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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA and JANET NAPOLITANO,
in her official capacity as President of the
University of California,

Plaintiffs,

v.

U.S. DEPARTMENT OF HOMELAND
SECURITY and ELAINE DUKE, in her
official capacity as Acting Secretary of the
Department of Homeland Security,

Defendants.

CASE NO. 17-CV-05211-WHA

**DECLARATION OF JESSE GABRIEL IN
SUPPORT OF PLAINTIFFS' MOTION FOR
PROVISIONAL RELIEF**

1 STATE OF CALIFORNIA, STATE OF
2 MAINE, STATE OF MARYLAND, and
STATE OF MINNESOTA,

3 Plaintiffs,

4 v.

5 U.S. DEPARTMENT OF HOMELAND
6 SECURITY, ELAINE DUKE, in her official
7 capacity as Acting Secretary of the Department
of Homeland Security, and the UNITED
STATES OF AMERICA,

8 Defendants.

CASE NO. 17-CV-05235-WHA

9 CITY OF SAN JOSE, a municipal corporation,

10 Plaintiffs,

11 v.

12 DONALD J. TRUMP, President of the United
13 States, in his official capacity, ELAINE C.
DUKE, in her official capacity, and the
UNITED STATES OF AMERICA,

14 Defendants.

CASE NO. 17-CV-05329-WHA

15 DULCE GARCIA, MIRIAM GONZALEZ
16 AVILA, SAUL JIMENEZ SUAREZ,
17 VIRIDIANA CHABOLLA MENDOZA,
18 NORMA RAMIREZ, and JIRAYUT
LATTHIVONGSKORN,

19 Plaintiffs,

20 v.

21 UNITED STATES OF AMERICA, DONALD
22 J. TRUMP, in his official capacity as President
of the United States, U.S. DEPARTMENT OF
23 HOMELAND SECURITY, and ELAINE
DUKE, in her official capacity as Acting
Secretary of Homeland Security,

24 Defendants.

CASE NO. 17-CV-05380-WHA

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COUNTY OF SANTA CLARA and
SERVICE EMPLOYEES INTERNATIONAL
UNION LOCAL 521,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity
as President of the United States, JEFFERSON
BEAUREGARD SESSIONS, in his official
capacity as Attorney General of the United
States; ELAINE DUKE, in her official
capacity as Acting Secretary of the Department
of Homeland Security; and U.S.
DEPARTMENT OF HOMELAND
SECURITY,

Defendants.

CASE NO. 17-CV-05813-WHA

1 I, JESSE GABRIEL, DECLARE:

2 1. I am an attorney at the law firm of Gibson, Dunn & Crutcher LLP, and counsel to
3 Plaintiffs Dulce Garcia, Miriam Gonzalez Avila, Saul Jimenez Suarez, Viridiana Chabolla Mendoza,
4 Norma Ramirez, and Jirayut Latthivongskorn (collectively, “Garcia Plaintiffs”) in the above-captioned
5 matter. I submit this declaration in support of Plaintiffs’ Motion for Provisional Relief.

6 2. Attached hereto as Exhibit A is a true and correct copy of a Memorandum from INS
7 General Counsel Sam Bernsen to INS Commissioner entitled “Legal Opinion Regarding Service
8 Exercise of Prosecutorial Discretion,” dated July 15, 1976, available at <https://goo.gl/uXW6Sg>. (App. at
9 1594–1601.)¹

10 3. Attached hereto as Exhibit B is a true and correct copy of a Statement by President
11 Dwight Eisenhower Concerning the Entry Into the United States of Adopted Foreign-Born Orphans,
12 dated October 26, 1956, available at <https://goo.gl/VDfcgW>. (App. at 1602.)

13 4. Attached hereto as Exhibit C is a true and correct copy of a White House Statement
14 Concerning the Admission of Additional Hungarian Refugees, dated December 1, 1956, available at
15 <https://goo.gl/D4DMuS>. (App. at 1603.)

16 5. Attached hereto as Exhibit D is a true and correct copy of a letter from President John F.
17 Kennedy to Secretary Abraham Ribicoff, dated January 27, 1961, available at <https://goo.gl/Hnf1LL>.
18 (App. at 1604.)

19 6. Attached hereto as Exhibit E is a true and correct copy of a USCIS publication entitled
20 “Refugee Timeline,” last updated June 27, 2017, available at <https://goo.gl/5fhA9y>. (App. at 1605–
21 1606.)

22 7. Attached hereto as Exhibit F is a true and correct copy of “Legalization and Family
23 Fairness – An Analysis” by Alan Nelson, dated October 26, 1987. (App. at 1607–1611.)
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25

26 ¹ Pursuant to their concurrently filed Request for Judicial Notice, Plaintiffs respectful request that the
27 Court take judicial notice of the documents attached hereto as Exhibits A, B, C, D, E, F, G, I, J, K, L, M,
28 N, O, Q, R, S, T, U, V, W, AA, CC, DD, KK, LL, PP, QQ, RR, SS, TT, UU, VV, WW, YY, ZZ, AAA,
BBB, and CCC.

1 8. Attached hereto as Exhibit G is a true and correct copy of a memorandum from INS
2 Commissioner Gene McNary to Regional Commissioners entitled “Family Fairness: Guidelines for
3 Voluntary Departure under 8 CFR 242.5 for the Ineligible Spouses and Children of Legalized Aliens,”
4 dated February 2, 1990, available at <https://goo.gl/7wcLLy>. (App. at 1612–1613.)

5 9. Attached hereto as Exhibit H is a true and correct copy of “As Growth Stalls,
6 Unauthorized Immigrant Population Becomes More Settled” by Pew Research Center, dated September
7 3, 2014, available at <https://goo.gl/JPw5U6>. (App. at 1614–1639.)

8 10. Attached hereto as Exhibit I is a true and correct copy of a memorandum from Paul
9 Virtue for the Acting Executive Associate Commissioner to Regional Directors, District Directors,
10 Officers-in-Charge, and Service Center Directors, entitled “Supplemental Guidance on Battered Alien
11 Self-Petitioning Process and Related Issues,” dated May 6, 1997, available at <https://goo.gl/QEp4kX>.
12 (App. at 1640–1649.)

13 11. Attached hereto as Exhibit J is a true and correct copy of a memorandum from Stuart
14 Anderson to Johnny N. Williams, entitled “Deferred Action for Aliens with bona fide Applications for T
15 Nonimmigrant Status,” dated May 8, 2002, available at <https://goo.gl/BUvRpU>. (App. at 1650–1651.)

16 12. Attached hereto as Exhibit K is a true and correct copy of a memorandum from USCIS
17 Associate Director of Operations William R. Yates to Director, Vermont Service Center, entitled
18 “Centralization for Interim Relief For U Nonimmigrant Status Applications,” dated October 8, 2003,
19 available at <https://goo.gl/tBvYwN>. (App. at 1652–1658.)

20 13. Attached hereto as Exhibit L is a true and correct copy of a USCIS publication entitled
21 “Victims of Human Trafficking & Other Crimes,” last updated August 25, 2017, available at
22 <https://goo.gl/wwV6jF>. (App. at 1659–1660.)

23 14. Attached hereto as Exhibit M is a true and correct copy of a USCIS Press Release entitled
24 “USCIS Announces Interim Relief For Foreign Students Adversely Impacted By Hurricane Katrina,”
25 dated November 25, 2005, available at <https://goo.gl/rRmaHm>. (App. at 1661–1662.)

26 15. Attached hereto as Exhibit N is a true and correct copy of a memorandum from Donald
27 Neufeld to USCIS Field Leadership, entitled “Guidance Regarding Surviving Spouses of Deceased U.S.
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1 Citizens and their Children,” dated September 4, 2009, available at <https://goo.gl/cAXvUR>. (App. at
2 1663–1671.)

3 16. Attached hereto as Exhibit O is a true and correct copy of a memorandum from Donald
4 Neufeld to USCIS Executive Leadership, entitled “Additional Guidance Regarding Surviving Spouses
5 of Deceased U.S. Citizens and their Children,” dated December 2, 2009, available at
6 <https://goo.gl/T9dECx>. (App. at 1672–1682.)

7 17. Attached hereto as Exhibit P is a true and correct copy of a brief filed in the Supreme
8 Court by Former Federal Immigration And Homeland Security Officials As Amici Curiae In Support Of
9 The United States in *United States v. Texas*, No. 15-674, dated March 8, 2016, available at
10 <http://www.scotusblog.com/wp-content/uploads/2016/03/USvTexas-AmicusBriefofFormer>
11 [ImmigrationOfficials.pdf](http://www.scotusblog.com/wp-content/uploads/2016/03/USvTexas-AmicusBriefofFormer). (App. at 1683–1738.)

12 18. Attached hereto as Exhibit Q is a true and correct copy of Remarks on Immigration
13 Reform and an Exchange with Reporters by President Barack Obama, dated June 15, 2012, available at
14 <https://obamawhitehouse.archives.gov/the-press-office/2012/06/15/remarks-president-immigration>.
15 (App. at 1739–1741.)

16 19. Attached hereto as Exhibit R is a true and correct copy of an archived USCIS publication
17 of Frequently Asked Questions regarding DACA, available at [https://www.uscis.gov/](https://www.uscis.gov/archive/frequently-asked-questions)
18 [archive/frequently-asked-questions](https://www.uscis.gov/archive/frequently-asked-questions). (App. at 1742–1761.)

19 20. Attached hereto as Exhibit S is a true and correct copy of a USCIS publication entitled
20 “F5—General information... How do I request consideration of deferred action for childhood arrivals?,”
21 dated October 2013, available at [https://www.uscis.gov/sites/default/files/files/nativedocuments/](https://www.uscis.gov/sites/default/files/files/nativedocuments/daca.pdf)
22 [daca.pdf](https://www.uscis.gov/sites/default/files/files/nativedocuments/daca.pdf). (App. at 1762–1764.)

23 21. Attached hereto as Exhibit T is a true and correct copy of a USCIS publication entitled
24 “(DACA) Toolkit,” dated June 2014, [https://www.uscis.gov/sites/default/files/USCIS/Humanitarian/](https://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Deferred%20Action%20for%20Childhood%20Arrivals/DACA_Toolkit_CP_072914.pdf)
25 [Deferred%20Action%20for%20Childhood%20Arrivals/DACA_Toolkit_CP_072914.pdf](https://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Deferred%20Action%20for%20Childhood%20Arrivals/DACA_Toolkit_CP_072914.pdf). (App. at
26 1765–1798.)

1 22. Attached hereto as Exhibit U is a true and correct copy of a USCIS publication entitled
2 “Don’t Let Your Work Permit Expire; Follow These DACA Renewal Tips,” last updated June 5, 2015,
3 <https://www.uscis.gov/archive/dont-let-your-work-permit-expire-follow-these-daca-renewal-tips>. (App.
4 at 1799–1800.)

5 23. Attached hereto as Exhibit V is a true and correct copy of USCIS Form I-821D, entitled
6 “Consideration of Deferred Action for Childhood Arrivals,” dated January 9, 2017. (App. at 1801–
7 1821.)

8 24. Attached hereto as Exhibit W is a true and correct copy of a letter from Secretary Jeh
9 Johnson to Congresswoman Judy Chu, dated December 30, 2016, available at [https://chu.house.gov/
10 sites/chu.house.gov/files/documents/DHS.Signed%20Response%20to%20Chu%2012.30.16.pdf](https://chu.house.gov/sites/chu.house.gov/files/documents/DHS.Signed%20Response%20to%20Chu%2012.30.16.pdf). (App.
11 at 1822–1823.)

12 25. Attached hereto as Exhibit X is a true and correct copy of the transcript from “Town Hall
13 Meeting with House Speaker Paul Ryan,” which aired on CNN on January 12, 2017, available at
14 <http://cnn.it/2oyJXJJ>. (App. at 1824–1839.)

15 26. Attached hereto as Exhibit Y is a true and correct copy of “Wary Democrats look to
16 Kelly for answers on immigration” by Ted Hesson and Seung Min Kim, published in *Politico*, dated
17 March 29, 2017, available at <http://politi.co/2mR3gSN>. (App. at 1840–1842.)

18 27. Attached hereto as Exhibit Z is a true and correct copy of the transcript from Associated
19 Press White House Correspondent Julie Pace’s interview with President Trump, dated April 24, 2017,
20 available at <https://www.cbsnews.com/news/transcript-of-ap-interview-with-trump>. (App. at 1843–
21 1858.)

22 28. Attached hereto as Exhibit AA is a true and correct copy of a letter from Tennessee
23 Attorney General Herbert H. Slatery III to Senators Lamar Alexander and Bob Corker, dated September
24 1, 2017, available at [http://static1.1.sqspcdn.com/static/f/373699/27673058/1504293882007/
25 DACA%2Bletter%2B9-1-2017.pdf?token%3DstUlWSlO3qeVjBe7%252BUHbTCIuvts%253D](http://static1.1.sqspcdn.com/static/f/373699/27673058/1504293882007/DACA%2Bletter%2B9-1-2017.pdf?token%3DstUlWSlO3qeVjBe7%252BUHbTCIuvts%253D). (App. at
26 1859–1860.)

1 29. Attached hereto as Exhibit BB is a true and correct copy of an open letter from Leaders
2 of American Industry to President Trump, dated August 31, 2017, available at [https://dreamers.fwd.us/
3 business-leaders](https://dreamers.fwd.us/business-leaders). (App. at 1861–1865.)

4 30. Attached hereto as Exhibit CC is a true and correct copy of Remarks on DACA, as
5 prepared for delivery, by Attorney General Jefferson Sessions, dated September 5, 2017, available at
6 <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-daca>. (App. at 1866–
7 1868.)

8 31. Attached hereto as Exhibit DD is a true and correct copy of “Statement from Acting
9 Secretary Duke on the Rescission of Deferred Action for Childhood Arrivals (DACA),” dated
10 September 5, 2017, available at [https://www.dhs.gov/news/2017/09/05/statement-acting-secretary-duke-
11 rescission-deferred-action-childhood-arrivals-daca](https://www.dhs.gov/news/2017/09/05/statement-acting-secretary-duke-rescission-deferred-action-childhood-arrivals-daca). (App. at 1869–1870.)

12 32. Attached hereto as Exhibit EE is a true and correct copy of excerpts of the deposition
13 transcript of James McCament, dated October 17, 2017. (App. at 1871–1908.)

14 33. Attached hereto as Exhibit FF is a true and correct copy of excerpts of the deposition
15 transcript of Gene Hamilton, dated October 20, 2017. (App. at 1909–1931.)

16 34. Attached hereto as Exhibit GG is a true and correct copy of “Trump Administration
17 Memo: DACA Recipients Should Prepare for ‘Departure’” by Kristen Welker & Daniel Arkin,
18 published in NBC NEWS, dated September 5, 2017, available at [https://www.nbcnews.com/politics/
19 immigration/white-house-memo-daca-recipients-should-prepare-departure-n799026](https://www.nbcnews.com/politics/immigration/white-house-memo-daca-recipients-should-prepare-departure-n799026). (App. at 1932.)

20 35. Attached hereto as Exhibit HH is a true and correct copy of excerpts of the deposition
21 transcript of James Nealon, dated October 13, 2017. (App. at 1933–1947.)

22 36. Attached hereto as Exhibit II is a true and correct copy of “Executive Grants of
23 Temporary Immigration Relief, 1956-Present” by American Immigration Counsel, dated October 2,
24 2014, available at <https://tinyurl.com/y76nnve7>. (App. at 1948–1957.)

25 37. Attached hereto as Exhibit JJ is a true and correct copy of a Tweet sent by President
26 Trump at 5:38 pm on September 5, 2017, available at [https://twitter.com/realDonaldTrump/
27 status/905228667336499200](https://twitter.com/realDonaldTrump/status/905228667336499200). (App. at 1958.)

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1 38. Attached hereto as Exhibit KK is a true and correct copy of the transcript of the testimony
2 of Attorney General Jefferson Sessions before the Senate Judiciary Committee, dated October 18, 2017.
3 (App. at 1959–1989.)

4 39. Attached hereto as Exhibit LL is a true and correct copy of a White House publication
5 entitled “President Donald J. Trump’s Letter to House and Senate Leaders & Immigration Principles and
6 Policies,” dated October 8, 2017, available at [https://www.whitehouse.gov/the-press-](https://www.whitehouse.gov/the-press-office/2017/10/08/president-donald-j-trumps-letter-house-and-senate-leaders-immigration)
7 [office/2017/10/08/president-donald-j-trumps-letter-house-and-senate-leaders-immigration](https://www.whitehouse.gov/the-press-office/2017/10/08/president-donald-j-trumps-letter-house-and-senate-leaders-immigration). (App. at
8 1990–2003.)

9 40. Attached hereto as Exhibit MM is a true and correct copy of “White House Makes Hard-
10 Line Demands for Any ‘Dreamers’ Deal,” by Michael D. Shear, published in *The New York Times*,
11 dated October 8, 2017, available at [https://www.nytimes.com/2017/10/08/us/politics/white-house-](https://www.nytimes.com/2017/10/08/us/politics/white-house-daca.html)
12 [daca.html](https://www.nytimes.com/2017/10/08/us/politics/white-house-daca.html). (App. at 2004–2008.)

13 41. Attached hereto as Exhibit NN is a true and correct copy of excerpts of the deposition
14 transcript of Donald Neufeld, dated October 18, 2017. (App. at 2009–2027.)

15 42. Attached hereto as Exhibit OO is a true and correct copy of excerpts from Defendants’
16 Objections and Responses to Plaintiffs’ First Set of Interrogatories to Defendants, *Batalla Vidal v. Duke*,
17 Case No. 16–cv-4756 (E.D.N.Y.) (NGG)(JO), dated Oct. 16, 2017. (App. at 2028–2043.)

18 43. Attached hereto as Exhibit PP is a true and correct copy of excerpts of the transcript of
19 the testimony of Secretary Elaine Duke before the Senate Committee on Homeland Security and
20 Government Affairs, dated September 27, 2017. (App. at 2044–2057.)

21 44. Attached hereto as Exhibit QQ is a true and correct copy of a Department of Homeland
22 Security publication entitled “Fact Sheet: Rescission Of Deferred Action For Childhood Arrivals
23 (DACA),” dated September 5, 2017, available at [https://www.dhs.gov/news/2017/09/05/fact-sheet-](https://www.dhs.gov/news/2017/09/05/fact-sheet-rescission-deferred-action-childhood-arrivals-daca)
24 [rescission-deferred-action-childhood-arrivals-daca](https://www.dhs.gov/news/2017/09/05/fact-sheet-rescission-deferred-action-childhood-arrivals-daca). (App. at 2058–2060.)

25 45. Attached hereto as Exhibit RR is a true and correct copy of a USCIS publication entitled
26 “Consideration of Deferred Action for Childhood Arrivals: Guidance for Employers,” dated November
27 20, 2012, available at <https://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Deferred%20>
28

1 Action%20for%20Childhood%20Arrivals/DACA-Fact-Sheet-I-9_Guidance-for-employers_
2 nov20_2012.pdf. (App. at 2061–2062.)

3 46. Attached hereto as Exhibit SS is a true and correct copy of a letter from ICE Director
4 John Morton to All Employees entitled “Secretary Napolitano’s Memorandum Concerning the Exercise
5 of Prosecutorial Discretion for Certain Removable Individuals Who Entered the United States as a
6 Child,” dated June 15, 2012, available at [https://www.ice.gov/doclib/about/offices/ero/pdf/s1-certain-
7 young-people-morton.pdf](https://www.ice.gov/doclib/about/offices/ero/pdf/s1-certain-young-people-morton.pdf). (App. at 2063–2064.)

8 47. Attached hereto as Exhibit TT is a true and correct copy of a Social Security
9 Administration publication entitled “Social Security Number and Card—Deferred Action For Childhood
10 Arrivals,” available at https://www.ssa.gov/pubs/deferred_action.pdf. (App. at 2065.)

11 48. Attached hereto as Exhibit UU is a true and correct copy of USCIS Form G-1145,
12 entitled “e-Notification of Application/Petition Acceptance,” available to download at
13 <https://www.uscis.gov/g-1145>. (App. at 2066.)

14 49. Attached hereto as Exhibit VV is a true and correct copy of USCIS Form I-765, entitled
15 “Application for Employment Authorization,” dated January 17, 2017, available to download at
16 <https://www.uscis.gov/i-765>. (App. at 2067–2087.)

17 50. Attached hereto as Exhibit WW is a true and correct copy of a letter from California
18 Attorney General Xavier Becerra to President Trump, dated July 21, 2017, available at
19 [https://oag.ca.gov/system/files/attachments/press_releases/7-21-17%20%20Letter%20from%20State%
20 20AGs%20to%20President%20Trump%20re%20DACA.final_.pdf](https://oag.ca.gov/system/files/attachments/press_releases/7-21-17%20%20Letter%20from%20State%20AGs%20to%20President%20Trump%20re%20DACA.final_.pdf). (App. at 2088–2091.)

21 51. Attached hereto as Exhibit XX is a true and correct copy of a publication by Center for
22 American Progress, entitled “Study: The Impact of Deferred Action for Childhood Arrivals (DACA)
23 Program Repeal on Jobs,” available at [https://dreamers.fwd.us/wp-content/uploads/2017/08/20170823-
24 DACA-Job-Loss-Report.pdf](https://dreamers.fwd.us/wp-content/uploads/2017/08/20170823-DACA-Job-Loss-Report.pdf). (App. at 2092–2099.)

25 52. Attached hereto as Exhibit YY is a true and correct copy of USCIS, “I-821D,
26 Consideration of Deferred Action for Childhood Arrivals,” last updated October 6, 2017, available at
27 <https://www.uscis.gov/archive/i-821d>. (App. at 2100–2103.)
28

1 53. Attached hereto as Exhibit ZZ is a true and correct copy of a memorandum from INS
2 Acting Executive Associate Commissioner Michael Cronin to Michael Pearson, entitled "Victims of
3 Trafficking and Violence Protection Act of 2000 (VTVPA) Policy Memorandum #2 – 'T' and 'U'
4 Nonimmigrant Visas," dated August 30, 2001, available at [http://www.asistahelp.org/documents/
5 resources/Policy_Memo_Cronin_83001_DFC4BA7F5E85D.pdf](http://www.asistahelp.org/documents/resources/Policy_Memo_Cronin_83001_DFC4BA7F5E85D.pdf). (App. at 2104–2109.)

6 54. Attached hereto as Exhibit AAA is a true and correct copy of a USCIS publication,
7 entitled "DED Granted Country – Liberia," last updated September 30, 2016, available at
8 [https://www.uscis.gov/humanitarian/deferred-enforced-departure/ded-granted-country-liberia/ded-
9 granted-country-liberia](https://www.uscis.gov/humanitarian/deferred-enforced-departure/ded-granted-country-liberia/ded-granted-country-liberia). (App. at 2110–2111.)

10 55. Attached hereto as Exhibit BBB is a true and correct copy of a Gerald R. Ford Library
11 publication, entitled "Emergency Program for Parole of Refugees from Vietnam," dated April 16, 1975,
12 available at <https://www.fordlibrarymuseum.gov/library/document/0164/19077062.pdf>. (App. at 2112–
13 2184.)

14 56. Attached hereto as Exhibit CCC is a true and correct copy of a State Department
15 communication regarding Executive Order 12711, dated June 1, 1990, available at [https://www.state.
16 gov/documents/organization/28450.pdf](https://www.state.gov/documents/organization/28450.pdf). (App. at 2185–2189.)

17 57. Attached hereto as Exhibit DDD is a true and correct copy of excerpts of the deposition
18 transcript of Philip Miller, dated October 18, 2017. (App. at 2190–2198.)

19 58. Attached hereto as Exhibit EEE is a true and correct copy of a document, entitled
20 "Talking Points – DACA Rescission," available at [http://msnbcmedia.msn.com/i/MSNBC/Sections/
21 NEWS/z-pdf-archive/170905-DACA-Talking-Points.pdf](http://msnbcmedia.msn.com/i/MSNBC/Sections/NEWS/z-pdf-archive/170905-DACA-Talking-Points.pdf). (App. at 2199–2200.)

22
23 I declare, under penalty of perjury under the laws of the United States and the State of California
24 that the foregoing is true and correct, and that I executed this Declaration on Nov. 1, 2017 in Los
25 Angeles, California.

26
27 
28 _____
Jesse Gabriel