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

11
 12
 13 REGENTS OF UNIVERSITY OF
 CALIFORNIA and JANET NAPOLITANO,
 14 in her official capacity as President of the
 University of California,

15 Plaintiffs,

16 v.

17 UNITED STATES DEPARTMENT OF
 HOMELAND SECURITY and ELAINE
 18 DUKE, in her official capacity as Acting
 Secretary of the Department of Homeland
 19 Security,

20 Defendants.

CASE NO. 17-CV-05211-WHA

**ADMINISTRATIVE MOTION FOR
 LEAVE TO FILE AMICUS BRIEF OF 9
 COUNTIES AND RAMSEY COUNTY
 ATTORNEY IN SUPPORT OF
 PLAINTIFFS' MOTION FOR
 PROVISIONAL RELIEF**

21 STATE OF CALIFORNIA, STATE OF
 MAINE, STATE OF MARYLAND, and
 22 STATE OF MINNESOTA,

23 Plaintiffs,

24 v.

25 U.S. DEPARTMENT OF HOMELAND
 SECURITY, ELAINE DUKE, in her official
 capacity as Acting Secretary of the
 26 Department of Homeland Security, and the
 UNITED STATES OF AMERICA,
 27

28 Defendants.

CASE NO. 17-CV-05235-WHA

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CITY OF SAN JOSE, a municipal corporation,

Plaintiff,

v.

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

Defendants.

CASE NO. 17-CV-05329-WHA

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

Plaintiffs,

v.

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

Defendants.

CASE NO. 17-CV-05380-WHA

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

INTEREST OF AMICI CURIAE

1
2 Pursuant to this Court's October 25, 2017 Order Regarding Amicus Briefing, Amici
3 hereby request leave to file the attached Amicus Brief of 9 Counties and Ramsey County
4 Attorney in Support of Plaintiffs' Motion for Preliminary Injunction. A copy of this proposed
5 brief and a draft order have been filed along with this motion. Amici have notified counsel for
6 the parties regarding this motion. Plaintiffs consent to the filing of this motion, and Defendants
7 take no position on the filing of this motion.

8 The proposed Amici are 9 counties located in California and Maryland, and the County
9 Attorney for Ramsey County, Minnesota. These counties have diverse economies and diverse
10 populations, with over 15 million residents. They file this brief in support of Plaintiffs' Motion
11 for a Preliminary Injunction to Enjoin the Repeal and Recession of the Deferred Action for
12 Childhood Arrivals program (DACA), because Defendants' unconsidered, irrational, and
13 arbitrary decision to rescind DACA is contrary to law and contrary to Amici's law enforcement,
14 economic, cultural, and community interests.

15 For each of the Amici counties, immigrants are integral to the community's economic and
16 cultural life. Across colors and creeds, immigrants are interwoven into Amici's social fabric, as
17 neighbors, family, and friends. The County of Los Angeles, for instance, has no majority ethnic
18 population and is made up of natives from at least 140 countries speaking 224 different
19 languages.¹ Fifty-seven percent of children in Los Angeles have a noncitizen parent.²
20 Immigrants, particularly those brought here as children, are interwoven into the community;
21 whether at school, on the job, in church, or at home, they are indistinguishable from their families
22 and neighbors who have been granted citizenship or legal permanent residence. These childhood
23 arrivals, although undocumented, lead American lives.

24 As County governments, Amici supervise, operate, and support significant local law
25 enforcement functions, including but not limited to Sheriff's Departments, District Attorney's

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27 ¹ *Facts About Los Angeles*, Discover Los Angeles, 2017 LA Tourism & Convention Board (June
22, 2017), available at <https://goo.gl/KtVZWn>.

28 ² Motion by Supervisor Hilda L. Solis, *Protecting Los Angeles County Residents Regardless of
Immigration Status*, at 1 (Dec. 6, 2016), available at <https://goo.gl/oNczH5>.

1 offices, Probation Departments, and other offices providing vital services to victims of crime.
2 Keeping our streets safe is far more difficult when residents live under the constant threat of
3 deportation. When immigrants fear interacting with law enforcement, even as witnesses or
4 victims of crime, it impedes officials from doing their jobs. This same dynamic leaves residents
5 vulnerable to crime and exploitation. DACA helped to eliminate this barrier for many law-
6 abiding children and to restore the relationship of trust between law enforcement and the
7 communities that Amici are sworn to protect.

8 Immigrants also contribute immeasurably to Amici's economic success. As workers,
9 consumers, technicians, and taxpayers, immigrants fuel Amici's economic engines, in part
10 precisely because of their varied backgrounds: As the Supreme Court has recognized, "the skills
11 needed in today's increasingly global marketplace can only be developed through exposure to
12 widely diverse people, cultures, ideas, and viewpoints." *Grutter v. Bollinger*, 539 U.S. 306, 330
13 (2003). Amici are a testament to this, as immigrants make up a substantial percentage of their
14 workforce and productivity. In Los Angeles, for example, immigrants generate *more than one*
15 *third* of the County's gross domestic product.³ Young long-term residents are especially crucial,
16 as they are more likely to be enrolled in higher education or employed than other undocumented
17 immigrants.⁴

18 Recognizing these indisputable facts, the Department of Homeland Security (DHS)
19 determined in 2012 that forcing productive, law-abiding residents who immigrated to this country
20 as children to live under constant threat of deportation was illogical, economically
21 counterproductive, and inhumane. DHS thus created DACA, a policy that formalized
22 prosecutorial discretion in immigration enforcement for certain individuals who came to the
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24

25
26 ³ Howard Fine, *Report: Immigrants to Los Angeles Provide Major Economic Boost*, Los Angeles
27 Bus. Journal (Feb. 8, 2017), available at <https://goo.gl/3x49aM>.

28 ⁴ Randy Capps *et al.*, *The Education and Work Profiles of the DACA Population*, Migration
Policy Inst. 1–2 (Aug. 2017) ("When contrasted to unauthorized immigrants in the same age
cohort who are not eligible for DACA, strikingly different occupational patterns emerge," with
DACA-eligible individuals more likely to be employed in white-collar jobs.)

1 United States illegally before the age of sixteen.⁵ DACA’s eligibility criteria were crafted to
2 ensure that only law-abiding, productive, long-time residents who were brought here as children
3 (on average, at age six⁶) would be eligible—in other words, those immigrants who bore the least
4 culpability for their initial unlawful entry and held the most promise for contributing to society.⁷
5 To encourage such individuals to apply for DACA free from fear, DHS advised them that the
6 information they submitted would be “protected” and not used against them in deportation
7 proceedings.⁸ Once a DACA applicant proved he or she satisfied these criteria, the applicant
8 became eligible for deferred action from immigration enforcement and for work authorization.

9 When DHS created the program in 2012, the agency explained that DACA served two
10 primary goals. *First*, DHS found that DACA was “necessary to ensure that our enforcement
11 resources are not expended on these low priority cases but are instead appropriately focused on
12 people who meet our enforcement priorities.”⁹ *Second*, DHS noted that our immigration laws are
13 not “designed to remove productive young people to countries where they may not have lived or
14 even speak the language”; thus, because “many of these young people have already contributed to
15 our country in significant ways,” prosecutorial discretion was “especially justified here.”¹⁰
16 President Obama’s remarks the same day were in line with these findings, emphasizing that this
17 “temporary stopgap measure . . . lets us focus our resources wisely while giving a degree of relief
18 and hope to talented, driven, patriotic young people.”¹¹

19 ⁵ Memorandum from Sec’y Janet Napolitano on Exercising Prosecutorial Discretion with Respect
20 to Individuals Who Came to the United States as Children 1–2, Dep’t of Homeland Security (June
21 15, 2012) (hereinafter DACA Enactment Memo), *available at* <https://goo.gl/KtPf6g>.

22 ⁶ Alicia Parlapiano and Karen Yourish, *A Typical ‘Dreamer’ Lives in Los Angeles, Is From
23 Mexico and Came to the U.S. at 6 Years Old*, N.Y. Times (Sept. 5, 2017), *available at*
24 <https://goo.gl/D1yoxs>.

25 ⁷ To be eligible for DACA, individuals had to prove they: (1) came to the US before they were
26 sixteen; (2) resided here continuously for five years before DACA’s enactment; (3) were
27 currently enrolled in or had graduated high school, or had obtained a GED; (4) had not committed
28 a felony, significant misdemeanor, multiple misdemeanors, and did not pose a security threat; and
(5) were not above the age of thirty. *Id.* at 3.

⁸ *See* U.S. Customs and Immigration Servs., DACA FAQs, at 6 (Apr. 25, 2017) (“Information
provided in this request is protected from disclosure to ICE and CBP for the purpose of
immigration enforcement,” other than for national security and law enforcement purposes).

⁹ DACA Enactment Memo, at 1.

¹⁰ *Id.* at 2.

¹¹ Remarks by Pres. Obama, June 15, 2012, *available at* <https://goo.gl/48kmbU>.

1 The program has unquestionably served both goals for immigrants in Amici’s
2 communities. DACA has allowed DHS to better focus its resources on “priority category”
3 individuals, such as those convicted of a felony or who arrived in the country quite recently: In
4 fiscal year 2011, the year before DACA was created, 90 percent of immigrants deported fell into
5 a priority category.¹² By fiscal year 2016, that number had risen to *99.3 percent*, meaning tens of
6 thousands more priority cases were processed.¹³ In the intervening time, DACA beneficiaries
7 contributed billions of dollars to Amici’s economies; the Los Angeles Chamber of Commerce
8 estimates *for LA County alone* that number was \$5.5 billion.¹⁴ They have overwhelmingly
9 participated in Amici’s workforce,¹⁵ and a quarter of them are both enrolled in school *and* are
10 holding down a job.¹⁶ In short, in just over five years, DACA has had a profound impact on the
11 lives of some 750,000 beneficiaries, their communities, and the country at large.

12 But on September 5, 2017, the Trump Administration abruptly rescinded DACA.¹⁷ On
13 that day, with no notice that a decision was imminent and no opportunity for the public, Congress,
14 or local governments like Amici to be heard, DHS announced it would stop processing new
15 DACA applications, effective immediately. DHS also set a deadline of October 5, 2017—only
16 one month later—for DACA recipients whose benefits expired on or before March 5, 2018 to
17 renew their status. All other DACA recipients, *i.e.*, those whose status will expire after March 5,
18 2018, or those who were unable to complete renewal in the one-month window DHS concocted,
19 will watch their deferred action status expire, after which they will be eligible for immediate
20 removal from the United States.¹⁸

21 _____
22 ¹² Immigration and Customs Enforcement, *FY 2011: ICE announces year-end removal numbers, highlights focus on key priorities* (Oct. 17, 2011), available at <https://goo.gl/4d1hUh>.

23 ¹³ Immigration and Customs Enforcement, *FY 2016 Immigration Removals*, available at
24 <https://goo.gl/a3Tj5q> (last visited Oct. 23, 2017).

25 ¹⁴ Julia Wick, *L.A. Area DACA Recipients Contribute Approximately \$5.5 billion Annually to Economy, Chamber Estimates*, LAist (Sept. 21, 2017), available at <https://goo.gl/E9X7mp>.

26 ¹⁵ See Ike Brannon, *The Economic and Fiscal Impact of Repealing DACA*, Cato at Liberty (Jan. 18, 2017).

27 ¹⁶ Capps *et al.*, *supra* n.4, at 2.

28 ¹⁷ See Memorandum from Acting DHS Secretary Elaine C. Duke on Rescission of Deferred Action for Childhood Arrivals, Department of Homeland Security (Sept. 5, 2017) (hereinafter Memorandum of Rescission), available at <https://goo.gl/wKuhW3>.

¹⁸ *Id.*

1 Despite the momentous impact this decision would clearly have, DHS offered only the
2 most cursory justification: that because some courts and the Trump Administration’s Attorney
3 General had concluded that a *separate* program, the Deferred Action for Parents of Americans
4 and Lawful Permanent Residents (DAPA), was unlawful, “it is clear that the June 15, 2012
5 DACA program should be terminated.”¹⁹ Nowhere in its explanation did DHS explain *how* or
6 *why* it considered the two disparate programs to be legally identical—nor did it mention that the
7 primary decision on which DHS relied for the comparison noted that the two programs may not
8 be comparable.²⁰ Indeed, DHS’s purported concern over DACA’s legality ran directly counter to
9 President Trump’s assertion that, if Congress did not act, he would consider leaving the program
10 in place.²¹ Just as unreasonably, none of the explanations given by the Administration indicate
11 that it considered the program’s enormous benefits, both in terms of marshalling DHS resources
12 to better enforce immigration priorities and in terms of its beneficiaries’ contributions to society.

13 This is not the rational decisionmaking our laws demand. Before deciding to put 750,000
14 faultless young people at risk, DHS was required to consider the evidence before it and explain
15 why that evidence supported its decision. Yet nowhere did DHS’s memorandum rescinding
16 DACA mention, let alone evaluate, the enormous harm that would result from ending the
17 program so abruptly—for DACA beneficiaries themselves; for the thousands of businesses, small
18 and large, that employed them; and for the counties like Amici in which they live. DHS’s
19 surprise action will cost the U.S. economy dearly: the Cato Institute estimates it will cause a
20 “\$280 billion reduction in economic growth over the next decade,”²² and Brookings anticipates
21 \$2 billion in lost tax revenue.²³ More than a quarter of DACA recipients live in California,²⁴ and
22 several Amici will endure a disproportionate amount of this unnecessary fiscal pain.

23
24 ¹⁹ *Id.*

25 ²⁰ *See Texas v. United States*, 787 F.3d 733, 764 (5th Cir. 2015).

26 ²¹ Donald J. Trump (@realDonaldTrump), Twitter (Sept. 5, 2017, 7:38 PM),
27 <https://goo.gl/UEi1TJ> (“Congress now has 6 months to legalize DACA. . . . If they can’t, I will
28 revisit this issue!”).

²² *See Brannon, supra* n.15.

²³ John Hudak and Elaine Kamarck, *The Mind-Boggling Cost of DACA Repeal*, Brookings
Institute (Sept. 7, 2017), available at <https://goo.gl/rEb16N>.

²⁴ Parlapiano & Yourish, *supra* n.6.

1 DHS has also unreasonably refused to reaffirm its earlier commitment not to use DACA
2 applicants' information for enforcement purposes. This action places *hundreds of thousands of*
3 *Amici's residents* in fear of being sent to a country that many of them barely remember, based on
4 information they gave to the government on what will turn out to have been false pretenses.

5 Amici also have a strong interest in the application of Plaintiffs' requested injunction
6 nationwide. Because the legal infirmities in DHS's decision apply equally to the parties, Amici,
7 and every person affected, the nationwide injunction is necessary to prevent DHS from taking any
8 steps to implement its unlawful new policy and causing Amici the harm described in their
9 proposed brief. *See, e.g., Trump v. IRAP*, 137 S.Ct. 2080, 2088 (2017) (upholding nationwide
10 injunction of Trump Administration's travel ban "with respect to parties similarly situated to [the
11 plaintiffs]").

12
13 **CONCLUSION**

14 For the foregoing reasons, Amici respectfully request the Court's permission to file the
15 attached Amicus Brief, a copy of which accompanies this Administrative Motion.

16
17 Dated: November 1, 2017

18 By: /s Margaret L. Carter

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APPENDIX

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Defendants.

CASE NO. 17-CV-05813-WHA

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	Page
INTRODUCTION	1
I. BY REPEALING DACA, DHS JEOPARDIZED A ROBUST, PRODUCTIVE COMMUNITY CONCENTRATED IN AMICI COUNTIES	1
A. DACA Strengthens Trust Between Law Enforcement and Immigrants	1
B. DACA Recipients Contribute Substantially to Amici’s Economies	3
C. DACA Recipients Are More Likely To Pursue Higher Education and Hold Higher-Skilled Jobs Than Other Undocumented Immigrants	4
D. DACA Allows Recipients To Fully Engage with Their Communities	5
II. DHS’S SURPRISE RESCISSION OF DACA WAS UNLAWFUL	6
A. The Decision To Repeal DACA Was Arbitrary and Capricious	6
1. DHS Did Not Adequately Consider the Harm From Repealing DACA	8
2. DHS Improperly Relied on the 5th Circuit’s and Supreme Court’s Rulings on DAPA—a Separate Program—in Making Its Decision.	9
3. There Is No Factual Basis for the Administration’s Statements Connecting DACA Recipients with Crime or Gang Violence.	12
B. DHS’s Refusal To Commit to its Earlier Promise Not To Use DACA Applicants’ Information for Enforcement Purposes Violates Due Process.	13
CONCLUSION	15

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page(s)

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TABLE OF AUTHORITIES
(continued)

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2
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6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page(s)

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Statutes	
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5 U.S.C. § 551(5).....	11
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(continued)

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10	https://goo.gl/KnR2W5	6
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13	Dep’t of Homeland Security, <i>Frequently Asked Questions: Rescission Of Deferred</i>	
14	<i>Action For Childhood Arrivals</i> (Sept. 5, 2017) (emphasis added), available at	
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INTRODUCTION

The Department of Homeland Security's (DHS) failure to consider the harmful effects of terminating the Deferred Action for Childhood Arrivals program (DACA) and to offer a consistent, factually accurate explanation for its decision falls far short of the reasoned decisionmaking the Administrative Procedure Act (APA) requires. Moreover, DHS has refused to commit to its earlier representation that it would not use the information DACA applicants submitted with their applications against them for enforcement purposes. This is fundamentally unfair and violates Due Process. For these and the reasons given in Plaintiffs' motion (ECF No. 111), the Court should enjoin DHS's unlawful action.

I. BY REPEALING DACA, DHS JEOPARDIZED A ROBUST, PRODUCTIVE COMMUNITY CONCENTRATED IN AMICI COUNTIES

DACA has allowed recipients to come out of the shadows and better contribute to Amici's communities. It has drastically improved recipients' lives, allowing them to obtain better jobs, more education, and better access to benefits—like health insurance and driver's licenses—which allow them to better contribute to society. It has also made our streets safer by ensuring that recipients can cooperate with local law enforcement without fear of deportation. Repealing DACA will not only harm Amici's economies and public safety programs, but will also cut off the benefits that allow recipients to contribute so productively to Amici's communities.

A. DACA Strengthens Trust Between Law Enforcement and Immigrants

DACA has helped make neighborhoods safer, because recipients are able to cooperate more freely and effectively with law enforcement to report crimes.¹ Studies show that undocumented individuals' fear of interactions with law enforcement makes them vulnerable targets for crime and abuse. Law enforcement agencies report that, as immigration enforcement and the threat of deportation increase, undocumented immigrants are substantially less likely to report crimes, including violent crimes.² One study estimates that granting legal status to 1% of

¹ Roberto G. Gonzales and Angie M. Bautista-Chavez, *Two Years and Counting: Assessing the Growing Power of DACA* 9, Am. Immigration Coun. (June 2014), available at <https://goo.gl/4ezbQR>.

² John Burnett, *New Immigration Crackdowns Creating 'Chilling Effect' on Crime Reporting*, National public Radio (May 25, 2017), available at <https://goo.gl/62P1mN>.

1 undocumented immigrants in a county can lower crime rates there by 2 to 6%.³ DACA recipients
2 are also more likely to obtain government identification, saving valuable law enforcement
3 resources by making it easier for police to identify victims and witnesses. Thus, although
4 Attorney General Sessions insinuated when announcing DACA’s repeal that DACA had “put our
5 nation at risk of crime, violence and even terrorism,”⁴ the facts show just the opposite.

6 Community policing strategies in Amici counties call for trust and engagement between
7 law enforcement and the people they protect. As Los Angeles County’s sheriff put it last month,
8 “Public safety is our mission. This requires that people come forward if they are a crime victim
9 or be willing to come forth as a witness to a crime without fear of being deported. When I say
10 that public trust is our currency, I mean it.”⁵

11 That trust is undermined when residents fear interaction with the police, and law
12 enforcement suffers as a result. Extensive evidence shows that undocumented immigrants—and
13 their lawfully present family and neighbors—fear that turning to the police will bring adverse
14 immigration consequences. DACA has promoted community policing and furthered Amici’s
15 efforts to ensure that deferred action recipients and their families and neighbors are less
16 vulnerable to crime and exploitation. Indeed, immigrants who were brought to the United States
17 as children and who already have strong ties to their neighborhoods are far more willing to
18 cooperate with law enforcement if they are reassured that their cooperation will not separate them
19 from their lives and families in the United States.

20 In addition, fear of immigration enforcement may prevent noncitizens from seeking much-
21 needed help during disasters. After the devastating recent Northern California wildfires, many
22 immigrants avoided applying for aid to which they and their families were entitled because
23 FEMA’s form state that application information “**may be subject to sharing within the**
24

25 ³ Scott R. Baker, *Effects of Immigrant Legalization on Crime: The 1986 Immigration Reform and*
26 *Control Act*, Stanford Law and Econ. Olin Working Paper, at 25 (July 28, 2014) available at
<https://goo.gl/MyX2oN>.

27 ⁴ Dep’t of Justice, *Attorney General Sessions Delivers Remarks on DACA* (Sept. 5, 2017),
available at <https://goo.gl/Bhnwni>.

28 ⁵ *L.A. County Sheriff Jim McDonnell’s statement about Senate Bill 54 regarding immigration*,
The Signal (Sept. 16, 2017), available at <https://goo.gl/xQ5TWL>.

1 **Department of Homeland Security**, including but not limited to, the Bureau of Immigration and
 2 Customs Enforcement.” The Government’s arbitrary repeal of DACA will likewise stoke fears
 3 that those who ask for help to save property or lives will expose themselves, family members, or
 4 neighbors to immigration enforcement.

5 **B. DACA Recipients Contribute Substantially to Amici’s Economies**

6 More than a quarter of all DACA participants lived in California at the time of their
 7 enrollment.⁶ The County of Los Angeles alone is home to an estimated 13% of all DACA
 8 recipients, approximately 78,000 as of 2013.⁷ That number has likely risen, because 317,000 new
 9 young people were granted DACA status between 2013 and June 2017.⁸

10 These young individuals drive Amici’s economies. DACA recipients are responsible for
 11 approximately \$11 billion of California’s GDP.⁹ Over 91% are employed, and many younger
 12 recipients are enrolled in school full-time with a strong prospect of quality future employment.¹⁰

13 DACA’s nationwide impact has also been substantial. Across the country, adding DACA
 14 recipients to the workforce generated roughly \$30 billion in new earnings, which, according to
 15 one analysis from the Cato Institute, “ha[d] a job-creating ripple effect on the economy.”¹¹ One
 16 study estimates that ending DACA will reduce the national GDP by \$433 billion over the next
 17 10 years, due in large part to the estimated loss of DACA workers.¹² DHS’s decision to rescind
 18 DACA will thus have a clear deleterious effect on Amici, the State of California, and the nation.

19 _____
 20 ⁶ *Id.*

21 ⁷ U.S. Customs and Immigration Serv. (USCIS), *Characteristics of Individuals Requesting and*
 22 *Approved for Deferred Action for Childhood Arrivals (DACA)* 7 (Sept. 2013), available at
 23 <https://goo.gl/stcxcr>.

24 ⁸ USCIS, *Number of I-821D, Consideration of Deferred Action for Childhood Arrivals by Fiscal*
 25 *Year, Quarter, Intake, Biometrics and Case Status: 2012-2017* 1 (June 30, 2017) (hereinafter
 26 2017 USCIS Intake Report), available at <https://goo.gl/VqSmUE>. Additionally, there have been
 27 more than 1,000,000 accepted requests to renew DACA benefits since 2013. *Id.*

28 ⁹ Julia Wick, *L.A. Area DACA Recipients Contribute Approximately \$5.5 billion Annually to*
 Economy, *Chamber Estimates*, LAist (Sept. 21, 2017), available at <https://goo.gl/E9X7mp>.

¹⁰ Tom K. Wong, et al., *2017 National DACA Study*, Ctr. for Am. Progress, at 3 (Aug. 20, 2017)
 (hereinafter Wong 2017 Survey), available at <https://goo.gl/i2pf65>.

¹¹ Alex Nowrasteh, *Don’t End DACA: The Immigration Program Trump Must Save*, New York
 Post (Aug. 31, 2017), available at <https://goo.gl/3nk3KM>.

¹² Silva Mathema, *Ending DACA Will Cost States Billions of Dollars*, Ctr. for Am. Progress (Jan.
 9, 2017), available at <https://goo.gl/I8veJR>.

1 **C. DACA Recipients Are More Likely To Pursue Higher Education and Hold**
 2 **Higher-Skilled Jobs Than Other Undocumented Immigrants**

3 DACA recipients are also more likely—much more likely than other undocumented
 4 immigrants, and nearly as likely as American citizens—to pursue higher education, enhancing
 5 their economic productivity and enriching their lives.¹³ In one survey, 45% of DACA recipients
 6 polled were currently attending school, and of those in school more than 90% were seeking an
 7 associate’s degree or higher, and 72% were seeking either a bachelor’s or graduate degree.¹⁴
 8 These respondents indicated that DACA was the difference maker: 65% said that because of
 9 DACA they “pursued educational opportunities that [they] previously could not,” another 33%
 10 intended to go back to school, and 18% paid off some or all of their students loans.¹⁵

11 Given their educational aspirations, it is unsurprising that DACA recipients are more
 12 likely to hold higher-skilled, higher-paying jobs than undocumented immigrants who are not
 13 protected by the program—exactly the kinds of jobs Amici have worked to generate through
 14 various economic development programs.¹⁶ 69% of survey respondents reported finding a job
 15 with better pay after receiving DACA, 54% agreed their post-DACA career “better fits [their]
 16 education and training,” and 56% experienced better working conditions in their new position.¹⁷
 17 DACA-protected workers are more likely than other immigrants to work office jobs and less
 18 likely to work in construction, cleaning, and maintenance jobs¹⁸: in a 2016 survey of DACA
 19 recipients, 21% of respondents worked in educational and health services, 11% worked in the
 20 nonprofit sector, 9% worked in wholesale and retail trades, and 8% worked in professional and

21 _____
 22 ¹³ Randy Capps *et al.*, *The Education and Work Profiles of the DACA Population*, Migration
 Policy Inst. 2 (Aug. 2017).

23 ¹⁴ Wong 2017 Survey, *supra* n.10, at 7; *see also* Capps, *et al.*, *supra* n.13, at 3 (“Early research
 24 based on surveys of DACA participants has documented improvements in high school completion
 and college enrollment.”).

25 ¹⁵ Wong 2017 Survey, *supra* n.10, at 7.

26 ¹⁶ *See, e.g.*, Motion by Supervisors Solis and Ridley-Thomas, *Implementing a Los Angeles*
County Strategic Plan for Economic Development (Jan. 5, 2016), available at
<https://goo.gl/XhdyUc>.

27 ¹⁷ *Id.* at 3.

28 ¹⁸ Alicia Parlapiano and Karen Yourish, *A Typical ‘Dreamer’ Lives in Los Angeles, Is From*
Mexico and Came to the U.S. at 6 Years Old, N.Y. Times (Sept. 5, 2017), available at
<https://goo.gl/D1yoxs>.

1 business services.¹⁹ And 5% of DACA recipients own their own business, significantly higher
 2 than the national average of 3.1%.²⁰ When it comes to the quintessentially American values of
 3 hard work and entrepreneurship, DACA recipients are ahead of the curve.

4 **D. DACA Allows Recipients To Fully Engage with Their Communities**

5 Once able to secure the building blocks of modern life (thousands have gotten their first
 6 driver's license and obtained health insurance since the program's inception²¹), DACA recipients
 7 strengthened their communities by dedicating themselves to them. Hundreds are serving in the
 8 military as part of a Pentagon pilot program.²² Thousands have taken up teaching, often in
 9 communities with large minority and Latino populations.²³ Not only do these individuals help to
 10 address the dearth of Spanish-speaking teachers and teachers of color, but they also provide
 11 perspective for their students, many of whom are undocumented immigrants themselves.²⁴
 12 DACA-recipient teachers have been such a forceful presence in underserved communities that
 13 elite programs like Teach For America are actively recruiting more, encouraging applicants to
 14 "Become a DACAdmented Teacher."²⁵ Through this program alone, DACA recipients have
 15 served 10,000 students across 11 states, including in many schools serving Amici's students.²⁶

16 When emergencies have threatened families, friends, and neighbors, DACA recipients

17 _____
 18 ¹⁹ Wong 2017 Survey, *supra* n.10, at 4; *see also* United We Dream, National Immigration Law
 19 Center, and Center for American Progress (Sept. 26, 2016) (hereinafter Wong 2016 Survey),
 20 *available at* <https://goo.gl/7Sgd3v>. A 2014 survey found that 59% of DACA recipients reported
 21 obtaining a new job and 45% reported higher earnings once granted work authorization. *See*
 22 Gonzales and Bautista-Chavez, *supra* n.1, at 9.

²⁰ Wong 2017 Survey, *supra* n.10, at 3 (showing 5% of DACA recipients have started their own
 21 business, compared to national average of 3.1%).

²¹ Gonzales and Chavez, *supra* n.1, at 3; *see also* Wong 2017 Survey, *supra* n.10, at 9.

²² Gregory Korte et al., *Trump Administration struggles with fate of 900 DREAMers serving in
 23 the military*, USA Today (Sept. 7, 2017), *available at* <https://goo.gl/URxefM>.

²³ *See* George White, *Teachers Who Are DACA Recipients Help Ease Anxiety of Undocumented
 24 Students*, EdSource (Sept. 15, 2017), *available at* <https://goo.gl/XYavEL>. Although the exact
 25 number of DACA recipients employed as teachers is unknown, the Migration Policy Institute
 26 estimates that 20,000 "DACA-eligible" individuals are teachers, although some may have
 27 attained lawful status by other means. *Id.*

²⁴ *Id.* (discussing Miriam Gonzalez, a middle school teacher in Los Angeles who has counseled
 27 two of her students since they disclosed their undocumented status to her).

²⁵ *Become a DACAdmented Teacher*, Teach For Am., <https://goo.gl/SMKyQP> (last visited Oct. 23,
 28 2017).

²⁶ *Id.*

1 have been among the first to answer the call. During Hurricane Harvey, one DACA recipient,
2 Alonso Guillén, was killed while driving a rescue boat *into* the storm.²⁷ Guillén gave his life
3 trying to keep fellow Texans from perishing in the rising floodwaters. Less than a week later,
4 DHS announced it would rescind the program that gave him lawful status—although DACA
5 recipients were still on the front lines in Houston, setting up emergency hotlines and helping to
6 rescue the stranded from flooded areas.²⁸

7 DACA has benefitted not only the hundreds of thousands of residents who received legal
8 status, but also their whole communities. Recipients live their lives by American values, promote
9 those values at school and at work, and enrich their neighborhoods. To suddenly subject them to
10 deportation will inflict unnecessary pain on them and their families, cost American citizens
11 hundreds of billions of dollars, and displace an important part of Amici’s communities.

12 **II. DHS’S SURPRISE RESCISSION OF DACA WAS UNLAWFUL**

13 DHS’s decision to repeal DACA was not only a grave policy error, but it was also
14 unlawful. First, DHS’s action was arbitrary and capricious and therefore violated the APA. Not
15 only did DHS fail to articulate an adequate explanation for its decision to repeal DACA, but it
16 also appears to have given zero consideration to the serious economic implications of DACA’s
17 repeal for local economies like Amici’s. Certainly, there is no evidence in the Administration’s
18 inconsistent explanations that it considered these vital factors. Second, by refusing to commit to
19 its earlier representation not to use DACA applicant’s personal information for enforcement
20 purposes, DHS has also deliberately placed these young people in fear for their future, a cruel and
21 continuing harm that violates basic notions of fundamental fairness.

22 **A. The Decision To Repeal DACA Was Arbitrary and Capricious**

23 “Federal administrative agencies are required to engage in ‘reasoned decisionmaking.’”
24 *Michigan v. E.P.A.*, 135 S. Ct. 2699, 2706 (2015) (citation omitted). With exceptions not relevant
25 here, all final agency action affecting the rights and obligations of individuals is subject to this

26
27 ²⁷ Samantha Schmidt, *A ‘Dreamer’ Dies Trying to Save Harvey Victims, Days Before Trump
Plans to End DACA*, Washington Post (Sept. 5, 2017), available at <https://goo.gl/FAjsBd>.

28 ²⁸ Charlotte Alter, *They Helped Their Neighbors After Harvey. Now Their Immigration Status is
at Risk*, Time (Sept. 5, 2017), available at <https://goo.gl/KnR2W5>.

1 judicially-enforceable requirement. *See* 5 U.S.C. §§ 551(13), 702; *see also* *Block v. Cmty.*
2 *Nutrition Inst.*, 467 U.S. 340, 348–49 (1984) (discussing presumption in favor of judicial review
3 of agency action). When an agency fails this standard—when it acts in a manner that is
4 “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law”—its
5 action must be set aside. 5 U.S.C. § 706(2)(A).

6 When DHS repealed DACA on September 5, 2017, it failed to (i) take into account the
7 enormous economic and social harms DACA’s repeal would cause, and (ii) articulate an adequate
8 (or even internally consistent) explanation for its decision. Separately and together, these failures
9 violate the APA, which requires agencies to “examine the relevant data *and* articulate a
10 satisfactory explanation for its action including a ‘rational connection between the facts found and
11 the choice made.’” *Motor Vehicle Mfrs. Ass’n of U.S., Inc., v. State Farm Mut. Auto. Ins. Co.*,
12 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines v. United States*, 371 U.S. 156, 168
13 (1962)) (emphasis added). DHS’s attempt to hastily rescind DACA fails on both fronts.

14 “[A] court may uphold agency action only on the grounds the agency invoked when it
15 took the action.” *Michigan*, 135 S. Ct. at 2710 (quoting *SEC v. Chenery Corp.*, 318 U.S. 80, 87
16 (1943)). Yet the three contemporaneous explanations the Administration gave—DHS’s
17 Memorandum of Rescission,²⁹ a letter from Attorney General Sessions,³⁰ and statements from
18 President Trump³¹—come nowhere close to justifying so momentous a decision. They are
19 internally inconsistent and simply unmoored from the actual evidence before the agency. And
20 those facts they do cite are either demonstrably false or irrelevant to the question at hand. As
21 even a cursory review makes clear, this was not the “reasoned decisionmaking” our law requires.
22

23 _____
24 ²⁹ *See* Memorandum from Acting DHS Secretary Elaine C. Duke on Rescission of Deferred
25 Action for Childhood Arrivals, Department of Homeland Security (Sept. 5, 2017) (hereinafter
26 Memorandum of Rescission), *available at* <https://goo.gl/wKuhW3>.

27 ³⁰ *See* Press Release, White House Office of the Press Secretary, *President Donald J. Trump*
28 *Restores Responsibility and the Rule of Law to Immigration* (Sept. 5, 2017) (hereinafter White
29 House Press Release), *available at* <https://goo.gl/GFqwFJ>; Statement from President Donald J.
30 Trump, White House Press Office (Sept. 5, 2017) (hereinafter Trump Statement), *available at*
31 <https://goo.gl/Dm3WVU>.

32 ³¹ Letter from Attorney General Sessions to DHS Secretary Duke Regarding Lawfulness of
33 DACA (Sept. 4, 2017) (hereinafter Sessions Letter), *available at* <https://goo.gl/CdkKu1>.

1 **1. DHS Did Not Adequately Consider the Harm From Repealing DACA**

2 DHS’s failure to consider both the economic impact and the individual harm of its action
3 is in and of itself sufficient ground to enjoin DACA’s rescission. In reviewing DHS’s proffered
4 explanation, the Court must “consider whether the decision was based on a consideration of the
5 relevant factors and whether there has been a clear error of judgment.” *State Farm*, 463 U.S. at
6 34 (internal quotation marks and citations omitted). The Administration’s haphazard
7 explanations fail to meet that standard.

8 As noted above, when it created DACA, the Obama Administration found that the
9 program was necessary to better direct its resources to priority cases, and that granting young,
10 long-term immigrants temporary protection and work authorization would benefit them and the
11 economy writ large.³² Yet notably absent from the Trump Administration’s explanations is *any*
12 mention of the enormous impact that DACA has had on the economy or on enforcement
13 prioritization. Because DHS “entirely failed to consider an important aspect of the problem,”
14 *State Farm*, 463 U.S. at 43, its ill-considered effort to repeal the program was unlawful.
15 *California v. Bureau of Land Mgmt.*, 2017 WL 4416409, at *11 (N.D. Cal. 2017) (APA violated
16 where agency repeals a rule but “entirely fail[s] to consider [its] benefits”).

17 Moreover, given that roughly 880,000 DACA applicants sought and were granted initial
18 DACA benefits between 2012 and 2017,³³ the effect that repealing this program would have on
19 those individuals—and over a million other DACA-eligible Americans³⁴—is surely a “relevant
20 factor,” the government should take into account when considering rescission. *State Farm*, 463
21 U.S. at 34. But none of the Administration’s explanations discussed the impact of repeal on the
22 very people DACA was intended to benefit most. When an agency “fails to analyze the effects”

23 _____
24 ³² See Memorandum from Sec’y Janet Napolitano on Exercising Prosecutorial Discretion with
25 Respect to Individuals Who Came to the United States as Children 1–2, Dep’t of Homeland
26 Security (June 15, 2012) (hereinafter DACA Enactment Memo), *available at*
27 <https://goo.gl/FVXqxqF>; Remarks by Pres. Obama, June 15, 2012, *available at*
28 <https://goo.gl/48kmbU>.

³³ See 2017 USCIS Intake Report, *supra* n.8. That total does not include applicants seeking
renewal of benefits.

³⁴ See *Deferred Action for Childhood Arrivals (DACA) Data Tools*, Migration Policy Institute
(2017), *available at* <https://goo.gl/fG6bZ7> (estimating that in 2016 the DACA eligible population
was 1.9 million).

1 its action will have on the people it seeks to regulate, the action must be set aside. *Pac. Coast*
 2 *Fed. of Fishermen's Assn's v. U.S. Bureau of Reclamation*, 426 F.3d 1082, 1095 (9th Cir. 2005) .

3 DHS's failure to consider the effects of DACA's rescission is especially problematic
 4 given the expedited (and apparently arbitrary) timeframe for implementation. When DHS
 5 announced DACA's termination on September 5, 2017, it gave current recipients whose status
 6 expired prior to March 5, 2018 one month (until October 5, 2017) to file for renewal.³⁵
 7 According to the United States Citizenship and Immigration Services (USCIS), about
 8 154,000 DACA recipients' benefits will expire by March 5, 2018, but nearly 36,000 of those
 9 individuals were unable to renew their status because of "the tight deadline, lack of access to legal
 10 help and inability to pay the \$495 renewal fee on short notice."³⁶ The Administration's varied
 11 explanations never even attempt to explain how it chose this date, let alone to explain why such a
 12 short timeline was necessary or appropriate. This oversight only compounds the illegality of
 13 DHS's action. *See Bureau of Land Mgmt.*, 2017 WL 4416409 at *11 n.5 ("Defendants' failure to
 14 fully consider all important aspects of postponing the compliance deadlines when issuing the
 15 Postponement Notice was arbitrary and capricious . . .").

16 **2. DHS Improperly Relied on the 5th Circuit's and Supreme Court's**
 17 **Rulings on DAPA—a Separate Program—in Making Its Decision.**

18 Attorney General Sessions argued that DACA should be abolished because it was
 19 unlawful, an argument DHS incorporated by reference in its memo rescinding the program.³⁷
 20 The Attorney General's one-page letter focused solely on the Fifth Circuit's decision in *Texas v.*
 21 *United States*, 809 F.3d 134 (5th Cir. 2015), which affirmed a lower court decision enjoining the
 22 Deferred Action for Parents of Americans and Lawful Permanent Residents program (DAPA)³⁸—
 23 an *entirely distinct* regulatory program³⁹—and the threat by several States to challenge DACA
 24

25 ³⁵ Memorandum of Rescission, *supra* n.29.

26 ³⁶ Tania Karas and Kenya Downs, *The Deadline to Renew DACA is Here, But 36,000 People Still*
 27 *Have Not Applied*, Pub. Radio Int'l (October 5, 2017), available at <https://goo.gl/GiZpqX>.

27 ³⁷ See Sessions Letter, *supra* n.31; Memorandum of Rescission, *supra* n.29.

28 ³⁸ A divided Supreme Court affirmed the injunction in a non-precedential per curiam decision.
 See *United States v. Texas*, 136 S.Ct. 2271 (2016) (per curiam).

³⁹ See Sessions Letter, *supra* n.31.

1 unless the Government agreed to a complete and unconditional repeal by September 5—the exact
2 day on which DHS capitulated to the States’ demand.⁴⁰ The States’ threatened litigation was an
3 inadequate basis on which to repeal DACA, for several reasons.

4 Even if *Texas v. United States* were rightly decided, the Attorney General did not explain
5 why that case, which focused on DAPA, says anything about DACA. The Fifth Circuit expressly
6 noted that it was not adjudging DACA’s legality—the plaintiffs did not challenge the program,
7 and the court recognized that there were several differences between DACA and DAPA that
8 could affect the legal analysis. 787 F.3d 733, 764 (5th Cir. 2015) (noting DACA affected much
9 smaller number of people, and involved different discretionary criteria). That court also noted
10 that, although a key aspect of the challenge to DAPA was that the program took discretion away
11 from officers on the ground, there was evidence in the record that DACA afforded officers such
12 discretion. *Id.* at 765. *Texas v. United States* therefore simply does not address DACA’s legality.

13 Attorney General Sessions’ proffered reason is also inconsistent with the fact that the
14 Administration left DACA in place for over seven months, even though *Texas v. United States*
15 was decided in 2015. Neither Attorney General Sessions nor DHS offered any explanation for
16 departing from prior policy based on a decision that had been on the books for over two years.
17 “Unexplained inconsistency between agency actions is a reason for holding an interpretation to be
18 an arbitrary and capricious change.” *Organized Vill. of Kake v. U.S. Dep’t of Ag.*, 795 F.3d 956,
19 966 (9th Cir. 2015). Indeed, both DHS and the Department of Justice (through its Office of Legal
20 Counsel) had for years accepted DACA’s legality.⁴¹ Even within the past six months—nearly a
21 year after a divided Supreme Court affirmed the Fifth Circuit’s injunction on DAPA—former
22 DHS Secretary (and current White House Chief of Staff) John Kelly acknowledged DACA’s
23 legality—and its legal distinction from DAPA—by leaving DACA in place while rescinding
24

25
26 ⁴⁰ Memorandum of Rescission, *supra* n.29.

27 ⁴¹ *The Department of Homeland Security’s Authority to Prioritize Removal of Certain Aliens*
28 *Unlawfully Present in the United States and to Defer Removal of Others*, Memorandum from Karl
R. Thompson, Principal Deputy Ass’t Attorney Gen., Off. of Legal Counsel, to Former DHS
Secretary Jeh Johnson (Nov. 19, 2014), available at <https://goo.gl/TT4iVU>.

1 DAPA.⁴² DHS’s current position, that DACA is unlawful because DAPA is unlawful, is thus
2 entirely inconsistent with this action taken only a few months ago.⁴³ When an agency does an
3 abrupt about-face, it must “demonstrate that the new policy rests upon principles that are rational,
4 neutral, and in accord with the agency’s proper understanding of its authority.” *F.C.C. v. Fox*
5 *Television Stations, Inc.*, 556 U.S. 502, 536 (2009); *Bureau of Land Mgmt.*, 2017 WL 4416409, at
6 *11 (the agency must “explain the reason for the change and its rejection of its earlier factual
7 findings”). DHS’s failure to even attempt to do so was arbitrary and capricious.

8 DHS also fails to acknowledge that even DACA *had* been improperly implemented, DHS
9 would *still* have violated the APA by rescinding DACA without going through the notice-and-
10 comment process. In general, when an agency enacts *or repeals* a “rule”—essentially a policy
11 with binding effect on those regulated⁴⁴—it must go through the APA’s notice-and-comment
12 process. *See* 5 U.S.C. §§ 553(b), 551(5) (notice-and-comment required whenever agency
13 “formulat[es], amend[s], or repeal[s] a rule”). Attorney General Sessions’ letter is premised on
14 the assumption that DACA is a rule that should have gone through notice-and-comment before
15 being implemented, because that is the grounds on which the 5th Circuit enjoined DAPA.⁴⁵ Yet
16 if DACA is a rule, it cannot be rescinded without notice-and-comment *even if it was improperly*
17 *enacted*. *See, e.g., Am. Forest Resource Coun. v. Ashe*, 946 F. Supp. 2d 1, 26 (D.D.C. 2013)
18 (“[O]rdinarily an agency rule may not be repealed unless certain procedures, including public
19 notice and comment, are followed, and that this is true even where the rule at issue may be
20 defective.”). Thus, even on its own terms, Attorney General Sessions’ explanation is irrational.

21 Congress has also directed that when agencies consider policy changes of this magnitude,
22 they consider impact on small businesses and localities. *See* Regulatory Flexibility Act, 5 U.S.C.
23 §§ 601, 603–604. Thousands of small businesses will lose employees (or founders) and hundreds

24 ⁴² *See* Memorandum from Former DHS Sec’y John Kelly on Rescission of Memorandum
25 Providing for Deferred Action for Parents of Americans and Lawful Permanent Residents
26 (“DAPA”) (June 15, 2017), *available at* <https://goo.gl/QNWERQ> (noting DAPA’s repeal, but that
27 “the Deferred Action for Childhood Arrivals (DACA) program will remain in effect”).

⁴³ Julie Hirschfeld Davis, *Trump Says Decision on ‘Dreamers’ Program Will Come Soon*, NY
28 Times (Sept. 1, 2017), *available at* <https://goo.gl/Ufi2pb>.

⁴⁴ *See* 5 U.S.C. § 551(4)

⁴⁵ Sessions Letter, *supra* n.31.

1 of communities, including many of Amici, will lose long-term residents—yet DHS failed even
2 once to consider this undeniable harm. The agency’s decision to ignore the procedures and
3 considerations Congress mandated is yet another reason DHS’s action must be enjoined.

4 **3. There Is No Factual Basis for the Administration’s Statements**
5 **Connecting DACA Recipients with Crime or Gang Violence.**

6 President Trump’s statements about DACA’s rescission cannot justify it either, because
7 they rely on factual assertions that are either irrelevant or simply untrue. He proclaimed,
8 “President Trump refuses to allow criminal activity to dominate our immigration system, taking
9 action to restore the law and protect all Americans,” and noted that “ICE has arrested at least
10 3,641 criminal gang members compared to 2,057 criminal gang members in all of Fiscal Year
11 2016.”⁴⁶ President Trump also claimed DACA “helped spur a humanitarian crisis—the massive
12 surge of unaccompanied minors from Central America including, in some cases, young people
13 who would become members of violent gangs throughout our country, such as MS-13.”⁴⁷

14 These unsupported assertions are at best non sequiturs, at worst blatant misstatements. As
15 noted above, DACA recipients are *less* likely to commit crimes than their native-born peers,⁴⁸ and
16 the evidence shows that DACA has *enhanced* law enforcement’s efforts to combat violent crime.
17 *See supra* 1–2 & nn.1–3. One study found that “violent crime rates tended to decrease as
18 metropolitan areas experienced gains in their concentration of immigrants.”⁴⁹ Moreover,
19 President Trump either misunderstood or misrepresented how DACA works; every recipient had
20 to prove to DHS’s satisfaction that he or she had *not* been convicted of any felony, significant
21 misdemeanor, or multiple misdemeanors, and did not otherwise pose a threat to national security
22 and public safety.⁵⁰ Indeed, given that DACA status was granted on a case-by-case basis
23 contingent on a background check,⁵¹ the Trump Administration was well-positioned to support

24 ⁴⁶ White House Press Release, *supra* n.30.

25 ⁴⁷ *See* Trump Statement, *supra* n.30.

26 ⁴⁸ Michelangelo Landgrave and Alex Nowrasteh, *The Dreamer Incarceration Rate*, Immigration
Research and Policy Brief, The Cato Inst. (Aug. 30, 2017), available at <https://goo.gl/Kp36AH>.

27 ⁴⁹ Jane C. Timm, *Fact Check: No Evidence Undocumented Immigrants Commit More Crimes*,
NBC News (June 28, 2017), available at <https://goo.gl/3BfhKY>.

28 ⁵⁰ DACA Enactment Memo, *supra* n.32, at 1.

⁵¹ *See id.*

1 allegations of “criminality” with evidence. That it utterly failed to do so shows that these
2 allegations are wrong.

3 President Trump’s allegations about gang membership are equally unfounded. There is no
4 known connection between DACA status and gang membership. Between DACA’s enactment in
5 2012 and May 2017, DHS revoked the deferred status of only 1,500 individuals because of gang
6 membership, less than 1% of the total number of immigrants who were granted DACA status in
7 the same period. Moreover, President Trump’s suggestion that DACA attracts miscreants to our
8 borders overlooks the obvious fact that *nobody who has come to the United States since DACA’s*
9 *creation is eligible for DACA.* “Suffice it to say, it is arbitrary and capricious for an agency to
10 base its decision on a factual premise that the record plainly showed to be wrong.” *Nat. Res. Def.*
11 *Council, Inc. v. Rauch*, 244 F. Supp. 3d 66, 96 (D.D.C. 2017).

12 **B. DHS’s Refusal To Commit to its Earlier Promise Not To Use DACA**
13 **Applicants’ Information for Enforcement Purposes Violates Due Process.**

14 DHS’s decision to repeal DACA also violates due process. USCIS promised DACA
15 applicants that “[i]nformation provided in this request *is protected from disclosure to ICE and*
16 *CBP for the purpose of immigration enforcement proceedings* unless the requestor meets the
17 criteria for the issuance of a Notice To Appear or a referral to ICE under the criteria set forth in
18 USCIS’ Notice to Appear guidance.”⁵² This promise—that the Government would not use
19 applicants’ personal information for immigration enforcement—was likely crucial to many if not
20 all DACA applicants, because without it, applicants would have essentially volunteered to the
21 Government all the information needed to initiate removal proceedings. DHS has inexplicably
22 changed course, now stating “[i]nformation provided to USCIS in DACA requests will not be
23 *proactively provided* to ICE and CBP for the purpose of immigration enforcement proceedings,
24 *unless the requestor meets the criteria for the issuance of a Notice To Appear* or a referral to ICE
25 under the criteria set forth in USCIS’ Notice to Appear guidance.”⁵³ The “proactively provided”

26 _____
27 ⁵² USCIS, Frequently Asked Questions (Oct. 6, 2017) (emphasis added), *available at*
<https://goo.gl/s9HtK1>.

28 ⁵³ Dep’t of Homeland Security, Frequently Asked Questions: Rescission Of Deferred Action For
Childhood Arrivals (Sept. 5, 2017) (emphasis added), *available at* <https://goo.gl/uaLxun>.

1 wording unlawfully departs from the promise USCIS made to DACA applicants prior to DACA’s
2 repeal, and suggested that the Government is now willing to use DACA applicants’ information
3 against them. The Trump Administration then removed any doubt when it gave officials talking
4 points that said DACA recipients should “prepare for and arrange their departure.”⁵⁴

5 DHS’s and USCIS’s new policy towards the disclosure of DACA applicants’ personal
6 information for immigration enforcement purposes violates Due Process for a host of reasons.
7 The Supreme Court has held that reconfiguring a regulatory scheme in midcourse to effect a “bait
8 and switch” violates the Due Process clause. *Reich v. Collins*, 513 U.S. 106, 111 (1994). The
9 Court has likewise repeatedly affirmed that individuals who rely on representations by the
10 government cannot be punished for that reliance. In *Cox v. Louisiana*, for example, the Court
11 ruled that due process does not permit convictions for picketing where “the highest police
12 officials of the city, in the presence of the Sheriff and Mayor, in effect told the demonstrators that
13 they could meet where they did.” 379 U.S. 559, 571 (1965). And in *United States v.*
14 *Pennsylvania Industrial Chemical Corp.*, the Court ruled that a defendant could make a due
15 process claim by showing that it “had been affirmatively misled into believing that the [conduct]
16 in question [was] not a violation of the statute.” 411 U.S. 655, 675 (1973); *see also Santobello v.*
17 *New York*, 404 U.S. 257, 262 (1971) (when a plea bargain “rests in any significant degree on a
18 promise or agreement . . . , so that it can be said to be part of the inducement or consideration,
19 such promise must be fulfilled”).

20 The same principle prohibits the Government’s attempted bait and switch here. DACA
21 recipients were induced by DHS to provide incriminating information to the Government. As one
22 court aptly put it when admonishing ICE’s predecessor in a similar context:

23 The national interest lies in a conscientious review by the [INS] . . . : it does not
24 lie in sacrificing a man’s efforts and hopes to a mechanical and inhuman
25 application of administrative regulations. . . . ***It was the [INS] that led [Plaintiff]
26 down the path towards permanent residence. Having done so, it should not
27 have shoved him into a ditch along the way.*** Its action was improper.

28 *Gestuvo v. Dist. Dir. of U. S. Immigration & Naturalization Serv.*, 337 F. Supp. 1093, 1102–03

⁵⁴ Kristen Welker and Daniel Arkin, *Trump Administration Memo: DACA Recipients Should Prepare for ‘Departure’*, NBC News (Sept. 5, 2017), available at <https://goo.gl/8heTU3>.

1 (C.D. Cal. 1971) (emphasis added). These words are as true today as they were 40 years ago—
2 DHS may not mislead DACA applicants just like it could not mislead the plaintiff in *Gestuvo*.

3 Finally, the Trump Administration’s decision to use DACA recipients’ own information
4 against them is so cruel and vindictive as to “offend a sense of justice.” *Rochin v. California*, 342
5 U.S. 165, 173 (1952). By forcing DACA applicants to provide the Government with all of the
6 necessary information to initiate removal proceedings, DHS and USCIS effectively convinced
7 hundreds of thousands of Americans to hand over the very dagger with which they will be
8 stabbed in the back. This action, effected on a massive scale and with no advance warning or
9 notice, is undeniably “an abuse of executive power so clearly unjustified by any legitimate
10 objective of law enforcement as to be barred by the Fourteenth Amendment.” *Cty. of Sacramento*
11 *v. Lewis*, 523 U.S. 833, 840 (1998). Making matters worse, DHS’s and USCIS’s information-use
12 policies are not merely some relic of a past administration; the current Administration accepted
13 DACA applications for nine months under these policies, after making substantial revisions to
14 many other executive immigration policies but no changes to DACA. Only now, after inviting
15 tens of thousands of young people to submit incriminating information, has DHS informed them
16 that it is effecting a *post hoc* policy change with potentially life-altering implications.

17 In other words, for nearly a year, the Administration acted with at best deliberate
18 indifference to applicants’ dignity and well-being, knowing that if and when it repealed DACA it
19 would then use information they provided to deport them. To permit the Administration’s new
20 information-use policy “would be to afford brutality the cloak of law.” *Rochin*, 342 U.S. at 173.

21 This executive action, as unlawful as it is inhumane, must be enjoined. Because “the
22 scope of injunctive relief is dictated by the extent of the violation established, not by the
23 geographical extent of the plaintiff,” *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979), this
24 injunction should apply nationwide, to prevent Amici and thousands of other localities,
25 businesses, and individuals from suffering this unnecessary harm. *See also Cty. of Santa Clara v.*
26 *Trump*, 250 F.Supp.3d 497, 539 (N.D. Cal. 2017).

27 CONCLUSION

28 For all of the reasons stated above, the Court should preliminarily enjoin DACA’s repeal.

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Dated: November 1, 2017

By: /s Margaret L. Carter

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9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA

11
 12
 13 REGENTS OF UNIVERSITY OF
 CALIFORNIA and JANET NAPOLITANO,
 14 in her official capacity as President of the
 University of California,

15 Plaintiffs,

16 v.

17 UNITED STATES DEPARTMENT OF
 HOMELAND SECURITY and ELAINE
 18 DUKE, in her official capacity as Acting
 Secretary of the Department of Homeland
 19 Security,

20 Defendants.

CASE NO. 17-CV-05211-WHA

**[PROPOSED] ORDER GRANTING
 ADMINISTRATIVE MOTION FOR
 LEAVE TO FILE AMICUS BRIEF OF 9
 COUNTIES AND RAMSEY COUNTY
 ATTORNEY IN SUPPORT OF
 PLAINTIFFS' MOTION FOR
 PROVISIONAL RELIEF**

21 STATE OF CALIFORNIA, STATE OF
 MAINE, STATE OF MARYLAND, and
 22 STATE OF MINNESOTA,

23 Plaintiffs,

24 v.

25 U.S. DEPARTMENT OF HOMELAND
 SECURITY, ELAINE DUKE, in her official
 capacity as Acting Secretary of the
 26 Department of Homeland Security, and the
 UNITED STATES OF AMERICA,
 27

28 Defendants.

CASE NO. 17-CV-05235-WHA

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CITY OF SAN JOSE, a municipal corporation,

Plaintiff,

v.

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

Defendants.

CASE NO. 17-CV-05329-WHA

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

Plaintiffs,

v.

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

Defendants.

CASE NO. 17-CV-05380-WHA

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

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[PROPOSED] ORDER

On November 1, 2017, Los Angeles County, et al. filed an Administrative Motion for Leave to File Amicus Brief in Support of Plaintiffs. Having considered the papers and pleadings on file, the Court GRANTS the Motion of Los Angeles County, et al. for Leave to File Amicus Brief in Support of Plaintiffs.

IT IS SO ORDERED.

Dated:

The Honorable William Alsup
United States District Court Judge
Northern District of California