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

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

21 Plaintiffs,

22 vs.

23 UNITED STATES DEPARTMENT OF
 24 HOMELAND SECURITY and ELAINE
 DUKE, in her official capacity as Acting
 25 Secretary of the Department of Homeland
 Security,

26 Defendants.

Case No. C 17-05211 WHA

**ADMINISTRATIVE MOTION OF CITY OF
 SAN JOSE TO CONSIDER WHETHER
 CASES SHOULD BE RELATED
 PURSUANT TO CIVIL L.R. 3-12(B) and
 NOTICE OF RELATED CASE PURSUANT
 TO CIVIL LOCAL RULE 3-13**

San Jose Complaint Filed: September 14, 2017
 No Trial Date

1 **I. INTRODUCTION**

2 Pursuant to Civil Local Rule 3-12(b), Plaintiff City of San Jose (“San Jose”) in the *City*
3 *of San Jose v. Trump, et al.*, Case No. 5:17-cv-05329-HRL filed September 14, 2017 in this
4 Court (“the San Jose Action”), a non-party in this action, respectfully requests that the Court
5 consider whether the actions, *The Regents of the University of California et al. v. United States*
6 *Department of Homeland Security*, Case No. 3:17-cv-05211-WHA (“Regents Action”), *State of*
7 *California, et al. v. Department of Homeland Security, et al.*, Case No. 3:17-cv-05235-WHA
8 (“California Action”) and the San Jose Action may be related. A copy of the complaints are
9 attached as Exhibit 1 (San Jose Action), Exhibit 2 (Regents Action) and Exhibit 3 (State of
10 California Action) to the Declaration of Nancy L. Fineman.

11 San Jose also gives notice pursuant to Civ. L.R. 3-13 that the San Jose Action is related
12 to the Regents and State of California Actions.

13 **II. ARGUMENT**

14 “An action is related to another action if: (1) the actions concern substantially the same
15 parties, property, transaction or event; and (2) it appears likely there will be an undue
16 burdensome duplication of labor and expense or conflicting results if the cases are conducted
17 before different Judges.” Civ. L.R. 3-12(a).

18 The San Jose Action, Regents, and California Actions concern substantially the same
19 parties and events. Each Action challenges rescission of the Deferred Action for Childhood
20 Arrivals (“DACA”), which occurred on September 5, 2017. The actions make similar
21 constitutional and legal arguments, and only seek injunctive and declaratory relief. Each action
22 sues the Acting Secretary of Homeland Security Elaine Duke and, the Department of Homeland
23 Security. Relating the San Jose Action to the Regents and California Actions will prevent
24 unduly burdensome duplication of labor and expense and/or conflicting results.

25 ///

26 ///

27 ///

1 **III. CONCLUSION**

2 For the reasons set forth above, San Jose respectfully requests that the Court relate the
3 San Jose Action to the Regents and California Actions.

4 Dated: September 14, 2017

COTCHETT, PITRE & McCARTHY, LLP
OFFICE OF THE CITY ATTORNEY

5
6 */s/ Nancy L. Fineman*

7 **NANCY L. FINEMAN**
8 *Attorney for Plaintiff City of San Jose*

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 17 **NORTHERN DISTRICT OF CALIFORNIA**
SAN FRANCISCO DIVISION

18 THE REGENTS OF UNIVERSITY OF
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 19 NAPOLITANO, in her official capacity as
 20 President of the University of California,

21 Plaintiffs,

22 vs.

23 UNITED STATES DEPARTMENT OF
 HOMELAND SECURITY and ELAINE
 24 DUKE, in her official capacity as Acting
 25 Secretary of the Department of Homeland
 Security,

26 Defendants.

Case No. C 17-05211 WHA

**DECLARATION OF NANCY L. FINEMAN
 IN SUPPORT OF ADMINISTRATIVE
 MOTION OF CITY OF SAN JOSE TO
 CONSIDER WHETHER CASES SHOULD
 BE RELATED**

San Jose Complaint Filed: September 14, 2017
 No Trial Date

1 I, NANCY L. FINEMAN, declare and state as follows:

2 1. I am an attorney duly licensed to practice law before this court. I am a partner
3 with the law firm of Cotchett, Pitre & McCarthy, LLP (“CPM”), attorneys of record for City of
4 San Jose, Plaintiff in *San Jose v. Trump*, Northern District, Case No. 5:17-cv-05329-HRL, a
5 non-party in this case (hereinafter referred to as “San Jose”). The following facts set forth
6 herein are within my personal knowledge and if called as a witness, I could and would
7 competently testify to all facts herein.

8 2. I file this Declaration in support of the San Jose’s Administrative Motion to
9 Consider Whether Cases Should Be Related (the “Administrative Motion”).

10 3. San Jose filed the action on September 14, 2017 and sent it out for service today,
11 but Defendants have not yet appeared in the action.

12 4. Today, I had a telephone conversation with Brad Rosenberg, who represents the
13 Defendants in the Regents and State Actions, James Zahradka II, who represents the State of
14 California in the California action, and Jeffrey M. Davidson, who represents the Plaintiffs in the
15 Regents Action, as well as other attorneys. I will be sending them a stipulation to review to see
16 whether they will stipulate to coordinate the cases. Since, pursuant to its order of today in this
17 case, Docket No. 8, the Court set a Case Management Conference on September 21, 2017 and
18 requested that San Jose attend the conference, I thought it prudent and the most efficient to file
19 the motion rather than wait to file a stipulation, which may take a few days to finalize. If the
20 parties do not agree to a stipulation, San Jose respectfully requests that the Court grant the
21 motion.

22 5. Attached hereto as Exhibit 1 is a true and correct copy of the complaint filed in
23 this Court by the City of San Jose in *San Jose v. Trump, et al.*, Case No. 5:17-cv-0539-HRL.

24 6. The complaint (without exhibits) of the Regents can be found at Docket No. 1 in
25 this action and is attached hereto as Exhibit 2.

26 ///

27 ///

28

Exhibit 1

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 16 **UNITED STATES DISTRICT COURT**
 17 **NORTHERN DISTRICT OF CALIFORNIA**
SAN JOSE DIVISION

18 **CITY OF SAN JOSE, a municipal**
19 **corporation,**

20 Plaintiff,

21 vs.

22 **DONALD J. TRUMP, President of the**
23 **United States, in his official capacity,**

24 **ELAINE C. DUKE in her official**
25 **capacity, and**

26 **the UNITED STATES OF AMERICA**

27 Defendants.
28

Case No.

COMPLAINT FOR:

1. **VIOLATION OF FIFTH AMENDMENT
EQUAL PROTECTION**
2. **VIOLATION OF 5 U.S.C. §§ 553 &
706(2)(D)**

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1 **I. INTRODUCTION**

2 1. For the last five years, young people who have lived in the United States since
3 they were children, even though they were born in another country, have had the right to live,
4 work and attend college if they met stringent requirements as set forth by the Deferred Action
5 for Childhood Arrivals (“DACA”). **Exhibit 1**. The success of these DREAMers, as they are
6 known, has been an incredible story. About 800,000 people who otherwise would not have had
7 the opportunity to attend college or work have now had that ability, thus enriching the lives of
8 themselves, their families, and their communities. Under DACA, Plaintiff, the City of San Jose
9 (“San Jose”) has been able to hire these DACA recipients, which has benefited the cities and
10 their residents.

11 2. During the 2016 election campaign, rhetoric about immigration became nasty.
12 One of the candidates who made extremely outrageous and false statements about immigrants
13 was defendant Donald J. Trump as he ran for the office of President. After he was elected and
14 sworn into office, President Trump’s anti-immigrant rhetoric continued. Both he and senior
15 members of this administration have made anti-immigrant statements.

16 3. Yet, throughout the campaign and President Trump’s presidency, he has made
17 positive and reassuring comments about DACA and the DREAMers. On April 24, 2017 in an
18 interview with the Associated Press, for example, President Trump told undocumented
19 immigrants who were brought to the United States as children that they could rest easy.

20 AP: A lot of the dreamers have been hoping to hear something from you. I don't want
21 to give them the wrong message with this.

22 TRUMP: Here is what they can hear: **The dreamers should rest easy**. OK? I'll give
23 you that. **The dreamers should rest easy....**

24 4. President Trump’s stated opinion is shared by most Americans. Since the United
25 States is a land of immigrants, most Americans realize the importance of immigrants to this
26 country.

27 5. Despite President Trump’s promises to DREAMers, he broke his promise. He
28 directed his Attorney General to make an announcement on September 5, 2017, that DACA

1 would be rescinded, **Exhibit 2** and then Defendant Elaine C. Duke (“Secretary Duke”) as the
2 Acting Secretary of the Department of Homeland Security, issued a memorandum that rescinded
3 DACA, although it deferred rescission for six months. **Exhibit 3.** Secretary Duke’s
4 memorandum, contrary to law, was issued without providing notice of the change and an
5 opportunity to be heard. The reasons for the issuance were contrary to the facts, and arbitrary
6 and capricious.

7 6. As a result of Defendants’ actions, the lives of the DACA recipients, over a
8 quarter of whom live in California, have been sent into upheaval. Fear and uncertainty have
9 invaded their lives. Not only have they been injured, but so too has San Jose.

10 **II. JURISDICTION AND VENUE**

11 7. The Court has jurisdiction under 28 U.S.C. §§ 1331 and 1346. This Court has
12 further remedial authority under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202 *et*
13 *seq.*

14 8. Venue properly lies within the Northern District of California because Plaintiff,
15 the City of San Jose, is a public entity in this judicial district and a substantial part of the events
16 or omissions giving rise to this action will occur or have occurred in this District. 28 U.S.C. §
17 1391(e).

18 **III. PARTIES**

19 **A. Plaintiff**

20 9. Plaintiff San Jose is a municipal corporation, organized as a Charter City under
21 the California Constitution and the laws of the State of California and is located in the County of
22 Santa Clara. It is the tenth largest city in the United States. San Jose has always been a place
23 for immigrants with almost 40% of its current population having been born in another country.
24 San Jose, which had been home to the Ohlone Indians for hundreds of years, was founded by
25 Spain on November 29, 1777, as El Pueblo de San Jose de Guadalupe. In 1821, San Jose
26 became part of Mexico. After the Treaty of Guadalupe Hidalgo ceded California to the United
27 States at the end of the Mexican-American War in 1848, San Jose became its first incorporated
28 U.S. city.

1 10. San Jose is bringing this action on its own behalf and on the behalf of its
2 employees who are DACA recipients. As described below, San Jose has suffered its own injury
3 in fact. It also has third party standing to bring this action on behalf of its employees because
4 San Jose has a concrete interest in the outcome of the dispute; San Jose has a close relationship
5 with its employees, whose rights it is asserting, and there is a hindrance to the employees to
6 protect their own interests. *Powers v. Ohio*, 499 U.S. 400, 410-11, (1991); *Singleton v. Wulff*,
7 428 U.S. 106, 113-16 (1976); *Wedges/Ledges of Cal., Inc. v. City of Phoenix, Ariz.*, 24 F.3d 56,
8 62 (9th Cir. 1994). Where here, San Jose is asserting the same right, to allow DACA recipient
9 employees to have the right to legally work for San Jose, San Jose's and its employees rights are
10 inextricably bound up, which satisfies the requirement that San Jose's interest is sufficiently
11 aligned with that of its employees. *Viceroy Gold Corp. v. Aubry*, 75 F.3d 482, 488-89 (9th Cir.
12 1996). The fact that the employees are undocumented immigrants with fear of provoking the
13 attention of the immigration authorities or creating other legal risks satisfies the requirement that
14 there is a hindrance to San Jose's employees protecting their own interests, especially in light of
15 Defendants' demonstrated hostility to them. *Young Apartments, Inc. v. Town of Jupiter*, 529
16 F.3d 1027, 1044 (11th Cir. 2008).

17 **B. Defendants**

18 11. Defendant **Donald J. Trump** has been since January 20, 2017, the President of
19 the United States. He is sued in his official capacity. As a candidate, he railed against
20 immigrants. When he announced his candidacy in June 2015, for example, he stated: "The U.S.
21 has become a dumping ground for everybody else's problems. Thank you. It's true, and these
22 are the best and the finest. When Mexico sends its people, they're not sending their best.
23 They're not sending you. They're not sending you. They're sending people that have lots of
24 problems, and they're bringing those problems to us. They're bringing drugs. They're bringing
25 crime. They're rapists. And some, I assume, are good people." There was no factual support
26 for this statement. Despite his animus towards immigrants, he has consistently indicated his
27 support for DACA, including tweeting on September 7, 2017, after DACA was rescinded, that
28

1 “For all those (DACA) that are concerned about status during the 6 month period, you have
2 nothing to worry about – No action!”

3 12. Defendant **Elaine C. Duke** is the acting Secretary of the Department of
4 Homeland Security, a cabinet department of the United States government with the primary
5 mission of securing borders of the United States. Acting Secretary Duke issued the
6 memorandum rescinding DACA, and she and the Department of Homeland Security are
7 responsible for implementing the rescission of DACA.

8 13. Defendant United States of America is sued under 28 U.S.C. § 1346.

9 **IV. FACTUAL ALLEGATIONS**

10 14. The Statue of Liberty has stood as a welcoming beacon of hope and inspiration to
11 the millions of immigrants who have come to the United States through New York. Inscribed on
12 the statue are the stirring words of Emma Lazarus to: “Give me your tired, your poor, your
13 huddled masses yearning to breathe free.”

14 15. The reality has been far different than the Statue of Liberty’s inscription as some
15 groups in the United States have, throughout the nation’s history, tried to limit citizenship to
16 groups of people some found undesirable: Irish, Italians, Jews, Chinese, Mexicans and the list
17 goes on. Yet, most of the immigrants who have come to the United States simply want to make
18 a better life for themselves and their families and to fit in to their new country. Our country
19 would not be the greatest country in the world without the diversity of its citizenship achieved
20 through immigration.

21 **A. Immigrants Contribute to the Success of the United States and California**
22 **Cities**

23 16. Studies demonstrate the positive impact immigrants, even undocumented
24 immigrants, have on the United States. In April of 2016, the U.S. Chamber of Commerce
25 published a report entitled Immigration Myths and Faces,
26 www.uschamber.com/reports/immigration-myths. The report demonstrates that most common
27 negative contentions regarding immigrants are false. For example, with citation to evidence, the
28 Chamber of Commerce demonstrates that immigrants do not take away jobs from U.S. citizens,

1 do not drive down the wages of the U.S. workers, but to the contrary, immigrants are necessary
2 for the U.S. economy. The Chamber also demonstrates that immigrants, even undocumented
3 immigrants, pay taxes. Undocumented immigrants are not eligible for federal public benefit
4 programs like Social Security, Medicaid, Medicare, and food stamps. The Chamber report
5 demonstrates that undocumented immigrants do not commit more crime than citizens. FBI data
6 demonstrates that as the number of undocumented immigrants tripled from 1990, violent crime
7 declined 48% and property crime declined 41%. A report from the conservative Americas
8 Majority Foundation found that crime rates are lowest in states with the highest immigration
9 growth rates. Immigrants are less likely than people born in the United States to commit crimes
10 or be incarcerated.

11 17. San Jose has been an extremely diverse region since the mid-1800s, which has
12 led to immigrants gravitating to such areas where there are already established immigrant
13 communities. Waves of immigrants, from China and Mexico, Vietnam, India, and Northern
14 Europe, have played a fundamental role in the creation of three profoundly different industries:
15 first mining, then agriculture, and finally technology in San Jose and the Silicon Valley.
16 <http://www.sanjoseca.gov/DocumentCenter/View/19862>.

17 **B. In 2012, DACA Is Implemented**

18 18. Throughout the later part of the last century and the first part of this century,
19 politicians could not agree on a comprehensive immigration policy. Immigrants who would
20 have had a clear path to citizenship in the past found citizenship almost impossible to achieve.
21 Yet, immigrants who had no hope in their country of birth came to the United States without
22 documentation for a better life. In the process, they have enriched our country. Many of these
23 immigrants brought their entire families, including their young children.

24 19. By 2012, there were millions of residents who came here as children, but they did
25 not have documentation to remain in this country. As Congress stalled in enacting any
26 meaningful immigration reform, there was a groundswell to protect these young people from
27 deportation and allow them to live productive lives to enrich themselves, their families and their
28 adopted country.

1 20. In June of 2012, President Barack Obama, through an Executive Order, enacted
2 DACA. He stated that he believed it was “the right thing to do” to protect young people who do
3 not know any country but America. On June 15, 2012, then Secretary of Homeland Security
4 Janet Napolitano issued a memorandum establishing the DACA program. **Exhibit 1**. DACA is
5 in essence a deferred prosecution agreement.

6 21. The 2012 DACA Memorandum established that an applicant would be
7 considered for an exercise of prosecutorial discretion only by satisfying each of the following
8 criteria:

- 9 • came to the United States under the age of sixteen;
- 10 • had continuously resided in the United States for at least five years
11 preceding the date of the memorandum and is present in the United States
12 on the date of the memorandum;
- 13 • was currently in school, had graduated from high school, had obtained a
14 general education development certificate, or was an honorably
15 discharged veteran of the Coast Guard or Armed Forces of the United
16 States;
- 17 • had not been convicted of a felony offense, a significant misdemeanor
18 offense, multiple misdemeanor offenses, or otherwise poses a threat to
19 national security or public safety; and
- 20 • was not above the age of thirty.

21 22. In addition to simply being eligible for this program, undocumented immigrants
22 must also pay a \$495 application fee, submit several forms, and produce documents showing
23 they meet the requirements. Moreover, if a DACA qualifying immigrant wants to travel abroad
24 there is an additional fee and application requirement required. Those applying are also vetted
25 for any criminal history or threat to national security and must be students or have completed
26 school or military service. If approved, action to deport them is deferred for two years, along
27 with the opportunity to renew, along with gaining eligibility for basics like a driving license,
28 college enrollment or a work permit.

1 23. In exchange for DACA applicants providing sensitive and private information
2 regarding their entire lives, the United States government promised to keep the information
3 confidential and not to use it, except in limited circumstances, for any purposes except for
4 DACA purposes.

5
6 **C. DACA Has Provided 800,000 Young People Who Have Known No Other
Country than the United States a Chance to Attend College and/or Work**

7 24. The rewards of DACA have been enormous, not only to the immigrants who
8 came to this country as children, but to the nation. First-generation immigrants who enter the
9 United States as children tend to pay, on average, more in taxes over their lifetimes than they
10 receive in benefits, regardless of their education level. DACA recipients end up contributing
11 more than the average, because they are not eligible for any federal means-tested welfare: cash
12 assistance, food stamps, Medicaid, health-care tax credits or anything else.

13 25. Moreover, DACA recipients also are better educated than the average immigrant.
14 Applicants must have at least a high school degree to enter the program. An additional 36
15 percent of DACA recipients who are older than 25 have a bachelor's degree, and an additional
16 32 percent are pursuing a bachelor's degree.

17 26. Further, while studies show that undocumented immigrants are much less likely
18 to end up in prison, this fact is especially true for DACA recipients since applicants must also
19 pass a background check, indicating even lower levels of criminal behavior than the average
20 American citizen.

21 27. DACA has been a success as it has allowed over 800,000 recipients to work and
22 go to college in the United States thus enriching our economy and security.

23 **D. San Jose and Silicon Valley Have Benefitted From DACA**

24 28. For San Jose, the ability to hire DACA recipients has been extremely beneficial.
25 San Jose, like the rest of the Silicon Valley, has the need for a skilled work force.
26 Unemployment in Santa Clara County is low and competition for employees is fierce. When
27 DACA was enacted, San Jose was able to hire DACA grantees. San Jose spent time and
28 resources training these employees and they hold jobs vital to the operation of San Jose.

1 29. San Jose is also home to tech companies, like Cisco and Adobe, who need skilled
2 workers. These companies also hired DACA recipients as did other Silicon Valley companies,
3 like Apple, Facebook, and Google, and many employees live in San Jose.

4 **E. While President Trump Has Been Ant-Immigrant, He Has Been Supportive**
5 **of DACA Recipients**

6 **1. Anti-Immigrant Statements by the President and His Administration**

7 30. Donald Trump during his campaign for President and since becoming President
8 has demonstrated an animus to immigrants. His administration, especially people in the
9 Department of Justice and Department of Homeland Security, has been just as anti-immigrant as
10 the President. Their statements demonstrate this discrimination.

11 31. Candidate Trump’s statements against immigrants were bombastic and incorrect.
12 For example, Trump repeatedly denigrated Mexican immigrants in particular, even comparing
13 them to rapists in his presidential bid announcement “When Mexico send its people, they’re not
14 sending their best. They’re not sending you. They’re not sending you. They’re sending people
15 that have lots of problems and they’re bringing those problems with us. They’re bringing drugs.
16 They’re bringing crime. They’re rapists. And some, I assume are good people.”

17 (https://www.washingtonpost.com/news/post-politics/wp/2015/06/16/full-text-donald-trump-announces-a-presidential-bid/?utm_term=.f6c79452d595)

19 32. During the first Republican presidential debate, candidate Trump doubled down
20 on his disparaging thoughts about Mexican immigrants, claiming that “The Mexican
21 government is much smarter, much sharper, much more cunning. And they send the bad ones
22 over because they don’t want to pay for them. They don’t want to take care of them.”

23 (<https://www.nbcnews.com/news/latino/trump-claims-debate-mexico-sends-bad-ones-u-s-n405661>)

25 33. During another presidential debate in October 2016, candidate Trump once again
26 broadly assaulted immigrant families and communities with his views on immigration by
27 declaring “We have some bad hombres here and we’re going to get them out.”

28

1 ([https://www.cnce.com/2016/10/19/trump-we-have-some-bad-hombres-and-were-going-to-get-](https://www.cnce.com/2016/10/19/trump-we-have-some-bad-hombres-and-were-going-to-get-them-out.html)
2 [them-out.html](https://www.cnce.com/2016/10/19/trump-we-have-some-bad-hombres-and-were-going-to-get-them-out.html))

3 34. After becoming President, President Trump’s statements have not become
4 Presidential, but continue to be bombastic and incorrect. For example, President Trump again
5 negatively referred to Mexicans as ‘hombres’ in a phone call with Mexico’s President,
6 condemning these immigrants by saying “You have some pretty tough hombres in Mexico that
7 you may need help with, and we are willing to help you with that big-league. But they have to
8 be knocked out and you have not done a good job of knocking them out.”

9 (<http://www.cnn.com/2017/08/09/politics/best-lines-trump-mexico-australia-call/index.html>)

10 35. President Trump and his administration further clarified their stance on
11 immigration, as Immigration and Customs Enforcement Acting Director Thomas Homan
12 testified that “every immigrant in this country without papers should be uncomfortable. You
13 should look over your shoulder. And you need to be worried.” These sentiments were once
14 again repeated in an interview later that week, when Homan stated that “Trump and his
15 administration have made clear that any undocumented immigrant could be arrested and face
16 deportation proceedings at any time, unless they have current and valid protection under
17 DACA.” ([http://www.cnn.com/2017/06/16/politics/ice-immigrants-should-be-afraid-](http://www.cnn.com/2017/06/16/politics/ice-immigrants-should-be-afraid-homan/index.html)
18 [homan/index.html](http://www.cnn.com/2017/06/16/politics/ice-immigrants-should-be-afraid-homan/index.html))

19 36. United States Attorney General Jeff Sessions further reiterated these sentiments
20 coming from the Trump administration as he responded to immigration on Fox News in April
21 2017 by stating “Everybody in the country illegally is subject to being deported, so people come
22 here and they stay here a few years and somehow they think they are not subject to being
23 deported – well, they are. The policy is that if people are here unlawfully, they’re subject to
24 being deported. Our priority is clear... we can’t promise people who are here unlawfully that
25 they’re not going to be deported.” ([http://www.foxnews.com/politics/2017/04/19/sessions-](http://www.foxnews.com/politics/2017/04/19/sessions-defends-immigration-policies-after-reported-dreamer-deportation.html)
26 [defends-immigration-policies-after-reported-dreamer-deportation.html](http://www.foxnews.com/politics/2017/04/19/sessions-defends-immigration-policies-after-reported-dreamer-deportation.html)).

1 41. In an *Associated Press* interview in April of 2017, President Trump said his
2 administration is “not after the dreamers, we are after the criminals” and that “The dreamers
3 should rest easy” since his Administration’s policy is not to deport DACA grantees.
4 ([https://apnews.com/79f2c79805f14c3f8ac878c5df21cdf/Trump-tells-‘dreamers’-to-rest-](https://apnews.com/79f2c79805f14c3f8ac878c5df21cdf/Trump-tells-‘dreamers’-to-rest-easy,%20-targets-criminaks)
5 [easy,%20-targets-criminaks\)](https://apnews.com/79f2c79805f14c3f8ac878c5df21cdf/Trump-tells-‘dreamers’-to-rest-easy,%20-targets-criminaks))

6 42. Even in a written statement issued shortly after the Attorney General, Jeff
7 Sessions, announced the policy to terminate DACA, President Trump declared “I do not favor
8 punishing children, most of whom are now adults, for the actions of their parents. But we must
9 also recognize that we are [a] nation of opportunity because we are a nation of laws.”
10 (<http://deadline.com/2017/09/donald-trump-daca-statement-punishing-children-1202161542/>)

11 43. In addition to his written statement after Secretary Sessions’ announcement
12 terminating DACA, President Trump also tweeted that he “will revisit this issue!” if DACA was
13 not legalized by Congress in the allotted 6 month time span. (<https://twitter.com/realDonaldTrump>)
14 Trump)

15 **F. The Rescission of DACA**

16 44. On September 5, 2017, President Trump, through Attorney General Sessions
17 announced the rescission of DACA. **Exhibit 2.** On the same day, Elaine Duke, the Acting
18 Secretary of the Department of Homeland Security, issued a memorandum rescinding DACA.
19 **Exhibit 3.** The memo was issued without compliance with the Administrative Procedures Act.
20 There was no notification that there was going to be a change in DACA, no notice to be heard,
21 and no factual findings or analysis to demonstrate that DACA should be rescinded.

22 **G. San Jose Has Taken Action to Try to Help Its Immigrant Residents, But Has**
23 **Limited Ability to Effectuate Change, Except With this Lawsuit**

24 45. When Donald Trump was elected President, residents of San Jose were
25 concerned about the President-elect’s immigration positions. In response, in January of 2017,
26 the City Council, approved a plan proposed by Mayor Sam Liccardo to educate immigrants
27 about their rights, helping schools with “safety plans,” and allowing churches to provide
28

1 sanctuary to undocumented residents if needed. The plan also created “safe spaces” in city-
2 owned facilities, such as libraries, to provide pro-bono legal services.

3 46. In response to the Defendants’ rescission of DACA, San Jose confirmed its
4 support of its immigrant residents and DACA recipients specifically. Mayor Sam Liccardo, for
5 example, issued the following statement:

6 The Attorney General’s announcement of the Trump Administration’s rescission
7 of DACA abandons 800,000 of America’s hardest-working, most patriotic residents.
8 Punting the issue to Congress, without any affirmative leadership to enact a legislative
9 solution, amounts to a cowardly cop-out, placing the futures of these young women and
10 men in serious jeopardy.

11 To San Jose’s tens of thousands of DREAMers, we reiterate: “We’ve got your
12 back.” I will seek to challenge the Administration’s actions in court, after consulting with
13 our Council and City Attorney regarding our options in the week ahead.

14 History will not forgive Donald Trump for abandoning our DREAMers.

15 47. Santa Clara County Board of Supervisor’s Chair Dave Cortese stated: “Trump’s
16 plan to eliminate DACA is by far his most callous attempt as of yet. The lives, dreams, and
17 futures of thousands of DACA recipients are not a bargaining chip for this Administration to
18 play with. I remain committed to them and to their cause. I urge every DREAMer out there to
19 remain resilient and hopeful. Because together, we will rise.”

20 48. The Silicon Valley Organization, stated through its Executive Vice President:
21 “Not only is the rollback of DACA immoral, but it is also terrible for America’s competitive
22 economic advantage. Our economic strength is our diversity; it is our greatest asset and our key
23 difference maker. To put 800,000 Americans, whose sole ‘infracture’ was arriving here as
24 children, on a path to lose citizenship will upend a large portion of this key strength. Rescinding
25 DACA sends the message that America’s door to opportunity is slammed tighter, and that is not
26 the message that Silicon Valley business leaders want our government to send to the world at a
27 time when expanding opportunity is the key to long-term innovative success.”

28 **H. The Rescission of DACA Has Harmed San Jose**

49. The rescission of DACA has already had and will continue to have an impact, not
only on the lives of the DACA recipients, but on San Jose who has suffered a concrete and

1 specific injury by the rescission. Based upon the rescission of DACA, San Jose has had to take
2 steps to deal with the fact that starting on March 5, 2018, the date that the DACA rescission goes
3 into effect, it will lose employees, who are DACA recipients. In order for an employer to hire
4 an employee, the employer must confirm that the employee has the legal right to work in the
5 United States. See 8 C.F.R. § 274A.1 *et seq.* Cities who employ people without the right to
6 work face steep penalties and criminal penalties. However, it is also illegal for the cities to
7 terminate employees because of their nationality or immigration status. Thus San Jose is facing
8 the uncertainty of not knowing whether they will be able to continue to retain these valuable
9 employees in their work force. With the rescission of DACA, the DACA recipients will be
10 losing their right to work for San Jose. In order for San Jose to end the employment relationship
11 with an employee and to make sure that there is a smooth transition without the loss of city
12 services, San Jose must start planning now. Accordingly, even though the DACA rescission
13 allows DACA recipients to work until March 5, 2018, San Jose has not been able to wait until
14 then to make plans to have this change in work force. It has expended and will continue to
15 extend time and resources to react to this loss of experienced employees.

16 50. The acts of Defendants have decreased the efficiency of the work performed by
17 San Jose. The impact of the DACA rescission on DACA recipients has been catastrophic as
18 they face a future of uncertainty and fear. San Jose has had to expend time and resources to deal
19 with the loss of productivity and employee morale because of the rescission of DACA, which is
20 another injury. *FPL Food, LLC v. United States Dep't of Agric.*, 671 F. Supp. 2d 1339, 1358
21 (S.D. Ga. 2009).

22 51. Additionally, because of the taxes that DACA recipients pay, San Jose is facing
23 the loss of tax revenues. It has had to start expending time and resources to deal with this loss of
24 funds.

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1 **V. CLAIMS FOR RELIEF**

2 (All Claims Are Against All Defendants)

3 **FIRST CLAIM FOR RELIEF**

4 **(Violation of Fifth Amendment - Equal Protection)**

5 52. San Jose repeats and incorporates by reference each allegation of the prior
6 paragraphs as if fully set forth herein.

7 53. The Due Process Clause of the Fifth Amendment of the United States
8 Constitution prohibits the federal government from denying equal protection of the laws.

9 54. As set forth above, Defendants’ actions target individuals for discriminatory
10 treatment based on their national origin, without lawful justification. Defendants’ actions were
11 motivated, at least in part, by a discriminatory intent to harm a particular group and treat them
12 differently under the law.

13 55. Defendants’ discriminatory actions cannot be sufficiently justified by federal
14 interests.

15 56. Through their actions as set forth above, Defendants have violated the equal
16 protection guarantee of the Fifth Amendment.

17 57. Defendants' actions has caused and continues to cause ongoing harm to San Jose
18 including their DACA employees, as hereinbefore described.

19 58. The City of San Jose seeks a declaration that the rescission of DACA is
20 unconstitutional and a temporary, preliminary, and permanent injunction enjoining the rescission
21 of DACA and enjoining the deportation of any DACA recipient.

22 WHEREFORE, San Jose prays for relief as hereinafter set forth.

23 **SECOND CLAIM FOR RELIEF**

24 **(Violation of 5 U.S.C. §§ 553 & 706(2)(D))**

25 59. San Jose repeats and incorporates by reference each allegation of the prior
26 paragraphs as if fully set forth herein.

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1 60. DACCA is a federal rule and therefore, before rescinding DACA, Defendants
2 were required to comply with the Administrative Procedure Act, which requires that federal
3 agencies go through a process of notice and comment before repealing any substantive rule.
4 5 U.S.C. § 553.

5 61. By rescinding DACA without providing proper notice and an opportunity to
6 comment, Defendants have violated 5 U.S.C. § 706(2)(D) because the rescission was done
7 without proper observance of the procedure of law.

8 62. Even if Defendants believed that DACA itself was defective for not complying
9 with the Administrative Procedure Act, which it was not, Defendants were required to comply
10 with the Administrative Procedure Act. *Consumer Energy Council v. Fed. Energy Regulatory*
11 *Com.*, 673 F.2d 425, 447 and n. 79 (D.C. Cir. 1982); *Hou Ching Chow v. Attorney General*, 362
12 F. Supp. 1288 (D.D.C. 1973).

13 63. Accordingly, San Jose seeks a declaration that Defendants’ actions violate
14 5 U.S.C. § 553 and § 706 and finding that the rescission of DACA is contrary to law. San Jose
15 also seeks a temporary preliminary and permanent injunction enjoining the rescission of DACA
16 and enjoining the deportation of any DACA recipient.

17 WHEREFORE, San Jose prays for relief as hereinafter set forth

18 **VI. PRAYER FOR RELIEF**

19 Wherefore, San Jose prays for the following relief:

- 20 1. A declaration that Defendants’ action are unconstitutional and/or violate 5 U.S.C.
- 21 §§ 553 and 706 and finding that the rescission of DACA is contrary to law;
- 22 2. Enjoin Defendants from rescinding the DACA program and enjoin Defendants from
- 23 taking any steps to deport any DACA recipients

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- 1 3. The costs of bringing this suit, including reasonable attorneys’ fees; and
- 2 4. All other relief to which San Jose may be entitled at law or in equity.

3 Dated: September 14, 2017

COTCHETT, PITRE & McCARTHY, LLP

4
5 By: /s/ Joseph W. Cotchett

6 JOSEPH W. COTCHETT

7 **OFFICE OF THE CITY ATTORNEY**

8
9 By: /s/ Richard Doyle

10 RICHARD DOYLE

11 *Attorneys for Plaintiff City of San Jose*

12
13 **ATTESTATION OF FILING**

14 I, Nancy L. Fineman, hereby attest, pursuant to Northern District of California, Local
15 Rule 5-1(i)(3) that concurrence to the filing of this document has been obtained from each
16 signatory hereto.

17 /s/ Nancy L. Fineman

18 **NANCY L. FINEMAN**

19 *Attorney for Plaintiff City of San Jose*

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Exhibit 1

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

June 15, 2012

MEMORANDUM FOR: David V. Aguilar
Acting Commissioner, U.S. Customs and Border Protection

Alejandro Mayorkas
Director, U.S. Citizenship and Immigration Services

John Morton
Director, U.S. Immigration and Customs Enforcement

FROM: Janet Napolitano
Secretary of Homeland Security

A handwritten signature in black ink, appearing to read "Janet Napolitano", written over the printed name and title.

SUBJECT: Exercising Prosecutorial Discretion with Respect to Individuals
Who Came to the United States as Children

By this memorandum, I am setting forth how, in the exercise of our prosecutorial discretion, the Department of Homeland Security (DHS) should enforce the Nation's immigration laws against certain young people who were brought to this country as children and know only this country as home. As a general matter, these individuals lacked the intent to violate the law and our ongoing review of pending removal cases is already offering administrative closure to many of them. However, additional measures are necessary to ensure that our enforcement resources are not expended on these low priority cases but are instead appropriately focused on people who meet our enforcement priorities.

The following criteria should be satisfied before an individual is considered for an exercise of prosecutorial discretion pursuant to this memorandum:

- came to the United States under the age of sixteen;
- has continuously resided in the United States for a least five years preceding the date of this memorandum and is present in the United States on the date of this memorandum;
- is currently in school, has graduated from high school, has obtained a general education development certificate, or is an honorably discharged veteran of the Coast Guard or Armed Forces of the United States;
- has not been convicted of a felony offense, a significant misdemeanor offense, multiple misdemeanor offenses, or otherwise poses a threat to national security or public safety; and
- is not above the age of thirty.

Our Nation's immigration laws must be enforced in a strong and sensible manner. They are not designed to be blindly enforced without consideration given to the individual circumstances of each case. Nor are they designed to remove productive young people to countries where they may not have lived or even speak the language. Indeed, many of these young people have already contributed to our country in significant ways. Prosecutorial discretion, which is used in so many other areas, is especially justified here.

As part of this exercise of prosecutorial discretion, the above criteria are to be considered whether or not an individual is already in removal proceedings or subject to a final order of removal. No individual should receive deferred action under this memorandum unless they first pass a background check and requests for relief pursuant to this memorandum are to be decided on a case by case basis. DHS cannot provide any assurance that relief will be granted in all cases.

1. With respect to individuals who are encountered by U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), or U.S. Citizenship and Immigration Services (USCIS):

- With respect to individuals who meet the above criteria, ICE and CBP should immediately exercise their discretion, on an individual basis, in order to prevent low priority individuals from being placed into removal proceedings or removed from the United States.
- USCIS is instructed to implement this memorandum consistent with its existing guidance regarding the issuance of notices to appear.

2. With respect to individuals who are in removal proceedings but not yet subject to a final order of removal, and who meet the above criteria:

- ICE should exercise prosecutorial discretion, on an individual basis, for individuals who meet the above criteria by deferring action for a period of two years, subject to renewal, in order to prevent low priority individuals from being removed from the United States.
- ICE is instructed to use its Office of the Public Advocate to permit individuals who believe they meet the above criteria to identify themselves through a clear and efficient process.
- ICE is directed to begin implementing this process within 60 days of the date of this memorandum.
- ICE is also instructed to immediately begin the process of deferring action against individuals who meet the above criteria whose cases have already been identified through the ongoing review of pending cases before the Executive Office for Immigration Review.

3. With respect to the individuals who are not currently in removal proceedings and meet the above criteria, and pass a background check:

- USCIS should establish a clear and efficient process for exercising prosecutorial discretion, on an individual basis, by deferring action against individuals who meet the

above criteria and are at least 15 years old, for a period of two years, subject to renewal, in order to prevent low priority individuals from being placed into removal proceedings or removed from the United States.

- The USCIS process shall also be available to individuals subject to a final order of removal regardless of their age.
- USCIS is directed to begin implementing this process within 60 days of the date of this memorandum.

For individuals who are granted deferred action by either ICE or USCIS, USCIS shall accept applications to determine whether these individuals qualify for work authorization during this period of deferred action.

This memorandum confers no substantive right, immigration status or pathway to citizenship. Only the Congress, acting through its legislative authority, can confer these rights. It remains for the executive branch, however, to set forth policy for the exercise of discretion within the framework of the existing law. I have done so here.

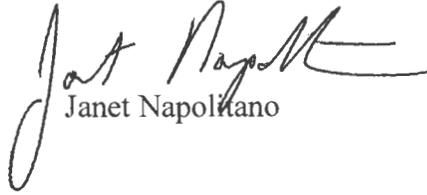

Janet Napolitano

Exhibit 2



Office of the Attorney General
Washington, D. C. 20530

Dear Acting Secretary Duke,

I write to advise that the Department of Homeland Security (DHS) should rescind the June 15, 2012, DHS Memorandum entitled “Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children,” as well as any related memoranda or guidance. This policy, known as “Deferred Action for Childhood Arrivals” (DACA), allows certain individuals who are without lawful status in the United States to request and receive a renewable, two-year presumptive reprieve from removal, and other benefits such as work authorization and participation in the Social Security program.

DACA was effectuated by the previous administration through executive action, without proper statutory authority and with no established end-date, after Congress’ repeated rejection of proposed legislation that would have accomplished a similar result. Such an open-ended circumvention of immigration laws was an unconstitutional exercise of authority by the Executive Branch. The related Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) policy was enjoined on a nationwide basis in a decision affirmed by the Fifth Circuit on the basis of multiple legal grounds and then by the Supreme Court by an equally divided vote. *See Texas v. United States*, 86 F. Supp. 3d 591, 669-70 (S.D. Tex.), *aff’d*, 809 F.3d 134, 171-86 (5th Cir. 2015), *aff’d by equally divided Court*, 136 S. Ct. 2271 (2016). Then-Secretary of Homeland Security John Kelly rescinded the DAPA policy in June. Because the DACA policy has the same legal and constitutional defects that the courts recognized as to DAPA, it is likely that potentially imminent litigation would yield similar results with respect to DACA.

In light of the costs and burdens that will be imposed on DHS associated with rescinding this policy, DHS should consider an orderly and efficient wind-down process.

As Attorney General of the United States, I have a duty to defend the Constitution and to faithfully execute the laws passed by Congress. Proper enforcement of our immigration laws is, as President Trump consistently said, critical to the national interest and to the restoration of the rule of law in our country. The Department of Justice stands ready to assist and to continue to support DHS in these important efforts.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jefferson B. Sessions III".

Jefferson B. Sessions III

Exhibit 3



U.S. Department of
Homeland Security

Memorandum on Rescission Of Deferred Action For Childhood Arrivals (DACA)

Release Date: September 5, 2017

MEMORANDUM FOR:

James W. McCament
Acting Director
U.S. Citizenship and Immigration Services

Thomas D. Homan
Acting Director
U.S. Immigration and Customs Enforcement

Kevin K. McAleenan
Acting Commissioner
U.S. Customs and Border Protection

Joseph B. Maher
Acting General Counsel

Ambassador James D. Nealon
Assistant Secretary, International Engagement

Julie M. Kirchner
Citizenship and Immigration Services Ombudsman

FROM:

Elaine C. Duke
Acting Secretary

SUBJECT:**Rescission of the June 15, 2012 Memorandum Entitled “Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children”**

This memorandum rescinds the June 15, 2012 memorandum entitled “Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children,” which established the program known as Deferred Action for Childhood Arrivals (“DACA”). For the reasons and in the manner outlined below, Department of Homeland Security personnel shall take all appropriate actions to execute a wind-down of the program, consistent with the parameters established in this memorandum.

Background

The Department of Homeland Security established DACA through the issuance of a memorandum on June 15, 2012. The program purported to use deferred action—an act of prosecutorial discretion meant to be applied only on an individualized case-by-case basis—to confer certain benefits to illegal aliens that Congress had not otherwise acted to provide by law.^[1] Specifically, DACA provided certain illegal aliens who entered the United States before the age of sixteen a period of deferred action and eligibility to request employment authorization.

On November 20, 2014, the Department issued a new memorandum, expanding the parameters of DACA and creating a new policy called Deferred Action for Parents of Americans and Lawful Permanent Residents (“DAPA”). Among other things—such as the expansion of the coverage criteria under the 2012 DACA policy to encompass aliens with a wider range of ages and arrival dates, and lengthening the period of deferred action and work authorization from two years to three—the November 20, 2014 memorandum directed USCIS “to establish a process, similar to DACA, for exercising prosecutorial discretion through the use of deferred action, on a case-by-case basis,” to certain aliens who have “a son or daughter who is a U.S. citizen or lawful permanent resident.”

Prior to the implementation of DAPA, twenty-six states—led by Texas—challenged the policies announced in the November 20, 2014 memorandum in the U.S. District Court for the Southern District of Texas. In an order issued on February 16, 2015, the district court preliminarily enjoined the policies nationwide.^[2] The district court held that the plaintiff states were likely to succeed on their claim that the DAPA program did not comply with relevant authorities.

The United States Court of Appeals for the Fifth Circuit affirmed, holding that Texas and the other states had demonstrated a substantial likelihood of success on the merits and satisfied

the other requirements for a preliminary injunction.^[3] The Fifth Circuit concluded that the Department's DAPA policy conflicted with the discretion authorized by Congress. In considering the DAPA program, the court noted that the Immigration and Nationality Act "flatly does not permit the reclassification of millions of illegal aliens as lawfully present and thereby make them newly eligible for a host of federal and state benefits, including work authorization." According to the court, "DAPA is foreclosed by Congress's careful plan; the program is 'manifestly contrary to the statute' and therefore was properly enjoined."

Although the original DACA policy was not challenged in the lawsuit, both the district and appellate court decisions relied on factual findings about the implementation of the 2012 DACA memorandum. The Fifth Circuit agreed with the lower court that DACA decisions were not truly discretionary,^[4] and that DAPA and expanded DACA would be substantially similar in execution. Both the district court and the Fifth Circuit concluded that implementation of the program did not comply with the Administrative Procedure Act because the Department did not implement it through notice-and-comment rulemaking.

The Supreme Court affirmed the Fifth Circuit's ruling by equally divided vote (4-4).^[5] The evenly divided ruling resulted in the Fifth Circuit order being affirmed. The preliminary injunction therefore remains in place today. In October 2016, the Supreme Court denied a request from DHS to rehear the case upon the appointment of a new Justice. After the 2016 election, both parties agreed to a stay in litigation to allow the new administration to review these issues.

On January 25, 2017, President Trump issued Executive Order No. 13,768, "Enhancing Public Safety in the Interior of the United States." In that Order, the President directed federal agencies to "[e]nsure the faithful execution of the immigration laws . . . against all removable aliens," and established new immigration enforcement priorities. On February 20, 2017, then Secretary of Homeland Security John F. Kelly issued an implementing memorandum, stating "the Department no longer will exempt classes or categories of removable aliens from potential enforcement," except as provided in the Department's June 15, 2012 memorandum establishing DACA,^[6] and the November 20, 2014 memorandum establishing DAPA and expanding DACA.^[7]

On June 15, 2017, after consulting with the Attorney General, and considering the likelihood of success on the merits of the ongoing litigation, then Secretary John F. Kelly issued a memorandum rescinding DAPA and the expansion of DACA—but temporarily left in place the June 15, 2012 memorandum that initially created the DACA program.

Then, on June 29, 2017, Texas, along with several other states, sent a letter to Attorney General Sessions asserting that the original 2012 DACA memorandum is unlawful for the same

reasons stated in the Fifth Circuit and district court opinions regarding DAPA and expanded DACA. The letter notes that if DHS does not rescind the DACA memo by September 5, 2017, the States will seek to amend the DAPA lawsuit to include a challenge to DACA.

The Attorney General sent a letter to the Department on September 4, 2017, articulating his legal determination that DACA “was effectuated by the previous administration through executive action, without proper statutory authority and with no established end-date, after Congress’ repeated rejection of proposed legislation that would have accomplished a similar result. Such an open-ended circumvention of immigration laws was an unconstitutional exercise of authority by the Executive Branch.” The letter further stated that because DACA “has the same legal and constitutional defects that the courts recognized as to DAPA, it is likely that potentially imminent litigation would yield similar results with respect to DACA.” Nevertheless, in light of the administrative complexities associated with ending the program, he recommended that the Department wind it down in an efficient and orderly fashion, and his office has reviewed the terms on which our Department will do so.

Rescission of the June 15, 2012 DACA Memorandum

Taking into consideration the Supreme Court’s and the Fifth Circuit’s rulings in the ongoing litigation, and the September 4, 2017 letter from the Attorney General, it is clear that the June 15, 2012 DACA program should be terminated. In the exercise of my authority in establishing national immigration policies and priorities, except for the purposes explicitly identified below, I hereby rescind the June 15, 2012 memorandum.

Recognizing the complexities associated with winding down the program, the Department will provide a limited window in which it will adjudicate certain requests for DACA and associated applications meeting certain parameters specified below. Accordingly, effective immediately, the Department:

- Will adjudicate—on an individual, case-by-case basis—properly filed pending DACA initial requests and associated applications for Employment Authorization Documents that have been accepted by the Department as of the date of this memorandum.
- Will reject all DACA initial requests and associated applications for Employment Authorization Documents filed after the date of this memorandum.
- Will adjudicate—on an individual, case by case basis—properly filed pending DACA renewal requests and associated applications for Employment Authorization Documents from current beneficiaries that have been accepted by the Department as of the date of this memorandum, and from current beneficiaries whose benefits will expire between the date of this memorandum and March 5, 2018 that have been accepted by the Department as of October 5, 2017.

- Will reject all DACA renewal requests and associated applications for Employment Authorization Documents filed outside of the parameters specified above.
- Will not terminate the grants of previously issued deferred action or revoke Employment Authorization Documents solely based on the directives in this memorandum for the remaining duration of their validity periods.
- Will not approve any new Form I-131 applications for advance parole under standards associated with the DACA program, although it will generally honor the stated validity period for previously approved applications for advance parole. Notwithstanding the continued validity of advance parole approvals previously granted, CBP will—of course—retain the authority it has always had and exercised in determining the admissibility of any person presenting at the border and the eligibility of such persons for parole. Further, USCIS will—of course—retain the authority to revoke or terminate an advance parole document at any time.
- Will administratively close all pending Form I-131 applications for advance parole filed under standards associated with the DACA program, and will refund all associated fees.
- Will continue to exercise its discretionary authority to terminate or deny deferred action at any time when immigration officials determine termination or denial of deferred action is appropriate.

This document is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter. Likewise, no limitations are placed by this guidance on the otherwise lawful enforcement or litigation prerogatives of DHS.

[1] (# [ftnref1](#)) Significantly, while the DACA denial notice indicates the decision to deny is made in the unreviewable discretion of USCIS, USCIS has not been able to identify specific denial cases where an applicant appeared to satisfy the programmatic categorical criteria as outlined in the June 15, 2012 memorandum, but still had his or her application denied based solely upon discretion.

[2] (# [ftnref2](#)) *Texas v. United States*, 86 F. Supp. 3d 591 (S.D. Tex. 2015).

[3] (# [ftnref3](#)) *Texas v. United States*, 809 F.3d 134 (5th Cir. 2015).

[4] (# [ftnref4](#)) *Id.*

[5] (# [ftnref5](#)) *United States v. Texas*, 136 S. Ct. 2271 (2016) (per curiam).

[6] (# [ftnref6](#)) Memorandum from Janet Napolitano, Secretary, DHS to David Aguilar, Acting Comm'r, CBP, et al., "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children" (June 15, 2012).

[7] (# [ftnref7](#)) Memorandum from Jeh Johnson, Secretary, DHS, to Leon Rodriguez, Dir., USCIS, et al., "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Whose Parents are U.S. Citizens or Permanent Residents" (Nov. 20, 2014).

Topics: [Border Security \(/topics/border-security/\)](/topics/border-security/), [Deferred Action \(/topics/deferred-action/\)](/topics/deferred-action/)

Keywords: [DACA \(/keywords/daca/\)](/keywords/daca/), [Deferred Action for Childhood Arrivals \(/keywords/deferred-action-childhood-arrivals/\)](/keywords/deferred-action-childhood-arrivals/)

Last Published Date: September 5, 2017

Exhibit 2

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12 Attorneys for Plaintiffs
13 THE REGENTS OF THE UNIVERSITY
14 OF CALIFORNIA and JANET NAPOLITANO,
15 in her official capacity as President of the
16 University of California

17 [*Additional Counsel Listed on Next Page*]

18
19 **UNITED STATES DISTRICT COURT**
20 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

21 THE REGENTS OF THE UNIVERSITY OF
22 CALIFORNIA and JANET NAPOLITANO,
23 *in her official capacity as President of the*
24 *University of California,*

25 Plaintiffs,

26 v.

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

Defendants.

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Civil Case No.:

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

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

1 Plaintiffs The Regents of the University of California (“UC” or “the University”), on its own
2 behalf and on behalf of all students currently enrolled at the University, and Janet Napolitano, in her
3 official capacity as President of the University of California (together “Plaintiffs”), bring this action for
4 declaratory and injunctive relief against the Department of Homeland Security (“DHS”) and Acting
5 Secretary of Homeland Security, Elaine Duke (together, “Defendants”), and allege as follows:

6 INTRODUCTION

7 1. This lawsuit, brought under the Due Process Clause of the Fifth Amendment to the
8 United States Constitution and the Administrative Procedure Act (“APA”), 5 U.S.C. § 706, challenges
9 Defendants’ unlawful decision to rescind the Deferred Action for Childhood Arrivals (“DACA”)
10 program, which protected from deportation nearly 800,000 individuals brought to this country as
11 children, known as Dreamers. Under DACA, the Dreamers, who came to the United States through no
12 choice of their own, who have clean records, and who have lived continuously in the United States since
13 2007, were permitted to live, work, and study in this country without fear of deportation. The United
14 States, and the University, have benefited enormously from the presence of the Dreamers, accomplished
15 young men and women who are our students, and colleagues, and neighbors. They are Americans, a
16 fact that Defendants’ precipitous decision cannot change.

17 2. As a result of Defendants’ actions, the Dreamers face expulsion from the only country
18 that they call home, based on nothing more than unreasoned executive whim. The University faces the
19 loss of vital members of its community, students and employees. It is hard to imagine a decision less
20 reasoned, more damaging, or undertaken with less care. As explained below, Defendants’ capricious
21 rescission of the DACA program violates both the procedural and substantive requirements of the APA,
22 as well as the Due Process Clause of the Fifth Amendment. Accordingly, Defendants’ unconstitutional,
23 unjust, and unlawful action must be set aside.

24 3. On June 15, 2012, former Secretary of Homeland Security Janet Napolitano announced
25 that individuals who arrived in the United States as children and met certain criteria, and who otherwise
26 satisfied DHS’s exercise of discretion, could apply for deferred action for two-year periods, subject to
27 renewal. *See* Memorandum from Janet Napolitano, Sec’y of Homeland Security, to Alejandro
28 Mayorkas, Director, U.S. Citizenship and Immigration Servs. et al., Exercising Prosecutorial Discretion

1 With Respect to Individuals Who Came to the United States as Children (June 15, 2012) (“DACA
2 Memorandum”). DACA allowed these individuals to live, study, and work in the United States without
3 fear that they could be arrested and deported at any time. Because of the program, DACA recipients
4 were able to pursue opportunities in higher education, to more readily obtain driver’s licenses and access
5 lines of credit, to obtain jobs and access to certain Social Security and Medicare benefits, and to
6 contribute to their communities and American society in countless ways.

7 4. The University directly benefited from the DACA program, in its capacities as educator
8 and employer. UC has approximately 4,000 undocumented students, a substantial number of whom are
9 DACA recipients. Many of its staff members are also DACA recipients. These individuals make
10 important contributions to University life, expanding the intellectual vitality of the school, filling crucial
11 roles as medical residents, research assistants, and student government leaders, and increasing the
12 diversity of the community.

13 5. Over the past five years, DACA recipients have structured their lives—and the University
14 has made significant investments—on the government’s express assurances that if they self-identified,
15 registered with federal law enforcement agencies, and passed an extensive background investigation,
16 they would be shielded from deportation and allowed to work in the United States for renewable two-
17 year periods. Yet despite the substantial and well-founded reliance that these individuals and the
18 University placed in the continuation of the DACA program, on September 5, 2017, Defendants
19 suddenly and unilaterally rescinded it. *See* Ex. A, Memorandum on Rescission Of Deferred Action For
20 Childhood Arrivals (Sept. 5, 2017) (hereinafter the “Rescission”).

21 6. The Rescission, which renders DACA recipients once more subject to deportation, has
22 profound consequences for the University and its students. As a result of Defendants’ actions, DACA
23 recipients face the loss of their livelihood, education, and country. The University and all of its students
24 will lose the contributions of valued colleagues and employees. The University also will lose
25 intellectual capital and productivity, as DACA recipients are deprived of the work authorizations needed
26 to serve in the professional roles in which both they and the University have so heavily invested.

27 7. In the Rescission, Defendants offered no reasoned basis for their cancellation of DACA,
28 instead merely pointing to the purported illegality of another program known as Deferred Action for

1 Parents of Americans and Lawful Permanent Residents (“DAPA”), and stating that in light of the Fifth
2 Circuit’s conclusion that DAPA is unlawful, “it is clear that [DACA] should be terminated.” As
3 explained below, rescinding DACA on this specious basis was procedurally and substantively invalid
4 under the APA and violated the Due Process Clause of the Fifth Amendment.

5 8. Agency action is invalid under the APA if it is “arbitrary, capricious, an abuse of
6 discretion, or otherwise not in accordance with law,” or if it is taken “without observance of procedure
7 required by law.” 5 U.S.C. § 706(2). To survive judicial review under the APA, an agency must
8 “articulate a satisfactory explanation for its action including a ‘rational connection between the facts
9 found and the choice made.’” *Motor Vehicle Mfrs. Ass’n of the U.S., Inc. v. State Farm Mut. Auto. Ins.*
10 *Co.*, 463 U.S. 29, 43 (1983). In determining whether an agency has complied with this requirement, a
11 court must conduct a “thorough, probing, in-depth review” of the agency’s reasoning and a “searching
12 and careful” inquiry into the factual underpinnings of the agency’s decision. *Citizens to Preserve*
13 *Overton Park, Inc. v. Volpe*, 401 U.S. 402, 415–16 (1971). Here, in multiple respects, Defendants failed
14 to “articulate a satisfactory explanation” for their action that would enable a court to conclude that the
15 decision was “the product of reasoned decisionmaking.” *State Farm*, 463 U.S. at 52.

16 9. As an initial matter, Defendants’ reliance on the purported illegality of DAPA is an
17 entirely insufficient basis on which to terminate DACA. DAPA is a separate program from DACA.
18 The two programs were governed by different sets of rules, applied to different individuals, and
19 conferred different benefits. Therefore, the alleged illegality of DAPA does not justify the rescission of
20 DACA, and Defendants’ failure to recognize the many differences between the programs renders their
21 decision unreasonable.

22 10. Because the Rescission is based on an incorrect legal premise—the purported illegality of
23 DACA—it cannot survive judicial review under the APA. *See, e.g., Massachusetts v. EPA*, 549 U.S.
24 497, 532 (2007) (holding that action was unlawful under the APA because agency based its decision on
25 incorrect legal conclusion); *Safe Air For Everyone v. EPA*, 488 F.3d 1088, 1101 (9th Cir. 2007)
26 (“Because that flawed premise is fundamental to EPA’s determination . . . EPA’s outcome on those
27 statutory interpretation questions is arbitrary, capricious, or otherwise not in accordance with law.”).

1 11. Despite Defendants’ conclusory assertion that DACA “has the same legal and
2 constitutional defects” as DAPA, no court has held that DACA is unlawful. Instead, DHS has
3 previously concluded that programs like DACA are a lawful exercise of the Executive Branch’s broad
4 statutory authority to administer and enforce the Immigration and Nationality Act, 8 U.S.C. § 1101, *et*
5 *seq.* See Brief for Petitioners, *United States v. Texas*, 2016 WL 836758 (2016) (No. 15-674). Similarly,
6 the Department of Justice’s Office of Legal Counsel (“OLC”)—whose legal advice is binding on the
7 Executive Branch—provided a thoughtful and nuanced analysis of DAPA in 2014, concluding that
8 DAPA, as well as DACA, was a lawful exercise of the Executive Branch’s prosecutorial discretion.
9 Dep’t of Homeland Sec.’s Auth. to Prioritize Removal of Certain Aliens Unlawfully Present in the
10 United States & to Defer Removal of Others, 2014 WL 10788677 (O.L.C. Nov. 19, 2014).

11 12. The Rescission fails to acknowledge—let alone explain—the government’s departure
12 from its own prior interpretations of the law. Indeed, DHS vigorously defended the legality of DAPA in
13 the Supreme Court less than two years ago. See Brief for Petitioners, *supra*. Yet in making the
14 unfounded assertion that DACA is illegal for the same reasons that DAPA is illegal, Defendants neither
15 addressed the compelling arguments set forth in DHS’s own brief before the Supreme Court and in
16 OLC’s 2014 Opinion, nor offered a reasonable explanation for why their current view of the law is
17 superior to the view they and OLC previously espoused. Those failures, standing alone, are enough to
18 render their decision unlawful under the APA.

19 13. Defendants compound the irrationality of their decision by failing to acknowledge the
20 profound reliance interests implicated by DACA and the hundreds of thousands of individuals,
21 employers, and universities who will be substantially harmed by the termination of the program. The
22 Supreme Court has emphasized that the presence of serious reliance interests requires an agency to
23 proffer a “more substantial justification” than otherwise would be required when the agency changes
24 course. See *Perez v. Mortg. Bankers Ass’n*, 135 S. Ct. 1199, 1209 (2015); *FCC v. Fox Television*
25 *Stations*, 556 U.S. 502, 515 (2009). Here, Defendants entirely failed to comply with that directive.

26 14. Defendants did not analyze the actual costs and benefits of allowing DACA recipients to
27 live and work in this country, nor did they acknowledge the manifold benefits that have resulted from
28 the program or the harm that institutions like the University—as well as its students—would suffer as a

1 result of the Rescission. By failing to consider these factors and the interests at stake, Defendants have
2 failed to satisfy the APA's requirement of reasoned decision-making.

3 15. The Rescission also should be set aside because it is procedurally invalid. By prohibiting
4 DHS from granting advance parole or renewing recipients' DACA status after October 5, 2017, the
5 Rescission circumscribes DHS's discretion and therefore constitutes a substantive rule. *See W.C. v.*
6 *Bowen*, 807 F.2d 1502, 1505 (9th Cir. 1987), *opinion amended on denial of reh'g*, 819 F.2d 237 (9th
7 Cir. 1987) ("Rules which substantially limit an agency's discretion are generally substantive rules.").
8 Additionally, in contrast to the case-by-case assessment of individual applicants provided under DACA,
9 the Rescission is a categorical rule, which applies to all DACA recipients. This too underscores the
10 substantive nature of the Rescission, which is subject to the full range of the APA's rulemaking
11 requirements, including the notice-and-comment requirement of 5 U.S.C. § 553. *See Paulsen v.*
12 *Daniels*, 413 F.3d 999, 1003-04 (9th Cir. 2005) (holding that Bureau of Prisons "plainly violated the
13 APA" by promulgating a rule that barred category of prisoners from relief without notice). Defendants'
14 failure to abide by these mandatory procedural requirements renders their action unlawful.

15 16. Finally, in rescinding DACA, Defendants violated the Due Process Clause of the United
16 States Constitution by failing to provide the University with any process before depriving it of the value
17 of the public resources it invested in DACA recipients, and the benefits flowing from DACA recipients'
18 contributions to the University. More fundamentally, they failed to provide DACA recipients with any
19 process before depriving them of their work authorizations and DACA status, and the benefits that flow
20 from that status.

21 THE PARTIES

22 17. Plaintiff The Regents of the University of California is a California public corporation,
23 authorized and empowered to administer a public trust known as the University of California, pursuant
24 to Article IX, Section 9, subdivisions (a) and (f) of the California Constitution. Its principal place of
25 business is in Oakland, Alameda County, California. The University brings this complaint on behalf of
26 itself and on behalf of all students currently enrolled at the University. Approximately 4,000
27 undocumented students are enrolled at the University, a substantial number of whom are DACA
28 recipients. Some of these recipients are also employed by the University.

1 18. Plaintiff Janet Napolitano is a resident of California. She brings this complaint in her
2 official capacity as President of the University of California.

3 19. Defendant DHS is a federal cabinet agency responsible for implementing and enforcing
4 the Immigration and Nationality Act (“INA”). DHS is a Department of the Executive Branch of the
5 United States Government and an agency within the meaning of 5 U.S.C. § 551(1). DHS, as well as its
6 component agencies U.S. Citizenship and Immigration Services (“USCIS”), U.S. Customs and Border
7 Protection (“CBP”), and U.S. Immigration and Customs Enforcement (“ICE”), have responsibility for,
8 among other things, administering and enforcing the nation’s immigration laws and policies, including
9 the DACA program.

10 20. Defendant Elaine Duke is the Acting Secretary of DHS and, in the absence of a
11 Secretary, is the senior official of DHS. She is sued in her official capacity. Acting Secretary Duke
12 issued the Rescission on September 5, 2017.

13 **JURISDICTION**

14 21. This action arises under the Due Process Clause of the Fifth Amendment, U.S. Const.
15 amend. V; and the APA, 5 U.S.C. § 550 *et seq.* This Court has jurisdiction pursuant to 28
16 U.S.C. §§ 1331, 1361, and 2201–2202.

17 22. There exists an actual and justiciable controversy between Plaintiffs and Defendants
18 requiring resolution by this Court. Plaintiffs have no adequate remedy at law.

19 **VENUE**

20 23. Venue is proper in the Northern District of California pursuant to 28 U.S.C. § 1391(e),
21 because this is a civil action in which Defendants are an agency, or officers of an agency, of the United
22 States, because a substantial part of the events or omissions giving rise to this action occurred in the
23 District, and, further, because Plaintiffs reside in this District and no real property is involved in the
24 action.

25 **INTRADISTRICT ASSIGNMENT**

26 24. Pursuant to Local Rule 3-2(c), intradistrict assignment is proper in San Francisco or
27 Oakland because a substantial part of the events or omissions which give rise to the claim occurred in
28 the County of Alameda.

BACKGROUND

A. *The DACA Program*

25. On June 15, 2012, the Secretary of Homeland Security Janet Napolitano announced that individuals who arrived in the United States as children and met certain criteria could apply for deferred action for two-year periods, subject to renewal. *See* DACA Memorandum. In establishing the program, the Secretary elected to extend deferred action to “certain young people who were brought to this country as children and know only this country as home.” *Id.* The Secretary emphasized that federal immigration laws are “not designed . . . to remove productive young people to countries where they may not have lived or even speak the language. Indeed, many of these young people have already contributed to our country in significant ways.” *Id.* This program is known as Deferred Action for Childhood Arrivals (“DACA”).

26. Individuals were eligible for the program if they (1) came to the United States when they were under the age of sixteen; (2) continuously resided in the United States since June 15, 2007, and were present in the United States on June 15, 2012, and on the date they requested DACA; (3) were currently in school, had graduated from high school, had obtained a general education development certificate, or were an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; (4) had not been convicted of a felony, a significant misdemeanor, or three or more other misdemeanors, and otherwise did not pose a threat to national security or public safety; (5) did not have lawful immigration status on June 15, 2012; and (6) were under the age of 31 as of June 15, 2012. *See id.*; *see also* Ex. B, U.S. Citizenship & Immigration Servs.: Consideration of Deferred Action for Childhood Arrivals Process (Aug. 26, 2017) (hereinafter “USCIS FAQs”). Individuals who met these criteria were then eligible for an exercise of prosecutorial discretion, following an individualized review of their applications. *See* DACA Memorandum.

27. When they applied for admission to the program, DACA recipients were required to disclose sensitive, personal information to Defendants, including their lack of lawful immigration status as of June 15, 2012, their date of initial entry into the United States, their country of birth, their current and previous mailing addresses, and other contact information. *See* USCIS Form I-821D; USCIS Form I-821D Instructions.

1 28. Continuing their longstanding practice with respect to deferred-action applications,
2 Defendants repeatedly promised DACA applicants that the information they submitted as part of their
3 applications would not be used for civil immigration enforcement purposes against DACA applicants or
4 their families. *See* USCIS FAQs; Form I-821D Instructions. Because only individuals who might be
5 subject to removal proceedings would apply for DACA, this promise was necessary for individuals to
6 submit applications without fear that the Executive Branch was using DACA as a way to find and
7 remove undocumented immigrants.

8 29. Individuals who received deferred action under DACA were not subject to removal for a
9 period of two years, subject to renewal. *See* DACA Memorandum.

10 30. DACA recipients also were eligible for work authorizations that allowed them to work
11 legally in the United States, pursuant to a long-standing federal regulation. *See id.*; 8 C.F.R. §
12 274a.12(c)(14) (providing that “an alien who has been granted deferred action” may obtain work
13 authorization upon demonstrating economic necessity); USCIS FAQs (“Under existing regulations, an
14 individual whose case has been deferred is eligible to receive employment authorization for the period
15 of deferred action, provided he or she can demonstrate ‘an economic necessity for employment.’”). An
16 individual’s work authorization expires at the same time as his or her DACA status and could be
17 renewed upon a renewal of DACA status.

18 31. Individuals with DACA status were “not considered to be unlawfully present during the
19 period in which deferred action [was] in effect.” USCIS FAQs.

20 32. Since the program was first introduced in 2012, nearly 800,000 individuals received
21 DACA status. This includes an estimated 242,339 residents of the State of California. *See* Number of I-
22 821D, Consideration of Deferred Action for Childhood Arrivals by Fiscal Year, Quarter, Intake,
23 Biometrics and Case Status: 2012-2017 (Mar. 31, 2017); Carolyn Jones, California Colleges Undaunted
24 by Trump’s Decision to Phase out DACA, EDSOURCE (Sept. 1, 2017),
25 <https://edsources.org/2017/california-colleges-undaunted-by-trumps-threat-to-end-daca/586746>.

26 ***B. The Many Benefits of DACA***

27 33. As noted above, DACA recipients have contributed in innumerable ways to the
28 intellectual and social fabric of the University.

1 34. As an institution whose core mission is serving the interests of the State of California, the
2 University seeks “to achieve diversity among its student bodies and among its employees.” *See*
3 Academic Senate of the Univ. of Cal., *Regents Policy 4400: Policy of University of California Diversity*
4 *Statement*, UNIV. OF CAL.: BOARD OF REGENTS, [http://regents.universityofcalifornia.edu/](http://regents.universityofcalifornia.edu/governance/policies/4400.html)
5 [governance/policies/4400.html](http://regents.universityofcalifornia.edu/governance/policies/4400.html). The University recognizes the importance of diversity to its academic
6 mission, as it allows “students and faculty [to] learn to interact effectively with each other, preparing
7 them to participate in an increasingly complex and pluralistic society.” *Id.* The educational experience
8 of all University students is fuller and more enriching when ideas are “born and nurtured in a diverse
9 community.” *Id.* DACA students at the University are an integral part of that community. Their talent,
10 perspectives, and experiences are invaluable contributions to University life.

11 35. DACA recipients also make significant contributions to University life in their role as
12 employees. They work at UC campuses and in UC medical centers as teaching assistants, research
13 assistants, post-docs, and health care providers. DACA recipients often possess valuable foreign
14 language skills. By allowing DACA recipients to work lawfully, DACA moved recipients out of the
15 informal economy, increasing the pool of talent from which UC could fill positions at the University.

16 36. Additional DACA recipients who are enrolled as students support themselves and cover a
17 portion of their tuition through their part-time work for the University. For many of these students,
18 DACA work authorization plays a significant role in their ability to attend UC and continue each year
19 with their chosen program of study.

20 37. The University has invested considerable resources in recruiting and retaining these
21 individuals—as students and employees. It has made scarce enrollment space available to these students
22 on the basis of their individual achievements. It also has invested substantial time, financial aid,
23 research dollars, housing benefits, and other resources in them on the expectation that these students will
24 complete their course of study and become productive members of the communities in which the
25 University operates, and other communities throughout the nation. The University has significant
26 interests in retaining this wealth of talent and in continuing to enjoy the many benefits of their
27 participation in University life.

1 38. Furthermore, by allowing recipients to receive deferred action and obtain work
2 authorization, DACA opened myriad opportunities to them. As noted above, DACA recipients became
3 eligible for federal work authorization, which significantly improved their opportunities for employment
4 and higher paying jobs. Under the program, DACA recipients received social security numbers and
5 therefore were able to access credit more easily. DACA also enabled recipients to obtain driver's
6 licenses in a number of states where they otherwise could not. It also protected these individuals' right
7 to travel freely by making them eligible to receive "advance parole," which allowed them to travel
8 abroad temporarily for humanitarian, educational, or employment purposes, and to return to the United
9 States lawfully. *See* 8 C.F.R. § 212.5(f); USCIS FAQs.

10 ***C. Defendants Unlawfully Rescind DACA***

11 39. As recently as February 20, 2017, Defendants had reaffirmed the administration's
12 commitment to DACA, *see* Memorandum from John Kelly, Sec'y of Homeland Security, Enforcement
13 of the Immigration Laws to Serve the National Interest, at 2 (Feb. 20 2017), and up until September 5,
14 2017, Defendants had continued to approve DACA requests and renewals. Despite President Trump's
15 claim that DACA recipients "shouldn't be very worried" and that the Administration would treat DACA
16 recipients "with great heart," on September 5, 2017, Defendants announced that they were rescinding
17 the program. *See* Transcript: ABC News anchor David Muir interviews President Trump, ABC NEWS
18 (Jan. 25, 2017) [http://abcnews.go.com/Politics/transcript-abc-news-anchor-david-muir-interviews-](http://abcnews.go.com/Politics/transcript-abc-news-anchor-david-muir-interviews-president/story?id=45047602)
19 [president/story?id=45047602](http://abcnews.go.com/Politics/transcript-abc-news-anchor-david-muir-interviews-president/story?id=45047602); *see also* Madeline Conway, Trump Tells Dreamers To "Rest Easy,"
20 Politico.com (Apr. 21, 2017), [http://www.politico.com/story/2017/04/21/trump-dreamers-rest-easy-](http://www.politico.com/story/2017/04/21/trump-dreamers-rest-easy-immigration-237463)
21 [immigration-237463](http://www.politico.com/story/2017/04/21/trump-dreamers-rest-easy-immigration-237463).

22 40. Defendants announced their decision on the same day as a "deadline" imposed by ten
23 states that threatened to sue the Trump administration if DACA were not rescinded. *See* Letter from
24 Gov. Abbott to U.S. Att'y General Sessions (June 29, 2017). The Rescission expressly states that this
25 threat—rather than any reasoned evaluation of the legality and merits of the program—provoked the
26 decision to terminate DACA.

27 41. Prior to DHS's issuance of the Rescission, Attorney General Jeff Sessions held a press
28 conference in which he asserted that "[o]ur collective wisdom is that the policy is vulnerable to the same

1 legal and constitutional challenges that the courts recognized with respect to the DAPA program.” *See*
2 Ex. C, Attorney General Sessions Delivers Remarks On DACA (Sept. 5, 2017),
3 <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-daca> (“Press
4 Conference”). Similarly, a September 4, 2017 letter from the Attorney General to Acting Secretary of
5 DHS Duke reiterated that DACA “was effectuated . . . without proper statutory authority” and “was an
6 unconstitutional exercise of authority by the Executive Branch.” *See* Ex. D, Letter from Att’y General
7 Sessions to Acting Sec’y of DHS Duke (Sept. 4, 2017). The Attorney General also noted the potential
8 of litigation from several states and that DACA was “likely” to be enjoined in that yet-to-be-filed
9 litigation.

10 42. In addition, in his press conference Attorney General Sessions alleged, without offering
11 any evidence, that DACA had “denied jobs to hundreds of thousands of Americans by allowing those
12 same jobs to go to illegal aliens.” He also made the specious claim that DACA “contributed to a surge
13 of unaccompanied minors on the southern border that yielded terrible humanitarian consequences.” *See*
14 Press Conference. That claim is facially false. DACA by its terms applies only to individuals resident
15 in the United States since June 15, 2007—five years before the program began.

16 43. After the press conference, Acting Secretary of Homeland Security Duke, purporting to
17 act “[i]n the exercise of [her] authority in establishing national immigration policies and priorities,”
18 formally rescinded the DACA Memorandum. The Rescission states that “it is clear” that DACA
19 “should be terminated” in light of the Fifth Circuit’s ruling in *Texas v. United States*, 809 F.3d 134 (5th
20 Cir. 2015), regarding DAPA, the Supreme Court’s non-precedential affirmance of that ruling by an
21 equally divided court, and the Attorney General’s September 4 letter.

22 44. The President, however, does not appear to share the views of DHS or his Attorney
23 General regarding the legality of DACA. In direct contradiction to Defendants’ and Attorney General
24 Sessions’ position that the prior administration had exceeded the authority of the Executive Branch in
25 establishing DACA, *see* Ex. A and Press Conference, the President tweeted on the night of the
26 Rescission, “Congress now has 6 months to legalize DACA (something the Obama Administration was
27 unable to do). If they can’t, I will revisit this issue!” *See* Donald J. Trump (@realDonaldTrump),
28 Twitter (Sep. 5, 2017, 8:38 PM), <https://twitter.com/realDonaldTrump/status/905228667336499200>.

1 45. Although the Rescission concludes that DACA is unlawful, it does not immediately
2 revoke any individual’s DACA status or work authorization. Instead, it instructs that “the Department
3 will provide a limited window in which it will adjudicate certain requests for DACA and associated
4 applications.” Specifically, the Rescission explains that DHS will adjudicate pending DACA requests
5 and associated work authorization applications that already had been accepted by the agency as of
6 September 5, 2017, but will reject new requests and applications filed after September 5, 2017. It
7 further states that DHS will adjudicate pending renewal requests and applications from current DACA
8 recipients, as well as renewal requests and applications from current DACA recipients for grants of
9 deferred action that expire between September 5, 2017, and March 5, 2018, and that are accepted by the
10 agency as of October 5, 2017. Any renewal requests filed after October 5, 2017, or any renewal requests
11 for benefits that expire after March 5, 2018, will be rejected. DHS will not terminate the current grants
12 of deferred action to DACA recipients, but instead will allow individuals’ DACA status to expire. DHS
13 will not approve any new applications for advance parole and will administratively close all pending
14 applications for advance parole. *See* Ex. A at 4-5.

15 46. Defendants’ decision to rescind the program will have immense and devastating effects
16 on the University and all of its students. As a result of the termination of the program, the University
17 and its students will lose the vital contributions that DACA recipients have made as students and
18 employees. *See Washington v. Trump*, 847 F.3d 1151, 1160 (9th Cir. 2017) (“[S]chools have been
19 permitted to assert the rights of their students.”). The civic life of the school will be diminished, the
20 exchange of ideas will be reduced, teaching and research will be impaired, and diversity will be more
21 difficult to achieve. The University and its students benefit from cohesive family units, robust civic
22 participation, and the strength of social and educational communities. The Rescission damages each of
23 these interests, in California and nationwide.

24 47. Moreover, UC students and employees have friends or family members who are DACA
25 recipients, and the University will have to expend resources to address the detrimental effects that the
26 rescission of DACA will have on these individuals’ lives. The University also will lose the resources it
27 has spent educating students who ultimately do not graduate.

28

1 opportunities in higher education, to more readily obtain driver's licenses and access lines of credit, to
2 obtain jobs, and to access certain Social Security and Medicare benefits.

3 71. The Rescission and actions taken by Defendants to rescind DACA unlawfully deprive the
4 University and its students of these and other constitutionally-protected interests without due process of
5 law. Such deprivation occurred with no notice or opportunity to be heard.

6 72. Defendants therefore have violated the Fifth Amendment to the United States
7 Constitution.

8 73. The University and its students were harmed and continue to be harmed by these
9 unlawful acts.

10 **RELIEF REQUESTED**

11 WHEREFORE, Plaintiffs respectfully request that this Court:

12 A. Vacate and set aside the Rescission and any other action taken by Defendants to
13 rescind DACA;

14 B. Declare that the Rescission and actions taken by Defendants to rescind DACA are
15 void and without legal force or effect;

16 C. Declare that the Rescission and actions taken by Defendants to rescind DACA are
17 arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law, and without
18 observance of procedure required by law in violation of 5 U.S.C. §§ 702-706;

19 D. Declare that the Rescission and actions taken by Defendants to rescind DACA are
20 in violation of the Constitution and contrary to the laws of the United States;

21 E. Preliminarily and permanently enjoin and restrain Defendants, their agents,
22 servants, employees, attorneys, and all persons in active concert or participation with any of
23 them, from implementing or enforcing the Rescission and from taking any other action to rescind
24 DACA that is not in compliance with applicable law;

25 F. Grant such further relief as this Court deems just and proper.
26
27
28

1 DATED: September 8, 2017

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2 By:



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

Exhibit 3

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 Senior Assistant Attorney General
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12 IN THE UNITED STATES DISTRICT COURT
 13 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 14

15 **STATE OF CALIFORNIA, STATE OF**
 16 **MAINE, STATE OF MARYLAND, and**
 17 **STATE OF MINNESOTA,**

Civil Case No.

Plaintiffs,

18 v.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

19
 20 **U.S. DEPARTMENT OF HOMELAND**
SECURITY; ELAINE C. DUKE, in her
 21 **official capacity as Acting Secretary of**
Homeland Security; and UNITED STATES
 22 **OF AMERICA,**

23
24 Defendants.
25

INTRODUCTION

1
2 1. The State of California is home to, by far, more grantees of Deferred Action for
3 Childhood Arrivals (“DACA”) than any other state, and the States of California, Maine,
4 Maryland, and Minnesota (collectively, “Plaintiff States”) combined are home to more than
5 238,000 DACA grantees. Defendants’ actions in rescinding DACA are illegal and seriously harm
6 Plaintiff States’ interests in ways that have already started to materialize and that threaten to last
7 for generations. This program has allowed nearly 800,000 young people (including over 220,000
8 Californians) who have come of age in the United States—many of whom have known no other
9 home—to come out of the shadows and study and work here without fear of deportation,
10 enriching our States and communities. DACA is a humane policy with a proven track record of
11 success, and Defendants’ rescission of DACA violates fundamental notions of justice.

12 2. On September 5, 2017, Defendant Acting Secretary of the Department of
13 Homeland Security Elaine Duke (“Duke”) issued a memorandum rescinding DACA. Ex. A,
14 Memorandum from Elaine C. Duke, Acting Sec’y of Homeland Security to James W. McCament,
15 Acting Dir., U.S. Citizenship and Immigration Services (“USCIS”), et al., Rescission of the June
16 15, 2012 Memorandum Entitled “Exercising Prosecutorial Discretion with Respect to Individuals
17 Who Came to the United States as Children” (Sept. 5, 2017) (“DACA Rescission Memorandum”).
18 Pursuant to that memorandum, Defendant Department of Homeland Security (“DHS”)
19 immediately ceased accepting new applications under the DACA program, immediately ceased
20 granting advance parole (i.e., authorization for DACA grantees to leave the country), and
21 declared that it will only issue renewals for current grantees whose DACA protection expires on
22 or before March 5, 2018; these current grantees must apply for renewal by October 5, 2017.

23 3. The Trump Administration’s elimination of DACA was unlawful on a number of
24 grounds. First, the DACA Rescission Memorandum violates the due process guarantee of the
25 Fifth Amendment to the United States Constitution by substantially altering DHS’s prior
26 assurances regarding the use of information contained in DACA applications; Defendants should
27 be equitably estopped from acting contrary to these assurances. Second, DHS promulgated this
28

1 rule without providing notice or the opportunity to comment as required by the Administrative
2 Procedure Act (“APA”), thereby depriving Plaintiff States of the opportunity to present important
3 evidence to DHS about the overwhelming success of the DACA program in Plaintiff States as
4 part of the rulemaking process. Third, DHS violated the substantive requirements of the APA by
5 proffering a legally insufficient justification for rescinding DACA, obscuring the true policy
6 rationale for this substantial change, and otherwise violating independent constitutional and
7 statutory provisions. Fourth, federal law does not permit this substantive change in DHS policy
8 to be made without an analysis of the negative impact of rescinding DACA on small businesses,
9 non-profits, and local government entities, including those in Plaintiff States. Finally, Defendants
10 have discriminated against this class of young immigrants in violation of the equal protection
11 guarantee of the Fifth Amendment by depriving them of their interests in pursuing a livelihood
12 and furthering their education. These interests are substantial, and Defendants deprived DACA
13 grantees of them without a sufficient justification.

14 4. DACA grantees residing in Plaintiff States are employed by companies and non-
15 profits, large and small, as well as State and municipal agencies, all of which benefit from their
16 skills and productivity. Through their employment and broader participation in the economy,
17 DACA grantees contribute to the economic activity of Plaintiff States and the United States
18 generally. As residents of Plaintiff States, DACA grantees have also pursued educational
19 opportunities at post-secondary institutions, enriching the educational experiences of all students
20 and faculty by contributing their diverse life experiences and perspectives, while building upward
21 career mobility for themselves. In addition to substantially benefitting from DACA themselves,
22 DACA grantees have taken advantage of the opportunities available to them under this program
23 in a manner that has significantly enhanced Plaintiff States in a number of ways, helping to
24 advance their sovereign, quasi-sovereign, and proprietary interests.

25 5. As a direct result of the decision to eliminate DACA, DACA grantees will lose
26 their work authorization, requiring their employers to terminate them as employees. As a result
27 of losing employment, DACA grantees face the loss of employer-based health insurance, which
28 has not only benefited them personally, but has reduced Plaintiff States’ expenditures on

1 healthcare to uninsured people and enhanced public health overall. While education laws in
2 California and other states will permit most DACA grantees who are in school to maintain their
3 enrollment in post-secondary educational institutions even if they lose DACA protection, many
4 are expected to disenroll because their inability to work will create financial obstacles to
5 maintaining enrollment. And others will disenroll simply because they may no longer be able to
6 achieve career objectives commensurate with their skills and qualifications; still others may be
7 afraid to interact with any government entity, even public schools or hospitals, once they lose
8 DACA's protection from deportation. Those DACA grantees who choose to remain enrolled will
9 be unable to participate equally in other opportunities generally available to students, such as paid
10 internships and externships, as well as study abroad programs.

11 6. Under the DACA program, grantees were authorized to apply for advance parole,
12 which allowed many of them to return to the United States after visiting their families outside the
13 country when family emergencies arose. Defendants have abruptly terminated this authorization,
14 even refusing to adjudicate already pending applications submitted by DACA grantees. As a
15 result of the termination, thousands of residents will be unable to visit family members or travel
16 outside the United States for educational or employment purposes. It is also uncertain whether
17 residents whose advance parole requests were previously approved and who are currently
18 traveling abroad will face greater difficulty in being permitted to return home to the United
19 States.

20 7. DACA grantees came to the United States through no volition of their own. They
21 grew up in this country and many have known no other home. Prior to DACA, they faced fear of
22 deportation, hardship, and stigma due to their status. DACA has allowed them the stability and
23 security they need to build their lives in the open. Through their sudden and unlawful actions,
24 Defendants are attempting to push DACA grantees back into the shadows of American life.

25 8. Due to Defendants' actions and representations, DACA grantees face risks as a
26 result of their very participation in DACA—particularly if the DACA Rescission Memorandum is
27 fully implemented. When they applied for DACA, applicants were required to provide sensitive
28 information to DHS—including their fingerprints, photos, home address, school location, and

1 criminal records, however minor—in reliance on the government’s repeated promises that it
2 would not use the information against them to conduct enforcement actions. The DACA
3 Rescission Memorandum and associated Frequently Asked Questions dated September 5, 2017
4 (“Rescission FAQs”), attached hereto as Ex. B, substantively change DHS’s policy in a manner
5 that places current and former DACA grantees at risk of deportation based on information
6 previously disclosed to DHS in good faith.

7 9. Further, DHS’s prior assurances to employers regarding the employment
8 verification information they provided to employees to aid prospective DACA applicants are not
9 discussed in the DACA Rescission Memorandum or Rescission FAQs, indicating that employers
10 might now be subject to actions for unlawful employment practices despite DHS’s earlier
11 assurances that they would not be.

12 10. Defendants’ rescission of DACA will injure Plaintiff States’ state-run colleges and
13 universities, upset the States’ workforces, disrupt the States’ statutory and regulatory interests,
14 cause harm to hundreds of thousands of their residents, damage their economies, and hurt
15 companies based in Plaintiff States.

16 11. The States of California, Maine, Maryland, and Minnesota respectfully request that
17 this Court enjoin DHS from rescinding DACA and declare that DHS is equitably estopped from
18 using information gathered pursuant to the DACA program in immigration enforcement actions
19 against current and former DACA applicants and grantees, and in actions against their current or
20 former employers except as authorized previously under DACA.

21 **JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT**

22 12. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 2201(a).

23 13. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b)(2) and
24 1391(e)(1). A substantial part of the events or omissions giving rise to this action occurred in this
25 district; Plaintiff State of California resides in this district; and no real property is involved in the
26 action. This is a civil action in which Defendants are agencies of the United States or officers of
27 such an agency.

1 21. California has an interest, reflected in its Constitution and state law, in prohibiting
2 discrimination on the basis of race, color, national origin, and immigration status. California's
3 Constitution prohibits any discrimination on the basis of race, color, or national origin. *See* Cal.
4 Const. art. I, §§ 8, 31. California recognizes as civil rights an individual's opportunity to obtain
5 employment, housing, real estate, full and equal utilization of public accommodations, public
6 services, and education institutions without such discrimination. *See, e.g.*, Cal. Gov. Code
7 §§ 11135, 12900-12907; Cal. Civ. Code § 51(b). California has a further interest, as evidenced
8 by its Constitution, in prohibiting the deprivation of life, liberty, or property without due process,
9 and in preventing any practice that denies equal protection of the laws. *See* Cal. Const. art. I, § 7.

10 22. California's interest in protecting the health, safety, and well-being of its residents,
11 including protecting its residents from harms to their physical or economic health, extends to all
12 residents, regardless of immigration status. *See, e.g.*, Cal. Civ. Code § 3339(a); Cal. Gov. Code
13 § 7285(a); Cal. Health & Safety Code § 24000(a); Cal. Labor Code § 1171.5(a).

14 23. California has an interest in ensuring public safety within its borders and
15 protecting the rights of its residents by maintaining an effective law enforcement system. Like
16 many local law enforcement agencies in California and throughout the nation, the State has
17 concluded that public safety is best protected when all members of our community—regardless of
18 immigration status—are encouraged to report crimes and participate in policing efforts without
19 fear of immigration consequences. California has further determined that the interests of public
20 safety are best served by promoting trust between law enforcement and California residents,
21 including members of the immigrant community. By deferring the possibility of immediate
22 deportation, the DACA program has removed a significant deterrent to immigrants approaching
23 law enforcement for assistance when they have been victimized or have witnessed crimes.

24 24. California has an interest in promoting and preserving the public health of
25 California residents. Defendants' rescission of DACA will create serious public health problems.
26 These include worsening the existing shortage of physicians and gutting the home healthcare
27 workforce for seniors and people with disabilities. Further, former DACA grantees will face
28

1 increasing mental health problems like depression, anxiety, and suicide attempts when they
2 suddenly find themselves once again members of an underclass with an uncertain future.

3 25. The rescission of the DACA program will also harm California’s interests in, and
4 expenditures on, its educational priorities. California’s state universities and colleges have made
5 significant investments in financial aid and in other programs to support these students, consistent
6 with the interests of those institutions—and those of the State itself—in diversity and
7 nondiscrimination. California will lose that investment because of the rescission of DACA. The
8 University of California (“UC”) system estimates that it alone has approximately 4,000
9 undocumented students enrolled, of whom a substantial number are DACA recipients. An
10 estimated 60,000 undocumented students attend California’s community colleges, and 8,300
11 attend the California State Universities; a significant number of these students are DACA
12 grantees.

13 26. UC also employs many DACA recipients at UC campuses and in UC medical
14 centers as teaching assistants, research assistants, post-doctoral researchers, and health care
15 providers. DACA recipients often possess valuable foreign language skills. As a result of
16 DACA’s termination, UC will lose the skills and talents of these employees.

17 27. Similarly, the loss of DACA grantees as professors, teachers, teachers’ aides,
18 administrators, and nurses from our primary and secondary schools, as well as the California
19 State University and California Community College systems, will frustrate California’s interests
20 in the education of all its residents and harm Californians.

21 28. Immigration is an important economic driver in California. California is the sixth
22 largest economy in the world, and it is home to many small businesses, large corporations, non-
23 profit organizations, public and private hospitals, and colleges and universities that will be
24 adversely affected by the termination of DACA.

25 29. The cumulative economic harm to California from the rescission of DACA is
26 significant. According to one estimate, the State of California alone would suffer \$65.8 billion in
27 economic losses over a ten-year window as a result of DACA’s rescission.

1 30. DACA grantees contribute significantly to state and local tax revenues. DACA
2 grantees average higher earning capacities than their undocumented peers and are able to better
3 contribute to our economy. Studies show that after receiving DACA, many grantees purchase
4 houses and cars for the first time, boosting the economy and generating state and local tax
5 revenues. According to one estimate, DACA-eligible residents contribute more than \$534 million
6 annually in state and local taxes in California alone; those annual state and local tax contributions
7 are projected to decrease by \$199 million when Defendants' rescission of DACA is complete.
8 The State of California stands to lose an estimated \$18.4 billion in taxes over ten years when the
9 full impact of Defendants' rescission of DACA has taken effect.

10 31. Executives at some of the largest companies in California, and indeed, the nation,
11 including Apple, Facebook, and Google, have been vocal in support of DACA grantees and have
12 urged the President to retain DACA. Many have also been vocal about the harm that DACA's
13 repeal will cause to their companies and employees. For example, the Chief Executive Officer of
14 Apple, Tim Cook, noted that "250 of my Apple coworkers are #Dreamers," later adding,
15 "#Dreamers contribute to our companies and our communities just as much as you and I." Tim
16 Cook, Twitter (Sept. 3 & 5, 2017). Mark Zuckerberg and Sundar Pichai, the Chief Executive
17 Officers of Facebook and Google, respectively, have expressed similar sentiments. *See, e.g.*,
18 Mark Zuckerberg, Facebook (Sept. 5, 2017) ("The young people covered by DACA are our
19 friends and neighbors. They contribute to our communities and to the economy."); Sundar Pichai,
20 Twitter (Sept. 5, 2017) ("Dreamers are our neighbors, our friends and our co-workers.").

21 32. California, too, has an interest in securing the best possible employees and in
22 managing its workforce. California state agencies and institutions employ at least 48 DACA
23 grantees, many of whom were hired because of their specialized skills and qualifications and who
24 will be affected by the termination of DACA. DACA grantees help further California's priorities
25 to ensure, *inter alia*: public safety at the Departments of Corrections, Rehabilitation, Forestry, and
26 Fire Protection; public health at the Departments of State Hospitals and Developmental Services;
27 and infrastructure at the Departments of Transportation and Water Resources. California has
28 expended time and funds to hire, train, and manage these DACA grantees, and stands to lose the

1 value of that investment—and the employees’ ongoing labor—due to Defendants’ rescission of
2 DACA.

3 33. In sum, Defendants’ rescission of DACA harms the State of California directly as
4 well as indirectly through its effects on California residents, families, businesses, and institutions.

5 **PLAINTIFF STATE OF MAINE**

6 34. The State of Maine is a sovereign State of the United States of America. The
7 Attorney General of Maine, Janet Mills, is a constitutional officer with the authority to represent
8 the State in all matters, and serves as its chief legal officer with general charge, supervision, and
9 direction of the State’s legal business. The Attorney General’s powers and duties include acting
10 on behalf of the State and the people of Maine in the federal courts on matters of public interest.
11 The Attorney General has the authority to file suit to challenge action by the federal government
12 that threatens the public interest and welfare of Maine residents as a matter of constitutional,
13 statutory, and common law authority.

14 35. Maine is aggrieved by Defendants’ actions and has standing to bring this action
15 because of the injuries to the State caused by Defendants’ rescission of DACA, including
16 immediate and irreparable injuries to its sovereign, quasi-sovereign, and proprietary interests.

17 36. At the end of the first quarter of 2017, USCIS had accepted 134 initial applications
18 and 410 renewal applications since 2012 for the DACA program in Maine, and in that same time
19 had approved 95 initial applications and 334 renewal applications. Ex. C, USCIS Numbers. The
20 DACA population in Maine makes up 4 percent of Maine’s estimated undocumented population.

21 37. An estimated 83 of Maine’s DACA recipients are employed. The estimated
22 annual GDP loss in Maine from removing DACA workers is \$3.97 million.

23 38. DACA-eligible individuals currently contribute \$330,000 a year in state and local
24 taxes. If 100 percent of eligible individuals were enrolled, tax revenues would increase by
25 \$74,000. If DACA protections are lost, Maine would lose an estimated \$96,000 in state and local
26 taxes.

27 39. Defendants’ rescission of DACA will result in Maine’s grantees losing their jobs
28 and ability to attend college and graduate institutions. Many businesses will lose valued workers.

1 Rescission of work authorization will threaten DACA grantees’ ability to support themselves and
2 their families, and the forced separation of Maine families that will result from DACA’s
3 rescission will further jeopardize the health and well-being of Maine residents.

4 40. Maine’s population demographics demonstrate particular benefits that immigrants
5 bring to the State’s work force. In 2014, almost one in five Mainers was already older than age
6 65—the third highest share in any state in the country. From 2011 to 2014, Maine experienced
7 more deaths than births, one of only two states in the country to do so. Many Maine employers—
8 from electronics manufacturers to meat processors—have struggled to find the workers they need
9 in recent years to expand and keep growing in the State. Jessica Lowell, *Maine Employers Face
10 a New Challenge: Not Enough Workers*, Portland Press Herald, July 23, 2016,
11 <https://tinyurl.com/y7gs6lan>.

12 41. Maine has a strong public policy interest in prohibiting discrimination on the basis
13 of race, color, or national origin. *See* Me. Rev. Stat. tit. 5, §§ 4681-4685.

14 **PLAINTIFF STATE OF MARYLAND**

15 42. The State of Maryland is a sovereign State of the United States of America.

16 43. The State is represented by and through the Attorney General of Maryland, Brian
17 Frosh, its chief legal officer with general charge, supervision, and direction of the State’s legal
18 business. The Attorney General’s powers and duties include acting on behalf of the State and the
19 people of Maryland in the federal courts on matters of public concern. Under the Constitution of
20 Maryland, and as directed by the Maryland General Assembly, the Attorney General has the
21 authority to file suit to challenge action by the federal government that threatens the public
22 interest and welfare of Maryland residents. Md. Const. art. V, § 3(a)(2); 2017 Md. Laws, Joint
23 Resolution 1.

24 44. Maryland is aggrieved by Defendants’ actions and has standing to bring this action
25 because of the injury to its State sovereignty caused by Defendants’ rescission of DACA,
26 including immediate and irreparable injuries to its sovereign, quasi-sovereign, and proprietary
27 interests.
28

1 45. Maryland is home to more than 20,000 young people who are immediately eligible
2 for DACA, an additional 6,000 who may become eligible through enrollment in school, and an
3 additional 7,000 who may become eligible on their 15th birthdays.

4 46. At the end of the first quarter of 2017, 11,513 initial applications and 12,357
5 renewal applications for the DACA program in Maryland had been accepted by USCIS.

6 47. If DACA is rescinded, Maryland will lose millions of dollars in state and local tax
7 revenues. DACA-eligible individuals currently contribute \$40.8 million a year in state and local
8 taxes. If 100 percent of eligible individuals were enrolled, tax revenues would increase by \$16.1
9 million.

10 48. Maryland has a quasi-sovereign interest in protecting the health and well-being,
11 both economic and physical, of all its residents.

12 49. Fifty-five percent of DACA-eligible individuals in Maryland are employed.
13 DACA grantees work for both large and small businesses, which are critical to the State's
14 economic viability. In addition, DACA grantees in Maryland work in a wide array of fields,
15 including healthcare, education, law, and social services.

16 50. Rescinding DACA will result in disruptions in each of these fields, as companies
17 and non-profits will be forced to terminate qualified and trained employees without employment
18 authorization. Estimates are that rescinding the DACA program will cost Maryland \$509.4
19 million in annual GDP losses.

20 51. Additionally, rescinding DACA will cause many DACA grantees to lose their
21 employer-based health insurance. Without employer-based benefits, more Maryland residents are
22 likely to refrain from seeking needed medical care. As a result of foregoing treatment, including
23 for preventative purposes, these residents will impose higher healthcare costs on Maine.

24 52. The rescission of DACA also threatens the welfare of both DACA grantees and
25 their families, including some households with family members who are United States citizens.
26 Rescission of work authorization will threaten DACA grantees' ability to support themselves and
27 their families, and the forced separation of Maryland families that results from DACA's
28 rescission will further jeopardize the health and well-being of Maryland residents.

1 53. Maryland also has a proprietary interest in hiring and training a qualified
2 workforce. Both the State and local jurisdictions employ DACA grantees, many of whom have
3 specialized skills and qualifications. The State and local governments will lose not only these
4 employees, but also their significant investments in hiring and training the DACA grantees who
5 work for them.

6 54. Rescinding DACA will adversely impact current DACA grantees enrolled in
7 colleges and universities. Without DACA's employment authorization, these students'
8 educational and employment plans will be disrupted, if not aborted.

9 55. Disenrollment by DACA grantees will also harm Maryland's public colleges and
10 universities. The University of Maryland has emphasized the importance of its students who are
11 DACA grantees. *See* Wallace D. Loh, *President's Statement on DACA Students*, University of
12 Maryland (Sept. 5, 2017), <https://tinyurl.com/y6ulklrz>. In 2011, Maryland passed a law allowing
13 undocumented students brought to the United States as children, or "dreamers," to pay in-state
14 tuition rates at the State's public institutions, and voters later approved the law in a referendum.
15 2011 Md. Laws, Ch. 191. In the 2015-16 academic year, over 500 dreamers were enrolled in
16 Maryland public colleges at in-state tuition rates. Rescinding DACA will result in many of these
17 students leaving school, which harms both the individual students as well as the schools.
18 Maryland's public institutions will lose the diversity and enrichment this population brings to the
19 school community.

20 56. Maryland has a strong public policy interest in prohibiting discrimination on the
21 basis of race, color, or national origin. *See* Md. Code Ann., State Gov't §§ 20-302, 20-304, 20-
22 401, 20-402, 20-602, 20-702, 20-705, 20-707, 20-901. The Maryland General Assembly has
23 declared that "assur[ing] all persons equal opportunity" is necessary "for the protection of the
24 public safety, public health, and general welfare, for the maintenance of business and good
25 government, and for the promotion of the State's trade, commerce, and manufacturers." Md.
26 Code Ann., State Gov't § 20-602.

1 64. Rescinding DACA will harm Minnesota’s colleges and universities. Minnesota
2 law encourages attendance by DACA grantees at public universities within Minnesota. *See, e.g.*,
3 Minn. Stat. § 135A.043, .044.

4 65. The University of Minnesota has emphasized the importance of its DACA students.
5 Eric W. Kaler, *DACA Decision and the University’s Stance*, Office of the President, University of
6 Minnesota, (Sept. 5, 2017), <https://tinyurl.com/y9khzd2w>. Similarly, Minnesota State University,
7 a system of 37 colleges and universities within Minnesota, has expressed its support for DACA
8 and noted the significant contributions of DACA students to its institutions and the State
9 economy. Macalester College, a nationally ranked private liberal arts college in St. Paul,
10 Minnesota, has also issued a statement emphasizing the importance of DACA students to the
11 college community and the economy at large. President Brian Rosenberg, *Message to the*
12 *Community on the Elimination of DACA*, Macalester College (Sept. 5, 2017),
13 <https://tinyurl.com/y79yyhhr>.

14 66. Rescinding DACA will impair the ability of Minnesota universities to fulfill their
15 educational missions and provide Minnesota residents with the skills necessary to become valued
16 members of the Minnesota workforce.

17 67. One recent study found that 94 percent of the DACA grantees surveyed who were
18 in school agreed that, because of DACA, they pursued educational opportunities that they
19 previously could not.

20 68. The rescission of DACA will likely cause some grantees to leave Minnesota
21 colleges and universities because they will be unable to work to meet their educational expenses.
22 Furthermore, DACA students may determine that the cost of a college education is not a good
23 investment because they will be unable to work after graduation. Those grantees who stay in
24 school may take longer to complete their studies because of their inability to work. Future DACA
25 students may be deterred from enrolling at all. As a result, Minnesota’s universities will lose the
26 diversity, enrichment, and new perspectives that this population brings to the school community,
27 undermining the educational missions of the universities. These harms will also negatively affect
28 the tuition revenues of Minnesota universities.

1 69. A large number of Minnesota’s postsecondary graduates remain in Minnesota after
2 graduation. Of Minnesota’s 2013 postsecondary graduating class, 72 percent were employed in
3 Minnesota two years after graduation. Rescinding DACA will deprive Minnesota of the skills,
4 earning, and tax-paying potential of those graduates of Minnesota universities who would stay in
5 the State to join the State’s workforce.

6 70. The Minnesota economy will also be negatively affected by the rescission of
7 DACA. Approximately 5,442 DACA grantees are employed in Minnesota. If DACA is
8 eliminated, these grantees will lose their work authorization and the State economy will lose
9 approximately \$376.7 million in annual GDP.

10 71. In addition, rescinding DACA will negatively affect Minnesota tax revenue
11 because DACA grantees make significant contributions to Minnesota state and local taxes. One
12 study estimates that the loss of employment caused by the rescission of DACA will result in
13 Minnesota losing approximately \$6.9 million annually in state and local tax revenue.

14 72. The rescission of DACA will also adversely impact Minnesota employers.
15 Minnesota businesses and other employers have hired DACA grantees because of the skills and
16 other contributions they bring to these organizations. Various Minnesota business leaders,
17 including the Chief Executive Officer of Best Buy and the Senior Vice President of the Minnesota
18 Chamber of Commerce, signed a letter to the President stressing the importance of DACA to their
19 organizations and the economy. *Open Letter from Leaders of American Industry* (Aug. 31, 2017),
20 <https://www.businessleadersdacaletter.com/>.

21 73. Minnesota has a strong public policy interest in prohibiting discrimination on the
22 basis of race, color, or national origin. *See* Minn. Stat. § 363A.02. Minnesota has stated that such
23 discrimination “threatens the rights and privileges of the inhabitants of this state and menaces the
24 institutions and foundations of democracy.” *Id.* Minnesota recognizes an individual’s
25 opportunity to obtain employment, housing, real estate, full and equal utilization of public
26 accommodations, public services, and educational institutions without such discrimination as a
27 “civil right.” *Id.*

28

1 b. had continuously resided in the United States for at least five years
2 preceding the date of the memorandum and was present in the United States on the date of the
3 memorandum;

4 c. was currently in school, had graduated from high school, had obtained a
5 general education development certificate, or was an honorably discharged veteran of the Coast
6 Guard or Armed Forces of the United States;

7 d. had not been convicted of a felony offense, a significant misdemeanor
8 offense, multiple misdemeanor offenses, or otherwise posed a threat to national security or public
9 safety; and

10 e. was not above the age of thirty.

11 *Id.* at 1.

12 81. According to the DACA Memorandum, DACA’s purpose was to ensure that
13 DHS’s resources were appropriately allocated to individuals who were higher priorities for
14 immigration enforcement, recognizing among other things that young people brought here as
15 children lacked the intent to violate the law. DACA recognizes that there are “certain young
16 people who were brought to this country as children and know only this country as home” and
17 that immigration laws are not “designed to remove productive young people to countries where
18 they may not have lived or even speak the language.” *Id.* at 1-2.

19 **II. DACA PROVIDES NUMEROUS BENEFITS**

20 82. DACA grantees are provided with numerous benefits. Most importantly, they are
21 granted the right not to be arrested or detained based solely on their immigration status during the
22 designated period of their deferred action. *See id.* at 2-3.

23 83. DACA grantees are granted eligibility to receive employment authorization.

24 84. DACA also opened the door to allow travel for DACA grantees. For example,
25 DACA grantees were allowed to briefly depart the U.S. and legally return under certain
26 circumstances, such as to visit an ailing relative, attend funeral services for a family member,
27 seek medical treatment, or further educational or employment purposes. 8 U.S.C.

28

1 § 1182(a)(9)(B)(i); *see also* Ex. E, USCIS, Frequently Asked Questions, DHS DACA FAQs
2 (“DACA FAQs”) (Apr. 25, 2017) Q57. Travel for vacation is not permitted.

3 85. Unlike other undocumented immigrants, DACA grantees are not disqualified on
4 the basis of their immigration status from receiving certain public benefits. These include federal
5 Social Security, retirement, and disability benefits. *See* 8 U.S.C. §§ 1611(b)(2)-(3), 1621(d). As
6 a result, and in reliance on DHS’s oft-stated position that DACA and similar programs are a
7 lawful exercise of the agency’s authority, Plaintiff States have structured some schemes around
8 DACA which allow, for example, applicants to demonstrate eligibility for state programs by
9 producing documentation that they have been approved under DACA. The rescission of DACA
10 undermines such regulatory frameworks.

11 86. DACA grantees are able to secure equal access to other benefits and opportunities
12 on which Americans depend, including opening bank accounts, obtaining credit cards, starting
13 businesses, purchasing homes and cars, and conducting other aspects of daily life that are
14 otherwise often unavailable for undocumented immigrants.

15 87. DACA fundamentally changed the lives of DACA grantees. By no longer having
16 to hide in the shadows, they obtained employment, sought higher education, pursued career paths,
17 and became fully contributing members of society who paid taxes and participated in civic life.

18 88. These positive personal outcomes have also generated benefits to many sectors of
19 the Plaintiff States’ economies. Defendants’ decision to rescind DACA both terminates the
20 ability of hundreds of thousands of the States’ residents to remain part of the mainstream
21 economy and harms the States and the communities that DACA recipients are part of, including
22 large and small businesses, non-profits, and government entities where they work and do business.

23 89. The federal government has recognized that the United States “continue[s] to
24 benefit . . . from the contributions of those young people who have come forward and want
25 nothing more than to contribute to our country and our shared future.” Ex. F, Letter from Jeh
26 Charles Johnson, DHS Sec’y, to Judy Chu, U.S. House of Representatives (CA-27) (Dec. 30,
27 2016) (“Johnson Letter”).
28

1 **III. DEFENDANTS' PROMISES TO DACA GRANTEES: DACA GRANTEES RELIED ON**
2 **REPEATED ASSURANCES THAT INFORMATION WOULD BE KEPT CONFIDENTIAL**
3 **AND NOT USED FOR ENFORCEMENT**

4 90. In an effort to encourage reluctant people to apply for DACA, DHS promised
5 applicants on numerous occasions that information they provided as part of the DACA
6 application process would be “protected” from use for immigration enforcement purposes.

7 91. In fact, only “fraud or misrepresentation” in the application process or
8 “[s]ubsequent criminal activity” are grounds for revocation of DACA. Ex. G, USCIS Approval
9 Notice, Form I-821D, Consideration of Deferred Action for Childhood Arrivals.

10 92. The government’s commitment to DACA grantees was further communicated to
11 young people through its publication entitled “National Standard Operating Procedures (SOP):
12 Deferred Action for Childhood Arrivals (DACA).” This document sets forth the standards that
13 DHS applies to DACA applications with nearly 150 pages of specific instructions for granting or
14 denying deferred action.

15 93. USCIS affirmatively represented to DACA applicants that, except in limited
16 circumstances, “[i]nformation provided in [a DACA request] is protected from disclosure to
17 [Immigration and Customs Enforcement (“ICE”)] and CBP for the purpose of immigration
18 enforcement proceedings.” Ex. E, DACA FAQs Q19.

19 94. USCIS affirmatively represented to DACA applicants that, except in limited
20 circumstances, “[i]f you have submitted a request for consideration of DACA and USCIS decides
21 not to defer your case . . . your case will not be referred to ICE for purposes of removal
22 proceedings.” *Id.* at Q26.

23 95. In the exceptional circumstances under which USCIS would refer a DACA
24 applicant to ICE, USCIS has affirmatively represented to DACA applicants that “information
25 related to your family members or guardians that is contained in your request will not be referred
26 to ICE for purposes of immigration enforcement against family members or guardians.” *Id.* at
27 Q20.
28

1 96. The government’s representations that information provided by a DACA grantee
2 would not be used against him or her for later immigration enforcement proceedings are
3 unequivocal and atypical. For example, the federal government does not make the same
4 representations for participants in other similar programs, such as Temporary Protected Status.
5 *See, e.g.,* USCIS, *Temporary Protected Status*, [https://www.uscis.gov/humanitarian/temporary-](https://www.uscis.gov/humanitarian/temporary-protected-status)
6 [protected-status](https://www.uscis.gov/humanitarian/temporary-protected-status) (last updated May 24, 2017).

7 97. Similarly, USCIS affirmatively represented to employers of DACA applicants that,
8 except in limited circumstances, if they provide their employees “with information regarding his
9 or her employment to support a request for consideration of DACA This information will
10 not be shared with ICE for civil immigration enforcement purposes.” Ex. E, DACA FAQs Q76.

11 98. Additionally, in December 2016, then-Secretary of Homeland Security Jeh Charles
12 Johnson sent a letter to U.S. Representative Judy Chu (CA-27) regarding her concerns about the
13 need to protect DACA-related information, acknowledging that there were, at the time, 750,000
14 DACA grantees who had “relied on the U.S. government’s representations” about prohibitions on
15 the use of such information for immigration enforcement purposes. Johnson unequivocally
16 stated: “We believe these representations made by the U.S. government, upon which DACA
17 applicants most assuredly relied, must continue to be honored.” Ex. F, Johnson Letter at 1. DHS
18 cannot now seek to renege on these explicit assurances and promises.

19 99. These assurances were key to DACA’s success. By making repeated, unique, and
20 unequivocal representations, DHS induced individuals to rely on those representations and
21 divulge sensitive personal information to apply for DACA despite the potential risk of deportation
22 and removal, and induced employers to provide information to their employees to assist the
23 latter’s DACA applications, despite the potential risk of liability for the employers. From January
24 to March 2017 (the most recent period for which statistics are publicly available), USCIS
25 accepted 132,790 combined initial and renewal requests to grant deferred action under the DACA
26 program.

27 100. Indeed, in February 2017, then-Secretary of Homeland Security John Kelly
28 authored a DHS memorandum relating to enforcement priorities. Ex. H, Memorandum from John

1 Kelly, Sec'y of Homeland Security to Kevin McAleenan, Acting Comm'r, CPB, Enforcement of
2 the Immigration Laws to Serve the National Interest (Feb. 20, 2017) ("Enforcement Priorities
3 Memorandum"). The Enforcement Priorities Memorandum rescinded "all existing conflicting
4 directives, memoranda, or field guidance regarding the enforcement of our immigration laws and
5 priorities for removal," including prior enforcement priorities, but specifically left DACA in
6 place, unchanged.

7 **IV. DHS RESCINDS DACA WITHOUT NOTICE, COMMENT, OR ANY SUFFICIENT**
8 **EXPLANATION FOR ITS CHANGE IN POSITION**

9 101. On September 5, 2017—more than five years after first encouraging individuals to
10 participate in DACA—DHS abruptly rescinded DACA by announcing that it would immediately
11 cease accepting new applications. DHS also announced it would only issue renewals for grantees
12 whose deferrals expire before March 5, 2018, and only if they applied for renewal within one
13 month of DHS's announcement, i.e., by October 5, 2017. Ex. A, DACA Rescission
14 Memorandum.

15 102. Based on this announcement, thousands of DACA grantees will lose their work
16 authorization each day on a rolling basis beginning March 6, 2018.

17 103. The DACA Rescission Memorandum is a final, substantive agency action that
18 required DHS to comply with the notice and comment requirements set forth in 5 U.S.C.
19 § 553(b). *See Hemp Industries Ass'n v. Drug Enf't Admin.*, 333 F.3d 1082, 1087 (9th Cir. 2003).
20 But the agency provided no opportunity for notice and comment before adopting this rule.

21 104. By failing to comply with these notice and comment requirements, DHS deprived
22 Plaintiff States, their agencies and residents, and all other interested parties, of the opportunity to
23 present important evidence to the agency about the DACA program.

24 105. In the DACA Rescission Memorandum, DHS did not sufficiently explain its
25 abrupt departure from prior agency statements regarding the necessity and legality of DACA.
26 The single paragraph in the DACA Rescission Memorandum explaining the rationale behind this
27 sudden shift merely asserts that DACA "should be terminated" based on consideration of two
28 factors: (1) the appellate rulings in a case regarding a 2014 memorandum from then-DHS

1 Secretary Johnson that expanded DACA and created a new program, Deferred Action for Parents
2 of Americans and Lawful Permanent Residents (“DAPA”), *Texas v. United States*, 809 F.3d 134
3 (5th Cir. 2015), *aff’d by an equally divided court sub nom. United States v. Texas*, ___ U.S. ___,
4 136 S. Ct. 2271 (2016); and (2) a September 4, 2017, letter from Attorney General Jefferson B.
5 Sessions arguing that DACA was “unconstitutional” and was invalid for the same reasons the
6 Fifth Circuit struck down DAPA in the *Texas* case. Ex. I, Letter from Jefferson B. Sessions to
7 Duke (Sept. 4, 2017) (“Sessions Letter”).

8 106. DHS ignored obvious differences between DACA and DAPA when reaching this
9 conclusion. Further, DHS ignored the fact that the legality of DACA was never directly at issue
10 in the *Texas* case, and not ruled on by the Fifth Circuit. The DACA Rescission Memorandum
11 also erroneously implied that the Supreme Court’s summary affirmance of the *Texas* decision by
12 an equally divided court has precedential effect. The DACA Rescission Memorandum cannot
13 survive judicial review under the APA when it is predicated on an incorrect legal premise. *See,*
14 *e.g., Massachusetts v. EPA*, 549 U.S. 497, 532-535 (2007); *Safe Air For Everyone v. U.S. EPA*,
15 488 F.3d 1088, 1101 (9th Cir. 2007).

16 107. Notably, in the DACA Rescission Memorandum, DHS did not offer its own
17 considered legal views, and neither the Sessions Letter nor the DACA Rescission Memorandum
18 addressed any of the findings articulated in support of the DACA Memorandum or explained why
19 the agency is so sharply departing from both its prior legal position that programs like DACA are
20 lawful and guidance from the U.S. Department of Justice Office of Legal Counsel that supported
21 DACA’s lawfulness. Ex. J, Memorandum Opinion, The Department of Homeland Security’s
22 Authority to Prioritize Removal of Certain Aliens Unlawfully Present in the United States and to
23 Defer Removal of Others, 38 Op. O.L.C. ___ (Nov. 19, 2014).

24 108. Other than the above conclusory assertions of DACA’s legal infirmity, DHS failed
25 to offer any explanation of why it believed that rescinding DACA was warranted. The DACA
26 Rescission Memorandum did not even address the rationale that DHS expressed in 2012 in the
27 DACA Memorandum regarding the use of prosecutorial discretion to focus resources and
28

1 priorities on lowest priority individuals, much less offer any explanation as to why those factors
2 have changed so radically as to justify rescinding DACA now.

3 109. Hours after the DACA program was rescinded, purportedly due to its illegality,
4 President Trump tweeted that, if Congress fails to provide similar protections through legislation,
5 “I will revisit this issue!” Ex. K, Donald J. Trump (@realDonaldTrump), Twitter (Sept. 5, 2017,
6 5:38 p.m.). This statement suggests that he believes he has authority to reinstate some or all of
7 the DACA program without Congressional authorization, further undermining DHS’s ostensible
8 rationale for rescinding.

9 **V. TRUMP ADMINISTRATION STATEMENTS FURTHER DEMONSTRATE ILLEGALITY OF**
10 **DACA RESCISSION**

11 110. Defendants’ stated justification for rescinding DACA—that is, its purported legal
12 infirmity—has been contravened by a number of their own statements regarding undocumented
13 immigrants, many of which are false and/or misleading, and as such provide an impermissible
14 basis for rescinding DACA. In doing so, Defendants abused their discretion and acted in an
15 arbitrary and capricious manner in violation of the APA.

16 111. On September 5, 2017, just prior to Attorney General Sessions’s announcement
17 rescinding the DACA program, President Trump tweeted, “Congress, get ready to do your job –
18 DACA!” Donald J. Trump, Twitter (Sep. 5, 2017 5:04 a.m.). *Id.* at 2. A few minutes thereafter,
19 President Trump retweeted a statement that “We are a nation of laws. No longer will we
20 incentivize illegal immigration. LAW AND ORDER! #MAGA,” and “Make no mistake, we are
21 going to put the interest of AMERICAN CITIZENS FIRST!” Donald J. Trump, Twitter (Sep. 5,
22 2017.). *Id.* at 3. The DACA Rescission Memorandum makes no reference to such interests to
23 explain the agency’s action.

24 112. On the same day, President Trump issued a written statement on the rescission of
25 the DACA program that stated: “The temporary implementation of DACA . . . helped spur a
26 humanitarian crisis—the massive surge of unaccompanied minors from Central America
27 including, in some cases, young people who would become members of violent gangs throughout
28 our country, such as MS-13. Only by the reliable enforcement of immigration law can we

1 produce safe communities, a robust middle class, and economic fairness for all Americans.” Ex.
2 L, Statement from President Donald J. Trump (Sept. 5, 2017). The DACA Rescission
3 Memorandum makes no reference to unaccompanied minors, public safety concerns, or economic
4 interests to explain the agency’s action.

5 113. During his announcement rescinding the DACA program, Attorney General
6 Sessions justified the decision by stating that the DACA program “contributed to a surge of
7 unaccompanied minors on the southern border that yielded terrible humanitarian consequences. It
8 also denied jobs to hundreds of thousands of Americans by allowing those same jobs to go to
9 illegal aliens.” Ex. M, Attorney General Sessions Delivers Remarks on DACA (Sept. 5, 2017).
10 Again, the DACA Rescission Memorandum makes no reference to humanitarian or economic
11 interests to explain the agency’s action.

12 114. Attorney General Sessions, while a United States Senator from Alabama, made
13 similar statements regarding undocumented individuals seeking employment (“I’m a minority in
14 the U.S. Senate ... in questioning whether we should reward people who came into the country
15 illegally with jobs that Americans would like to do.”). Seung Min Kim, *The Senate’s Anti-*
16 *Immigration Warrior*, Politico (Mar. 5, 2015) <https://tinyurl.com/znog262>. That same year, then-
17 senator Sessions praised the 1924 Johnson-Reed Act, whose namesake, Representative Albert
18 Johnson, used racial theory as the basis for its severe immigration restrictions, which included
19 barring Asian immigration entirely. *See* Interview by Stephen Bannon with Sen. Jefferson B.
20 Sessions, Briartbar News (Oct. 5, 2015), audio available at <https://tinyurl.com/y8gbj6vk>; *see also*
21 Adam Serwer, *Jeff Sessions’s Unqualified Praise for a 1924 Immigration Law*, The Atlantic (Jan.
22 10, 2017), <https://tinyurl.com/ybzd096u>.

23 115. These statements by the Trump Administration in the context of its decision to
24 rescind DACA—that DACA created a surge in illegal immigration, and that DACA grantees take
25 jobs away from other American workers and weaken the middle class—suggest that the DACA
26 Rescission Memorandum’s cursory statements regarding the legality of DACA do not set forth
27 the agency’s true rationale for rescission. The APA requires governmental agencies to publicly
28 state a sufficient justification for their actions, particularly where, as here, Plaintiff States, as well

1 as their agencies, institutions, and residents, have relied upon DHS's prior statements to their
2 detriment. *See Perez v. Mortg. Bankers Ass'n*, 135 S. Ct. 1199, 1209 (2015); *FCC v. Fox*
3 *Television Stations*, 556 U.S. 502, 515 (2009). Defendants have failed to do so.

4 116. Moreover, these statements are wholly controverted by available evidence
5 demonstrating the contributions of DACA grantees to Plaintiff States and to the United States as a
6 whole, as explained above. *See Motor Veh. Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins.*
7 *Co.*, 463 U.S. 29, 43 (1983) (an agency rule is arbitrary and capricious when the explanation
8 offered by the agency "runs counter to the evidence before the agency").

9 **VI. FORMER DACA GRANTEES ARE AT RISK OF IMMIGRATION ENFORCEMENT BASED**
10 **ON INFORMATION THEY ENTRUSTED TO DEFENDANTS AS PART OF DACA**
11 **APPLICATIONS**

12 117. In rescinding the DACA Memorandum, Defendants have created a confusing and
13 threatening situation for Plaintiff States and their residents, including for DACA grantees who
14 will soon begin losing their DACA protection under the DACA Rescission Memorandum.

15 118. The DACA application form requires applicants to provide a wealth of personal,
16 sensitive information, including the applicant's lack of lawful immigration status, address, Social
17 Security number, and the name and location of his or her school, if applicable. Ex. N, USCIS,
18 Form I-821D, Consideration of Deferred Action for Childhood Arrivals. The application process
19 also required that all DACA applicants undergo biographic and biometric background checks,
20 which includes fingerprinting, before USCIS considered their DACA requests. DACA applicants
21 provided this information based on Defendants' representations about the terms of the program
22 and the manner in which information would be protected.

23 119. Former DACA grantees now face a real risk of having the sensitive information
24 that they provided to DHS in their applications or renewal requests (for example, fingerprints)
25 used against them for future immigration enforcement proceedings. This, despite the repeated
26 assurances discussed above that Defendants would do no such thing.

27 120. The DACA Rescission Memorandum does not provide adequate assurances that
28 this information will not be used for enforcement purposes following DACA's termination.

1 121. The former FAQs to the DACA Memorandum—government representations under
2 which all DACA grantees submitted their applications—unequivocally stated: “Information
3 provided in this request is **protected** from disclosure to ICE and CBP for the purpose of
4 immigration enforcement proceedings,” with limited exceptions where “the requestor meets the
5 criteria for the issuance of a Notice To Appear [“NTA”] or a referral to ICE under the [NTA]
6 criteria” (emphasis added). Ex. E, DACA FAQs Q19.

7 122. The Rescission FAQs that DHS produced to accompany the DACA Rescission
8 Memorandum provide inadequate assurances that information will be protected, and state:
9 “**Generally**, information provided in DACA requests will not be **proactively provided** to other
10 law enforcement entities (including ICE and CBP) for the purpose of immigration enforcement
11 proceedings unless the requestor poses a risk to national security or public safety, or meets the
12 criteria for the issuance of a Notice To Appear [“NTA”] or a referral to ICE under the [NTA]
13 criteria.” Ex. B, Rescission FAQs Q8 (emphasis added).

14 123. The addition of the qualifier “generally”—devoid of any apparent criteria for when
15 DHS would deviate from the “general” policy of non-referral to ICE—and removal of the
16 unequivocal statement that information is “protected” strongly suggests that, in fact, DHS now
17 views DACA grantees’ sensitive information as available to ICE for previously prohibited
18 purposes, including immigration enforcement.

19 124. DACA applicants are also required to provide DHS with a detailed history of their
20 criminal arrests and convictions, including all misdemeanors, however minor.

21 125. DACA applicants have relied in good faith on DHS’s promises not to use the
22 information against them and forthrightly informed DHS of minor criminal offenses of which
23 they had been convicted (or for which they were only arrested, regardless of whether they were
24 ultimately convicted). Individuals who applied for DACA with only minor criminal offenses
25 could gain approval under DACA nonetheless because DHS did not regard them as a threat or bar
26 to DACA, since they were of the very lowest enforcement priority. They are now under even
27 more threat than other DACA grantees.

28

1 126. President Trump also has taken affirmative steps to set the table for eliminating
2 privacy protections applicable to DACA data. In January 2017, President Trump issued an
3 Executive Order entitled “Enhancing Public Safety in the Interior of the United States,” directing
4 all agencies, including DHS, to “ensure that their privacy policies exclude persons who are not
5 United States citizens or lawful permanent residents from the protections of the Privacy Act
6 regarding personally identifiable information.” Ex. O, Exec. Order No. 13,768, 82 Fed. Reg.
7 8799 § 14 (Jan. 25, 2017). DHS has confirmed that its new privacy policy, adopted in response to
8 the Executive Order, “permits the sharing of information about immigrants and non-immigrants
9 with federal, state, and local law enforcement.” Ex. P, DHS Privacy Policy 2017-01 Questions &
10 Answers No. 6 (Apr. 27, 2017).

11 127. Until February 2017, DHS’s enforcement priorities were generally consistent with
12 the DACA Memorandum, prioritizing people who had committed felonies, serious
13 misdemeanors, or multiple less serious misdemeanors, and making DACA grantees (and others
14 similarly situated) the lowest enforcement priority.

15 128. The February 2017 Enforcement Priorities Memorandum substantively changed
16 policy with respect to how DHS treats individuals with criminal history and radically broadened
17 the categories of people who are to be prioritized for removal. Whereas DHS previously
18 prioritized individuals who had been convicted of serious criminal offenses, the new categories
19 now include, among others, those who:

- 20 (1) Have been convicted of any criminal offense;
21 (2) Have been charged with any criminal offense that has not been resolved; [and]
22 (3) Have committed acts which constitute a chargeable criminal offense[.]

23 Ex. H, Enforcement Priorities Memorandum at 2.

24 Thus, people who have not been convicted of, but only charged with, **any** criminal offense
25 (or even never charged, but somehow determined to have committed an act constituting a
26 chargeable criminal offense), no matter how low-level, are now prioritized for immigration
27 enforcement. Because any offense triggers priority enforcement, this includes various lower level
28

1 offenses that DACA applicants were required to disclose but that did not make them ineligible for
2 DACA.

3 129. The sweeping Enforcement Priorities Memorandum replaced DHS's previous,
4 more targeted enforcement priorities. Although this memorandum specifically exempted the
5 DACA program from these new priorities, it is not clear whether or how they apply to DACA
6 grantees and those who lose their protections on a rolling basis in light of the DACA Rescission
7 Memorandum.

8 130. Given these developments—particularly the Enforcement Priorities Memorandum
9 significantly broadening enforcement priorities and the Rescission FAQs changing DHS's prior
10 policy to shield DACA applicants' information from ICE—the criteria under which current and
11 former DACA grantees with minor criminal histories are considered for referral to ICE have
12 substantively changed. These individuals are now in danger of being placed in removal
13 proceedings based on information they provided in reliance on DHS's promises.

14 131. These changes signal Defendants' intent to renege on their assurances and
15 promises and subject DACA applicants to immigration enforcement. At the very least, these
16 changes create confusion about the new risk faced by current and former DACA grantees and
17 former applicants, particularly those whose DACA protection is ending under the DACA
18 Rescission Memorandum.

19 132. Indeed, on June 13, 2017, in testimony before the House Appropriations
20 Committee's Subcommittee on Homeland Security, Acting ICE Director Thomas Homan stated
21 as to "every immigrant in the country without papers," that they "should be uncomfortable. You
22 should look over your shoulder. And you need to be worried." *Immigration and Customs*
23 *Enforcement & Customs and Border Protection FY18 Budget Request Before the H. Comm. on*
24 *Appropriations*, 115th Cong. (2017) 2017 WLNR 18737622 (emphasis added).

25 133. CNN reported that Homan "doubled down" on these statements in an interview
26 later that week, quoting him to state that "'Trump and his administration have made clear that any
27 undocumented immigrant could be arrested and face deportation proceedings at any time, unless
28 they have *current and valid* protection under DACA.'" Tal Kopan, *ICE Director: Undocumented*

1 *Immigrants 'Should Be Afraid,'* CNN (June 6, 2017), <https://tinyurl.com/y88h6zuo> (quoting
2 Acting ICE Director Thomas Homan) (emphasis added).

3 134. On April 19, 2017, Attorney General Sessions stated in an interview on Fox News'
4 "Happening Now" program—in response to a question regarding the deportation of a DACA
5 grantee—that "[e]verybody in the country illegally is subject to being deported, so people come
6 here and they stay here a few years and somehow they think they are not subject to being
7 deported—well, they are . . . we can't promise people who are here unlawfully that they aren't
8 going to be deported.'" Adam Shaw, Sessions Defends Immigration Policies After Reported
9 'DREAMer' Deportation, Fox News (Apr. 19, 2017), <https://tinyurl.com/kym82ce> (quoting
10 Attorney General Jefferson B. Sessions).

11 135. Moreover, current litigation in federal court in Georgia demonstrates that even
12 before the DACA Rescission Memorandum, DHS was terminating individuals' DACA due to the
13 Enforcement Priorities Memorandum's changed priorities. In that case, *Colotl v. Kelly*, DHS
14 admitted on the record that Ms. Colotl had met and continued to meet all five DACA
15 criteria. Order [on Preliminary Injunction Motion], *Colotl Coyotl v. Kelly*, No. 17-1670 (N.D.
16 Ga., June 12, 2017) ECF No. 28 at 17-18. The only reason for the change in DHS's decision was
17 that—despite the previous assurances by DHS that DACA-related history would not be used
18 against applicants and with no change in Ms. Colotl's criminal history since her application—she
19 had become an enforcement priority under the Enforcement Priorities Memorandum "[d]ue to
20 [her] criminal history." *Id.* at 6, 18. That criminal history, stemming from a 2010 arrest for
21 allegedly blocking traffic while waiting for a parking space, had been disclosed on Ms. Colotl's
22 initial DACA application and subsequent renewal requests, each of which were approved until the
23 denial based solely on the Enforcement Priorities Memorandum. The court ruled in favor of Ms.
24 Colotl, granting her request for a preliminary injunction and holding that since DACA was still in
25 effect at the time DHS sought to revoke her DACA, and DHS had established procedures with
26 respect to notice and termination, she was likely to prevail on her claim that DHS violated the
27 APA by failing to comply with its own administrative processes and procedures. *Id.* at 30-33.

28

1 136. Defendants' conduct in inducing DACA applicants to provide sensitive personal
2 information and then removing that protection impacts all DACA grantees, not just those with
3 minor criminal histories. DACA applicants were not only required to provide information that
4 could be used to easily find and arrest them; they were required to undergo fingerprinting
5 regardless of criminal history. DACA grantees are now at risk that this type of biometric
6 information will be used against them for immigration enforcement purposes.

7 **VII. DACA GRANTEES CAN NO LONGER TRAVEL OUTSIDE THE COUNTRY**

8 137. Under DACA, DACA grantees were allowed to apply to receive authorization
9 from USCIS for "advance parole" to travel outside of the United States by submitting Form I-
10 131, Application for Travel Document and paying a filing fee of \$575. USCIS approves advance
11 parole on a case-by-case basis.

12 138. USCIS affirmatively represented to DACA applicants that, if USCIS decides to
13 defer action, the applicant may request advance parole to travel outside the United States for
14 educational, employment, or humanitarian purposes. Ex. E, DACA FAQs Q57.

15 139. The DACA Rescission Memorandum terminated the ability of DACA grantees to
16 travel outside the United States during their renewed benefit period, including for those who have
17 already submitted requests for advance parole in reliance on DHS's prior representations that
18 advance parole was available to them. Under the DACA Rescission Memorandum, DHS is now
19 categorically prohibited from granting advance parole for DACA grantees and "[w]ill not approve
20 any new Form I-131 applications for advance parole under standards associated with the DACA
21 program[.]" Ex. A, DACA Rescission Memorandum. In addition, DHS "[w]ill administratively
22 close all pending Form I-131 applications for advance parole filed under standards associated
23 with the DACA program, and will refund all associated fees." *Id.* Those who have pending
24 applications are therefore denied advance parole without any assessment being conducted using
25 the criteria set forth previously by DHS for advance parole requests.

26 140. Many DACA grantees have applied for and received advance parole from USCIS
27 and have paid the required fees. The DACA Rescission Memorandum states that DHS will
28 "generally" honor the previously approved applications for advance parole, clearly signaling that

1 sometimes it will not. Many of those DACA grantees who relied on USCIS authorization of
2 advance parole are currently travelling abroad visiting family or for other authorized
3 reasons. Given DHS’s unambiguous shift in policy towards prohibiting the case-by-case
4 determination of advance parole for other DACA grantees, DACA grantees with approved
5 advance parole now face uncertainty and risk of not being able to return to their homes in the
6 United States.

7 **FIRST CAUSE OF ACTION**

8 **(Violation of Fifth Amendment – Due Process – Information Use)**

9 141. Plaintiff States re-allege and incorporate by reference the allegations set forth in
10 each of the preceding paragraphs of this Complaint.

11 142. The Due Process Clause of the Fifth Amendment requires that immigration
12 enforcement actions taken by the federal government be fundamentally fair.

13 143. Given the federal government’s representations about the allowable uses of
14 information provided by DACA applicants, Defendants’ change in policy on when to allow the
15 use of information contained in DACA applications and renewal requests for purposes of
16 immigration enforcement, including identifying, apprehending, detaining, or deporting non-
17 citizens, is fundamentally unfair.

18 144. Through their actions above, Defendants have violated the due process guarantee
19 of the Fifth Amendment.

20 145. Defendants’ violation causes ongoing harm to Plaintiff States and their residents.

21 **SECOND CAUSE OF ACTION**

22 **(Violation of Administrative Procedure Act – 5 U.S.C. § 553)**

23 146. Plaintiff States re-allege and incorporate by reference the allegations set forth in
24 each of the preceding paragraphs of this Complaint.

25 147. The APA requires the Court to “hold unlawful and set aside agency action” taken
26 “without observance of procedure required by law.” 5 U.S.C. § 706(2)(D).
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1 5. Declare that Defendants are equitably estopped from using information provided
2 to Defendants pursuant to DACA for immigration enforcement purposes except as previously
3 authorized under the DACA Memorandum;

4 6. Enjoin Defendants from rescinding DACA or engaging in any action to frustrate
5 its full and continued implementation;

6 7. Enjoin Defendants from using information obtained in any DACA application or
7 renewal request to identify, apprehend, detain, or deport any DACA applicant or member of any
8 DACA applicant’s family, or take any action against a DACA applicant’s current or former
9 employer; and

10 8. Award such additional relief as the interests of justice may require.

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12 Dated: September 11, 2017

Respectfully Submitted,

13
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16 MICHAEL L. NEWMAN
17 Supervising Deputy Attorney General

18 /s/ James F. Zahradka II
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15
 16 **UNITED STATES DISTRICT COURT**
 17 **NORTHERN DISTRICT OF CALIFORNIA**
SAN FRANCISCO DIVISION

18 THE REGENTS OF UNIVERSITY OF
 CALIFORNIA AND JANET
 19 NAPOLITANO, in her official capacity as
 20 President of the University of California,

21 Plaintiffs,

22 **vs.**

23 UNITED STATES DEPARTMENT OF
 HOMELAND SECURITY and ELAINE
 24 DUKE, in her official capacity as Acting
 Secretary of the Department of Homeland
 Security,
 25

26 Defendants.

Case No. C 17-05211 WHA

**[PROPOSED] ORDER GRANTING
 ADMINISTRATIVE MOTION OF CITY OF
 SAN JOSE TO CONSIDER WHETHER
 CASES SHOULD BE RELATED**

Complaint Filed: September 14, 2017
 No Trial Date

1 On September 18, 2017, non-party City of San Jose (“San Jose”) filed an Administrative
2 Motion to Consider Whether Cases Should Be Related under Civil Local Rule 3-12. Having
3 considered the papers and pleadings on file, the Court GRANTS the Administrative Motion to
4 Consider Whether Cases Should Be Related and ORDERS that the following cases be related:

- 5 • *The Regents of the University of California et al. v. United States Department of*
6 *Homeland Security*, Case No. 3:17-cv-05211-WHA
- 7 • *State of California, et al. v. Department of Homeland Security, et al.*, Case No.
8 3:17-cv-05235-WHA
- 9 • *City of San Jose v. Trump, et al.*, Case No. 5:17-cv-05329-HRL

10 **IT IS SO ORDERED**

11 Dated:

12 _____
13 HONORABLE WILLIAM ALSUP
14 UNITED STATES DISTRICT COURT JUDGE
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