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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. 17 CV 1840 JM(NLS)

**FIRST AMENDED COMPLAINT
 FOR DECLARATORY AND
 INJUNCTIVE RELIEF**

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1 Plaintiff Alberto Luciano Gonzalez Torres (“Mr. Gonzalez”) brings this First
2 Amended 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 has made him
5 “lawfully present” with the right to work in the United States and offered the
6 opportunity for renewal upon consideration of the DACA eligibility criteria.
7 Crucial to that status and to the consideration for renewal is the fact that—in the 16
8 years he has lived in the United States, since the age of 8—he has never been
9 charged with (let alone convicted of) any crime, in any forum.

10 In May 2016, officers of Defendant CBP arrested Mr. Gonzalez when they
11 encountered him at the home of an acquaintance where CBP claims it later found
12 several undocumented immigrants. Following the arrest, Defendant USCIS
13 unlawfully automatically terminated Mr. Gonzalez’s DACA status. In September
14 2017, this Court vacated and preliminarily enjoined that termination as violating
15 the DACA Standard Operating Procedures (“SOP”) and the Administrative
16 Procedure Act (“APA”).

17 USCIS subsequently issued Mr. Gonzalez a Notice of Intent to Terminate
18 (“NOIT”) his DACA status. Its sole rationale is that he is now an “enforcement
19 priority” because Defendant ICE is litigating Immigration Court removal
20 proceedings against him on the charge of presence in the United States without
21 admission or parole—*i.e.*, the ground for removal that DACA, by definition, exists
22 to defer because DACA recipients are “low priority cases.” Mr. Gonzalez
23 responded to the NOIT, again denying any knowledge of or involvement in any
24 possible wrongdoing associated with the circumstances of his arrest.

25 While the NOIT was pending USCIS’s review, Defendants acknowledged
26 that they “do not take issue with” the fact that Mr. Gonzalez continues to meet all
27 of the DACA eligibility criteria. That very recent admission is significant, as one
28 of those criteria is that a DACA requestor does not “pose[] a threat to national

1 security or public safety.” Defendants’ acknowledgment is therefore inconsistent
2 with USCIS’s sudden labeling of Mr. Gonzalez as an “enforcement priority,” in
3 clear contravention of Defendants’ publicly stated and unambiguous definitions of
4 that term, which make clear that DACA recipients remain low priority cases in the
5 absence of adjudicated disqualifying criminal offenses.

6 On the other hand, Defendants’ acknowledgment that he is not a public
7 safety concern is entirely consistent with (1) the fact that Mr. Gonzalez has never
8 been charged with or convicted of any crime, in any forum; (2) CBP’s
9 abandonment of any investigation of Mr. Gonzalez after two days of aggressive
10 interrogation nearly two years ago; (3) an Immigration Judge’s June 2016
11 determination that he is not a public safety concern and should be released on just
12 \$5,000 bond; and (4) DHS’s decision not to object to or appeal that determination
13 or to investigate or take any action against Mr. Gonzalez in the 20 months since he
14 was released from immigration detention, during which time he has resumed his
15 law-biding and productive life in San Diego, the only home he knows.

16 In other words, for over a year and a half, the government has explicitly and
17 implicitly indicated that it does not believe Mr. Gonzalez was involved in any
18 criminal activity related to the circumstances of his arrest or that he is a safety
19 concern. Accordingly, he has never had the opportunity to confront any potentially
20 incriminating evidence against him because he has never been charged with a
21 crime, in Immigration Court or otherwise. Defendants’ decision to label a DACA
22 recipient an enforcement priority in the absence of any “criminal offense” is
23 therefore an unexplained departure from the DACA Standard Operating
24 Procedures and Defendants’ publicly iterated enforcement priority standards,
25 which they have repeatedly affirmed have not changed for DACA recipients and
26 remain governed by the criteria set forth in DHS’s 2012 DACA Memo.

27 The closest Mr. Gonzalez has come to an opportunity to be heard by a
28 neutral arbiter was at his bond hearing, where the Immigration Judge found him

1 credible and determined that he is not a threat to the public before releasing him on
2 \$5,000 bond. And he has since disavowed any wrongdoing in a sworn declaration
3 submitted to this Court, and again in his responses to USCIS’s NOIT.
4 Nevertheless, USCIS—acting as judge and jury—has determined through an
5 informal review that his assertions of innocence are “not credible” and that the
6 “record as a whole”—*i.e.*, his mere presence at the house and unsubstantiated
7 identifications of a person “resembling” him by three of the twelve immigrants
8 allegedly present at the house (but not the other nine)—suffice to label him a
9 criminal. On the basis of this violation of the most basic tenets of due process,
10 USCIS has purported to terminate Mr. Gonzalez’s DACA status and employment
11 authorization, and to deny his renewal application.

12 As explained more fully below, Defendants have violated the DACA Memo
13 and DACA SOP, deviated from their own mandatory policies and public
14 pronouncements regarding enforcement priorities without any reason or
15 explanation, and declared Mr. Gonzalez a criminal through an informal
16 determination that contradicts their own behavior and statements. Defendants’
17 actions violate the APA and the Due Process Clause of the Fifth Amendment. The
18 termination of Mr. Gonzalez’s DACA status and the denial of his renewal
19 application must be declared unlawful and unconstitutional and set aside.

20 **INTRODUCTION**

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

25 2. Mr. Gonzalez attended elementary and middle school in San Diego,
26 where he graduated on time from high school in 2011. In January 2013,
27 Defendants granted him permission to live and work lawfully in the United States
28 pursuant to the DACA program. Defendants renewed Mr. Gonzalez’s DACA

1 status in December 2014 until December 22, 2017. Both times, he was subject to
2 rigorous biographic and biometric background checks, and paid \$465 fees.

3 3. Prior to receiving DACA status, from 2011 to 2013, Mr. Gonzalez
4 was unable to secure employment because he was unwilling to misrepresent his
5 immigration status. But thanks to his DACA-related employment authorization,
6 Mr. Gonzalez quickly found lawful employment with an airline supply company in
7 2013. He was tasked with stocking food and supplies on commercial flights for
8 American Airlines. In addition to the rigorous vetting process he had undergone to
9 obtain—and then renew—his DACA status and employment authorization, Mr.
10 Gonzalez’s airline industry job required him to meet strict security protocols,
11 including background checks and drug tests. He passed them all.

12 4. On May 6, 2016, Mr. Gonzalez was detained by immigration officers
13 while dog-sitting at a house where a CBP officer later alleged that undocumented
14 immigrants were present. The very next day, CBP issued him a Notice to Appear
15 (“NTA”) in Immigration Court. The NTA’s sole charge was unlawful presence in
16 the United States under Section 212 of the Immigration and Nationality Act
17 (“INA”). *See* 8 U.S.C. § 1182(a)(6)(A)(i) (“present in the United States without
18 being admitted or paroled”). The NTA did not contain any criminal allegations.

19 5. After two days of questioning, Mr. Gonzalez was virtually ignored for
20 nearly a month in immigration detention. CBP officers apparently lost interest in
21 him and concluded that he was not involved in whatever events they were
22 investigating. Ultimately, an Immigration Judge ordered Mr. Gonzalez released on
23 a bond of only \$5,000, after finding that he did not pose a threat to public safety.
24 DHS did not object to or appeal the Immigration Judge’s findings or his decision.
25 Since being released over 19 months ago, Mr. Gonzalez has resumed his life as a
26 law-abiding and productive member of his San Diego community. To this day,
27 Mr. Gonzalez has never been criminally charged or questioned again by any law
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1 enforcement agency or officer in connection with the events of May 6, 2016. He
2 appeared at every Immigration Court proceeding pursuant to his NTA.

3 6. On May 23, 2016, USCIS issued Mr. Gonzalez a “Notice of Action,”
4 informing him that: “On May 7, 2016, Customs and Border Protection (CBP)
5 issued you a Notice to Appear (NTA). USCIS is notifying you that your deferred
6 action as a childhood arrival and your employment authorization terminated
7 automatically as of the date your NTA [for unlawful presence] was issued.”

8 7. On September 29, 2017, this Court vacated and preliminarily enjoined
9 that automatic termination and ordered Defendants to reinstate Mr. Gonzalez’s
10 DACA status and employment authorization, accept his renewal application, and
11 fully comply with the DACA SOP if they wished to reconsider his DACA status.
12 Any termination decision does not take effect until Defendants prove the
13 termination’s lawfulness to the satisfaction of the Court.

14 8. On November 13, 2017, USCIS issued Mr. Gonzalez a Notice of
15 Intent to Terminate (“NOIT”), explaining that it would not independently assess
16 his DACA eligibility because ICE was litigating removal proceedings against him
17 for unlawful presence. After the Immigration Judge terminated Mr. Gonzalez’s
18 removal proceedings without prejudice, ICE issued a new NTA—again charging
19 nothing but unlawful presence.

20 9. The new NTA preceded Mr. Gonzalez’s response to the NOIT, and
21 therefore indicated Defendants’ pre-judgment of whether Mr. Gonzalez might
22 rightfully be deemed an “enforcement priority.” Tellingly, however, the new NTA
23 still does not contain any criminal allegations.

24 10. Therefore, while Defendants purport to have superficially complied
25 with the DACA SOP by issuing an NOIT, their pre-judgment of the case and their
26 decision to label Mr. Gonzalez an “enforcement priority” even though he has never
27 been charged with or convicted of a crime is a violation of the DACA program’s
28 non-prioritization of immigrants without any criminal history and the APA’s

1 proscriptions against arbitrary and capricious action and unexplained policy
2 changes.

3 11. Moreover, Defendants’ revocation—through an informal review and
4 determination of credibility and criminality—of the rights they granted Mr.
5 Gonzalez to live and work in the United States is a blatant due process violation.

6 12. The timing of Defendants’ purported termination is also telling.
7 While they waited six weeks after the Court issued its Preliminary Injunction (and
8 a year and a half after the incident of May 6, 2016) to issue the bare-bones NOIT,
9 Defendants then issued Mr. Gonzalez’s termination notice only three days after
10 receiving his NOIT response, and just one day before his DACA status was set to
11 expire—in a seemingly pre-judged determination, and in an apparent effort to
12 avoid considering his pending renewal application. As this Court warned, it
13 “seems . . . this situation has been prejudged, and that this [NOIT procedure] is just
14 going to be a pretext to get this guy out of the country, terminate his legal status,
15 and [] do what it wanted to do in the beginning by the initial issuance of the NTA.”

16 13. After growing up and obtaining his education in San Diego, Mr.
17 Gonzalez has been a valued employee and productive member of his community.
18 Defendants’ efforts to strip him of protection from removal from the only country
19 he knows are unlawful and unconstitutional and must be set aside.

20 **JURISDICTION AND VENUE**

21 14. This Court has jurisdiction pursuant to 28 U.S.C. § 1331.

22 15. This Court has remedial authority under the Declaratory Judgment
23 Act, 28 U.S.C. §§ 2201 and 2202, and the APA, 5 U.S.C. §§ 701-706.

24 16. Venue is proper in the Southern District of California because a
25 substantial part of the events or omissions giving rise to this action occurred in this
26 District. 28 U.S.C. § 1391(e)(1).

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PARTIES

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2 17. Mr. Gonzalez is a 24-year-old resident of San Diego, California. He
3 was born in Mexico and brought to the United States in or around 2001, when he
4 was approximately 8 years old. Pursuant to the DACA program, Defendants twice
5 conferred on Mr. Gonzalez the right to live and work in this country—for set
6 periods subject to renewal—after lengthy application processes, rigorous security
7 vetting, and substantial fee payments. He is a valued employee with no criminal
8 history.

9 18. DHS is a cabinet department of the United States federal government
10 with responsibility for, among other things, administering and enforcing the
11 nation’s immigration laws. Its stated mission is to “safeguard the American
12 people, our homeland, and our values.” U.S. Department of Homeland Security,
13 “Our Mission.”¹

14 19. USCIS is a federal agency within DHS “that oversees lawful
15 immigration to the United States.” U.S. Citizenship and Immigration Services,
16 “About Us.”² USCIS administers the DACA program, including collection of
17 forms, documents, and fees; issuance of DACA approval and employment
18 authorization notices; and issuance of termination notices. USCIS previously
19 “automatically” terminated Mr. Gonzalez’s DACA status and EAD without notice
20 or an opportunity to be heard, and now purports to unlawfully and
21 unconstitutionally terminate his DACA status and deny his renewal application.

22 20. ICE is a law enforcement agency within DHS that “enforces federal
23 laws governing border control, customs, trade and immigration to promote
24 homeland security and public safety.” U.S. Immigration and Customs
25 Enforcement, “Who We Are.”³

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28 ¹ <https://www.dhs.gov/our-mission> (last visited Dec. 29, 2017).

² <https://www.uscis.gov/aboutus> (last visited Dec. 29, 2017).

³ <https://www.ice.gov/about> (last visited Dec. 29, 2017).

1 24. Accordingly, Defendants enacted a program of deferred action for
2 individuals who were brought to the United States as children and meet specific
3 criteria. Deferred action is a well-established form of administrative action by
4 which the Executive Branch decides, for humanitarian or other reasons, to refrain
5 from seeking an individual’s removal from the country and authorizes his
6 continued lawful presence for a specified period.

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

11 26. President Obama explained that “it makes no sense to expel talented
12 young people, who, for all intents and purposes, are Americans – they’ve been
13 raised as Americans; understand themselves to be part of this country . . . [and]
14 want to staff our labs, or start new businesses, or defend our country.”
15 Accordingly, the President explained that DHS would be “taking steps to lift the
16 shadow of deportation from these young people” and giving them “a degree of
17 relief and hope.” The White House, Office of the Press Secretary, “Remarks by
18 the President on Immigration” (“Obama Remarks”) (June 15, 2012).⁶

19 27. The DACA Memo established that the following DACA criteria:
20 • came to the United States under the age of 16;
21 • continuously resided in the United States for at least five years preceding the
22 date of the memorandum and was present in the United States on the date of the
23 memorandum;
24 • is currently in school, has graduated from high school, has obtained a general
25 education development certificate, or is an honorably discharged veteran of the
26 Coast Guard or Armed Forces of the United States;

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28 ⁶ <https://obamawhitehouse.archives.gov/the-press-office/2012/06/15/remarks-president-immigration>.

- 1 • has not been convicted of a felony offense, a significant misdemeanor offense,
2 or multiple misdemeanor offenses, and does not otherwise pose a threat to national
3 security or public safety; and
- 4 • is not above the age of 30.

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

7 29. USCIS was tasked with implementing the DACA program, including
8 collection of forms, documents, and fees and issuance of DACA approval and
9 employment authorization notices. Defendants promulgated a public policy
10 document detailing how the DACA program operates. *See* USCIS, “DACA
11 Frequently Asked Questions” (“DACA FAQ”).⁷

12 30. Defendants also developed non-discretionary internal policies for all
13 government personnel implementing the DACA program, known as the DACA
14 Standard Operating Procedures, or “SOP.”

15 31. Until the program’s rescission in September 2017, a DACA recipient
16 could apply for renewal every 2 years. A renewal applicant had to reapply, pass
17 another round of background checks, and pay another \$495. Renewal requires that
18 the recipient “met the guidelines for consideration of Initial DACA” and:

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

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28 ⁷ <https://www.uscis.gov/archive/frequently-asked-questions> (updated Oct. 6, 2017;
last visited Dec. 29, 2017).

1 32. Since DACA’s inception, these objective criteria have served as the
2 determinative basis for USCIS’s individual DACA decisions. *See Texas v. U.S.*,
3 809 F.3d 134, 171-76 (5th Cir. 2015).

4 33. In 2015, USCIS further screened all individuals who had been granted
5 DACA status “to identify records that contained information indicating known or
6 suspected gang association.” Apr. 17, 2015 Letter from USCIS Director Leon
7 Rodriguez to Senate Judiciary Chairman Charles E. Grassley (“Rodriguez
8 Letter”).⁸

9 34. A DACA recipient “may obtain employment authorization from
10 USCIS provided [he or she] can demonstrate an economic necessity for
11 employment.” DACA FAQ, Q4. Upon approval, the recipient receives an
12 Employment Authorization Document (“EAD”).

13 35. “An individual who has received deferred action is authorized by
14 DHS to be present in the United States, and is therefore considered by DHS to be
15 lawfully present during the period deferred action is in effect.” DACA FAQ, Q1.

16 36. DACA determinations are separate and independent from any removal
17 proceedings in Immigration Court. Even an individual who (1) is in removal
18 proceedings, (2) has a final order of removal, or (3) has a voluntary departure order
19 is eligible for DACA status. *See* DACA FAQ, Q10. Indeed, the DACA SOP
20 requires review of DACA eligibility even for individuals who were removed
21 pursuant to a final removal order but illegally reentered the country.

22 **Rescission of the DACA Program**

23 37. From January to September 5, 2017, the Trump administration
24 continued to process and grant new DACA applications, renewal applications, and
25 EADs.

26 38. On September 5, DHS announced a plan to phase out the DACA
27 program over a two-year period. DACA recipients whose statuses were set to

28 ⁸ [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 expire before March 6, 2018 were permitted to apply for renewal by October 5,
2 2017. *See* Sept. 5, 2017 Memorandum from Elaine C. Duke to ICE, CBP, and
3 USCIS, “Memorandum on Rescission of Deferred Action for Child Arrivals”
4 (“Duke Memo”).⁹

5 39. Before and after the rescission, the administration made clear that the
6 rules governing DACA recipients had not changed, and that DACA recipients
7 would not be deemed enforcement priorities in a manner inconsistent with the
8 DACA program. Indeed, on April 21, 2017, President Trump—using the common
9 term for undocumented immigrants brought to the United States as children—
10 assured that the administration is “not after the dreamers.” He was asked, “that’s
11 going to be the policy of your administration to allow the dreamers to stay?” The
12 President responded unequivocally: “Yes. Yes. That’s our policy.” He
13 elaborated: “The dreamers should rest easy. OK? I’ll give you that. The dreamers
14 should rest easy.” Associated Press, “Transcript of AP Interview with Trump”
15 (“Trump Interview”) (published Apr. 23, 2017).¹⁰

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

24 41. The Kelly Memo prioritizes for removal non-DACA recipients who
25 merely “have been charged with any criminal offense that has not been resolved”
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27 ⁹ <https://www.dhs.gov/news/2017/09/05/memorandum-rescission-daca>.

28 ¹⁰ <https://www.apnews.com/c810d7de280a47e88848b0ac74690c83>.

¹¹ https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf.

1 or allegedly “committed acts which constitute a chargeable criminal offense.” But
2 by the Memo’s own terms, the enforcement priority for individuals subject to an
3 allegation or suspicion of wrongdoing without a conviction or criminal charge does
4 not apply to DACA recipients.

5 42. On February 21, 2017, DHS again unequivocally stated that the Kelly
6 Memo’s enforcement priorities have no bearing on DACA recipients:

7 Q22: Do these memoranda affect recipients of Deferred
8 Action for Childhood Arrivals (DACA)?
A22: No.

9 DHS, “Q&A: DHS Implementation of the Executive Order on Enhancing Public
10 Safety in the Interior of the United States (Feb. 20, 2017).¹²

11 43. On June 15, 2017, DHS issued more public guidance, explaining that
12 “DACA recipients will continue to be eligible as outlined in the June 15, 2012
13 memorandum.” DHS, “Frequently Asked Questions: Rescission of Memorandum
14 Providing for Deferred Action for Parents of Americans and Lawful Permanent
15 Residents (‘DAPA’)” (June 15, 2017).¹³

16 44. Following the announcement of the DACA rescission plan, the
17 administration explained that “[d]uring this six-month time, there are no changes
18 that are being made to the program at this point.” The White House, “Press
19 Briefing by Press Secretary Sarah Sanders and Homeland Security Advisor Tom
20 Bossert” (Sept. 8, 2017).

21 45. And again on October 3, 2017, DHS assured the Senate Judiciary
22 Committee regarding its enforcement priorities: “We rely on guidance that was put
23 in place in 2012 when the DACA program was initiated. That’s available on
24 USCIS’s website and will tell you what the priorities are for Immigration and
25 Customs Enforcement and what they are for the Department at large. Those

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27 ¹² [https://www.dhs.gov/news/2017/02/21/qa-dhs-implementation-executive-order-
enhancing-public-safety-interior-united-states](https://www.dhs.gov/news/2017/02/21/qa-dhs-implementation-executive-order-enhancing-public-safety-interior-united-states).

28 ¹³ [https://www.dhs.gov/news/2017/06/15/frequently-asked-questions-rescission-
memorandum-providing-deferred-action-parents](https://www.dhs.gov/news/2017/06/15/frequently-asked-questions-rescission-memorandum-providing-deferred-action-parents).

1 priorities have not changed.” Testimony of Michael Dougherty, Assistant
2 Secretary of DHS at 01:10:20, “Oversight of the Administration’s Decision to End
3 Deferred Action for Childhood Arrivals,” *available at* <https://bit.ly/2fzVNEY>; *id.*
4 at 01:11:00 (the Kelly Memo “carved out” DACA from its enforcement priorities;
5 “I would tell you in good faith and complete confidence that we are relying on the
6 same priorities that were in place in 2012 and we have not added to them for this
7 population.”).¹⁴

8 46. In short, DACA recipients who meet the program’s objectively
9 verifiable criteria—*i.e.*, have no disqualifying criminal convictions and do not pose
10 a threat to national security or public safety—remain “low priority cases.” The
11 government has issued no guidance indicating a change in that position.

12 **DACA Application and Renewal Process**

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

19 48. A DACA applicant had to “undergo biographic and biometric
20 background checks before USCIS [would] consider [his or her] request.” DACA
21 FAQ, Q22. This involved checking biographic and biometric information “against
22 a variety of databases maintained by DHS and other federal government agencies.”
23 DACA FAQ, Q23.

24 49. To be considered, an applicant also paid a \$495 fee, which “cannot be
25 waived.” USCIS, “I-821D, Consideration of Deferred Action for Childhood
26 Arrivals.”¹⁵

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28 ¹⁴ <https://www.judiciary.senate.gov/meetings/oversight-of-the-administrations-decision-to-end-deferred-action-for-childhood-arrivals>.

¹⁵ <https://www.uscis.gov/i-821d> (updated Oct. 6, 2017; last visited Dec. 29, 2017).

1 50. A DACA renewal applicant had to submit the same forms, undergo
2 another round of biographic and biometric background checks, and pay another
3 \$495 fee. USCIS, Form I-821D, OMB No. 1615-0124.¹⁶

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

9 52. In 2015, USCIS further screened all individuals who had been granted
10 DACA status “to identify records that contained information indicating known or
11 suspected gang association.” Apr. 17, 2015 Letter from USCIS Director Leon
12 Rodriguez to Senate Judiciary Chairman Charles E. Grassley.¹⁷

13 53. Even an individual (1) in removal proceedings, (2) with a final order
14 of removal, or (3) with a voluntary departure order is eligible for DACA status.
15 *See* DACA FAQ, Q7.

16 **DACA Termination Policies**

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

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

26 _____
27 ¹⁶ https://www.uscis.gov/system/files_force/files/form/i-821dinstr.pdf?download=1
28 (archived content).

¹⁷ [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 56. 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 3.¹⁸

8 57. “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 58. If ICE issues an NTA based on an EPS concern, USCIS will terminate
19 DACA status “automatically,” without an NOIT or opportunity to respond.
20 Neither the DACA SOP nor the USCIS Memo authorizes termination without
21 notice when CBP issues an NTA or in the absence of an EPS determination by
22 ICE. In such instances, an NOIT and 33 days to respond are required. An EPS
23 referral does not require being charged or convicted of any crime. It requires only
24 “information indicat[ing] the alien is under investigation for, has been arrested for
25 (without disposition), or has been convicted of” one of a list of crimes, defined in
26 Section 101 of the INA. USCIS Memo at 3.

27 _____
18 ¹⁸

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.

1 59. If ICE makes an EPS determination, USCIS affords a DACA recipient
2 no opportunity to contest the grounds.

3 60. An individual who is not suspected of being an EPS concern—but
4 who has committed a “disqualifying criminal offense” or whose continuing DACA
5 status is “not consistent with [DHS’s] enforcement priorities”—must be issued an
6 NOIT with 33 days to “file a brief or statement contesting the grounds cited in the”
7 NOIT.

8 **The Government’s Representations to DACA Applicants and Recipients**

9 61. DACA status confers numerous benefits on a recipient as part of
10 Defendants’ recognition that the United States “continue[s] to benefit . . . from the
11 contributions of those young people who have come forward and want nothing
12 more than to contribute to our country and our shared future.” Dec. 30, 2016
13 Letter from then-Secretary of Homeland Security Jeh Charles Johnson to
14 Representative Judy Chu (“Johnson Letter”) at 2.¹⁹

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

21 63. More broadly, the DACA SOP codifies Defendants’ commitment to
22 the DACA program, effectively limiting the exercise of agency discretion with
23 “nearly 150 pages of specific instructions” for granting, denying, and terminating
24 deferred action. *Texas v. U.S.*, 809 F.3d at 173 (citing the DACA SOP as evidence
25 that DACA is not a truly discretionary program), *aff’d by an equally divided Court*,
26 136 S. Ct. 2271 (2016).

27 _____
19

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

1 64. Executive and Legislative Branch officials from both political parties
2 have reinforced the promises of the DACA program. They have publicly
3 acknowledged that hundreds of thousands of DACA applicants and recipients have
4 relied on Defendants to (1) honor the benefits conferred by DACA and (2)
5 implement and enforce it without policies or actions that are arbitrary, capricious,
6 an abuse of discretion, contrary to internal policies, or unconstitutional.

7 • In January 2017, Speaker of the House Paul Ryan said that the government
8 must ensure “that the rug doesn’t get pulled out from under” DACA recipients and
9 their families, because they have “organize[d] [their] li[ves] around” the DACA
10 program. CNN, “Transcripts: Town Hall Meeting with House Speaker Paul Ryan”
11 (Jan. 12, 2017).²⁰

12 • In February 2017, Arizona Congressman Raul Grijalva called on the
13 government to “honor its word to protect” those who came forward “expecting”
14 the government to uphold its “commitment.” Congressional Progressive Caucus,
15 “Congressional Progressive Caucus Leaders Respond to ICE Arrest of DACA
16 Recipient” (Feb. 16, 2017).²¹

17 • In March 2017, then-DHS Secretary Kelly reaffirmed that DACA status “is a
18 commitment . . . by the government towards the DACA person.” Ted Hesson and
19 Seung Min Kim, “Wary Democrats Look to Kelly for Answers on Immigration,”
20 Politico (Mar. 29, 2017).²²

21 • And in April 2017, President Trump reiterated that “dreamers should rest easy.”
22 Apr. 21, 2017 Trump Interview.

23 65. Defendants’ reassurances that no changes were being made to the
24 DACA program during its wind-down bolstered the mutual understanding that
25

26 ²⁰ <https://transcripts.cnn.com/TRANSCRIPTS/1701/12/se.01.html>.

27 ²¹ <https://cpc-grijalva.house.gov/press-releases/congressional-progressive-caucus-leaders-respond-to-ice-arrest-of-daca-recipient/>.

28 ²² <https://www.politico.com/story/2017/03/wary-dems-look-to-kelly-for-answers-on-immigration-236673>.

1 DACA confers Constitutionally significant benefits in the form of the right to
2 lawfully live and work in the United States.

3 **Benefits Conferred by Defendants on DACA Recipients**

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

14 67. Because DACA recipients are lawfully present, DHS and USCIS have
15 directed ICE and CBP "to prevent qualifying individuals from being apprehended,
16 placed into removal proceedings, or removed." DACA FAQ, Q9.

17 68. In the course of Mr. Gonzalez's removal proceedings, ICE explained
18 in open court that DACA is "permission" to live in the United States.

19 69. DACA recipients are also eligible for a DACA-specific EAD "for the
20 period of deferred action," for which they would otherwise be ineligible. DACA
21 FAQ, Q1; *see* 8 C.F.R. § 274a.12, Category (c)(33).²³

22 70. DACA recipients may apply for certain federal public benefits for
23 which they would otherwise be ineligible, including Social Security retirement
24 benefits, Social Security disability benefits, and Medicare Part A health insurance
25 benefits. *See* 8 U.S.C. § 1611(b)(2)-(3). They may also be eligible for state public
26

27
28 ²³ <https://www.uscis.gov/working-united-states/information-employers-employees/employer-information/employment-authorization> (updated Oct. 24, 2017; last visited Dec. 29, 2017).

1 benefits, including a driver’s license and unemployment insurance. *See* 8 U.S.C. §
2 1621(d); *accord Texas v. U.S.*, 809 F.3d at 148.

3 71. DACA recipients, by virtue of obtaining Social Security Numbers, are
4 also afforded ancillary benefits that are typically unavailable or difficult to obtain
5 for undocumented immigrants, including opening a bank account, obtaining a
6 credit card, starting a business, purchasing a home or car, and obtaining financial
7 aid for higher education.

8 72. DACA recipients do not accrue time for unlawful presence for
9 admissibility purposes under 8 U.S.C. § 1182(a)(9)(B)(i). *See* DACA FAQ, Q5.
10 And—prior to a September 5 change in policy regarding advance parole—for
11 certain humanitarian, educational, and employment purposes, recipients could
12 briefly leave the country and legally return, a benefit that Defendants do not afford
13 to those they does not deem lawfully present. *See* DACA FAQ, Q57.

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

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

24 75. Of course, these benefits were not unilaterally conferred. Defendants
25 granted these benefits in exchange for recipients’ personal, financial, and criminal
26 history information and substantial fee payments, and the expectation of
27 consideration for renewal.
28

1 76. These benefits, once conferred—and consistently reaffirmed by
2 Defendants’ subsequent policies and public statements—have created a reasonable
3 expectation that Defendants would abide by the terms of the DACA program and
4 would not reverse course on DACA recipients’ status as low priority cases or
5 terminate or deny renewal without disqualifying criminal offenses or stated public
6 safety concerns.

7 **Mr. Gonzalez’s DACA Status and Employment Authorization**

8 77. Mr. Gonzalez graduated on time from Altus Charter High School in
9 San Diego in 2011. Despite the support of his family and friends, he was unable to
10 secure lawful employment from 2011 to 2013 because he was unwilling to
11 misrepresent his immigration status to prospective employers.

12 78. In 2013, Mr. Gonzalez learned of the DACA program. He expended
13 significant time and resources filling out the USCIS forms; gathering the necessary
14 supporting evidence and documentation; attending a biometrics appointment where
15 his photograph and fingerprints were taken; and paying the \$465 filing fee.

16 79. Mr. Gonzalez provided Defendants his birth certificate; school records
17 from childhood to graduation, including report cards and certificates of
18 achievement; several years of his family’s tax returns; and his prior addresses, all
19 of which are in San Diego.

20 80. Ultimately, Defendants granted Mr. Gonzalez DACA status and
21 employment authorization on January 22, 2013, valid until January 21, 2015.

22 81. In 2014, Mr. Gonzalez timely applied for renewal of his DACA status
23 and EAD, again complying with the paperwork and biographic and biometric
24 background checks, and paying the same substantial fee. Upon review of these
25 materials, Defendants granted Mr. Gonzalez’s renewal application, deeming him
26 lawfully present and authorized to work in the United States until December 22,
27 2017 with the expectation of appropriate consideration for renewal.
28

1 82. In 2015, USCIS further screened all individuals who had been granted
2 DACA status “to identify records that contained information indicating known or
3 suspected gang association.” *See* Rodriguez Letter, *supra*.

4 83. Defendants therefore confirmed, on at least three separate occasions,
5 that Mr. Gonzalez is deserving of DACA status and its benefits and does not pose a
6 threat to national security or public safety.

7 84. They reaffirmed these determinations in the course of this litigation,
8 stating on December 8, 2017 that they “do not take issue with [Mr. Gonzalez’s]
9 ability to meet the DACA guidelines going forward.”

10 **Mr. Gonzalez’s Employment**

11 85. With EAD in hand, Mr. Gonzalez sought and quickly obtained
12 employment in 2013. He was hired to perform food and equipment setup and
13 stocking for Gate Gourmet, a provider of airline catering and provision services.
14 Because he was preparing trays that were carried on commercial aircraft, Mr.
15 Gonzalez’s employer required that he pass additional security tests, including
16 interviews, drug tests, security clearance protocols, and EAD verification. He
17 passed all of them.

18 86. Mr. Gonzalez was a dutiful and trusted employee for nearly three
19 years. He was primarily responsible for provisioning seven flights, five nights a
20 week for American Airlines, but was often tasked with helping others who were
21 responsible for Canada Air, Delta, Hawaiian, United, and US Airways. From the
22 time he was hired to the time of his inexplicable detention, Mr. Gonzalez worked
23 five nights a week from approximately 7:00 p.m. to 4:00 a.m. Upon coming home
24 to his shared apartment, he often slept much of the day before returning to work in
25 the evening.

26 87. Mr. Gonzalez was saving up to buy his own car, but after he was
27 detained, he was forced to divert those savings to securing his release.
28

1 88. When Mr. Gonzalez was released from his month-long detention, he
2 voluntarily informed Gate Gourmet that his EAD had been terminated. He had to
3 be let go, but his employer asked him to reapply when his EAD or other
4 employment authorization was restored.

5 89. Mr. Gonzalez’s employers have praised his “work ethic, dedication,
6 and consistency.” One of them wrote to USCIS to “recommend that he continue to
7 be provided the opportunity to be gainfully employed here” because he “would
8 [be] highly recommended [] to any future employer.”

9 **Mr. Gonzalez’s Detention and Release**

10 90. On May 6, 2016, an acquaintance known to Mr. Gonzalez only as
11 “Adolfo” asked him to come to his home and care for his dogs for the afternoon
12 while Adolfo was out of town. Mr. Gonzalez agreed, having previously done so
13 without any issues. He arrived at Adolfo’s home sometime between 11:30 a.m.
14 and 1:00 p.m.

15 91. Mr. Gonzalez entered the unlocked home and was surprised to
16 discover that two people were already there. One was a male acquaintance whom
17 Mr. Gonzalez recognized as “Romeo,” and the other was a woman he did not
18 know.

19 92. Having fed and cleaned up after the dogs, and realizing that others
20 were there to look after them, Mr. Gonzalez considered leaving. But he was
21 without transportation.

22 93. For the rest of the afternoon, Mr. Gonzalez kept to himself, passing
23 the time watching movies and television while he waited for his ride to his regular
24 early-evening-to-early-morning work shift.

25 94. At approximately 4:00 p.m., a law enforcement officer knocked on the
26 front door and asked to enter the house. Mr. Gonzalez felt it was inappropriate to
27 allow anyone into someone else’s home without a search warrant. He said so to
28

1 the officers, who stopped trying to enter the house and stopped speaking to him.

2 But Mr. Gonzalez noticed that the officers continued to surround the house.

3 95. About an hour later, a man Mr. Gonzalez did not recognize arrived at
4 the house with the law enforcement officers. He identified himself as the owner
5 and asked Mr. Gonzalez to exit.

6 96. By that time, Mr. Gonzalez knew he would soon have to leave for
7 work. His manager had an unforgiving policy toward tardiness, and Mr. Gonzalez
8 believed he would have little difficulty resolving the situation with law
9 enforcement and being allowed to go to work—because he had DACA status and
10 had done nothing wrong.

11 97. Mr. Gonzalez (and Romeo) exited the house. Relying on Defendants'
12 assurances—publicly and in his DACA approval notices—that DACA status
13 barred his apprehension as long as he had not committed any crimes (which he had
14 not) Mr. Gonzalez informed the officers of his DACA status and of his need to get
15 to work.

16 98. Mr. Gonzalez had his valid DACA EAD with C-33 classification with
17 him. He handed it to one of the officers for verification.

18 99. After that officer walked away, a second officer told Mr. Gonzalez
19 that he would be detained. Mr. Gonzalez asked why, to which the officer replied
20 that he was in the country illegally and his DACA status did not matter. A third
21 officer abruptly grabbed Mr. Gonzalez by the arm and handcuffed him.

22 100. Romeo was taken away in handcuffs, and the officer who threatened
23 Mr. Gonzalez with detention and the officer who handcuffed him went inside the
24 house.

25 101. At no point did any officer indicate that their investigation targeted
26 Mr. Gonzalez.

27 102. Mr. Gonzalez sat on the front porch—handcuffed—unable to see
28 inside the house. He heard no sounds coming from inside the house. He did not

1 see or hear anyone else go in or out of the house. Within a couple of minutes—
2 without further questioning or explanation—the officer who was checking Mr.
3 Gonzalez’s immigration status put him in a police car and took him away. Mr.
4 Gonzalez did not see that officer speak to or engage with anyone who went inside
5 the house.

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

10 104. During the questioning, officers threatened to arrest his (unspecified)
11 family members. These threats were not based on any allegations of wrongdoing.

12 105. Seeing and fearing the officers’ hostility and willingness to threaten
13 him and his family for reasons he did not understand, Mr. Gonzalez handed over
14 his phone.

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

19 107. For two or three days, Mr. Gonzalez was denied food, deliberately
20 woken up with loud bangs by officers (who laughed at his shocked fear), and
21 threatened with arrest of his family.

22 108. After that, the officers apparently lost interest in Mr. Gonzalez.

23 109. He was transferred to a second facility. For approximately a week he
24 was ignored. No one came to question him, and his requests for an explanation or
25 right to call his family simply went unanswered.

26 110. Subsequently, Mr. Gonzalez was transferred to a third facility, where
27 he was finally permitted to contact his family after approximately ten days in
28 detention.

1 111. For the final three weeks or more of Mr. Gonzalez’s detention, law
2 enforcement officers continued to ignore him.

3 112. The questioning ceased entirely. After the initial two days of threats,
4 abuse, and unsubstantiated accusations, the officers apparently concluded what Mr.
5 Gonzalez told them all along: that he had no part in the events at Adolfo’s house
6 that concerned them and was not a person of interest.

7 113. On June 1, 2016—nearly a month after his unwarranted and unlawful
8 detention—Immigration Judge McSeveney ordered Mr. Gonzalez released from
9 custody on a mere \$5,000 bond. Judge McSeveney found him credible and stated
10 that Mr. Gonzalez was not a danger to the public.

11 114. DHS did not object to the Immigration Court’s findings or decision
12 and waived appeal.

13 115. Mr. Gonzalez was finally released on June 3, 2016.

14 116. Mr. Gonzalez has not been questioned or investigated since. Indeed,
15 he has not had a single run-in with law enforcement before or after May 6, 2016.

16 117. On May 7, 2016 (the day after Mr. Gonzalez’s arrest), CBP agent
17 Andrew Bolton issued DHS Form I-213, “Record of Deportable/Inadmissible
18 Alien.” It affirms Mr. Gonzalez’s lack of a criminal record (“None Known”) and
19 gives a narrative of the events of May 6. It alleges that law enforcement officers
20 were “relayed” information that at around 8:30 a.m. (several hours before Mr.
21 Gonzalez arrived at the house) a male individual escorted five individuals who
22 “appeared” to have been “recently smuggled into the United States” into the house.
23 The narrative affirms the presence of Roman Rodriguez (“Romeo”) at the house
24 when officers arrived at approximately 4:20 p.m., and also describes another “male
25 individual, later identified to be the dweller of the detached garage, [who] exited
26 the property through the rear of the house towards an alley.”

27 118. The I-213 describes Mr. Gonzalez as “nervous” when several law
28 enforcement officers descended on him. Among other inaccuracies, it mistakenly

1 indicates that Mr. Gonzalez told the officers it was up to his sister (who has never
2 had any connection to the house or the circumstances of this case) to give
3 permission to enter the house.

4 119. The narrative affirms that the door to the house was left unlocked and
5 that Mr. Gonzalez “did not even have the key to the property.”

6 120. While the I-213 states that Mr. Gonzalez was “booked for
7 Administrative Alien Smuggling” and was “being processed for removal
8 proceedings,” the May 7, 2016 NTA commencing those proceedings did not
9 charge alien smuggling—the sole stated basis for removal was unlawful presence.

10 121. DHS Form I-831, “Report of Investigation,” also prepared on May 7,
11 2016, details incriminating statements extracted in the course of interviews with
12 everyone encountered at the house that day. Tellingly, although it indicates what
13 the other undocumented immigrants said to incriminate themselves in their
14 interviews, it says nothing about any derogatory information learned in the course
15 of interviewing Mr. Gonzalez, who made every effort to cooperate with the
16 officers and even turned over his phone to them.

17 122. Pursuant to a Freedom of Information Act request submitted by Mr.
18 Gonzalez on July 19, 2017, on December 26, 2017 (after the second purported
19 termination of Mr. Gonzalez’s DACA status) ICE provided more records created
20 contemporaneous to Mr. Gonzalez’s detention. Those records:

- 21 • contain the hand-written notations “No crim” and “First imm app”;
- 22 • under the “Event/Incident Information” heading, describe the “Event Type” as
23 “Administrative Non-Criminal Individual”;
- 24 • under the “Subject Information” heading, describe Mr. Gonzalez’s “Priority” as
25 “N/A” and his “Criminal Type” as “N/A.”

26 **USCIS’s Automatic Termination of Mr. Gonzalez’s DACA Status and EAD**

27 123. On May 7, 2016—the day after Mr. Gonzalez’s arrest—CBP issued
28 him an NTA. Its sole charge was that Mr. Gonzalez is unlawfully present in the

1 United States under Section 212 of the INA, 8 U.S.C. § 1182(a)(6)(A)(i). The
2 NTA made no other allegations.

3 124. On May 23, 2016, USCIS sent Mr. Gonzalez a “Notice of Action,”
4 explaining that: “On May 7, 2016, Customs and Border Protection (CBP) issued
5 you a Notice to Appear (NTA). USCIS is notifying you that your deferred action
6 as a childhood arrival and your employment authorization terminated automatically
7 as of the date your NTA [for unlawful presence] was issued.”

8 125. Because this purported automatic termination has no basis in the
9 DACA SOP, *see supra* ¶¶ 54-60, it violates the APA.

10 126. This Court vacated and preliminarily enjoined the termination as
11 violating the DACA SOP and the APA. In so doing, the Court held that Mr.
12 Gonzalez

13 “will suffer significant irreparable harm in the absence of
14 an injunction by losing his DACA status and the ability
15 to apply for renewal of that status. The potential harm
16 caused by Defendants’ conduct includes the loss of
17 employment, a core benefit under DACA. The
18 deprivation of employment impacts Plaintiff’s ability to
19 financially provide for himself and his family. The loss
20 of DACA status also undermines one’s sense of well-
21 being and subjects Plaintiff to a constant threat of
22 apprehension and possible removal from the only country
23 he has called home.”

24 127. The Court ordered Defendants to reinstate Mr. Gonzalez’s DACA
25 status and EAD and to “fully comply with the DACA SOP should Defendants elect
26 to reconsider Plaintiff’s DACA status.” The Court also required Defendants to
27 accept (and presumably fairly consider) Mr. Gonzalez’s DACA renewal
28 application.

1 128. The Court’s Preliminary Injunction “order is to remain in effect
2 pending further Order of this court.”

3 129. Defendants must prove the termination’s lawfulness to the satisfaction
4 of the Court, as the harms flowing from the initial unlawful termination have not
5 abated.

6 130. With his current DACA status set to expire on December 22, 2017,
7 Mr. Gonzalez submitted a timely DACA renewal application on October 4, 2017.

8 131. Following a Master Calendar Hearing on November 16, 2017, San
9 Diego Immigration Judge Law terminated Mr. Gonzalez’s removal proceedings
10 without prejudice.

11 **The NOIT Process**

12 132. On November 13, 2017, USCIS issued Mr. Gonzalez a Notice of
13 Intent to Terminate his DACA status. The NOIT provided Mr. Gonzalez 33 days
14 to “submit any evidence that you feel will overcome the grounds for termination.”

15 133. The NOIT explained: “Since DHS has determined that you are an
16 enforcement priority and ICE has informed USCIS that it is actively pursuing your
17 removal, USCIS will not contemporaneously conclude that removal action should
18 continue to be deferred in your case.”

19 134. The NOIT did not provide any facts in support of the sudden
20 “enforcement priority” assertion. Nor did it cite to any new DHS policy indicating
21 that merely being in removal proceedings for unlawful presence made a DACA
22 recipient an “enforcement priority” rather than a “low priority case” in the absence
23 of a “disqualifying criminal offense” or public safety concern.

24 135. Through his counsel, Mr. Gonzalez responded to the NOIT by
25 explaining that he continues to meet all of the objective DACA eligibility
26 criteria—including Defendants’ determination that he does not pose a threat to
27 national security or public safety—which have governed USCIS’s DACA
28

1 determinations for over five years, and formed the basis for his two previous
2 DACA grants.

3 136. The response went on to explain that ICE’s litigation of removal
4 proceedings for unlawful presence against a DACA recipient was not a valid basis
5 for USCIS to terminate DACA under the SOP, which requires USCIS to consider
6 eligibility for individuals in removal proceedings and with final orders of removal.
7 In short, he explained that “since DACA’s inception, the litigation of removal
8 proceedings by ICE has never been a bar to USCIS’s adjudication and approval of
9 DACA,” and that termination on that basis would therefore violate the APA.
10 “Consistent with these policies and practices, Mr. Gonzalez respectfully
11 request[ed] that USCIS exercise its independent discretion in this case and
12 continue its deferral of [his] removal.”

13 137. While the NOIT did not give any factual predicate or cite any reversal
14 in policy or guidance in support of the notion that Mr. Gonzalez is now an
15 “enforcement priority,” Mr. Gonzalez’s response posited that the only conceivable
16 basis for such an assertion was his May 6, 2016 arrest, which never led to the filing
17 of any criminal charges in Immigration Court, Federal Court, or State Court.

18 138. In unambiguously denying any knowledge of or involvement in any
19 alleged criminal conduct surrounding the circumstances of that day, the response
20 was unequivocal:

21 “Mr. Gonzalez takes this opportunity to reassert his
22 ignorance of and lack of participation in any alleged
23 criminal conduct, including alien harboring. He was at
24 the house on May 6 to look after the pets of an
25 acquaintance and had nothing to do with any of the
26 alleged undocumented immigrants that CBP allegedly
27 encountered. It is crucial to note that even in CBP’s
28 version of the events, recounted in the I-213 issued the

1 day after the arrest, Mr. Gonzalez was outside of the
2 house when the individuals were discovered and was not
3 questioned about their presence prior to their discovery.
4 And the officers arrested and took him away before any
5 of those individuals emerged from the house. Once the
6 questioning began at the detention facility, it became
7 clear that Mr. Gonzalez had no idea what the officers
8 were talking about.”

9 139. Mr. Gonzalez’s response also referenced and attached the sworn
10 declaration he submitted to this Court under penalty of perjury, in which he
11 explained (1) his expectation that the officers would let him leave the house and go
12 to work because he had not “committed a crime,” and (2) the fact that the CBP
13 officers indicated their intent to detain him before discovering any alleged
14 criminality on the stated rationale that he “was not in the country legally and [his]
15 DACA status did not matter.”

16 140. Mr. Gonzalez pointed out the arbitrariness of his sudden purported
17 “enforcement priority” label, given: (1) CBP’s abandonment of his case after two
18 days of questioning and a thorough search of his cell phone; (2) Judge
19 McSeveney’s determination that he was credible and should be released on bond
20 because he was not a public safety concern; (3) DHS’s decision not to object to or
21 appeal that determination; and (4) the fact that he has not had an encounter with or
22 been questioned by law enforcement for over a year and a half after his release
23 (and never had a single law enforcement encounter before May 6, 2016).

24 141. Indeed, Mr. Gonzalez made clear that deeming him an “enforcement
25 priority” would be counter to (or an unexplained reversal of) Defendants’ years-
26 long policy of categorizing individuals who meet the DACA eligibility criteria as
27 “low priority cases” in the absence of “disqualifying criminal offenses.”
28

1 142. And of course, Defendants explained in a filing with this Court as
2 recently as December 8, 2017 that they “do not take issue with [Mr. Gonzalez’s]
3 ability to meet the DACA guidelines going forward.” Those guidelines include the
4 requirement that Mr. Gonzalez has not been convicted of a disqualifying criminal
5 offense and does not “otherwise pose[] a threat to national security or public
6 safety.”

7 143. USCIS permitted Mr. Gonzalez to submit a supplemental response as
8 well, in order to address the new NTA that ICE issued on December 8, 2017,
9 which Mr. Gonzalez did not receive until the day before he submitted his initial
10 response. The new NTA again only charges unlawful presence in the United
11 States, which “does not provide a reasoned basis for terminating DACA.” *Inland*
12 *Empire—Immigrant Youth Collective v. Duke*, 2017 WL 5900061, at *6 (C.D. Cal.
13 Nov. 20, 2017).

14 144. Within two or three days of receiving these responses (and just one
15 day before Mr. Gonzalez’s DACA status was set to expire) USCIS issued Mr.
16 Gonzalez’s Termination Notice on December 21, 2017. On the sole basis of that
17 termination decision, USCIS summarily denied Mr. Gonzalez’s renewal
18 application on December 28, 2017.

19 145. Signaling that the decision was pre-determined, USCIS explained that
20 it based its decision on ICE’s issuance of the December 8, 2017 NTA.

21 146. Even though neither NTA against Mr. Gonzalez has contained any
22 criminal allegations, the Termination Notice went on to explain USCIS’s informal
23 determination that Mr. Gonzalez is a criminal because his “claim that [he was]
24 unaware of [the alleged undocumented immigrants’] presence in the home is not
25 credible when [he was] present in the house and three individuals did identify
26 [him] in connection with their smuggling.”

27 147. Of course, nine out of the twelve individuals interviewed did not
28 identify Mr. Gonzalez.

1 148. More importantly, Mr. Gonzalez has never had an opportunity to
2 confront the circumstances of those three identifications, let alone cross-examine
3 those individuals or the nine individuals who did not identify him, all of whose
4 identities are redacted in the I-831 and who were all placed into removal
5 proceedings and likely have been removed from the country.

6 149. Indeed, Mr. Gonzalez has never had an opportunity to confront any of
7 the suspicions against him in a proper forum, for the simple reason that he has
8 never been charged with a crime in any forum. That is unsurprising, given his
9 repeated claims of innocence and the fact that the law enforcement agencies tasked
10 with investigating the incident seem to have concluded long ago that he was not
11 involved in any alleged criminal act.

12 150. The I-831 indicates that the other suspected caretaker of the house
13 (whose name is redacted but was presumably “Romeo”) was read his Miranda
14 rights. There is no indication that Mr. Gonzalez was read his Miranda rights
15 before being questioned, again indicating that the officers did not view him as a
16 serious target of the criminal investigation (or that the officers violated his
17 Constitutional rights).

18 151. Mr. Gonzalez now faces the revocation of his DACA status and the
19 summary denial of his renewal application—*i.e.*, the significant benefits of being
20 permitted to live and work lawfully in the United States—even though he has
21 never been convicted of (or even charged with) a disqualifying criminal offense (or
22 any criminal offense), in a clear misapplication of Defendants’ own enforcement
23 priority policies and after a USCIS agent’s informal determination of criminality.

24 152. In addition to violating the DACA program rules, Defendants’ process
25 clearly lacks the fairness and reliability required to deprive a person of existing
26 liberty or property interests. *Mathews v. Eldridge*, 424 U.S. 319 (1976).

27 153. The value of additional procedural safeguards is significant. And
28 those safeguards are readily available to Defendants. Even if Defendants wish to

1 adjudicate allegations against Mr. Gonzalez and base DACA termination on an
2 administrative finding rather than on a criminal conviction, an obvious available
3 alternative exists: the filing of an NTA charging more than mere unlawful presence
4 and the determination by an Immigration Judge of the charge’s validity.

5 **CAUSES OF ACTION**

6 **COUNT ONE**

7 **Administrative Procedure Act**

8 **(Initial May 23, 2016 Automatic Termination)**

9 154. Mr. Gonzalez repeats and incorporates by reference each and every
10 preceding allegation as if fully set forth herein.

11 155. The termination of Mr. Gonzalez’s DACA status and employment
12 authorization and summary denial of his renewal application constitute final
13 agency action that cannot be appealed administratively.

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

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

23 158. The DACA SOP and USCIS Memo typically require USCIS to issue a
24 DACA beneficiary an NOIT and 33 days to respond before determining whether to
25 terminate DACA status. But USCIS did not provide Mr. Gonzalez with notice or
26 an opportunity to respond before terminating his DACA status. The SOP provides
27 for termination without notice when USCIS follows the protocol for EPS cases,
28 including referral of the case to BCU and ultimately to ICE and the issuance of an

1 NTA by ICE based on alleged EPS concerns. But USCIS did not follow the
2 protocol for EPS cases, nor did ICE issue Mr. Gonzalez an NTA based on a finding
3 that his was an EPS case. Neither the DACA SOP nor the USCIS Memo provides
4 for “automatic” termination without notice when CBP issues an NTA based on
5 unlawful presence. But USCIS terminated Mr. Gonzalez’s DACA status
6 automatically upon CBP’s issuance of an NTA that listed unlawful presence as its
7 sole basis. Moreover, USCIS’s own guidelines make clear that, even upon ICE’s
8 issuance of an NTA in an EPS case, USCIS should proceed by “taking into account
9 the basis for the NTA.” USCIS Memo at 4. By adopting an unwritten “policy” of
10 automatic termination regardless of the basis for an NTA and regardless of the
11 issuing agency, USCIS expressly eschewed any consideration of the basis for the
12 NTA.

13 159. In at least these ways, USCIS’s initial automatic termination of Mr.
14 Gonzalez’s DACA status in May 2016 violated established procedures for DACA
15 termination and, for that reason, was arbitrary and capricious.

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

22 161. The termination decision was also arbitrary and capricious because:
23 (a) USCIS failed to articulate any reason for terminating DACA benefits; (b)
24 DACA status is expressly available to those who are subject to NTAs and thus
25 cannot terminate automatically upon the issuance of an NTA; (c) it purports to rest
26 on a practice that finds no support in procedures that govern DACA termination
27 and constitutes an abrupt departure from established termination practice; (d) it
28 would make termination hinge on an immigration official’s decision to issue an

1 NTA without any allegation of wrongdoing; and (e) “automatic” termination does
2 not involve the exercise of discretion, which is required before USCIS may
3 terminate DACA status.

4 162. The harms flowing from Defendants’ unlawful May 2016 termination
5 have not abated.

6 163. For all of these reasons, USCIS’s initial automatic termination of Mr.
7 Gonzalez’s DACA status and work authorization in May 2016 violates the APA
8 and must be permanently vacated and enjoined as arbitrary, capricious, and an
9 abuse of discretion.

10 **COUNT TWO**

11 **Administrative Procedure Act**

12 **(Purported December 21, 2017 Termination and Purported December 28,**
13 **2017 Denial)**

14 164. Mr. Gonzalez repeats and incorporates by reference each and every
15 preceding allegation as if fully set forth herein.

16 165. The termination of Mr. Gonzalez’s DACA status and employment
17 authorization and summary denial of his renewal application constitute final
18 agency action that cannot be appealed administratively.

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

22 167. Agencies must provide “reasoned explanation[s]” for their actions,
23 and courts must reverse agency actions for which they cannot discern a reason.
24 When an agency departs from prior action, it must provide “a reasoned analysis for
25 the change.” *Motor Vehicle Mfrs. Assoc. v. State Farm Mut. Auto. Ins. Co.*, 463
26 U.S. 29, 42 (1983); *see FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515
27 (2002) (“the agency must show that there are good reasons for the new policy”);
28 *Organized Village of Kake v. U.S. Dept. of Agriculture*, 795 F.3d 956, 968 (9th Cir.

1 2015) (the agency must “provide a ‘reasoned explanation . . . for disregarding’ the
2 ‘facts and circumstances’ that underlay its previous decision”) (citations omitted).

3 168. The DACA SOP identifies six permissible bases for DACA
4 termination. Defendants assert that USCIS premised its termination of Mr.
5 Gonzalez’s DACA status on only one of those six bases—that it was “not
6 consistent with [DHS’s] enforcement priorities.” But Mr. Gonzalez does not fit
7 DHS’s own well-defined enforcement priorities with respect to DACA recipients
8 because he satisfies the DACA eligibility criteria and has not either been convicted
9 or otherwise adjudicated guilty of a disqualifying criminal offense and Defendants
10 do not assert that he is either a public safety or a national security concern.

11 169. To the extent that Defendants purport to rely on the Kelly Memo’s
12 definitions of enforcement priorities for non-DACA recipients to revoke Mr.
13 Gonzalez’s DACA status, they are violating its explicit and binding terms. The
14 Kelly Memo exempts DACA recipients from enforcement priority status for
15 merely having “been charged with any criminal offense that has not been resolved”
16 or a suspicion of having “committed acts which constitute a chargeable criminal
17 offense.” Only individuals who do not qualify for DACA status may be
18 considered enforcement priorities on those bases. Asserting that a DACA recipient
19 who is subject to only an allegation or suspicion of criminal misconduct, without a
20 conviction or adverse adjudication in court, violates Defendants’ own binding
21 policies with respect to enforcement priorities and the APA.

22 170. To the extent that Defendants purport to terminate Mr. Gonzalez’s
23 DACA status under their governing DACA Memo and DACA SOP provisions,
24 they are either deliberately disregarding or grossly misreading those provisions. In
25 the absence of a disqualifying criminal offense or public safety concern, the DACA
26 Memo, DACA SOP, DACA FAQ, and other guidance governing administration of
27 the DACA program do not make Mr. Gonzalez an enforcement priority or allow
28 Defendants to terminate his DACA status on the basis of a suspicion of criminal

1 conduct reviewed by a USCIS officer nearly two years after the fact, in the face of
2 a bare-bones NOIT that did not indicate what facts would inform its review, and in
3 the face of an Immigration Judge’s determination that Mr. Gonzalez was credible
4 and did not present a public safety concern, and Defendants’ agreement that Mr.
5 Gonzalez continues to meet the DACA criteria—including the lack of a
6 disqualifying criminal offense or public safety concern. Defendants therefore have
7 also violated the APA by terminating Mr. Gonzalez’s DACA status without any
8 proper basis in the DACA SOP and/or improperly attempted to adopt bases for
9 termination that do not appear in the DACA SOP informally and *sub silentio*,
10 which also violates the APA.

11 171. USCIS’s purported termination decision constitutes an unexplained
12 departure from established DACA determination policies and practices. It also
13 purports to permit termination to hinge on an immigration official’s decision to
14 issue an NTA for mere unlawful presence, a charge that is irrelevant to DACA
15 eligibility.

16 172. And because USCIS’s purported summary denial of Mr. Gonzalez’s
17 DACA renewal application is for the sole reason of the unlawful termination
18 (which has yet to even take effect), it has no basis in reasoned decision-making or
19 consideration of relevant factors.

20 173. In at least these ways, USCIS’s termination of Mr. Gonzalez’s DACA
21 status and summary denial of his renewal application violate established
22 procedures and policies for DACA status determinations and are arbitrary,
23 capricious, and an abuse of discretion in violation of the APA.

24 **COUNT THREE**

25 **Due Process Clause of the Fifth Amendment**

26 1. Mr. Gonzalez repeats and incorporates by reference each and every
27 preceding allegation as if fully set forth herein.
28

1 2. The Due Process Clause of the Fifth Amendment provides that “[n]o
2 person shall be . . . deprived of life, liberty, or property, without due process of
3 law.”

4 3. Immigrants who are physically present in the United States are
5 guaranteed the protections of the Due Process Clause. *See Zadvydas v. Davis*, 533
6 U.S. 678, 693 (2001); *U.S. v. Peralta-Sanchez*, 847 F.3d 1124, 1131 (9th Cir.
7 2017) (“[T]he Due Process Clause applies to all ‘persons’ within the United States,
8 including aliens, whether their presence here is lawful, unlawful, temporary, or
9 permanent.”).

10 4. When a person has a protected liberty or property interest, the
11 Constitution constrains government action that deprives the person of that interest
12 without due process. *See Nozzi v. Housing Authority of LA*, 806 F.3d 1178, 1190-
13 91 (9th Cir. 2015); *Mathews v. Eldridge*, 424 U.S. 319 (1976).

14 5. DACA status confers a liberty interest to be free from apprehension,
15 arrest, or detention on the basis of immigration status. The term liberty also
16 encompasses the ability to work, raise a family, and “form the other enduring
17 attachments of normal life.” *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).
18 Where, as here, an individual reasonably relies on a conferred status to pursue
19 these activities, that status cannot be revoked without due process. *See Bell v.*
20 *Burson*, 402 U.S. 535, 539 (1971).

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

26 7. Mr. Gonzalez possesses a property interest in his DACA status and
27 the numerous benefits conferred by it, including employment authorization and
28 eligibility for federal and state public benefits.

1 8. While Defendants may argue that DACA status confers no substantive
2 rights or benefits, “the identification of property interests under constitutional law
3 turns on the substance of the interest recognized, not the name given that interest
4 by the state.” *Newman v. Sathyavaglswaran*, 287 F.3d 786, 797 (9th Cir. 2002).
5 The “mutually explicit understandings” created by Defendants’ establishment and
6 continuous operation of the DACA program—under a well-defined framework and
7 highly specific criteria—created a reasonable expectation of entitlement to DACA
8 status and its attendant benefits, and proper consideration for renewal, which
9 cannot be terminated without due process. *Perry v. Sindermann*, 408 U.S. 593,
10 601 (1972).

11 9. Even if Defendants’ ultimate decision about whether to terminate Mr.
12 Gonzalez’s DACA status is discretionary, its policy and process must be rational
13 and conform to their own policies and Constitutional procedural due process
14 requirements. *See Galvin v. Hay*, 374 F.3d 739, 758 (9th Cir. 2004) (“[F]ederal
15 officials do not possess discretion to violate constitutional rights.”).

16 10. The adequacy of Defendants’ procedure in attempting to deprive Mr.
17 Gonzalez of his protected liberty and property interests is evaluated under the
18 three-part *Eldridge* test, under which the Court must balance (1) the nature of the
19 interest and the degree of potential deprivation, (2) the fairness and reliability of
20 existing procedures and the value of additional procedural safeguards, and (3) the
21 public interest.

22 11. Here, the initial automatic termination of Mr. Gonzalez’s DACA
23 status, EAD, and other benefits on May 23, 2016 without any notice or opportunity
24 to be heard obviously fails the *Eldridge* test. First, his protected interests are
25 extremely significant. Second, the existing procedure of termination without
26 notice is a wholly inadequate abrogation of the “essence of due process”—
27 adequate notice and a meaningful opportunity to present one’s case. *Eldridge*, 424
28

1 U.S. at 348-49. And third, there is no credible burden associated with adequate
2 procedural safeguards, or public benefit from their absence.

3 12. Similarly, Defendants' purported December 21, 2017 termination and
4 December 28, 2017 summary denial of renewal of Mr. Gonzalez's right to live and
5 work lawfully in the United States fail the *Eldridge* test. First, his protected
6 interests—the rights that Defendants conferred on him to live and work in the only
7 country he knows after he submitted to extensive screening and paid substantial
8 fees—are extremely significant. Second, the existing procedure of a criminal
9 determination through the informal NOIT process—via a USCIS agent's
10 determinations of credibility and criminality without a hearing or the ability to
11 confront evidence—is neither fair nor reliable. And the value of a simple
12 additional procedural safeguard—*i.e.*, the issuance of an NTA charging a crime,
13 and an Immigration Judge's sustaining of that NTA—is tremendous. Third, the
14 public interest and the rights implicated by these determinations heavily outweigh
15 the additional burden of using fair and Constitutionally adequate procedures to
16 adjudicate criminal allegations or suspicions.

17 13. Mr. Gonzalez does not have any DACA-disqualifying criminal
18 offenses. Even if Defendants wish to adjudicate criminal allegations against Mr.
19 Gonzalez only through an administrative proceeding (rather than in a Federal Court
20 prosecution) and to revoke the rights they granted him to live and work lawfully in
21 the United States, they have an administrative avenue for doing so: via the issuance
22 of an NTA alleging a criminal violation as the basis for removal. In the face of
23 such an obvious alternative procedure, the revocation of benefits with serious
24 adverse liberty and property consequences through a USCIS agent's informal
25 findings of credibility and criminality fails the *Eldridge* test and is Constitutionally
26 inadequate.

27 14. Because an informal determination of criminality with serious
28 consequences is anathema to our “concept of ordered liberty,” and because

1 removal from the country in the absence of any culpability would visit such
2 grievous harm, Defendants’ actions “shock the conscience” and also amount to a
3 violation of Mr. Gonzalez’s substantive due process rights. *Cnty. of Sacramento v.*
4 *Lewis*, 523 U.S. 833, 847 (1998).

5 15. For all of these reasons, Defendants’ termination of Mr. Gonzalez’s
6 DACA status and employment authorization and summary denial of his renewal
7 application violate his rights under the Due Process Clause of the Fifth
8 Amendment.

9 **COUNT FOUR**

10 **Declaratory Relief**

11 16. Mr. Gonzalez repeats and incorporates by reference each and every
12 preceding allegation as if fully set forth herein.

13 17. Mr. Gonzalez seeks a declaration that Defendants’ May 23, 2016
14 automatic termination of his DACA status and EAD failed to adhere to the DACA
15 SOP and USCIS Memo, was arbitrary, capricious, and an abuse of discretion, and
16 violated the Due Process Clause of the Fifth Amendment.

17 18. Mr. Gonzalez seeks a declaration that Defendants’ December 21,
18 2017 termination of his DACA status and employment authorization and
19 December 28, 2017 summary denial of his renewal application fail to adhere to
20 Defendants’ policies, including the DACA Memo, DACA SOP, DACA FAQ,
21 Kelly Memo, and related guidance, and are arbitrary, capricious, and an abuse of
22 discretion.

23 19. Mr. Gonzalez seeks a declaration that (1) he has constitutionally
24 protected liberty and property interests in his DACA status and its attendant
25 benefits, and therefore (2) Defendants’ termination of those interests through an
26 informal determination of criminality does not provide the procedural safeguards
27 mandated by the Due Process Clause of the Fifth Amendment.
28

- 1 (6) Order Defendants to restore Mr. Gonzalez’s DACA status and EAD
2 pending a termination procedure that comports with the APA and the Due Process
3 Clause and a lawful resolution of his renewal application;
4 (7) Award Mr. Gonzalez reasonable costs and attorneys’ fees; and
5 (8) Grant any other and further relief that this Court deems fit and proper.
6

7 Dated: January 12, 2018

Respectfully submitted,

8 /s/ John C. Ulin

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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that on January 12, 2018, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

/s/ John Ulin