created by the  
19 Government’s establishment and continuous operation of the DACA program—  
20 under a well-defined framework and highly specific criteria—created a reasonable  
21 expectation of entitlement to DACA status and its attendant benefits, which cannot  
22 be terminated without due process. *Perry v. Sindermann*, 408 U.S. 593, 601  
23 (1972).

24 106. Even if the Government’s ultimate decision about whether to  
25 terminate Mr. Gonzalez’s DACA status is discretionary, its policy and process  
26 must be rational and conform to constitutional procedural due process  
27 requirements. *See Galvin v. Hay*, 374 F.3d 739, 758 (9th Cir. 2004) (“[F]ederal  
28 officials do not possess discretion to violate constitutional rights.”)





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Dated: September 11, 2017

Respectfully submitted,

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**CERTIFICATE OF ELECTRONIC FILING**

I hereby certify that on September 11, 2017, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

/s/ John Ulin