

Consolidated Case Nos. 18-15068, 18-15069, 18-15070,  
18-15071, 18-15072, 18-15128, 18-15133, 18-15134

---

---

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

---

REGENTS OF THE UNIVERSITY OF CALIFORNIA, et al.,

Plaintiffs-Appellees,

v.

U.S. DEPARTMENT OF HOMELAND SECURITY, et al.,

Defendants-Appellants.

---

On Appeal from the United States District Court  
for the Northern District of California

---

APPELLANTS' EXCERPTS OF RECORD  
VOLUME II OF III

---

CHAD A. READLER  
*Acting Assistant Attorney General*

ALEX G. TSE  
*Acting United States Attorney*

HASHIM M. MOOPPAN  
*Deputy Assistant Attorney General*

MARK B. STERN  
ABBY C. WRIGHT  
THOMAS PULHAM  
*Attorneys, Appellate Staff  
Civil Division  
U.S. Department of Justice  
950 Pennsylvania Avenue NW  
Washington, DC 20530  
(202) 514-2000*

---

---

## TABLE OF CONTENTS

	<u>Page</u>
Notice of Appeal .....	64
Complaint, Regents of the University of California v. U.S. Department of Homeland Security, No. 3:17-cv-5211 .....	69
Complaint, State of California v U.S. Department of Homeland Security, No. 3:17-cv-5235 .....	88
Exhibit A: Memorandum from Elaine C. Duke, Acting Secretary of Homeland Security, Re: Rescission of Deferred Action for Childhood Arrivals (DACA) (Sept. 5, 2017) .....	125
Exhibit B: Department of Homeland Security, Frequently Asked Questions: Rescission of Deferred Action for Childhood Arrivals (DACA) (Sept. 5, 2017).....	133
Exhibit D: Memorandum from Janet Napolitano, Secretary of Homeland Security, Re: Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children (June 15, 2012) .....	140
Exhibit E: Department of Homeland Security, Frequently Asked Questions: Deferred Action for Childhood Arrivals (DACA) (updated on April 25, 2017) .....	144
Exhibit H: Memorandum from John Kelly, Secretary of Homeland Security, Re: Enforcement of the Immigration Laws to Serve the National Interest (Feb. 20, 2017) .....	168
Exhibit I: Letter from Jefferson B. Sessions, Attorney General, Re: Rescission of Deferred Action for Childhood Arrivals .....	175
Complaint, City of San Jose v. Trump, No. 3:17-cv-5329 .....	177
Complaint, Garcia v. United States, No. 3:17-cv-5380 .....	195
Complaint, County of Santa Clara v. Trump, No. 3:17-cv-5813 .....	241

Memorandum from Jeh Charles Johnson, Secretary of Homeland Security, Re:  
Exercising Prosecutorial Discretion with Respect to Individuals Who  
Came to the United States as Children and with Respect to Certain  
Individuals Who Are the Parents of U.S. Citizens or Permanent  
Residents (Nov. 20, 2014) ..... 269

Letter from Ken Paxton, Attorney General of Texas, et al., Re: Texas, et al. v.  
United States, et al., No. 1:14-cv-00254 (S.D. Tex.) (June 29, 2017) ..... 274

1 CHAD A. READLER  
 Acting Assistant Attorney General  
 2 ALEX G. TSE  
 Acting United States Attorney  
 3 BRETT A. SHUMATE  
 Deputy Assistant Attorney General  
 4 JENNIFER D. RICKETTS  
 Branch Director  
 5 JOHN R. TYLER  
 Assistant Branch Director  
 6 BRAD P. ROSENBERG (DC Bar #467513)  
 Senior Trial Counsel  
 7 STEPHEN M. PEZZI (DC Bar #995500)  
 KATE BAILEY (MD Bar #1601270001)  
 8 Trial Attorneys  
 9 United States Department of Justice  
 Civil Division, Federal Programs Branch  
 10 20 Massachusetts Avenue, NW  
 11 Washington, DC 20530  
 Telephone: (202) 514-3374  
 12 Facsimile: (202) 616-8460  
 13 E-mail: brad.rosenberg@usdoj.gov  
 14

15 *Attorneys for Defendants*

16 **UNITED STATES DISTRICT COURT FOR THE**  
17 **NORTHERN DISTRICT OF CALIFORNIA**

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

21 Plaintiffs,

22 v.

23 UNITED STATES DEPARTMENT OF  
 24 HOMELAND SECURITY and KIRSTJEN  
 M. NIELSEN, in her official capacity as the  
 25 Secretary of Homeland Security,

26 Defendants.

No. 3:17-cv-05211-WHA

**NOTICE OF APPEAL**

Judge: Honorable William Alsup

27  
28  
**NOTICE OF APPEAL**  
All DACA Cases (Nos. 17-5211, 17-5235, 17-5329, 17-5380, 17-5813)

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

STATE OF CALIFORNIA, STATE OF  
MAINE, STATE OF MARYLAND, and  
STATE OF MINNESOTA,  
  
Plaintiffs,  
  
v.  
  
U.S. DEPARTMENT OF HOMELAND  
SECURITY, KIRSTJEN M. NIELSEN, in her  
official capacity as Secretary of Homeland  
Security, and the UNITED STATES OF  
AMERICA,  
  
Defendants.

No. 3:17-cv-05235-WHA

CITY OF SAN JOSE, a municipal  
corporation,  
  
Plaintiff,  
  
v.  
  
DONALD J. TRUMP, President of the United  
States, in his official capacity, KIRSTJEN M.  
NIELSEN, in her official capacity as  
Secretary of Homeland Security, and the  
UNITED STATES OF AMERICA,  
  
Defendants.

No. 3:17-cv-05329-WHA

DULCE GARCIA, MIRIAM GONZALEZ  
AVILA, SAUL JIMENEZ SUAREZ,  
VIRIDIANA CHABOLLA MENDOZA,  
NORMA RAMIREZ, and JIRAYUT  
LATTHIVONGSKORN,  
  
Plaintiffs,  
  
v.  
  
UNITED STATES OF AMERICA,  
DONALD J. TRUMP, in his official capacity

No. 3:17-cv-05380-WHA

**NOTICE OF APPEAL**  
**All DACA Cases (Nos. 17-5211, 17-5235, 17-5329, 17-5380, 17-5813)**

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

as President of the United States, U.S. DEPARTMENT OF HOMELAND SECURITY, and KIRSTJEN M. NIELSEN, in her official capacity as Secretary of Homeland Security,  
  
Defendants.

COUNTY OF SANTA CLARA and SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 521,  
  
Plaintiffs,  
  
v.  
  
DONALD J. TRUMP, President of the United States, in his official capacity; JEFFERSON BEAUREGARD SESSIONS, Attorney General of the United States, in his official capacity; KIRSTJEN M. NIELSEN, Secretary of Homeland Security, in her official capacity; and the U.S. DEPARTMENT OF HOMELAND SECURITY,  
  
Defendants.

No. 3:17-cv-05813-WHA

**NOTICE OF APPEAL**  
**All DACA Cases (Nos. 17-5211, 17-5235, 17-5329, 17-5380, 17-5813)**

1 **NOTICE OF APPEAL**

2 PLEASE TAKE NOTICE that all Defendants in the above-captioned matters hereby  
3 appeal to the United States Court of Appeals for the Ninth Circuit from this Court's January 9,  
4 2018 Order Denying FRCP 12(b)(1) Dismissal and Granting Provisional Relief<sup>1</sup> and this Court's  
5 January 12, 2018 Order Granting in Part Defendants' Motion to Dismiss Under FRCP 12(b)(6).<sup>2</sup>  
6 Those Orders are docketed in each of these five cases as follows:

- 7 • *Regents of the University of California, et al. v. United States Department of Homeland*  
8 *Security, et al.*, No. 3:17-cv-05211-WHA, ECF Nos. 234, 239.  
9 • *State of California, et al. v. U.S. Department of Homeland Security, et al.*, No. 3:17-cv-  
10 05235-WHA, ECF Nos. 83, 88.  
11 • *City of San Jose v. Donald J. Trump, et al.*, No. 3:17-cv-05329-WHA, ECF Nos. 66, 71.  
12 • *Dulce Garcia, et al. v. United States of America, et al.*, No. 3:17-cv-05380-WHA,  
13 ECF Nos. 60, 65.  
14 • *County of Santa Clara, et al. v. Donald J. Trump, et al.*, No. 3:17-cv-05813-WHA,  
15 ECF Nos. 48, 53.

16 This appeal includes all prior orders and decisions that merge into the Court's January 9, 2018  
17 and January 12, 2018 Orders.

18  
19  
20  
21  
22  
23  
24  
25  
26 <sup>1</sup> While the January 9, 2018 Order is immediately appealable to the extent it grants provisional  
27 relief, all Defendants are also appealing the Order to the extent it denies Defendants' motion to  
dismiss. That aspect of the appeal is being taken pursuant to 28 U.S.C. § 1292(b).

28 <sup>2</sup> The January 12, 2018 Order is being appealed pursuant to 28 U.S.C. § 1292(b).

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

Dated: January 16, 2018

Respectfully submitted,  
  
CHAD A. READLER  
Acting Assistant Attorney General  
  
ALEX G. TSE  
Acting United States Attorney  
  
BRETT A. SHUMATE  
Deputy Assistant Attorney General  
  
JENNIFER D. RICKETTS  
Branch Director  
  
JOHN R. TYLER  
Assistant Branch Director  
  
/s/ Brad P. Rosenberg  
BRAD P. ROSENBERG (DC Bar #467513)  
Senior Trial Counsel  
  
STEPHEN M. PEZZI (DC Bar #995500)  
KATE BAILEY (MD Bar #1601270001)  
Trial Attorneys  
United States Department of Justice  
Civil Division, Federal Programs Branch  
20 Massachusetts Avenue N.W.  
Washington, DC 20530  
Phone: (202) 514-3374  
Fax: (202) 616-8460  
Email: brad.rosenberg@usdoj.gov  
  
*Attorneys for Defendants*

**NOTICE OF APPEAL**  
**All DACA Cases (Nos. 17-5211, 17-5235, 17-5329, 17-5380, 17-5813)**



1 Jeffrey M. Davidson (Bar No. 248620)  
2 Alan Bersin (Bar No. 63874)  
3 COVINGTON & BURLING LLP  
4 One Front Street, 35th Floor  
5 San Francisco, CA 94111-5356  
6 Telephone: + 1 (415) 591-6000  
7 Facsimile: + 1 (415) 591-6091  
8 Email: jdavids@cov.com,  
9 abersin@cov.com

6 Lanny A. Breuer  
7 Mark H. Lynch  
8 Alexander A. Berengaut  
9 Megan A. Crowley  
10 Ashley Anguas Nyquist  
11 Ivano M. Ventresca  
12 (*pro hac vice* applications forthcoming)  
13 COVINGTON & BURLING LLP  
14 One CityCenter  
15 850 Tenth Street, NW  
16 Washington, DC 20001-4956  
17 Telephone: + 1 (202) 662-6000  
18 Facsimile: +1 (202) 662-6291  
19 E-mail: lbreuer@cov.com, mlynch@cov.com,  
20 aberengaut@cov.com, mcrowley@cov.com,  
21 anyquist@cov.com, iventresca@cov.com

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

[Additional Counsel Listed on Next Page]

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

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

Plaintiffs,

v.

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

Defendants.

Charles F. Robinson (Bar No. 113197)  
Margaret Wu (Bar No. 184167)  
Julia Friedlander (Bar No. 165767)  
Sonya Sanchez (Bar No. 247541)  
Norman Hamill (Bar No. 154272)  
Harpreet Chahal (Bar No. 233268)  
Michael Troncoso (Bar No. 221180)  
University of California  
Office of the General Counsel  
1111 Franklin Street, 8th Floor  
Oakland, CA 94607-5200  
Telephone: + 1 (510) 987-9800  
Facsimile: + 1 (510) 987-9757  
Email: charles.robinson@ucop.edu

Civil Case No.:

**COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

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

**ADDITIONAL COUNSEL OF RECORD**

Mónica Ramírez Almadani (Bar No. 234893)  
COVINGTON & BURLING LLP  
1999 Avenue of the Stars  
Los Angeles, CA 90067-4643  
Telephone: + 1 (424) 332-4800  
Facsimile: + (424) 332-4749  
Email: mralmadani@cov.com

Erika Douglas (Bar No. 314531)  
COVINGTON & BURLING LLP  
333 Twin Dolphin Drive, Suite 700  
Redwood Shores, CA 94061-1418  
Telephone: + 1 (650) 632-4700  
Facsimile: + 1 (650) 632-4800  
Email: edouglas@cov.com

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.  
28

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 48. As a result of the Rescission, DACA students will be unable to plan for the future, apply  
2 for and obtain internships and certain financial aid and scholarships, study abroad, or work to pay their  
3 tuition and other expenses. Students subject to these hardships may choose to withdraw from UC  
4 altogether.

5 49. DACA recipients also will be at risk of removal. Indeed, in a set of “Talking Points”  
6 released the same day of the Rescission, DHS “urge[d] DACA recipients to use the time remaining on  
7 their work authorizations to prepare for and arrange their departure from the United States.” *See*  
8 Talking Points—DACA Rescission. Removal will self-evidently result in the loss of employment,  
9 education, and relationships with others in the United States.

10 **FIRST CLAIM FOR RELIEF**  
11 **Agency Action That Is Arbitrary and Capricious,**  
12 **An Abuse of Discretion, and Otherwise Not In Accordance with Law**  
13 **in Violation of 5 U.S.C. § 706(2)(A)**

14 50. The above paragraphs are incorporated herein by reference.

15 51. DHS is an agency subject to the requirements of the APA. 5 U.S.C. § 701(b)(1).

16 52. Under 5 U.S.C. § 706(2), courts shall hold unlawful and set aside agency action that is  
17 arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to  
18 constitutional right, power, privilege, or immunity; in excess of statutory jurisdiction, authority, or  
19 limitations; or without observance of procedure required by law.

20 53. The Rescission constitutes final agency action that is reviewable by this Court.

21 54. The Rescission and actions taken by Defendants to rescind DACA are arbitrary and  
22 capricious, an abuse of discretion, and not in accordance with law because, among other things,  
23 Defendants failed to articulate a reasonable explanation for their actions. In assessing Defendants’  
24 actions under the arbitrary-and-capricious standard, a court “must consider whether the decision was  
25 based on a consideration of the relevant factors and whether there has been a clear error of judgment.”  
26 *San Luis & Delta-Mendota Water Auth. v. Jewell*, 747 F.3d 581, 601 (9th Cir. 2014) (citation omitted).  
27 Here, Defendants have not considered the relevant factors in deciding to revoke DACA. They also have  
28 failed to consider important aspects of the issue, including the arguments previously set forth by OLC  
and DHS as to why DACA is lawful.

1 55. Defendants also disregarded the serious reliance interests engendered by the DACA  
2 program. Where, as here, significant reliance interests are at stake, Defendants must, in addition to  
3 demonstrating that “there are good reasons” for the new policy, offer “a reasoned explanation . . . for  
4 disregarding facts and circumstances that underlay or were engendered by the prior policy.” *Fox*, 556  
5 U.S. at 515. Defendants here have utterly failed in these obligations.

6 56. The Rescission and actions taken by Defendants to rescind DACA are arbitrary and  
7 capricious, an abuse of discretion, and not in accordance with law because, among other things, they are  
8 based on the legally incorrect premise that DACA is unlawful.

9 57. The Rescission and actions taken by Defendants to rescind DACA are arbitrary and  
10 capricious, an abuse of discretion, and not in accordance with law because, among other things, they are  
11 contrary to the constitutional protections of the Fifth Amendment.

12 58. The University and its students were harmed and continue to be harmed by these  
13 unlawful acts.

14 **SECOND CLAIM FOR RELIEF**  
15 **Agency Action Without Observance of Procedure Required by Law**  
16 **in Violation of 5 U.S.C. § 706(2)(D)**

17 59. The above paragraphs are incorporated herein by reference.

18 60. The APA requires administrative agencies to follow notice-and-comment rulemaking  
19 procedures to promulgate substantive rules. *See* 5 U.S.C. § 553. The APA defines “rule” broadly to  
20 include:

21 the whole or part of an agency statement of general or particular applicability and  
22 future effect designed to implement, interpret, or prescribe law or policy or  
describing the organization, procedure, or practice requirements of an agency and  
includes the approval or prescription for the future of rates, wages . . . .

23 5 U.S.C. § 551(4).

24 61. The Rescission constitutes a substantive rule subject to APA’s notice-and-comment  
25 requirements.

26 62. The Rescission constitutes a substantive rule because it affirmatively circumscribes  
27 DHS’s statutory authority in providing deferred action and prohibits DHS from renewing recipients’  
28 DACA status after October 5, 2017.





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

DATED: September 8, 2017

COVINGTON & BURLING LLP

By:



Jeffrey M. Davidson (Bar No. 248620)  
One Front Street, 35th Floor  
San Francisco, CA 94111-5356  
Telephone: + 1 (415) 591-6000  
Facsimile: + 1 (415) 591-6091  
Email: j davidson@cov.com

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 XAVIER BECERRA  
 Attorney General of California  
 2 ANGELA SIERRA  
 Senior Assistant Attorney General  
 3 MICHAEL L. NEWMAN  
 Supervising Deputy Attorney General  
 4 JAMES F. ZAHRADKA II (SBN 196822)  
 CHRISTINE CHUANG  
 5 REBEKAH A. FRETZ  
 RONALD H. LEE  
 6 KATHLEEN VERMAZEN RADEZ  
 SHUBHRA SHIVPURI  
 7 Deputy Attorneys General  
 1515 Clay Street, 20th Floor  
 8 Oakland, CA 94612-1499  
 Telephone: (510) 879-1247  
 9 E-mail: James.Zahradka@doj.ca.gov

10 *[Additional counsel listed on signature page]*

11 *Attorneys for Plaintiff State of California*

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,**

Plaintiffs,

v.

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

Defendants.

Civil Case No.

**COMPLAINT FOR DECLARATORY  
 AND INJUNCTIVE RELIEF**

**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.

28



1 14. Intradistrict assignment is proper in San Francisco or Oakland pursuant to Local  
2 Rules 3-2(c) and (d) because a substantial part of the events or omissions which give rise to the  
3 claim occurred in the City and County of San Francisco.

4 **PARTIES**

5 **PLAINTIFF STATE OF CALIFORNIA**

6 15. The State of California, represented by and through its Attorney General, is a  
7 sovereign State of the United States of America.

8 16. Governor Edmund G. Brown, Jr., is the chief executive officer of the State. The  
9 Governor is responsible for overseeing the operations of the State and ensuring that its laws are  
10 faithfully executed. As the leader of the executive branch, the Governor is the chief of  
11 California's executive branch agencies, including those whose injuries are discussed in this  
12 Complaint. Cal. Const. art V, § 1.

13 17. Attorney General Xavier Becerra is the chief law officer of the State. The  
14 Attorney General is responsible for protecting California's sovereign interests, including the  
15 sovereign interest in enforcing California laws. Cal. Const. art V, § 13.

16 18. California is aggrieved by the actions of Defendants and has standing to bring this  
17 action because of the injury to its state sovereignty caused by Defendants' rescission of DACA,  
18 including immediate and irreparable injuries to its sovereign, quasi-sovereign, and proprietary  
19 interests, and its interests as *parens patriae*.

20 19. California is home to more than 379,000 DACA-eligible residents. As of March  
21 2017, USCIS had approved 222,795 DACA applications from immigrants residing in California.  
22 Ex. C, USCIS, Number of Form I-821D, Consideration of Deferred Action for Childhood  
23 Arrivals by Fiscal Year, Quarter, Intake Biometrics and Case Status Fiscal Year 2012-2017 (Mar.  
24 31, 2017) ("USCIS Numbers"). More than 30 percent of all DACA grantees in the entire country  
25 reside in California, giving California by far the largest population of DACA grantees of any  
26 state.

27 20. Indeed, in the first year of DACA, 13 percent of DACA requests nationwide  
28 (78,000) came from individuals in the Los Angeles area alone.

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.

28

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 **PLAINTIFF STATE OF MINNESOTA**

2 57. The State of Minnesota, which is a sovereign State of the United States of America,  
3 is aggrieved by Defendants' actions. Minnesota has standing to bring this action because of the  
4 injuries caused by Defendants' rescission of the DACA program, including injuries to its  
5 sovereign, quasi-sovereign, and proprietary interests.

6 58. Attorney General Lori Swanson brings this action on behalf of Minnesota to  
7 protect the interests of Minnesota and its residents. The Attorney General's powers and duties  
8 include acting in federal court in matters of State concern. Minn. Stat. § 8.01.

9 59. It is estimated that in 2016 there were 16,000 DACA-eligible individuals living in  
10 Minnesota. As of March 31, 2017, USCIS had approved 6,255 initial DACA applications and  
11 6,236 renewals for residents of Minnesota. Ex. C, USCIS Numbers. In addition to these DACA  
12 grantees, Minnesota has many residents who would have become eligible for DACA in the future.

13 60. Minnesota has a quasi-sovereign interest in protecting the health and well-being,  
14 both economic and physical, of all its residents.

15 61. DACA has allowed grantees to access a number of important benefits, including  
16 working legally and obtaining employer-based health insurance.

17 62. Rescinding DACA will cause many DACA grantees to lose their employer-based  
18 health insurance. Without employer-based benefits, more Minnesota residents are likely to  
19 refrain from seeking out needed medical care. As a result of foregoing treatment, including for  
20 preventative issues, these residents will impose higher healthcare costs on Minnesota.

21 63. The rescission of DACA also threatens the welfare of both Minnesota DACA  
22 grantees and their families. Many Minnesota DACA grantees live in households with family  
23 members who are American citizens. Rescission of work authorization will threaten DACA  
24 grantees' ability to financially support themselves and their families, endangering the financial  
25 security of these families. It will also force separation of Minnesota families, jeopardizing their  
26 health and stability.

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, *Brietbart 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/ybzdo96u>.

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).  
27  
28









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.

11  
12 Dated: September 11, 2017

Respectfully Submitted,

13  
14 XAVIER BECERRA  
15 Attorney General of California  
16 MICHAEL L. NEWMAN  
17 Supervising Deputy Attorney General

18 /s/ James F. Zahradka II  
19 JAMES F. ZAHRADKA II  
20 Deputy Attorney General

21 *Attorneys for Plaintiff State of California*

BRIAN E. FROSH  
Attorney General of Maryland  
STEVEN M. SULLIVAN  
Solicitor General  
200 Saint Paul Place, 20th Floor  
Baltimore, Maryland 21202  
Telephone: (410) 576-6325  
Email: [ssullivan@oag.state.md.us](mailto:ssullivan@oag.state.md.us)

*Attorneys for Plaintiff State of Maryland*

22 JANET T. MILLS  
23 Attorney General of Maine  
24 SUSAN P. HERMAN (*pro hac vice pending*)  
25 Deputy Attorney General  
26 6 State House Station  
27 Augusta, Maine 04333  
28 Telephone: (207) 626-8814  
Email: [susan.herman@maine.gov](mailto:susan.herman@maine.gov)

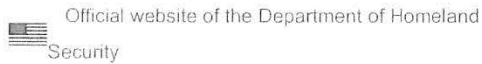
*Attorneys for Plaintiff State of Maine*

LORI SWANSON  
Attorney General  
State of Minnesota  
JULIANNA F. PASSE (*pro hac vice pending*)  
Assistant Attorney General  
445 Minnesota Street, Suite 1100  
St. Paul, Minnesota 55101-2128  
Telephone: (651) 757-1136  
Email: [julianna.passe@ag.state.mn.us](mailto:julianna.passe@ag.state.mn.us)

*Attorneys for Plaintiff State of Minnesota*



# **EXHIBIT A**



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.<sup>[1]</sup> (#\_ftn1) 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.<sup>[2]</sup> (#\_ftn2) 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.<sup>[3]</sup> (#\_ftn3) 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,<sup>[4]</sup> (#\_ftn4) 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).<sup>[5]</sup> (#\_ftn5) 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,<sup>[6]</sup> (#\_ftn6) and the November 20, 2014 memorandum establishing DAPA and expanding DACA.<sup>[7]</sup> (#\_ftn7)

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).

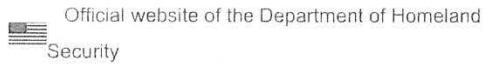
Topics: [Border Security \(/topics/border-security\)](#), [Deferred Action \(/topics/deferred-action\)](#)

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

Last Published Date: September 5, 2017



# **EXHIBIT B**



U.S. Department of  
Homeland Security

# Frequently Asked Questions: Rescission Of Deferred Action For Childhood Arrivals (DACA)

**Release Date:** September 5, 2017

En español (<https://www.dhs.gov/news/2017/09/05/preguntas-frecuentes-anulaci-n-de-la-acci-n-diferida-para-los-llegados-en-la>)

The following are frequently asked questions on the September 5, 2017 Rescission of the Deferred Action for Childhood Arrivals (DACA) Program.

**Q1: Why is DHS phasing out the DACA program?**

**A1:** Taking into consideration the federal court rulings in ongoing litigation, and the September 4, 2017 letter from the Attorney General, it is clear that program should be terminated. As such, the Acting Secretary of Homeland Security rescinded the June 15, 2012 memorandum establishing the DACA program. Please see the Attorney General's letter and the Acting Secretary of Homeland Security's memorandum for further information on how this decision was reached.

**Q2: What is going to happen to current DACA holders?**

**A2:** Current DACA recipients will be permitted to retain both the period of deferred action and their employment authorization documents (EADs) until they expire, unless terminated or revoked. DACA benefits are generally valid for two years from the date of issuance.

Q3: What happens to individuals who currently have an initial DACA request pending?

A3: Due to the anticipated costs and administrative burdens associated with rejecting all pending initial requests, USCIS will adjudicate—on an individual, case-by-case basis—all properly filed DACA initial requests and associated applications for EADs that have been accepted as of September 5, 2017.

Q4: What happens to individuals who currently have a request for renewal of DACA pending?

A4: Due to the anticipated costs and administrative burdens associated with rejecting all pending renewal requests, USCIS 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 as of September 5, 2017, and from current beneficiaries whose benefits will expire between September 5, 2017 and March 5, 2018 that have been accepted as of October 5, 2017. USCIS will reject all requests to renew DACA and associated applications for EADs filed after October 5, 2017.

Q5: Is there still time for current DACA recipients to file a request to renew their DACA?

A5: USCIS will only accept renewal requests and associated applications for EADs for the class of individuals described above in the time period described above.

Q6: What happens when an individual's DACA benefits expire over the course of the next two years? Will individuals with expired DACA be considered illegally present in the country?

A6: Current law does not grant any legal status for the class of individuals who are current recipients of DACA. Recipients of DACA are currently unlawfully present in the U.S. with their removal deferred. When their period of deferred action expires or is

terminated, their removal will no longer be deferred and they will no longer be eligible for lawful employment.

Only Congress has the authority to amend the existing immigration laws.

Q7: Once an individual's DACA expires, will their case be referred to ICE for enforcement purposes?

A7: Information provided to USCIS in DACA requests will not be proactively provided to ICE and CBP for the purpose of immigration enforcement proceedings, unless the requestor meets the criteria for the issuance of a Notice To Appear or a referral to ICE under the criteria set forth in USCIS' Notice to Appear guidance ([www.uscis.gov/NTA](http://www.uscis.gov/NTA) (<http://www.uscis.gov/NTA>)). This policy, which may be modified, superseded, or rescinded at any time without notice, is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable by law by any party in any administrative, civil, or criminal matter.

Q8: Will USCIS share the personal information of individuals whose pending requests are denied proactively with ICE for enforcement purposes?

A8: Generally, information provided in DACA requests will not be proactively provided to other law enforcement entities (including ICE and CBP) for the purpose of immigration enforcement proceedings unless the requestor poses a risk to national security or public safety, or meets the criteria for the issuance of a Notice To Appear or a referral to ICE under the criteria. This policy, which may be modified, superseded, or rescinded at any time without notice, is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable by law by any party in any administrative, civil, or criminal matter.

Q9: Can deferred action received pursuant to DACA be terminated before it expires?

A9: Yes. DACA is an exercise of deferred action which is a form of prosecutorial discretion. Hence, DHS 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.

Q10: Can DACA recipients whose valid EAD is lost, stolen or destroyed request a new EAD during the phase out?

A10: If an individual's still-valid EAD is lost, stolen, or destroyed, they may request a replacement EAD by filing a new Form I-765.

Q11: Will DACA recipients still be able to travel outside of the United States while their DACA is valid?

A11: Effective September 5, 2017, USCIS will no longer approve any new Form I-131 applications for advance parole under standards associated with the DACA program. Those with a current advance parole validity period from a previously-approved advance parole application will generally retain the benefit until it expires. However, CBP will retain the authority it has always exercised in determining the admissibility of any person presenting at the border. Further, USCIS retains the authority to revoke or terminate an advance parole document at any time.

Q12: What happens to individuals who have pending requests for advance parole to travel outside of the United States?

A12: USCIS will administratively close all pending Form I-131 applications for advance parole under standards associated with the DACA program, and will refund all associated fees.

Q13: How many DACA requests are currently pending that will be impacted by this change? Do you have a breakdown of these numbers by state?

A13: There were 106,341 requests pending as of August 20, 2017 – 34,487 initial requests and 71,854 renewals. We do not currently have the state-specific breakouts.

Q14: Is there a grace period for DACA recipients with EADs that will soon expire to make appropriate plans to leave the country?

A14: As noted above, once an individual's DACA and EAD expire—unless in the limited class of beneficiaries above who are found eligible to renew their benefits—the individual is no longer considered lawfully present in the United States and is not authorized to work. Persons whose DACA permits will expire between September 5, 2017 and March 5, 2018 are eligible to renew their permits. No person should lose benefits under this memorandum prior to March 5, 2018 if they properly file a renewal request and associated application for employment authorization.

Q15: Can you provide a breakdown of how many DACA EADs expire in 2017, 2018, and 2019?

A15: From August through December 2017, 201,678 individuals are set to have their DACA/EADs expire. Of these individuals, 55,258 already have submitted requests for renewal of DACA to USCIS.

In calendar year 2018, 275,344 individuals are set to have their DACA/EADs expire. Of these 275,344 individuals, 7,271 have submitted requests for renewal to USCIS.

From January through August 2019, 321,920 individuals are set to have their DACA/EADs expire. Of these 321,920 individuals, eight have submitted requests for renewal of DACA to USCIS.

Q16: What were the previous guidelines for USCIS to grant DACA?

A16: Individuals meeting the following categorical criteria could apply for DACA if they:

- Were under the age of 31 as of June 15, 2012;
- Came to the United States before reaching their 16th birthday;
- Have continuously resided in the United States since June 15, 2007, up to the present time;

- Were physically present in the United States on June 15, 2012, and at the time of making their request for consideration of deferred action with USCIS;
- Had no lawful status on June 15, 2012;
- Are currently in school, have graduated, or obtained a certificate of completion from high school, have obtained a General Educational Development (GED) certificate, or are an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; and
- Have not been convicted of a felony, significant misdemeanor, three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety.

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 D**



Secretary

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



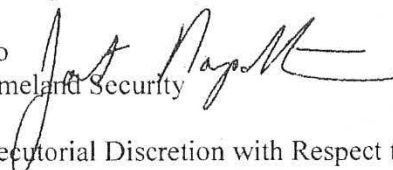
**Homeland  
Security**

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

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.

[www.dhs.gov](http://www.dhs.gov)

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 E



**U.S. Citizenship and  
Immigration Services**

## Frequently Asked Questions

*FAQs updated April 25, 2017*

### General Information for All Requestors

- [What is Deferred Action for Childhood Arrivals?](#)
- [DACA Process](#)
- [Background Checks](#)
- [After USCIS Makes a Decision](#)

### Initial Requests for DACA

### Renewal of DACA

### Travel

### Criminal Convictions

### Miscellaneous

## **I. General Information for All Requestors**

### **A. What is Deferred Action for Childhood Arrivals?**

As the Department of Homeland Security (DHS) continues to focus its enforcement resources on the removal of individuals who pose a danger to national security or a risk to public safety, DHS will exercise prosecutorial discretion as appropriate to ensure that enforcement resources are not expended on low priority cases, such as individuals who came to the United States as children and meet other key guidelines. Individuals who demonstrate that they meet the guidelines below may request consideration of deferred action for childhood arrivals (DACA) for a period of two years, subject to renewal for a period of two years, and may be eligible for employment authorization.

You may request consideration of DACA if you:

1. Were under the age of 31 as of June 15, 2012;
2. Came to the United States before reaching your 16th birthday;
3. Have continuously resided in the United States since June 15, 2007, up to the present time;
4. Were physically present in the United States on June 15, 2012, and at the time of making your request for consideration of deferred action with USCIS;
5. Had no lawful status on June 15, 2012, meaning that:

- You never had a lawful immigration status on or before June 15, 2012, or
  - Any lawful immigration status or parole that you obtained prior to June 15, 2012, had expired as of June 15, 2012;
6. Are currently in school, have graduated or obtained a certificate of completion from high school, have obtained a General Educational Development (GED) certificate, or are an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; and
  7. Have not been convicted of a felony, a significant misdemeanor, three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety.

**Individuals can call U.S. Citizenship and Immigration Services (USCIS) at 1-800-375-5283 with questions or to request more information on DACA.** Those with pending requests can also use a number of [online self-help tools](#) which include the ability to check case status and processing times, change your address, and send an inquiry about a case pending longer than posted processing times or non-delivery of a card or document.

**Q1: What is deferred action?**

A1: Deferred action is a discretionary determination to defer a removal action of an individual as an act of prosecutorial discretion. For purposes of future inadmissibility based upon **unlawful presence**, an individual whose case has been deferred is not considered to be unlawfully present during the period in which deferred action is in effect. An individual who has received deferred action is authorized by DHS to be present in the United States, and is therefore considered by DHS to be lawfully present during the period deferred action is in effect. However, deferred action does not confer **lawful status** upon an individual, nor does it excuse any previous or subsequent periods of unlawful presence.

Under existing regulations, an individual whose case has been deferred is eligible to receive employment authorization for the period of deferred action, provided he or she can demonstrate “an economic necessity for employment.” DHS can terminate or renew deferred action at any time, at the agency’s discretion.

**Q2: What is DACA?**

A2: On June 15, 2012, the Secretary of Homeland Security announced that certain people who came to the United States as children and meet several key guidelines may request consideration of deferred action for a period of two years, subject to renewal, and would then be eligible for work authorization.

Individuals who can demonstrate through verifiable documentation that they meet these guidelines will be considered for deferred action. Determinations will be made on a case-by-case basis under the DACA guidelines.

**Q3: Is there any difference between “deferred action” and DACA under this process?**

A3: DACA is one form of deferred action. The relief an individual receives under DACA is identical for immigration purposes to the relief obtained by any person who receives deferred action as an act of prosecutorial discretion.

**Q4: If my removal is deferred under the consideration of DACA, am I eligible for employment authorization?**

A4: Yes. Under existing regulations, if your case is deferred, you may obtain employment authorization from USCIS provided you can demonstrate an economic necessity for employment.

**Q5: If my case is deferred, am I in lawful status for the period of deferral?**

A5: No. Although action on your case has been deferred and you do not accrue unlawful presence (for admissibility purposes) during the period of deferred action, deferred action does not confer any lawful status.

The fact that you are not accruing unlawful presence does not change whether you are in lawful status while you remain in the United States. However, although deferred action does not confer a lawful immigration status, your period of stay is

authorized by the Department of Homeland Security while your deferred action is in effect and, for admissibility purposes, you are considered to be lawfully present in the United States during that time. **Individuals granted deferred action are not precluded by federal law from establishing domicile in the U.S.**

Apart from the immigration laws, “lawful presence,” “lawful status” and similar terms are used in various other federal and state laws. For information on how those laws affect individuals who receive a favorable exercise of prosecutorial discretion under DACA, please contact the appropriate federal, state or local authorities.

**Q6: Can I renew my period of deferred action and employment authorization under DACA?**

A6: Yes. You may request consideration for a renewal of your DACA. Your request for a renewal will be considered on a case-by-case basis. If USCIS renews its exercise of discretion under DACA for your case, you will receive deferred action for another two years, and if you demonstrate an economic necessity for employment, you may receive employment authorization throughout that period.

[Return to top.](#)

**B. DACA Process**

**Q7: How do I request consideration of DACA?**

A7: To request consideration of DACA (either as an initial request or to request a renewal), you must submit [Form I-821D, Consideration of Deferred Action for Childhood Arrivals](#) to USCIS. Please visit [uscis.gov/i-821d](http://uscis.gov/i-821d) before you begin the process to make sure you are using the most current version of the form available. This form must be completed, properly signed and accompanied by a [Form I-765, Application for Employment Authorization](#), and a [Form I-765WS, Worksheet \(PDF, 235 KB\)](#), establishing your economic need for employment. If you fail to submit a completed Form I-765 (along with the accompanying filing fees for that form, please see the Form I-821D page for more information), USCIS will not consider your request for deferred action. Please read the form instructions to ensure that you answer the appropriate questions (determined by whether you are submitting an initial or renewal request) and that you submit all the required documentation to support your initial request.

You must file your request for consideration of DACA at the USCIS Lockbox. You can find the mailing address and instructions at [www.uscis.gov/i-821d](http://www.uscis.gov/i-821d). As of June 5, 2014, requestors must use the new version of the form. After your Form I-821D, Form I-765, and Form I-765 Worksheet have been received, USCIS will review them for completeness, including submission of the required fee, initial evidence and supporting documents (for initial filings).

If it is determined that the request is complete, USCIS will send you a receipt notice. USCIS will then send you an appointment notice to visit an Application Support Center (ASC) for biometric services, if an appointment is required. Please make sure you read and follow the directions in the notice. Failure to attend your biometrics appointment may delay processing of your request for consideration of deferred action, or may result in a denial of your request. You may also choose to receive an email and/or text message notifying you that your form has been accepted by completing a [Form G-1145, E-Notification of Application/Petition Acceptance](#).

Each request for consideration of DACA will be reviewed on an individual, case-by-case basis. USCIS may request more information or evidence from you, or request that you appear at a USCIS office. USCIS will notify you of its determination in writing.

**Note:** All individuals who believe they meet the guidelines, including those in removal proceedings, with a final removal order, or with a voluntary departure order (and not in immigration detention), may affirmatively request consideration of DACA from USCIS through this process. Individuals who are currently in immigration detention and believe they meet the guidelines may not request consideration of deferred action from USCIS but may identify themselves to their deportation

officer or Jail Liaison. You may also contact the ICE Field Office Director. For more information visit ICE's website at [www.ice.gov/daca](http://www.ice.gov/daca).

**Q8: Can I obtain a fee waiver or fee exemption for this process?**

A8: There are no fee waivers available for employment authorization applications connected to DACA. There are very limited fee exemptions available. Requests for fee exemptions must be filed and favorably adjudicated before an individual files his/her request for consideration of DACA without a fee. In order to be considered for a fee exemption, you must submit a letter and supporting documentation to USCIS demonstrating that you meet one of the following conditions:

- You are under 18 years of age, have an income that is less than 150 percent of the U.S. poverty level, and are in foster care or otherwise lacking any parental or other familial support; or
- You are under 18 years of age and homeless; or
- You cannot care for yourself because you suffer from a serious, chronic disability and your income is less than 150 percent of the U.S. poverty level; or,
- You have, at the time of the request, accumulated **\$10,000** or more in debt in the past 12 months as a result of unreimbursed medical expenses for yourself or an immediate family member, and your income is less than 150 percent of the U.S. poverty level.

You can find additional information on our [Fee Exemption Guidance](#) Web page. Your request must be submitted and decided before you submit a request for consideration of DACA without a fee. In order to be considered for a fee exemption, you must provide documentary evidence to demonstrate that you meet any of the above conditions at the time that you make the request. For evidence, USCIS will:

- Accept affidavits from community-based or religious organizations to establish a requestor's homelessness or lack of parental or other familial financial support.
- Accept copies of tax returns, bank statement, pay stubs, or other reliable evidence of income level. Evidence can also include an affidavit from the applicant or a responsible third party attesting that the applicant does not file tax returns, has no bank accounts, and/or has no income to prove income level.
- Accept copies of medical records, insurance records, bank statements, or other reliable evidence of unreimbursed medical expenses of at least **\$10,000**.
- Address factual questions through Requests for Evidence (RFEs).

**Q9: If individuals meet the guidelines for consideration of DACA and are encountered by U.S. Customs and Border Protection (CBP) or U.S. Immigration and Customs Enforcement (ICE), will they be placed into removal proceedings?**

A9: DACA is intended, in part, to allow CBP and ICE to focus on priority cases. Under the direction of the Secretary of Homeland Security, if an individual meets the guidelines for DACA, CBP or ICE should exercise their discretion on a case-by-case basis to prevent qualifying individuals from being apprehended, placed into removal proceedings, or removed. If individuals believe that, in light of this policy, they should not have been apprehended or placed into removal proceedings, contact the Law Enforcement Support Center's hotline at 1-855-448-6903 (staffed 24 hours a day, 7 days a week).

**Q10: Does this process apply to me if I am currently in removal proceedings, have a final removal order, or have a voluntary departure order?**

A10: This process is open to any individual who can demonstrate he or she meets the guidelines for consideration, including those who have never been in removal proceedings as well as those in removal proceedings, with a final order, or with a voluntary departure order (as long as they are not in immigration detention).

**Q11: If I am not in removal proceedings but believe I meet the guidelines for consideration of DACA, should I seek to place myself into removal proceedings through encounters with CBP or ICE?**



A11: No. If you are not in removal proceedings but believe that you meet the guidelines, you should submit your DACA request to USCIS under the process outlined below.

**Q12: Can I request consideration of DACA from USCIS if I am in immigration detention under the custody of ICE?**

A12: No. If you are currently in immigration detention, you may not request consideration of DACA from USCIS. If you think you may meet the guidelines of this process, you should identify yourself to your deportation officer or Jail Liaison. You may also contact the ICE Field Office Director. For more information, visit ICE's website at [www.ice.gov/daca](http://www.ice.gov/daca).

**Q13: If I am about to be removed by ICE and believe that I meet the guidelines for consideration of DACA, what steps should I take to seek review of my case before removal?**

A13: If you believe you can demonstrate that you meet the guidelines and are about to be removed, you should immediately contact the Law Enforcement Support Center's hotline at 1-855-448-6903 (staffed 24 hours a day, 7 days a week).

**Q14: What should I do if I meet the guidelines of this process and have been issued an ICE detainer following an arrest by a state or local law enforcement officer?**

A14: If you meet the guidelines and have been served a detainer, you should immediately contact the Law Enforcement Support Center's hotline at 1-855-448-6903 (staffed 24 hours a day, 7 days a week).

**Q15: If I accepted an offer of administrative closure under the case-by-case review process or my case was terminated as part of the case-by-case review process, can I be considered for deferred action under this process?**

A15: Yes. If you can demonstrate that you meet the guidelines, you will be able to request consideration of DACA even if you have accepted an offer of administrative closure or termination under the case-by-case review process.

**Q16: If I declined an offer of administrative closure under the case-by-case review process, can I be considered for deferred action under this process?**

A16: Yes. If you can demonstrate that you meet the guidelines, you will be able to request consideration of DACA even if you declined an offer of administrative closure under the case-by-case review process.

**Q17: If my case was reviewed as part of the case-by-case review process but I was not offered administrative closure, can I be considered for deferred action under this process?**

A17: Yes. If you can demonstrate that you meet the guidelines, you will be able to request consideration of DACA even if you were not offered administrative closure following review of your case as part of the case-by-case review process.

**Q18: Can I request consideration of DACA under this process if I am currently in a nonimmigrant status (e.g. F-1, E-2, H-4) or have Temporary Protected Status (TPS)?**

A18: No. You can only request consideration of DACA under this process if you currently have no immigration status and were not in any lawful status on June 15, 2012.

**Q19: Will the information I share in my request for consideration of DACA be used for immigration enforcement purposes?**

A19: Information provided in this request is protected from disclosure to ICE and CBP for the purpose of immigration enforcement proceedings unless the requestor meets the criteria for the issuance of a Notice To Appear or a referral to ICE under the criteria set forth in USCIS' Notice to Appear guidance ([www.uscis.gov/NTA](http://www.uscis.gov/NTA)). Individuals whose cases are deferred pursuant to DACA will not be referred to ICE. The information may be shared with national security and law enforcement agencies, including ICE and CBP, for purposes other than removal, including for assistance in the consideration of DACA, to identify or prevent fraudulent claims, for national security purposes, or for the investigation or prosecution of a criminal offense. The above information sharing policy covers family members and guardians, in addition to the requestor. This policy, which may be modified, superseded, or rescinded at any time without notice, is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable by law by any party in any

administrative, civil, or criminal matter.

**Q20: If my case is referred to ICE for immigration enforcement purposes or if I receive an NTA, will information related to my family members and guardians also be referred to ICE for immigration enforcement purposes?**

A20: If your case is referred to ICE for purposes of immigration enforcement or you receive an NTA, information related to your family members or guardians that is contained in your request will not be referred to ICE for purposes of immigration enforcement against family members or guardians. However, that information may be shared with national security and law enforcement agencies, including ICE and CBP, for purposes other than removal, including for assistance in the consideration of DACA, to identify or prevent fraudulent claims, for national security purposes, or for the investigation or prosecution of a criminal offense.

This policy, which may be modified, superseded, or rescinded at any time without notice, 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.

**Q21: Will USCIS verify documents or statements that I provide in support of a request for DACA?**

A21: USCIS has the authority to verify documents, facts, and statements that are provided in support of requests for DACA. USCIS may contact education institutions, other government agencies, employers, or other entities in order to verify information.

[Return to top.](#)

### C. Background Checks

**Q22: Will USCIS conduct a background check when reviewing my request for consideration of DACA?**

A22: Yes. You must undergo biographic and biometric background checks before USCIS will consider your DACA request.

**Q23: What do background checks involve?**

A23: Background checks involve checking biographic and biometric information provided by the individuals against a variety of databases maintained by DHS and other federal government agencies.

**Q24: What steps will USCIS and ICE take if I engage in fraud through the new process?**

A24: If you knowingly make a misrepresentation, or knowingly fail to disclose facts, in an effort to obtain DACA or work authorization through this process, you will be treated as an immigration enforcement priority to the fullest extent permitted by law, and be subject to criminal prosecution and/or removal from the United States.

[Return to top.](#)

### D. After USCIS Makes a Decision

**Q25: Can I appeal USCIS' determination?**

A25: No. You cannot file a motion to reopen or reconsider, and cannot appeal the decision if USCIS denies your request for consideration of DACA.

You may request a review of your I-821D denial by contacting USCIS' National Customer Service Center at 1-800-375-5283 to have a service request created if you believe that you actually did meet all of the DACA guidelines and you believe that your request was denied because USCIS:

- Denied the request based on abandonment, when you actually responded to a Request for Evidence (RFE) or Notice of Intent to Deny (NOID) within the prescribed time;

- Mailed the RFE or NOID to the wrong address although you had changed your address online at [www.uscis.gov](http://www.uscis.gov) or with a customer service representative on the phone and submitted a Form AR-11, Change of Address, before USCIS issued the RFE or NOID.
  - To ensure the address is updated on a pending case as quickly as possible, we recommend that customers submit a change of address request at [www.uscis.gov/addresschange](http://www.uscis.gov/addresschange). Please note that only an online change of address or a Form AR-11 submission will satisfy the legal requirements for notifying the agency of an address change. Therefore, if you called a customer service representative to change your address, please be sure you have also submitted your address change online or with a Form AR-11.
- Denied the request on the grounds that you did not come to the United States prior to your 16th birthday, but the evidence submitted at the time of filing shows that you did arrive before reaching that age.
- Denied the request on the grounds that you were under age 15 at the time of filing but not in removal proceedings, while the evidence submitted at the time of filing show that you indeed were in removal proceedings when the request was filed;
- Denied the request on the grounds that you were 31 or older as of June 15, 2012, but the evidence submitted at the time of filing shows that you were under the age of 31 as of June 15, 2012;
- Denied the request on the grounds that you had lawful status on June 15, 2012, but the evidence submitted at the time of filing shows that you indeed were in an unlawful immigration status on that date;
- Denied the request on the grounds that you were not physically present in the United States on June 15, 2012, and up through the date of filing, but the evidence submitted at the time of filing shows that you were, in fact, present;
- Denied the request due to your failure to appear at a USCIS Application Support Center (ASC) to have your biometrics collected, when you in fact either did appear at a USCIS ASC to have this done or requested prior to the scheduled date of your biometrics appointment to have the appointment rescheduled; or
- Denied the request because you did not pay the filing fees for Form I-765, Application for Employment Authorization, when you actually did pay these fees

If you believe your request was denied due to any of these administrative errors, you may contact our National Customer Service Center at 1-800-375-5283 or 1-800-767-1833 (TDD for the hearing impaired). Customer service officers are available Monday – Friday from 8 a.m. – 6 p.m. in each U.S. time zone.

**Q26: If USCIS does not exercise deferred action in my case, will I be placed in removal proceedings?**

A26: If you have submitted a request for consideration of DACA and USCIS decides not to defer action in your case, USCIS will apply its policy guidance governing the referral of cases to ICE and the issuance of Notices to Appear (NTA). If your case does not involve a criminal offense, fraud, or a threat to national security or public safety, your case will not be referred to ICE for purposes of removal proceedings except where DHS determines there are exceptional circumstances. For more detailed information on the applicable NTA policy, visit [www.uscis.gov/NTA](http://www.uscis.gov/NTA). If after a review of the totality of circumstances USCIS determines to defer action in your case, USCIS will likewise exercise its discretion and will not issue you an NTA.

**Q27: Can my deferred action under the DACA process be terminated before it expires?**

A27: Yes.

DACA is an exercise of prosecutorial discretion and deferred action may be terminated at any time, with or without a Notice of Intent to Terminate, at DHS's discretion.

[Return to top.](#)

## II. Initial Requests for DACA

**Q28: What guidelines must I meet to be considered for deferred action for childhood arrivals (DACA)?**

A28: Under the Secretary of Homeland Security's June 15, 2012 memorandum, in order to be considered for DACA, you must submit evidence, including supporting documents, showing that you:

1. Were under the age of 31 as of June 15, 2012;
2. Came to the United States before reaching your 16th birthday;
3. Have continuously resided in the United States since June 15, 2007, up to the present time;
4. Were physically present in the United States on June 15, 2012, and at the time of making your request for consideration of deferred action with USCIS;
5. Had no lawful status on June 15, 2012;
6. Are currently in school, have graduated or obtained a certificate of completion from high school, have obtained a General Educational Development (GED) certificate, or are an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; and
7. Have not been convicted of a felony, significant misdemeanor, three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety.

These guidelines must be met for consideration of DACA. U.S. Citizenship and Immigration Services (USCIS) retains the ultimate discretion to determine whether deferred action is appropriate in any given case even if the guidelines are met.

**Q29: How old must I be in order to be considered for deferred action under this process?**

A29:

- If you have never been in removal proceedings, or your proceedings have been terminated before your request for consideration of DACA, you must be at least 15 years of age or older at the time of filing and meet the other guidelines.
- If you are in removal proceedings, have a final removal order, or have a voluntary departure order, and are not in immigration detention, you can request consideration of DACA even if you are under the age of 15 at the time of filing and meet the other guidelines.
- In all instances, you must have been under the age of 31 as of June 15, 2012, to be considered for DACA.

**Q30: I first came to the United States before I turned 16 years old and have been continuously residing in the United States since at least June 15, 2007. Before I turned 16 years old, however, I left the United States for some period of time before returning and beginning my current period of continuous residence. May I be considered for deferred action under this process?**

A30: Yes, but only if you established residence in the United States during the period before you turned 16 years old, as evidenced, for example, by records showing you attended school or worked in the United States during that time, or that you lived in the United States for multiple years during that time. In addition to establishing that you initially resided in the United States before you turned 16 years old, you must also have maintained continuous residence in the United States from June 15, 2007, until the present time to be considered for deferred action under this process.

**Q31: To prove my continuous residence in the United States since June 15, 2007, must I provide evidence documenting my presence for every day, or every month, of that period?**

A31: To meet the continuous residence guideline, you must submit documentation that shows you have been living in the United States from June 15, 2007, up until the time of your request. You should provide documentation to account for as much of the period as reasonably possible, but there is no requirement that every day or month of that period be specifically accounted for through direct evidence.

It is helpful to USCIS if you can submit evidence of your residence during at least each year of the period. USCIS will review the documentation in its totality to determine whether it is more likely than not that you were continuously residing in the United States for the period since June 15, 2007. Gaps in the documentation as to certain periods may raise doubts as to your continued residence if, for example, the gaps are lengthy or the record otherwise indicates that you may have been outside the United States for a period of time that was not brief, casual or innocent.

If gaps in your documentation raise questions, USCIS may issue a Request for Evidence to allow you to submit additional documentation that supports your claimed continuous residence.

Affidavits may be submitted to explain a gap in the documentation demonstrating that you meet the five-year continuous residence requirement. If you submit affidavits related to the continuous residence requirement, you must submit two or more affidavits, sworn to or affirmed by people other than yourself who have direct personal knowledge of the events and circumstances during the period as to which there is a gap in the documentation. Affidavits may only be used to explain gaps in your continuous residence; they cannot be used as evidence that you meet the entire five-year continuous residence requirement.

**Q32: Does “currently in school” refer to the date on which the request for consideration of deferred action is filed?**

A32: To be considered “currently in school” under the guidelines, you must be enrolled in school on the date you submit a request for consideration of deferred action under this process.

**Q33: Who is considered to be “currently in school” under the guidelines?**

A33: To be considered “currently in school” under the guidelines, you must be enrolled in:

- a public, private, or charter elementary school, junior high or middle school, high school, secondary school, alternative program, or homeschool program that meets state requirements;
- an education, literacy, or career training program (including vocational training) that has a purpose of improving literacy, mathematics, or English or is designed to lead to placement in postsecondary education, job training, or employment and where you are working toward such placement; or
- an education program assisting students either in obtaining a regular high school diploma or its recognized equivalent under state law (including a certificate of completion, certificate of attendance, or alternate award), or in passing a GED exam or other state-authorized exam (e.g., HiSet or TASC) in the United States.

Such education, literacy, career training programs (including vocational training), or education programs assisting students in obtaining a regular high school diploma or its recognized equivalent under state law, or in passing a GED exam or other state-authorized exam in the United States, include, but are not limited to, programs funded, in whole or in part, by federal, state, county or municipal grants or administered by non-profit organizations. Programs funded by other sources may qualify if they are programs of demonstrated effectiveness.

In assessing whether such programs not funded in whole or in part by federal, state, county or municipal grants or administered by non-profit organizations are of demonstrated effectiveness, USCIS will consider the duration of the program’s existence; the program’s track record in assisting students in obtaining a regular high school diploma or its recognized equivalent, in passing a GED or other state-authorized exam (e.g., HiSet or TASC), or in placing students in postsecondary education, job training, or employment; and other indicators of the program’s overall quality. For individuals seeking to demonstrate that they are “currently in school” through enrollment in such a program, the burden is on the requestor to show the program’s demonstrated effectiveness.

**Q34: How do I establish that I am currently in school?**

A34: Documentation sufficient for you to demonstrate that you are currently in school may include, but is not limited to:

- evidence that you are enrolled in a public, private, or charter elementary school, junior high or middle school, high school or secondary school; alternative program, or homeschool program that meets state requirements; or
- evidence that you are enrolled in an education, literacy, or career training program (including vocational training) that:
  - has a purpose of improving literacy, mathematics, or English, or is designed to lead to placement in postsecondary education, job training, or employment and where you are working toward such placement; and
  - is funded, in whole or in part, by federal, state, county or municipal grants or is administered by non-profit organizations, or if funded by other sources, is a program of demonstrated effectiveness; or
- evidence that you are enrolled in an education program assisting students in obtaining a high school equivalency diploma or certificate recognized under state law (such as by passing a GED exam or other such state-authorized exam [for example, HiSet or TASC]), and that the program is funded in whole or in part by federal, state, county or municipal grants or is administered by non-profit organizations or if funded by other sources, is of demonstrated effectiveness.

Such evidence of enrollment may include: acceptance letters, school registration cards, letters from a school or program, transcripts, report cards, or progress reports which may show the name of the school or program, date of enrollment, and current educational or grade level, if relevant.

**Q35: What documentation may be sufficient to demonstrate that I have graduated from high school?**

A35: Documentation sufficient for you to demonstrate that you have graduated from high school may include, but is not limited to, a high school diploma from a public or private high school or secondary school, a certificate of completion, a certificate of attendance, or an alternate award from a public or private high school or secondary school, or a recognized equivalent of a high school diploma under state law, or a GED certificate or certificate from passing another such state authorized exam (e.g., HiSet or TASC) in the United States.

**Q36: What documentation may be sufficient to demonstrate that I have obtained a GED certificate or certificate from passing another such state authorized exam (e.g., HiSet or TASC)?**

A36: Documentation may include, but is not limited to, evidence that you have passed a GED exam, or other state-authorized exam (e.g., HiSet or TASC), and, as a result, have received the recognized equivalent of a regular high school diploma under state law.

**Q37: If I am enrolled in a literacy or career training program, can I meet the guidelines?**

A37: Yes, in certain circumstances. You may meet the guidelines if you are enrolled in an education, literacy, or career training program that has a purpose of improving literacy, mathematics, or English or is designed to lead to placement in postsecondary education, job training, or employment and where you are working toward such placement. Such programs include, but are not limited to, programs funded, in whole or in part, by federal, state, county or municipal grants or administered by non-profit organizations, or if funded by other sources, are programs of demonstrated effectiveness.

**Q38: If I am enrolled in an English as a Second Language (ESL) program, can I meet the guidelines?**

A38: Yes, in certain circumstances. Enrollment in an ESL program may be used to meet the guidelines if the ESL program is funded in whole or in part by federal, state, county or municipal grants, or administered by non-profit organizations, or if funded by other sources is a program of demonstrated effectiveness. You must submit direct documentary evidence that the program is funded in whole or part by federal, state, county or municipal grants, administered by a non-profit organization, or of demonstrated effectiveness.

**Q39: Will USCIS consider evidence other than that listed in Chart #1 to show that I have met the education guidelines?**

A39: No. Evidence not listed in Chart #1 will not be accepted to establish that you are currently in school, have graduated or obtained a certificate of completion from high school, or have obtained a GED or passed another state-authorized exam

(e.g., HiSet or TASC). You must submit any of the documentary evidence listed in Chart #1 to show that you meet the education guidelines.

**Q40: Will USCIS consider evidence other than that listed in Chart #1 to show that I have met certain initial guidelines?**

A40: Evidence other than those documents listed in Chart #1 may be used to establish the following guidelines and factual showings if available documentary evidence is insufficient or lacking and shows that:

- You were physically present in the United States on June 15, 2012;
- You came to the United States before reaching your 16th birthday;
- You satisfy the continuous residence requirement, as long as you present direct evidence of your continued residence in the United States for a portion of the required period and the circumstantial evidence is used only to fill in gaps in the length of continuous residence demonstrated by the direct evidence; and
- Any travel outside the United States during the period of required continuous presence was brief, casual, and innocent.

However, USCIS will not accept evidence other than the documents listed in Chart #1 as proof of any of the following guidelines to demonstrate that you:

- Were under the age of 31 on June 15, 2012; and
- Are currently in school, have graduated or obtained a certificate of completion from high school, have obtained a GED certificate, or are an honorably discharged veteran of the Coast Guard or Armed Forces of the United States.

For example, even if you do not have documentary proof of your presence in the United States on June 15, 2012, you may still be able to satisfy the guideline. You may do so by submitting credible documentary evidence that you were present in the United States shortly before and shortly after June 15, 2012, which, under the facts presented, may give rise to an inference of your presence on June 15, 2012 as well. However, evidence other than that listed in Chart #1 will not be accepted to establish that you have graduated high school. You must submit the designated documentary evidence to satisfy that you meet this guideline.

Chart #1 provides examples of documentation you may submit to demonstrate you meet the initial guidelines for consideration of deferred action under this process. Please see the instructions of [Form I-821D, Consideration of Deferred Action for Childhood Arrivals](#), for additional details of acceptable documentation.

**Chart #1 Examples of Documents to Submit to Demonstrate You Meet the Guidelines**

Proof of identity	<ul style="list-style-type: none"> <li>• Passport or national identity document from your country of origin</li> <li>• Birth certificate with photo identification</li> <li>• School or military ID with photo</li> <li>• Any U.S. government immigration or other document bearing your name and photo</li> </ul>
Proof you came to U.S. before your 16th birthday	<ul style="list-style-type: none"> <li>• Passport with admission stamp</li> <li>• Form I-94/I-95/I-94W</li> </ul>

- School records from the U.S. schools you have attended
  - Any Immigration and Naturalization Service or DHS document stating your date of entry (Form I-862, Notice to Appear)
  - Travel records
  - Hospital or medical records
  - Rent receipts or utility bills
  - Employment records (pay stubs, W-2 Forms, etc.)
  - Official records from a religious entity confirming participation in a religious ceremony
  - Copies of money order receipts for money sent in or out of the country
  - Birth certificates of children born in the U.S.
  - Dated bank transactions
  - Automobile license receipts or registration
  - Deeds, mortgages, rental agreement contracts
  - Tax receipts, insurance policies
- Proof of immigration status
- Form I-94/I-95/I-94W with authorized stay expiration date
  - Final order of exclusion, deportation, or removal issued as of June 15, 2012
  - A charging document placing you into removal proceedings
- Proof of presence in U.S. on June 15, 2012
- Rent receipts or utility bills
  - Employment records (pay stubs, W-2 Forms, etc.)
  - School records (letters, report cards, etc.)
- Proof you continuously resided in U.S. since June 15, 2007
- Military records (Form DD-214 or NGB Form 22)
  - Official records from a religious entity confirming participation in a religious ceremony
  - Copies of money order receipts for money sent in or out of the country
  - Passport entries
  - Birth certificates of children born in the U.S.
  - Dated bank transactions
  - Automobile license receipts or registration
  - Deeds, mortgages, rental agreement contracts
  - Tax receipts, insurance policies
- Proof of your education status at the time of requesting consideration of DACA
- School records (transcripts, report cards, etc.) from the school that you are currently attending in the United States showing the name(s) of the school(s) and periods of school attendance and the current educational or grade level



- U.S. high school diploma, certificate of completion, or other alternate award
  - High school equivalency diploma or certificate recognized under state law
  - Evidence that you passed a state-authorized exam, including the GED or other state-authorized exam (for example, HiSet or TASC) in the United States
- Proof you are an honorably discharged veteran of the U.S. Armed Forces or the U.S. Coast Guard
- Form DD-214, Certificate of Release or Discharge from Active Duty
  - NGB Form 22, National Guard Report of Separation and Record of Service
  - Military personnel records
  - Military health records

**Q41: May I file affidavits as proof that I meet the initial guidelines for consideration of DACA?**

A41: Affidavits generally will not be sufficient on their own to demonstrate that you meet the guidelines for USCIS to consider you for DACA. However, affidavits may be used to support meeting the following guidelines only if the documentary evidence available to you is insufficient or lacking:

- Demonstrating that you meet the five year continuous residence requirement; and
- Establishing that departures during the required period of continuous residence were brief, casual and innocent.

If you submit affidavits related to the above criteria, you must submit two or more affidavits, sworn to or affirmed by people other than yourself, who have direct personal knowledge of the events and circumstances. Should USCIS determine that the affidavits are insufficient to overcome the unavailability or the lack of documentary evidence with respect to either of these guidelines, it will issue a Request for Evidence, indicating that further evidence must be submitted to demonstrate that you meet these guidelines.

USCIS will not accept affidavits as proof of satisfying the following guidelines:

- You are currently in school, have graduated or obtained a certificate of completion or other alternate award from high school, have obtained a high school equivalency diploma or certificate (such as by passing the GED exam or other state-authorized exam [for example, HiSet or TASC]), or are an honorably discharged veteran from the Coast Guard or Armed Forces of the United States;
- You were physically present in the United States on June 15, 2012;
- You came to the United States before reaching your 16th birthday;
- You were under the age of 31 on June 15, 2012; and
- Your criminal history, if applicable.

If the only evidence you submit to demonstrate you meet any of the above guidelines is an affidavit, USCIS will issue a Request for Evidence, indicating that you have not demonstrated that you meet these guidelines and that you must do so in order to demonstrate that you meet that guideline.

**Q42: Will I be considered to be in unlawful status if I had an application for asylum or cancellation of removal pending before either USCIS or the Executive Office for Immigration Review (EOIR) on June 15, 2012?**

A42: Yes. If you had an application for asylum or cancellation of removal, or similar relief, pending before either USCIS or EOIR as of June 15, 2012, but had no lawful status, you may request consideration of DACA.

**Q43: I was admitted for "duration of status" or for a period of time that extended past June 14, 2012, but violated my immigration status (e.g., by engaging in unauthorized employment, failing to report to my employer, or failing to pursue a full course of study) before June 15, 2012. May I be considered for deferred action under this process?**

A43: No, unless the Executive Office for Immigration Review terminated your status by issuing a final order of removal against you before June 15, 2012.

**Q44: I was admitted for "duration of status" or for a period of time that extended past June 14, 2012 but "aged out" of my dependent nonimmigrant status as of June 15, 2012. May I be considered for deferred action under this process?**

A44: Yes. For purposes of satisfying the "had no lawful status on June 15, 2012," guideline alone, if you were admitted for "duration of status" or for a period of time that extended past June 14, 2012 but "aged out" of your dependent nonimmigrant status, on or before June 15, 2012, (meaning you turned 21 years old on or before June 15, 2012), you may be considered for deferred action under this process.

**Q45: I was admitted for "duration of status" but my status in SEVIS is listed as terminated on or before June 15, 2012. May I be considered for deferred action under this process?**

A45: Yes. For the purposes of satisfying the "had no lawful status on June 15, 2012," guideline alone, if your status as of June 15, 2012, is listed as "terminated" in SEVIS, you may be considered for deferred action under this process.

**Q46: I am a Canadian citizen who was inspected by CBP but was not issued an I-94 at the time of admission. May I be considered for deferred action under this process?**

A46: In general, a Canadian citizen who was admitted as a visitor for business or pleasure and not issued an I-94, Arrival/Departure Record, (also known as a "non-controlled" Canadian nonimmigrant) is lawfully admitted for a period of six months. For that reason, unless there is evidence, including verifiable evidence provided by the individual, that he or she was specifically advised that his or her admission would be for a different length of time, the Department of Homeland Security (DHS) will consider for DACA purposes only, that the alien was lawfully admitted for a period of six months. Therefore, if DHS is able to verify from its records that your last non-controlled entry occurred on or before Dec. 14, 2011, DHS will consider your nonimmigrant visitor status to have expired as of June 15, 2012 and you may be considered for deferred action under this process.

**Q47: I used my Border Crossing Card (BCC) to obtain admission to the United States and was not issued an I-94 at the time of admission. May I be considered for deferred action under this process?**

A47: Because the limitations on entry for a BCC holder vary based on location of admission and travel, DHS will assume that the BCC holder who was not provided an I-94 was admitted for the longest period legally possible—30 days—unless the individual can demonstrate, through verifiable evidence, that he or she was specifically advised that his or her admission would be for a different length of time. Accordingly, if DHS is able to verify from its records that your last admission was using a BCC, you were not issued an I-94 at the time of admission, and it occurred on or before May 14, 2012, DHS will consider your nonimmigrant visitor status to have expired as of June 15, 2012, and you may be considered for deferred action under this process.

**Q48: Do I accrue unlawful presence if I have a pending initial request for consideration of DACA?**

A48: You will continue to accrue unlawful presence while the request for consideration of DACA is pending unless you are under 18 years of age at the time of the request. If you are under 18 years of age at the time you submit your request, you will not accrue unlawful presence while the request is pending, even if you turn 18 while your request is pending with USCIS. If action on your case is deferred, you will not accrue unlawful presence during the period of deferred action. However, having action deferred on your case will not excuse previously accrued unlawful presence.

[Return to top.](#)

### III. Renewal of DACA

#### **Q49: When should I file my renewal request with U.S. Citizenship and Immigration Services (USCIS)?**

A49: USCIS strongly encourages you to submit your Deferred Action for Childhood Arrivals (DACA) renewal request between 150 days and 120 days before the expiration date located on your current Form I-797 DACA approval notice and Employment Authorization Document (EAD). Filing during this window will minimize the possibility that your current period of DACA will expire before you receive a decision on your renewal request.

USCIS' current goal is to process DACA renewal requests within 120 days. You may submit an inquiry about the status of your renewal request after it has been pending more than 105 days. To submit an inquiry online, please visit [egov.uscis.gov/e-request](http://egov.uscis.gov/e-request).

- **Please Note:** Factors that may affect the timely processing of your DACA renewal request include, but are not limited to:
  - Failure to appear at an Application Support Center (ASC) for a scheduled biometrics appointment to obtain fingerprints and photographs. No-shows or rescheduling appointments will require additional processing time.
  - Issues of national security, criminality or public safety discovered during the background check process that require further vetting.
  - Issues of travel abroad that need additional evidence/clarification.
  - Name/date of birth discrepancies that may require additional evidence/clarification.
  - The renewal submission was incomplete or contained evidence that suggests a requestor may not satisfy the DACA renewal guidelines and USCIS must send a request for additional evidence or explanation

#### **Q50: Can I file a renewal request outside the recommended filing period of 150 days to 120 days before my current DACA expires?**

A50: USCIS strongly encourages you to file your renewal request within the recommended 150-120 day filing period to minimize the possibility that your current period of DACA will expire before you receive a decision on your renewal request. Requests received earlier than 150 days in advance will be accepted; however, this could result in an overlap between your current DACA and your renewal. This means your renewal period may extend for less than a full two years from the date that your current DACA period expires..

If you file after the recommended filing period (meaning less than 120 days before your current period of DACA expires), there is an increased possibility that your current period of DACA and employment authorization will expire before you receive a decision on your renewal request. If you file after your most recent DACA period expired, but within one year of its expiration, you may submit a request to renew your DACA. If you are filing beyond one year after your most recent period of DACA expired, you may still request DACA by submitting a new initial request.

#### **Q51: How will USCIS evaluate my request for renewal of DACA:**

A51: You may be considered for renewal of DACA if you met the guidelines for consideration of Initial DACA (see above) AND you:

- Did not depart the United States on or after Aug. 15, 2012, without advance parole;
- Have continuously resided in the United States since you submitted your most recent request for DACA that was approved up to the present time; and
- Have not been convicted of a felony, a significant misdemeanor, or three or more misdemeanors, and do not

otherwise pose a threat to national security or public safety.

These guidelines must be met for consideration of DACA renewal. USCIS retains the ultimate discretion to determine whether deferred action is appropriate in any given case even if the guidelines are met.

**Q52 Do I accrue unlawful presence if I am seeking renewal and my previous period of DACA expires before I receive a renewal of deferred action under DACA? Similarly, what would happen to my work authorization?**

A52: Yes, if your previous period of DACA expires before you receive a renewal of deferred action under DACA, you will accrue unlawful presence for any time between the periods of deferred action unless you are under 18 years of age at the time you submit your renewal request.

Similarly, if your previous period of DACA expires before you receive a renewal of deferred action under DACA, you will not be authorized to work in the United States regardless of your age at time of filing until and unless you receive a new employment authorization document from USCIS.

**Q53. Do I need to provide additional documents when I request renewal of deferred action under DACA?**

A53. No, unless you have *new* documents pertaining to removal proceedings or criminal history that you have not already submitted to USCIS in a previously approved DACA request. USCIS, however, reserves the authority to request at its discretion additional documents, information or statements relating to a DACA renewal request determination.

CAUTION: If you knowingly and willfully provide materially false information on Form I-821D, you will be committing a federal felony punishable by a fine, or imprisonment up to five years, or both, under 18 U.S.C. Section 1001. In addition, individuals may be placed into removal proceedings, face severe penalties provided by law, and be subject to criminal prosecution.

**Q54. If I am no longer in school, can I still request to renew my DACA?**

A54. Yes. Neither Form I-821D nor the instructions ask renewal requestors for information about continued school enrollment or graduation. The instructions for renewal requests specify that you may be considered for DACA renewal if you met the guidelines for consideration of initial DACA, including the educational guidelines and:

1. Did not depart the United States on or after August 15, 2012, without advance parole;
2. Have continuously resided in the United States, up to the present time, since you submitted your most recent request for DACA that was approved; and
3. Have not been convicted of a felony, a significant misdemeanor or three or more misdemeanors, and are not a threat to national security or public safety.

**Q55. If I initially received DACA and was under the age of 31 on June 15, 2012, but have since become 31 or older, can I still request a DACA renewal?**

A55. Yes. You may request consideration for a renewal of DACA as long as you were under the age of 31 as of June 15, 2012.

#### IV. Travel

**Q56: May I travel outside of the United States before I submit an initial Deferred Action for Childhood Arrivals (DACA) request or while my initial DACA request remains pending with the Department of Homeland Security (DHS)?**

A56: Any unauthorized travel outside of the United States on or after Aug. 15, 2012, will interrupt your continuous residence and you will not be considered for deferred action under this process. Any travel outside of the United States that occurred on or after June 15, 2007, but before Aug. 15, 2012, will be assessed by U.S. Citizenship and Immigration Services (USCIS) to

determine whether the travel qualifies as brief, casual and innocent. (See Chart #2.)

**CAUTION:** You should be aware that if you have been ordered deported or removed, and you then leave the United States, your departure will likely result in your being considered deported or removed, with potentially serious future immigration consequences.

**Q57: If my case is deferred under DACA, will I be able to travel outside of the United States?**

A57: Not automatically. If USCIS has decided to defer action in your case and you want to travel outside the United States, you must apply for advance parole by filing a [Form I-131, Application for Travel Document](#) and paying the applicable fee (\$575). USCIS will determine whether your purpose for international travel is justifiable based on the circumstances you describe in your request. Generally, USCIS will only grant advance parole if your travel abroad will be in furtherance of:

- humanitarian purposes, including travel to obtain medical treatment, attending funeral services for a family member, or visiting an ailing relative;
- educational purposes, such as semester-abroad programs and academic research, or;
- employment purposes such as overseas assignments, interviews, conferences or, training, or meetings with clients overseas.

Travel for vacation is not a valid basis for advance parole.

You may not apply for advance parole unless and until USCIS defers action in your case under the consideration of DACA. You cannot apply for advance parole at the same time as you submit your request for consideration of DACA. All advance parole requests will be considered on a case-by-case basis.

If USCIS has deferred action in your case under the DACA process after you have been ordered deported or removed, you may still request advance parole if you meet the guidelines for advance parole described above.

**CAUTION:** However, for those individuals who have been ordered deported or removed, before you actually leave the United States, you should seek to reopen your case before the Executive Office for Immigration Review (EOIR) and obtain administrative closure or termination of your removal proceeding. Even after you have asked EOIR to reopen your case, you should not leave the United States until after EOIR has granted your request. If you depart after being ordered deported or removed, and your removal proceeding has not been reopened and administratively closed or terminated, your departure may result in your being considered deported or removed, with potentially serious future immigration consequences. If you have any questions about this process, you may contact U.S. Immigration and Customs Enforcement (ICE) through the local ICE Office of the Chief Counsel with jurisdiction over your case.

**CAUTION:** If you travel outside the United States on or after Aug. 15, 2012, without first receiving advance parole, your departure automatically terminates your deferred action under DACA.

**Q58: Do brief departures from the United States interrupt the continuous residence requirement?**

A58: A brief, casual and innocent absence from the United States will not interrupt your continuous residence. If you were absent from the United States, your absence will be considered brief, casual and innocent if it was on or after June 15, 2007, and before Aug. 15, 2012, and:

1. The absence was short and reasonably calculated to accomplish the purpose for the absence;
2. The absence was not because of an order of exclusion, deportation or removal;
3. The absence was not because of an order of voluntary departure, or an administrative grant of voluntary departure before you were placed in exclusion, deportation or removal proceedings; and
4. The purpose of the absence and/or your actions while outside the United States were not contrary to law.

Once USCIS has approved your request for DACA, you may file [Form I-131](#), Application for Travel Document, to request advance parole to travel outside of the United States.

CAUTION: If you travel outside the United States on or after Aug. 15, 2012, without first receiving advance parole, your departure automatically terminates your deferred action under DACA.

**Travel Guidelines (Chart #2)**

Travel Dates	Type of Travel	Does It Affect Continuous Residence
On or after June 15, 2007, but before Aug. 15, 2012	Brief, casual and innocent	No
	For an extended time	Yes
	Because of an order of exclusion, deportation, voluntary departure, or removal	
	To participate in criminal activity	
On or after Aug. 15, 2012, and before you have requested deferred action	Any	Yes. You cannot apply for advance parole unless and until DHS has determined whether to defer action in your case and you cannot travel until you receive advance parole.
		In addition, if you have previously been ordered deported and removed and you depart the United States without taking additional steps to address your removal proceedings, your departure will likely result in your being considered deported or removed, with potentially serious future immigration consequences.
On or after Aug. 15, 2012, and after you have requested deferred action	Any	

On or after Aug. 15, 2012 and after receiving DACA

Any  
It depends. If you travel after receiving advance parole, the travel will not interrupt your continuous residence. However, if you travel *without* receiving advance parole, the travel *will* interrupt your continuous residence.

**Q59: May I file a request for advance parole concurrently with my DACA package?**

A59: Concurrent filing of advance parole is not an option at this time. DHS is, however, reviewing its policy on concurrent filing of advance parole with a DACA request. In addition, DHS is also reviewing eligibility criteria for advance parole. If any changes to this policy are made, USCIS will update this FAQ and inform the public accordingly.

[Return to top.](#)

**V. Criminal Convictions**

**Q60: If I have a conviction for a felony offense, a significant misdemeanor offense, or multiple misdemeanors, can I receive an exercise of prosecutorial discretion under this new process?**

A60: No. If you have been convicted of a felony offense, a significant misdemeanor offense, or three or more other misdemeanor offenses not occurring on the same date and not arising out of the same act, omission, or scheme of misconduct, you will not be considered for Deferred Action for Childhood Arrivals (DACA) except where the Department of Homeland Security (DHS) determines there are exceptional circumstances.

**Q61: What offenses qualify as a felony?**

A61: A felony is a federal, state, or local criminal offense punishable by imprisonment for a term exceeding one year.

**Q62: What offenses constitute a significant misdemeanor?**

A62: For the purposes of this process, a significant misdemeanor is a misdemeanor as defined by federal law (specifically, one for which the maximum term of imprisonment authorized is one year or less but greater than five days) and that meets the following criteria:

1. Regardless of the sentence imposed, is an offense of domestic violence; sexual abuse or exploitation; burglary; unlawful possession or use of a firearm; drug distribution or trafficking; or, driving under the influence; or,
2. If not an offense listed above, is one for which the individual was sentenced to time in custody of more than 90 days. The sentence must involve time to be served in custody, and therefore does not include a suspended sentence.

The time in custody does not include any time served beyond the sentence for the criminal offense based on a state or local law enforcement agency honoring a detainer issued by U.S. Immigration and Customs Enforcement (ICE). Notwithstanding the above, the decision whether to defer action in a particular case is an individualized, discretionary one that is made taking into account the totality of the circumstances. Therefore, the absence of the criminal history outlined above, or its presence, is not necessarily determinative, but is a factor to be considered in the unreviewable exercise of discretion. DHS retains the discretion to determine that an individual does not warrant deferred action on the basis of a single criminal offense for which the individual was sentenced to time in custody of 90 days or less.

**Q63: What offenses constitute a non-significant misdemeanor?**

A63: For purposes of this process, a non-significant misdemeanor is any misdemeanor as defined by federal law (specifically, one for which the maximum term of imprisonment authorized is one year or less but greater than five days) and that meets the following criteria:

1. Is not an offense of domestic violence; sexual abuse or exploitation; burglary; unlawful possession or use of a firearm; drug distribution or trafficking; or, driving under the influence; and
2. Is one for which the individual was sentenced to time in custody of 90 days or less. The time in custody does not include any time served beyond the sentence for the criminal offense based on a state or local law enforcement agency honoring a detainer issued by ICE.

Notwithstanding the above, the decision whether to defer action in a particular case is an individualized, discretionary one that is made taking into account the totality of the circumstances. Therefore, the absence of the criminal history outlined above, or its presence, is not necessarily determinative, but is a factor to be considered in the unreviewable exercise of discretion.

**Q64: If I have a minor traffic offense, such as driving without a license, will it be considered a non-significant misdemeanor that counts towards the “three or more non-significant misdemeanors” making me unable to receive consideration for an exercise of prosecutorial discretion under this new process?**

A64: A minor traffic offense will not be considered a misdemeanor for purposes of this process. However, your entire offense history can be considered along with other facts to determine whether, under the totality of the circumstances, you warrant an exercise of prosecutorial discretion.

It is important to emphasize that driving under the influence is a significant misdemeanor regardless of the sentence imposed.

**Q65: What qualifies as a national security or public safety threat?**

A65: If the background check or other information uncovered during the review of your request for deferred action indicates that your presence in the United States threatens public safety or national security, you will not be able to receive consideration for an exercise of prosecutorial discretion except where DHS determines there are exceptional circumstances. Indicators that you pose such a threat include, but are not limited to, gang membership, participation in criminal activities, or participation in activities that threaten the United States.

**Q66: Will offenses criminalized as felonies or misdemeanors by state immigration laws be considered felonies or misdemeanors for purpose of this process?**

A66: No. Immigration-related offenses characterized as felonies or misdemeanors by state immigration laws will not be treated as disqualifying felonies or misdemeanors for the purpose of considering a request for consideration of deferred action under this process.

**Q67: Will DHS consider my expunged or juvenile conviction as an offense making me unable to receive an exercise of prosecutorial discretion?**

A67: Expunged convictions and juvenile convictions will not automatically disqualify you. Your request will be assessed on a case-by-case basis to determine whether, under the particular circumstances, a favorable exercise of prosecutorial discretion is warranted. If you were a juvenile, but tried and convicted as an adult, you will be treated as an adult for purposes of the DACA process.

[Return to top.](#)

## VI. Miscellaneous



**Q68: Does deferred action provide me with a path to permanent resident status or citizenship?**

A68: No. Deferred action is a form of prosecutorial discretion that does not confer lawful permanent resident status or a path to citizenship. Only the Congress, acting through its legislative authority, can confer these rights.

**Q69: Can I be considered for deferred action even if I do not meet the guidelines to be considered for DACA?**

A69: This process is only for individuals who meet the specific guidelines for DACA. Other individuals may, on a case-by-case basis, request deferred action from U.S. Citizenship and Immigration Services (USCIS) or U.S. Immigration and Customs Enforcement (ICE) in certain circumstances, consistent with longstanding practice.

**Q70: How will ICE and USCIS handle cases involving individuals who do not satisfy the guidelines of this process but believe they may warrant an exercise of prosecutorial discretion under the June 2011 Prosecutorial Discretion Memoranda?**

A70: If USCIS determines that you do not satisfy the guidelines or otherwise determines you do not warrant an exercise of prosecutorial discretion, then it will decline to defer action in your case. If you are currently in removal proceedings, have a final order, or have a voluntary departure order, you may then request ICE consider whether to exercise prosecutorial discretion.

**Q71: How should I fill out question 9 on Form I-765, Application for Employment Authorization?**

A71: When you are filing a Form I-765 as part of a DACA request, question 9 is asking you to list those Social Security numbers that were officially issued to you by the Social Security Administration.

**Q72: Will there be supervisory review of decisions by USCIS under this process?**

A72: Yes. USCIS has implemented a successful supervisory review process to ensure a consistent process for considering requests for DACA.

**Q73: Will USCIS personnel responsible for reviewing requests for DACA receive special training?**

A73: Yes. USCIS personnel responsible for considering requests for consideration of DACA have received special training.

**Q74: Must attorneys and accredited representatives who provide pro bono services to deferred action requestors at group assistance events file a Form G-28 with USCIS?**

A74: Under 8 C.F.R. §§ 292.3 and 1003.102, practitioners are required to file a Notice of Entry of Appearance as Attorney or Accredited Representative when they engage in practice in immigration matters before DHS, either in person or through the preparation or filing of any brief, application, petition, or other document. Under these rules, a practitioner who consistently violates the requirement to file a Form G-28 may be subject to disciplinary sanctions; however on Feb. 28, 2011, USCIS issued a statement indicating that it does not intend to initiate disciplinary proceedings against practitioners (attorneys and accredited representatives) based solely on the failure to submit a Notice of Entry of Appearance as Attorney or Accredited Representative (Form G-28) in relation to pro bono services provided at group assistance events. DHS is in the process of issuing a final rule at which time this matter will be reevaluated.

**Q75: When must an individual sign a Form I-821D as a preparer?**

A75: Anytime someone other than the requestor prepares or helps fill out the Form I-821D, that individual must complete Part 5 of the form.

**Q76: If I provide my employee with information regarding his or her employment to support a request for consideration of DACA, will that information be used for immigration enforcement purposes against me and/or my company?**

A76: You may, as you determine appropriate, provide individuals requesting DACA with documentation which verifies their employment. This information will not be shared with ICE for civil immigration enforcement purposes under section 274A of the Immigration and Nationality Act (relating to unlawful employment) unless there is evidence of egregious violations of criminal statutes or widespread abuses.

**Q77: Can I request consideration for deferred action under this process if I live in the Commonwealth of the Northern Mariana Islands (CNMI)?**

A77: Yes, in certain circumstances. The CNMI is part of the United States for immigration purposes and is not excluded from this process. However, because of the specific guidelines for consideration of DACA, individuals who have been residents of the CNMI are in most cases unlikely to qualify for the program. You must, among other things, have come to the United States before your 16th birthday and have resided continuously in the United States since June 15, 2007.

Under the Consolidated Natural Resources Act of 2008, the CNMI became part of the United States for purposes of immigration law only on Nov. 28, 2009. Therefore entry into, or residence in, the CNMI before that date is not entry into, or residence in, the United States for purposes of the DACA process.

USCIS has used parole authority in a variety of situations in the CNMI to address particular humanitarian needs on a case-by-case basis since Nov. 28, 2009. If you live in the CNMI and believe that you meet the guidelines for consideration of deferred action under this process, except that your entry and/or residence to the CNMI took place entirely or in part before Nov. 28, 2009, USCIS is willing to consider your situation on a case-by-case basis for a grant of parole. If this situation applies to you, you should make an appointment through [INFOPASS](#) with the USCIS ASC in Saipan to discuss your case with an immigration officer.

**Q78: Someone told me if I pay them a fee, they can expedite my DACA request. Is this true?**

A78: No. There is no expedited processing for deferred action. Dishonest practitioners may promise to provide you with faster services if you pay them a fee. These people are trying to scam you and take your money. Visit our [Avoid Scams](#) page to learn how you can protect yourself from immigration scams.

Make sure you seek information about requests for consideration of DACA from official government sources such as USCIS or the DHS. If you are seeking legal advice, visit our [Find Legal Services](#) page to learn how to choose a licensed attorney or accredited representative.

**Q79: Am I required to register with the Selective Service?**

A79: Most male persons residing in the U.S., who are ages 18 through 25, are required to register with Selective Service. Please see link for more information. [\[Selective Service\]](#).

**Q80: How can I tell if an employer is discriminating against me because I am a DACA recipient?**

A80: An employer may be engaging in discrimination if the employer:

- Demands that an employee show specific documents or asks for more or different documents than are required to complete [Form I-9, Employment Eligibility Verification](#), or create an [E-Verify](#) case; or
- Rejects documents from the Lists of Acceptable Documents that reasonably appear to be genuine and relate to the employee, including a work authorization document because it has a future expiration date or because of an employee's prior unauthorized status.

The Civil Rights Division of the U.S. Department of Justice has an office dedicated to ensuring that employers do not discriminate against individuals who are permitted to work in the U.S. These include DACA recipients who have been granted work authorization. If you think your employer may be discriminating against you, contact the Immigrant and Employee Rights Section (IER) at 1-800-255-7688 (TDD for the deaf and hard of hearing: 1-800-237-2515).

For more information about unfair employment practices against DACA recipients, please read IER's factsheet in [English \(PDF\)](#) or [Spanish \(PDF\)](#).

For additional resources and information about workers' rights, visit [www.justice.gov/crt/worker-information](http://www.justice.gov/crt/worker-information).

[Return to top.](#)

Last Reviewed/Updated: 02/08/2017

# **EXHIBIT H**

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



Homeland  
Security

February 20, 2017

MEMORANDUM FOR:

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

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

Lori Scialabba  
Acting Director  
U.S. Citizenship and Immigration Services

Joseph B. Maher  
Acting General Counsel

Dimple Shah  
Acting Assistant Secretary for International Affairs

Chip Fulghum  
Acting Undersecretary for Management

FROM:

John Kelly  
Secretary

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

SUBJECT:

**Enforcement of the Immigration Laws to Serve the National Interest**

This memorandum implements the Executive Order entitled "Enhancing Public Safety in the Interior of the United States," issued by the President on January 25, 2017. It constitutes guidance for all Department personnel regarding the enforcement of the immigration laws of the United States, and is applicable to the activities of U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS). As such, it should inform enforcement and removal activities, detention decisions, administrative litigation, budget requests and execution, and strategic planning.

With the exception of the June 15, 2012, memorandum entitled “Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children,” and the November 20, 2014 memorandum entitled “Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Residents,”<sup>1</sup> all existing conflicting directives, memoranda, or field guidance regarding the enforcement of our immigration laws and priorities for removal are hereby immediately rescinded—to the extent of the conflict—including, but not limited to, the November 20, 2014, memoranda entitled “Policies for the Apprehension, Detention and Removal of Undocumented Immigrants,” and “Secure Communities.”

#### **A. The Department’s Enforcement Priorities**

Congress has defined the Department’s role and responsibilities regarding the enforcement of the immigration laws of the United States. Effective immediately, and consistent with Article II, Section 3 of the United States Constitution and Section 3331 of Title 5, United States Code, Department personnel shall faithfully execute the immigration laws of the United States against all removable aliens.

Except as specifically noted above, the Department no longer will exempt classes or categories of removable aliens from potential enforcement. In faithfully executing the immigration laws, Department personnel should take enforcement actions in accordance with applicable law. In order to achieve this goal, as noted below, I have directed ICE to hire 10,000 officers and agents expeditiously, subject to available resources, and to take enforcement actions consistent with available resources. However, in order to maximize the benefit to public safety, to stem unlawful migration and to prevent fraud and misrepresentation, Department personnel should prioritize for removal those aliens described by Congress in Sections 212(a)(2), (a)(3), and (a)(6)(C), 235(b) and (c), and 237(a)(2) and (4) of the Immigration and Nationality Act (INA).

Additionally, regardless of the basis of removability, Department personnel should prioritize removable aliens who: (1) have been convicted of any criminal offense; (2) have been charged with any criminal offense that has not been resolved; (3) have committed acts which constitute a chargeable criminal offense; (4) have engaged in fraud or willful misrepresentation in connection with any official matter before a governmental agency; (5) have abused any program related to receipt of public benefits; (6) are subject to a final order of removal but have not complied with their legal obligation to depart the United States; or (7) in the judgment of an immigration officer, otherwise pose a risk to public safety or national security. The Director of ICE, the Commissioner of CBP, and the Director of USCIS may, as they determine is appropriate, issue further guidance to allocate appropriate resources to prioritize enforcement activities within these categories—for example, by prioritizing enforcement activities against removable aliens who are convicted felons or who are involved in gang activity or drug trafficking.

---

<sup>1</sup> The November 20, 2014, memorandum will be addressed in future guidance.

**B. Strengthening Programs to Facilitate the Efficient and Faithful Execution of the Immigration Laws of the United States**

Facilitating the efficient and faithful execution of the immigration laws of the United States—and prioritizing the Department’s resources—requires the use of all available systems and enforcement tools by Department personnel.

Through passage of the immigration laws, Congress established a comprehensive statutory regime to remove aliens expeditiously from the United States in accordance with all applicable due process of law. I determine that the faithful execution of our immigration laws is best achieved by using all these statutory authorities to the greatest extent practicable. Accordingly, Department personnel shall make full use of these authorities.

Criminal aliens have demonstrated their disregard for the rule of law and pose a threat to persons residing in the United States. As such, criminal aliens are a priority for removal. The Priority Enforcement Program failed to achieve its stated objectives, added an unnecessary layer of uncertainty for the Department’s personnel, and hampered the Department’s enforcement of the immigration laws in the interior of the United States. Effective immediately, the Priority Enforcement Program is terminated and the Secure Communities Program shall be restored. To protect our communities and better facilitate the identification, detention, and removal of criminal aliens within constitutional and statutory parameters, the Department shall eliminate the existing Forms I-247D, I-247N, and I-247X, and replace them with a new form to more effectively communicate with recipient law enforcement agencies. However, until such forms are updated they may be used as an interim measure to ensure that detainers may still be issued, as appropriate.

ICE’s Criminal Alien Program is an effective tool to facilitate the removal of criminal aliens from the United States, while also protecting our communities and conserving the Department’s detention resources. Accordingly, ICE should devote available resources to expanding the use of the Criminal Alien Program in any willing jurisdiction in the United States. To the maximum extent possible, in coordination with the Executive Office for Immigration Review (EOIR), removal proceedings shall be initiated against aliens incarcerated in federal, state, and local correctional facilities under the Institutional Hearing and Removal Program pursuant to section 238(a) of the INA, and administrative removal processes, such as those under section 238(b) of the INA, shall be used in all eligible cases.

The INA § 287(g) Program has been a highly successful force multiplier that allows a qualified state or local law enforcement officer to be designated as an “immigration officer” for purposes of enforcing federal immigration law. Such officers have the authority to perform all law enforcement functions specified in section 287(a) of the INA, including the authority to investigate, identify, apprehend, arrest, detain, and conduct searches authorized under the INA, under the direction and supervision of the Department.

There are currently 32 law enforcement agencies in 16 states participating in the 287(g)

Program. In previous years, there were significantly more law enforcement agencies participating in the 287(g) Program. To the greatest extent practicable, the Director of ICE and Commissioner of CBP shall expand the 287(g) Program to include all qualified law enforcement agencies that request to participate and meet all program requirements. In furtherance of this direction and the guidance memorandum, "Implementing the President's Border Security and Immigration Enforcement Improvements Policies" (Feb. 20, 2017), the Commissioner of CBP is authorized, in addition to the Director of ICE, to accept State services and take other actions as appropriate to carry out immigration enforcement pursuant to section 287(g) of the INA.

### **C. Exercise of Prosecutorial Discretion**

Unless otherwise directed, Department personnel may initiate enforcement actions against removable aliens encountered during the performance of their official duties and should act consistently with the President's enforcement priorities identified in his Executive Order and any further guidance issued pursuant to this memorandum. Department personnel have full authority to arrest or apprehend an alien whom an immigration officer has probable cause to believe is in violation of the immigration laws. They also have full authority to initiate removal proceedings against any alien who is subject to removal under any provision of the INA, and to refer appropriate cases for criminal prosecution. The Department shall prioritize aliens described in the Department's Enforcement Priorities (Section A) for arrest and removal. This is not intended to remove the individual, case-by-case decisions of immigration officers.

The exercise of prosecutorial discretion with regard to any alien who is subject to arrest, criminal prosecution, or removal in accordance with law shall be made on a case-by-case basis in consultation with the head of the field office component, where appropriate, of CBP, ICE, or USCIS that initiated or will initiate the enforcement action, regardless of which entity actually files any applicable charging documents: CBP Chief Patrol Agent, CBP Director of Field Operations, ICE Field Office Director, ICE Special Agent-in-Charge, or the USCIS Field Office Director, Asylum Office Director or Service Center Director.

Except as specifically provided in this memorandum, prosecutorial discretion shall not be exercised in a manner that exempts or excludes a specified class or category of aliens from enforcement of the immigration laws. The General Counsel shall issue guidance consistent with these principles to all attorneys involved in immigration proceedings.

### **D. Establishing the Victims of Immigration Crime Engagement (VOICE) Office**

Criminal aliens routinely victimize Americans and other legal residents. Often, these victims are not provided adequate information about the offender, the offender's immigration status, or any enforcement action taken by ICE against the offender. Efforts by ICE to engage these victims have been hampered by prior Department of Homeland Security (DHS) policy extending certain Privacy Act protections to persons other than U.S. citizens and lawful permanent residents, leaving victims feeling marginalized and without a voice. Accordingly, I am establishing the Victims of Immigration Crime Engagement (VOICE) Office within the Office of



the Director of ICE, which will create a programmatic liaison between ICE and the known victims of crimes committed by removable aliens. The liaison will facilitate engagement with the victims and their families to ensure, to the extent permitted by law, that they are provided information about the offender, including the offender's immigration status and custody status, and that their questions and concerns regarding immigration enforcement efforts are addressed.

To that end, I direct the Director of ICE to immediately reallocate any and all resources that are currently used to advocate on behalf of illegal aliens (except as necessary to comply with a judicial order) to the new VOICE Office, and to immediately terminate the provision of such outreach or advocacy services to illegal aliens.

Nothing herein may be construed to authorize disclosures that are prohibited by law or may relate to information that is Classified, Sensitive but Unclassified (SBU), Law Enforcement Sensitive (LES), For Official Use Only (FOUO), or similarly designated information that may relate to national security, law enforcement, or intelligence programs or operations, or disclosures that are reasonably likely to cause harm to any person.

#### **E. Hiring Additional ICE Officers and Agents**

To enforce the immigration laws effectively in the interior of the United States in accordance with the President's directives, additional ICE agents and officers are necessary. The Director of ICE shall—while ensuring consistency in training and standards—take all appropriate action to expeditiously hire 10,000 agents and officers, as well as additional operational and mission support and legal staff necessary to hire and support their activities. Human Capital leadership in CBP and ICE, in coordination with the Under Secretary for Management and the Chief Human Capital Officer, shall develop hiring plans that balance growth and interagency attrition by integrating workforce shaping and career paths for incumbents and new hires.

#### **F. Establishment of Programs to Collect Authorized Civil Fines and Penalties**

As soon as practicable, the Director of ICE, the Commissioner of CBP, and the Director of USCIS shall issue guidance and promulgate regulations, where required by law, to ensure the assessment and collection of all fines and penalties which the Department is authorized under the law to assess and collect from aliens and from those who facilitate their unlawful presence in the United States.

#### **G. Aligning the Department's Privacy Policies With the Law**

The Department will no longer afford Privacy Act rights and protections to persons who are neither U.S. citizens nor lawful permanent residents. The DHS Privacy Office will rescind the DHS *Privacy Policy Guidance memorandum*, dated January 7, 2009, which implemented the DHS "mixed systems" policy of administratively treating all personal information contained in DHS record systems as being subject to the Privacy Act regardless of the subject's immigration status. The DHS Privacy Office, with the assistance of the Office of the General Counsel, will

develop new guidance specifying the appropriate treatment of personal information DHS maintains in its record systems.

#### **H. Collecting and Reporting Data on Alien Apprehensions and Releases**

The collection of data regarding aliens apprehended by ICE and the disposition of their cases will assist in the development of agency performance metrics and provide transparency in the immigration enforcement mission. Accordingly, to the extent permitted by law, the Director of ICE shall develop a standardized method of reporting statistical data regarding aliens apprehended by ICE and, at the earliest practicable time, provide monthly reports of such data to the public without charge.

The reporting method shall include uniform terminology and shall utilize a format that is easily understandable by the public and a medium that can be readily accessed. At a minimum, in addition to statistical information currently being publicly reported regarding apprehended aliens, the following categories of information must be included: country of citizenship, convicted criminals and the nature of their offenses, gang members, prior immigration violators, custody status of aliens and, if released, the reason for release and location of their release, aliens ordered removed, and aliens physically removed or returned.

The ICE Director shall also develop and provide a weekly report to the public, utilizing a medium that can be readily accessed without charge, of non-Federal jurisdictions that release aliens from their custody, notwithstanding that such aliens are subject to a detainer or similar request for custody issued by ICE to that jurisdiction. In addition to other relevant information, to the extent that such information is readily available, the report shall reflect the name of the jurisdiction, the citizenship and immigration status of the alien, the arrest, charge, or conviction for which each alien was in the custody of that jurisdiction, the date on which the ICE detainer or similar request for custody was served on the jurisdiction by ICE, the date of the alien's release from the custody of that jurisdiction and the reason for the release, an explanation concerning why the detainer or similar request for custody was not honored, and all arrests, charges, or convictions occurring after the alien's release from the custody of that jurisdiction.

#### **I. No Private Right of Action**

This document provides only internal DHS policy guidance, which may be modified, rescinded, or superseded at any time without notice. This guidance 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.

In implementing these policies, I direct DHS Components to consult with legal counsel to ensure compliance with all applicable laws, including the Administrative Procedure Act.

# **EXHIBIT I**



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 black ink, appearing to read "Jefferson B. Sessions III".

Jefferson B. Sessions III

1 JOSEPH W. COTCHETT (SBN 36324)  
 jcotchett@cpmlegal.com  
 2 NANCY L. FINEMAN (SBN 124870)  
 nfineman@cpmlegal.com  
 3 BRIAN DANITZ (SBN 247403)  
 bdanitz@cpmlegal.com  
 4 TAMARAH P. PREVOST (SBN 313422)  
 tprevost@cpmlegal.com  
 5 **COTCHETT, PITRE & McCARTHY, LLP**  
 San Francisco Airport Office Center  
 6 840 Malcolm Road, Suite 200  
 Burlingame, CA 94010  
 7 Telephone: (650) 697-6000  
 Facsimile: (650) 697-0577  
 8

9 RICHARD DOYLE (SBN 88625)  
 NORA FRIMANN (SBN 93249)  
 10 **OFFICE OF THE CITY ATTORNEY**  
 200 East Santa Clara Street, 16th Floor  
 11 San José, California 95113  
 Telephone: (408) 535-1900  
 12 Facsimile: (408) 998-3131  
 E-Mail Address: cao.main@sanJoseca.gov  
 13

14 *Attorneys for Plaintiff the City of San Jose*

15  
 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**  
**United States, in his official capacity,**

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

25 **the UNITED STATES OF AMERICA**

26 Defendants.

Case No.

**COMPLAINT FOR:**

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

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

**TABLE OF CONTENT**

I. INTRODUCTION .....1

II. JURISDICTION AND VENUE .....2

III. PARTIES .....2

    A. Plaintiff.....2

    B. Defendants.....3

IV. FACTUAL ALLEGATIONS .....4

    A. Immigrants Contribute to the Success of the United States and California  
    Cities .....4

    B. In 2012, DACA Is Implemented .....5

    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

    D. San Jose and Silicon Valley Have Benefitted From DACA.....7

    E. While President Trump Has Been Ant-Immigrant, He Has Been Supportive  
    of DACA Recipients .....8

        1. Anti-Immigrant Statements by the President and His  
        Administration.....8

        2. Despite His Anti-Immigration Rhetoric, Trump Has Demonstrated  
        His Support of DACA.....10

    F. The Rescission of DACA.....11

    G. San Jose Has Taken Action to Try to Help Its Immigrant Residents, But  
    Has Limited Ability to Effectuate Change, Except With this Lawsuit.....11

    H. The Rescission of DACA Has Harmed San Jose.....12

V. CLAIMS FOR RELIEF .....14

VI. PRAYER FOR RELIEF .....15

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](http://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  
7 Country than the United States a Chance to Attend College and/or Work**

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

14           25.     Moreover, DACA recipients also are better educated than the average immigrant.  
15 Applicants must have at least a high school degree to enter the program. An additional 36  
16 percent of DACA recipients who are older than 25 have a bachelor's degree, and an additional  
17 32 percent are pursuing a bachelor's degree.

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

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

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

25           28.     For San Jose, the ability to hire DACA recipients has been extremely beneficial.  
26 San Jose, like the rest of the Silicon Valley, has the need for a skilled work force.  
27 Unemployment in Santa Clara County is low and competition for employees is fierce. When  
28 DACA was enacted, San Jose was able to hire DACA grantees. San Jose spent time and  
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-](https://www.washingtonpost.com/news/post-politics/wp/2015/06/16/full-text-donald-trump-announces-a-presidential-bid/?utm_term=.f6c79452d595)  
18 [announces-a-presidential-bid/?utm\\_term=.f6c79452d595](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-](https://www.nbcnews.com/news/latino/trump-claims-debate-mexico-sends-bad-ones-u-s-n405661)  
24 [n405661](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/polticis/2017/04/19/sessions-](http://www.foxnews.com/polticis/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/polticis/2017/04/19/sessions-defends-immigration-policies-after-reported-dreamer-deportation.html)).

27  
28

1                                   **2. Despite His Anti-Immigration Rhetoric, Trump Has Demonstrated**  
2                                   **His Support of DACA**

3           37. Even as he has railed at immigrants, President Trump has repeatedly stated his  
4 support for DACA recipients. For example, in an interview with *TIME* magazine on the  
5 campaign trail in December 2016, President Trump signaled that he could find a way to  
6 accommodate the DREAMers “We’re going to work something out that’s going to make people  
7 happy and proud. They got brought here at a very young age, they’ve worked here, they’ve  
8 gone to school here. Some were good students. Some have wonderful jobs. And they’re in  
9 never-never land because they don’t know what’s going to happen.” ([http://time.com/time-](http://time.com/time-person-of-the-year-2016-donald-trump/?iid=buttonrecirc)  
10 [person-of-the-year-2016-donald-trump/?iid=buttonrecirc](http://time.com/time-person-of-the-year-2016-donald-trump/?iid=buttonrecirc))

11           38. President Trump made statements in an interview with Fox & Friends on January  
12 18, 2017, promising “It’s a plan that’s going to be very firm, but it’s going to have a lot of heart.  
13 And we’re going to be looking into that situation.... That’s a very tough situation, but I think  
14 they’re going to end up being very happy.” ([http://www.politico.com/story/2017/01/trump-](http://www.politico.com/story/2017/01/trump-immigration-plan-233748)  
15 [immigration-plan-233748](http://www.politico.com/story/2017/01/trump-immigration-plan-233748))

16           39. President Trump reiterated this position the next week in an interview with David  
17 Muir of ABC News, claiming that “[DACA grantees] shouldn’t be very worried. I do have a big  
18 heart. We’re going to take care of everybody.” ([http://abcnews.go.com/Politics/transcript-abc-](http://abcnews.go.com/Politics/transcript-abc-news-anchor-david-muir-interviews-president/story?id=45047602)  
19 [news-anchor-david-muir-interviews-president/story?id=45047602](http://abcnews.go.com/Politics/transcript-abc-news-anchor-david-muir-interviews-president/story?id=45047602))

20           40. At a press conference in February of 2017, President Trump announced “We’re  
21 going to show great heart... you have some absolutely incredible kids – I would say mostly.  
22 They were brought here in such a way. It’s a very – it’s a very very tough subject. We are  
23 going to deal with DACA with heart. I have to deal with a lot of politicians, don’t forget. And I  
24 have to convince them that what I’m saying is, is right... But the DACA situation is a very very  
25 – it’s a very difficult thing for me because you know, I love these kids. I love kids. I have kids  
26 and grandkids and I find it very, very hard doing what the law says exactly to do.”  
27 ([https://www.whitehouse.gov/the-press-office/2017/02/16/remarks-president-trump-press-](https://www.whitehouse.gov/the-press-office/2017/02/16/remarks-president-trump-press-conference)  
28 [conference](https://www.whitehouse.gov/the-press-office/2017/02/16/remarks-president-trump-press-conference))



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/79f2c79805f14c3f8ac878c5df21cfd/Trump-tells-‘dreamers’-to-rest-](https://apnews.com/79f2c79805f14c3f8ac878c5df21cfd/Trump-tells-‘dreamers’-to-rest-easy,%20-targets-criminaks)  
5 [easy,%20-targets-criminaks\)](https://apnews.com/79f2c79805f14c3f8ac878c5df21cfd/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 Generals 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  
men in serious jeopardy.

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

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

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

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

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

27 49. The rescission of DACA has already had and will continue to have an impact, not  
28 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.

25  
26  
27 ///

28 ///

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.

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

24

25

26

27 ///

28 ///

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

3. The costs of bringing this suit, including reasonable attorneys' fees; and

4. All other relief to which San Jose may be entitled at law or in equity.

Dated: September 14, 2017

**COTCHETT, PITRE & McCARTHY, LLP**

By: /s/ Joseph W. Cotchett

JOSEPH W. COTCHETT

**OFFICE OF THE CITY ATTORNEY**

By: /s/ Richard Doyle

RICHARD DOYLE

*Attorneys for Plaintiff City of San Jose*

**ATTESTATION OF FILING**

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

/s/ Nancy L. Fineman

**NANCY L. FINEMAN**

*Attorney for Plaintiff City of San Jose*

1 GIBSON, DUNN & CRUTCHER LLP  
 2 THEODORE J. BOUTROUS, JR., SBN 132099  
 3 tboutrous@gibsondunn.com  
 4 KATHERINE M. MARQUART, SBN 248043  
 5 kmarquart@gibsondunn.com  
 6 JESSÉ S. GABRIEL, SBN 263137  
 7 jgabriel@gibsondunn.com  
 8 333 South Grand Avenue  
 9 Los Angeles, CA 90071-3197  
 10 Telephone: (213) 229-7000  
 11 Facsimile: (213) 229-7520

PUBLIC COUNSEL  
 MARK D. ROSENBAUM, SBN 59940  
 mrosenbaum@publiccounsel.org  
 JUDY LONDON, SBN 149431  
 jlondon@publiccounsel.org  
 610 South Ardmere Avenue  
 Los Angeles, CA 90005  
 Telephone: (213) 385-2977  
 Facsimile: (213) 385-9089

7 ETHAN D. DETTMER, SBN 196046  
 8 edettmer@gibsondunn.com  
 9 555 Mission Street  
 10 San Francisco, CA 94105  
 11 Telephone: (415) 393-8200  
 12 Facsimile: (415) 393-8306

10 Attorneys for Plaintiffs DULCE GARCIA,  
 11 MIRIAM GONZALEZ AVILA, SAUL  
 12 JIMENEZ SUAREZ, VIRIDIANA CHABOLLA  
 13 MENDOZA, NORMA RAMIREZ, and  
 14 JIRAYUT LATTHIVONGSKORN

14 *[Additional Counsel Listed on Next Page]*

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

18 DULCE GARCIA, MIRIAM GONZALEZ  
 19 AVILA, SAUL JIMENEZ SUAREZ,  
 20 VIRIDIANA CHABOLLA MENDOZA,  
 21 NORMA RAMIREZ, and JIRAYUT  
 22 LATTHIVONGSKORN,

21 Plaintiffs,

22 v.

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

29 Defendants.

CIVIL CASE NO.:

**COMPLAINT FOR DECLARATORY AND  
 INJUNCTIVE RELIEF**

1 Additional Counsel for Plaintiffs

2 BARRERA LEGAL GROUP, PLLC  
3 LUIS CORTES ROMERO, SBN 310852  
4 lcortes@barreralegal.com  
5 19309 68th Avenue South, Suite R102  
6 Kent, WA 98032  
7 Telephone: (253) 872-4730  
8 Facsimile: (253) 237-1591

9 LAURENCE H. TRIBE, SBN 39441  
10 larry@tribelaw.com  
11 Harvard Law School  
12 \*Affiliation for identification purposes only  
13 1575 Massachusetts Avenue  
14 Cambridge, MA 02138  
15 Telephone: (617) 495-1767

16 ERWIN CHEMERINSKY, *pro hac vice* forthcoming  
17 echemerinsky@law.berkeley.edu  
18 University of California, Berkeley School of Law  
19 \*Affiliation for identification purposes only  
20 215 Boalt Hall  
21 Berkeley, CA 94720-7200  
22 Telephone: (510) 642-6483

23 LEAH M. LITMAN, *pro hac vice* forthcoming  
24 llitman@law.uci.edu  
25 University of California, Irvine School of Law  
26 \*Affiliation for identification purposes only  
27 401 East Peltason Drive  
28 Irvine, CA 92697  
Telephone: (949) 824-7722



**INTRODUCTION**

1  
2 The young women and men filing this lawsuit embody the American Dream. Brought to this  
3 country as children and raised in families that often struggled with poverty and homelessness, each  
4 has achieved remarkable success through hard work, fierce determination, and incredible resilience.  
5 These are characteristics that have defined Americans throughout our Nation’s history. Plaintiffs in  
6 this case are also alike in that each has committed to helping others, choosing to direct their time,  
7 energy, and considerable talents toward defending, healing, educating, and uplifting individuals and  
8 communities that are too often ignored. While each of the Plaintiffs is remarkable in his or her own  
9 right, their stories of success—and their commitment to serving others—are common among the  
10 nearly 800,000 young people who have come to rely on the Deferred Action for Childhood Arrivals  
11 (“DACA”) program.

12 The decision to end the DACA program is a broken promise and an unprecedented violation  
13 of the constitutional rights of Plaintiffs and other young people who relied on the federal government  
14 to honor that promise. The government established the DACA program with great fanfare in 2012.  
15 Under DACA, individuals who were brought to the United States as children and meet certain  
16 criteria, and who are investigated and found to pose no threat to public safety or national security, are  
17 granted deferred action and work authorization for a two-year period, subject to renewal. These  
18 young people are commonly referred to as “Dreamers” in recognition of the fact that they have long  
19 called this country home and aspire to be part of the American Dream.

20 To apply for DACA, eligible individuals are required to provide the government with highly  
21 sensitive personal information, pay a substantial fee, and submit to a rigorous Department of  
22 Homeland Security background check. Initially, the DACA program was met with skepticism in  
23 immigrant communities, as many Dreamers were understandably reluctant to voluntarily disclose  
24 information (including their current home address) that could facilitate their removal from the United  
25 States and place their family members at risk. To combat this fear the government launched an  
26 extensive outreach campaign urging Dreamers to apply for DACA, repeatedly promising that they  
27 would be able to renew their DACA status and that information they provided in connection with the  
28 program would not be used for immigration enforcement purposes. As a result, hundreds of

1 thousands of young people applied for, and were granted, DACA status. The government quickly  
2 realized the administrative, law enforcement, public safety, and economic benefits it sought in  
3 establishing the program.

4 In creating DACA, the government offered Plaintiffs and other Dreamers a straightforward  
5 deal—if they stepped forward, shared sensitive personal information, and passed a background check,  
6 they would be granted renewable protection and would be allowed to live and work in the United  
7 States provided that they played by the rules. DACA also provided access to important benefits, and  
8 enabled recipients to open bank accounts, obtain credit cards, start businesses, purchase homes and  
9 cars, and conduct other aspects of daily life that were otherwise often unavailable to them. In so  
10 doing, DACA has allowed Plaintiffs and nearly 800,000 young people to become contributing  
11 members of society and pursue the American Dream.

12 In taking the irreversible step of identifying themselves to the government, Plaintiffs and  
13 other Dreamers trusted the government to honor its word and uphold its end of the bargain. In  
14 reliance on the government’s promises, DACA recipients took out student loans, accepted job offers,  
15 moved to new cities, started businesses, bought homes and cars, and made numerous other life  
16 changing decisions. They allowed themselves to fall in love, get married, and start families, trusting  
17 that the security and work authorization provided under DACA would enable them to care for (and  
18 remain in this country with) their spouses and children.

19 The transformative impact DACA had for Plaintiffs cannot be overstated. Brought to this  
20 country as young children, Plaintiffs have spent virtually their entire lives in the United States. They  
21 consider themselves to be Americans and call our nation home. Yet for much of their lives, Plaintiffs  
22 were denied basic opportunities and prohibited from realizing their full potential. But DACA  
23 changed everything. Beyond a work permit and access to a professional license, DACA provided  
24 Plaintiffs the certainty and security necessary to enroll in graduate programs, open businesses, hire  
25 employees, build relationships with clients, patients, and students, and begin to start families of their  
26 own. Plaintiffs were able to take these risks, and enjoy the benefits of their hard work, because they  
27 trusted the government to honor its promises and live up to its word.

28

1 Notwithstanding the severe harm it will inflict, the government arbitrarily decided to break its  
 2 promises to Plaintiffs and hundreds of thousands of other Dreamers by terminating the DACA  
 3 program. This cruel bait and switch, which was motivated by unconstitutional bias against Mexicans  
 4 and Latinos, violates the equal protection component of the Fifth Amendment, the due process rights  
 5 of Plaintiffs and other DACA recipients, and federal law, including the Administrative Procedure  
 6 Act. Plaintiffs therefore seek equitable and injunctive relief to enjoin this unlawful and  
 7 unconstitutional action, and respectfully request that the Court compel the government to honor its  
 8 promises and uphold its end of the DACA bargain.

**JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT**

9  
 10 1. This Court has jurisdiction under 28 U.S.C. § 1331 because this action arises under  
 11 the Constitution and laws of the United States. This Court has additional remedial authority under  
 12 the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the Administrative Procedure Act,  
 13 5 U.S.C. §§ 701–706.

14 2. Venue is proper in the Northern District of California pursuant to 28 U.S.C.  
 15 § 1391(b)(2) and (e)(1) because at least one plaintiff resides in this District, a substantial part of the  
 16 events or omissions giving rise to this action occurred in this District, and each defendant is an  
 17 agency of the United States or an officer of the United States sued in his or her official capacity.

18 3. Pursuant to Local Rules 3-2(c) and (d), intradistrict assignment is proper in San  
 19 Francisco or Oakland because a substantial part of the events or omissions which give rise to the  
 20 claim occurred in the Counties of San Francisco and Alameda.

**PARTIES**

21  
 22 4. Plaintiff Dulce Garcia (“Ms. Garcia”) is a DACA recipient and an attorney in San  
 23 Diego, California. Ms. Garcia earned her bachelor’s degree from the University of California, San  
 24 Diego and her law degree from the Cleveland-Marshall College of Law. She was brought to the  
 25 United States from Mexico when she was four years old. The government’s decision to terminate  
 26 the DACA program will deprive Ms. Garcia of her DACA status and the numerous valuable benefits  
 27 she is entitled to by virtue of that status. The termination of DACA also will frustrate Ms. Garcia’s  
 28 ability to represent her clients and harm the dozens of individuals who rely on her counsel.

1           5.       Plaintiff Viridiana Chabolla Mendoza (“Ms. Chabolla”) is a DACA recipient and a  
2 first-year law student at the University of California, Irvine School of Law. Ms. Chabolla was  
3 brought to the United States from Mexico when she was two years old. The government’s decision  
4 to terminate the DACA program will deprive Ms. Mendoza of her DACA status and the numerous  
5 valuable benefits she is entitled to by virtue of that status. The termination of DACA also will  
6 frustrate Ms. Chabolla’s ability to fulfill her dream of working as a lawyer and helping individuals  
7 from disadvantaged and underrepresented communities obtain justice through the legal system.

8           6.       Plaintiff Jirayut (“New”) Latthivongskorn (“Mr. Latthivongskorn”) is a DACA  
9 recipient and a fourth-year medical student at the University of California, San Francisco (“UCSF”)   
10 School of Medicine. He is also a candidate for a Master of Public Health degree from the T.H. Chan  
11 School of Public Health at Harvard University. Mr. Latthivongskorn was brought to the United  
12 States from Thailand when he was nine years old. The government’s decision to terminate the  
13 DACA program will deprive Mr. Latthivongskorn of his DACA status and the numerous valuable  
14 benefits he is entitled to by virtue of that status. The termination of DACA also will frustrate  
15 Mr. Latthivongskorn’s ability to fulfill his dream of becoming a doctor and providing care to  
16 underserved and unprivileged communities.

17           7.       Plaintiff Norma Ramirez (“Ms. Ramirez”) is a DACA recipient and a candidate for  
18 a Ph.D. in Clinical Psychology from the Fuller Theological Seminary in Pasadena, California.  
19 Ms. Ramirez was brought to the United States from Mexico when she was five years old. The  
20 government’s decision to terminate the DACA program will deprive Ms. Ramirez of her DACA  
21 status and the numerous valuable benefits she is entitled to by virtue of that status. The termination  
22 of DACA also will frustrate Ms. Ramirez’s ability to realize her dream of opening a free  
23 multidisciplinary therapy clinic to immigrant youth and their families.

24           8.       Plaintiff Miriam Gonzalez Avila (“Ms. Gonzalez”) is a DACA recipient and a  
25 teacher at Crown Preparatory Academy in Los Angeles, California. She is also a candidate for a  
26 Master of Arts in Urban Education from Loyola Marymount University. Ms. Gonzalez was brought  
27 to the United States from Mexico when she was six years old. The government’s decision to  
28 terminate the DACA program will deprive Ms. Gonzalez of her DACA status and the numerous

1 valuable benefits she is entitled to by virtue of that status. The termination of DACA also will  
2 frustrate Ms. Gonzalez’s ability to teach children in underserved communities, thereby harming the  
3 children, families, and community who have come to rely on her.

4 9. Plaintiff Saul Jimenez Suarez (“Mr. Jimenez”) is a DACA recipient and a special  
5 education teacher, coach, and mentor in Los Angeles, California. Mr. Jimenez was brought to the  
6 United States from Mexico when he was one year old. The government’s decision to terminate the  
7 DACA program will deprive Mr. Jimenez of his DACA status and the numerous valuable benefits  
8 he is entitled to by virtue of that status. The termination of DACA also will frustrate Mr. Jimenez’s  
9 ability to teach and coach young people, including those with special needs, thereby harming dozens  
10 of families and making poorer the community that he is serving and making a better place.

11 10. Defendant United States of America includes all government agencies and  
12 departments responsible for the implementation, administration, and termination of the DACA  
13 program.

14 11. Defendant Donald J. Trump is the President of the United States. President Trump  
15 made the decision to terminate the DACA program and is sued in his official capacity.

16 12. Defendant Department of Homeland Security (“DHS”) is a cabinet department of the  
17 federal government with responsibility for, among other things, administering and enforcing the  
18 nation’s immigration laws.

19 13. Defendant Elaine Duke is the Acting Secretary of Homeland Security and is sued in  
20 her official capacity. Secretary Duke is responsible for managing DHS, including the administration  
21 and enforcement of policies and practices related to DACA.

## 22 STATEMENT OF FACTS

### 23 Establishment of the DACA Program

24 14. On June 15, 2012, then-Secretary of Homeland Security Janet Napolitano issued a  
25 memorandum establishing the DACA program (the “2012 DACA Memorandum”). Under DACA,  
26 individuals who were brought to the United States as young children and who met certain specific  
27 criteria could request deferred action for a period of two years, subject to renewal. In exchange,  
28

1 DACA applicants were required to provide the government with highly sensitive personal  
2 information, submit to a rigorous background check, and pay a considerable fee.<sup>1</sup>

3 15. Deferred action is a well-established form of prosecutorial discretion under which  
4 the government defers removal action against an individual for a specified period, subject to  
5 renewal. The 2012 DACA Memorandum explained that DACA covers “certain young people who  
6 were brought to this country as children and know only this country as home” and that the  
7 immigration laws are not “designed to remove productive young people to countries where they may  
8 not have lived or even speak the language.”<sup>2</sup>

9 16. The 2012 DACA Memorandum established specific criteria that “should be satisfied  
10 before an individual is considered for an exercise of prosecutorial discretion.”<sup>3</sup> They are that the  
11 applicant:

- 12 • came to the United States under the age of sixteen;
- 13 • has continuously resided in the United States for at least five years preceding the date of the  
14 memorandum and is present in the United States on the date of the memorandum;
- 15 • is currently in school, has graduated from high school, has obtained a general education  
16 development certificate, or is an honorably discharged veteran of the Coast Guard or Armed  
17 Forces of the United States;
- 18 • has not been convicted of a felony offense, a significant misdemeanor offense, multiple  
19 misdemeanor offenses, or otherwise poses a threat to national security or public safety; and  
20 • is not above the age of thirty.<sup>4</sup>

21  
22  
23  
24 <sup>1</sup> Memorandum from Secretary Janet Napolitano, Exercising Prosecutorial Discretion with Respect  
25 to Individuals Who Came to the United States as Children, at 1–2 (June 15, 2012),  
[https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-  
26 came-to-us-as-children.pdf](https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf) (hereinafter “2012 DACA Memorandum”).

27 <sup>2</sup> *Id.*

28 <sup>3</sup> *Id.* at 1.

<sup>4</sup> *Id.*

1           17.       The 2012 DACA Memorandum further provided that “[n]o individual should  
2 receive deferred action . . . unless they first pass a background check and requests for relief . . . are  
3 to be decided on a case by case basis.”<sup>5</sup>

4           18.       USCIS describes DACA as follows: “Deferred action is a discretionary  
5 determination to defer a removal action of an individual as an act of prosecutorial discretion. For  
6 purposes of future inadmissibility based upon unlawful presence, an individual whose case has been  
7 deferred is not considered to be unlawfully present during the period in which deferred action is in  
8 effect. An individual who has received deferred action is authorized by DHS to be present in the  
9 United States, and is therefore considered by DHS to be lawfully present during the period deferred  
10 action is in effect. However, deferred action does not confer lawful status upon an individual, nor  
11 does it excuse any previous or subsequent periods of unlawful presence.”<sup>6</sup>

12           19.       Like other forms of deferred action, DACA serves the government’s interests by  
13 allowing the government to prioritize resources and exercise discretion for its own convenience.  
14 DACA also has provided the government with tremendous law enforcement, public safety, and  
15 economic benefits. As the government has recognized, our nation “continue[s] to benefit . . . from  
16 the contributions of those young people who have come forward and want nothing more than to  
17 contribute to our country and our shared future.”<sup>7</sup>

18       **The DACA Application and Renewal Process**

19           20.       To apply for DACA, applicants must submit extensive documentation establishing  
20 that they meet the relevant criteria.<sup>8</sup> Applicants must also submit a Form I-765 Application for  
21 Employment Authorization, and pay \$495 in fees.<sup>9</sup>

22 \_\_\_\_\_  
23 <sup>5</sup> *Id.* at 2.

24 <sup>6</sup> USCIS DACA FAQs (Archived), Question 1, <https://www.uscis.gov/archive/frequently-asked-questions> (hereinafter “USCIS DACA FAQs”).

25 <sup>7</sup> Letter from Secretary Jeh Charles Johnson to U.S. Representative Judy Chu (Dec. 30, 2016),  
26 <https://chu.house.gov/sites/chu.house.gov/files/documents/DHS.Signed%20Response%20to%20Chu%2012.30.16.pdf> (hereinafter “Secretary Johnson Letter”).

27 <sup>8</sup> USCIS DACA FAQs, Questions 28–41.

28 <sup>9</sup> *Id.*, Question 7; *see also* USCIS, I-821D, Consideration of Deferred Action for Childhood Arrivals, <https://www.uscis.gov/i-821d>.

1           21.       DACA applicants must also undergo biometric and biographic background checks.  
2       When conducting these checks, DHS reviews the applicant’s biometric and biographic information  
3       “against a variety of databases maintained by DHS and other federal government agencies.”<sup>10</sup> If any  
4       information “indicates that [the applicant’s] presence in the United States threatens public safety or  
5       national security,” the applicant will be ineligible for DACA absent “exceptional circumstances.”<sup>11</sup>

6           22.       DACA is not limited to a single, two-year deferral of action. On the contrary, the  
7       ability to renew DACA status is an essential element of the program and one of the main benefits  
8       used to induce Dreamers to step forward, subject themselves to a rigorous background investigation,  
9       and share sensitive personal information with the government. Indeed, the government clearly  
10       understood from the very beginning that Dreamers would not apply for DACA, and the program  
11       would not be successful, unless they were promised the opportunity to renew their DACA status.

12           23.       To that end, the 2012 DACA Memorandum explicitly directs that DACA be  
13       “*subject to renewal*, in order to prevent low priority individuals from being placed into removal  
14       proceedings or removed from the United States.”<sup>12</sup> That memorandum also makes clear that DACA  
15       is meant to protect “productive young people” who “were brought to this country as children and  
16       know only this country as home” and not merely postpone their removal for two years.<sup>13</sup>

17           24.       DHS also established a straightforward renewal process for DACA and “strongly  
18       encourage[d]” DACA recipients to submit their renewal request in advance of the relevant  
19       expiration date.<sup>14</sup> Moreover, DACA renewal does not require DACA recipients to meet all of the  
20       initial criteria for the program, nor does it require them to submit additional documents.<sup>15</sup> On the  
21       contrary, to qualify for renewal, DACA recipients are required to meet three basic criteria: (1) they  
22       must not have left the United States without advance parole; (2) they must have continuously  
23

---

24       <sup>10</sup> USCIS DACA FAQs, Question 23.

25       <sup>11</sup> *Id.*, Question 65.

26       <sup>12</sup> 2012 DACA Memorandum, at 3 (emphasis added).

27       <sup>13</sup> *Id.*

28       <sup>14</sup> USCIS DACA FAQs, Question 49.

<sup>15</sup> *Id.*, Questions 53–54.



1 resided in the United States after submitting their DACA application; and (3) they must not have  
2 been convicted of a felony, a significant misdemeanor, or three or more misdemeanors, or otherwise  
3 pose a threat to national security or public safety.<sup>16</sup>

4 25. DHS “Standard Operating Procedures” also provide that, absent an “Egregious  
5 Public Safety” issue or other special circumstances, DACA status should not be revoked until the  
6 government has provided a “Notice of Intent to Terminate” which “thoroughly explain[s]” the  
7 grounds for the termination.<sup>17</sup> DHS policy further provides that the recipients of such notice should  
8 be afforded 33 days to “file a brief or statement contesting the grounds cited in the Notice of Intent  
9 to Terminate” prior to termination of DACA status.<sup>18</sup>

10 26. Collectively, these policies and procedures, and the representations of numerous  
11 government officials, created a clear and reasonable expectation among DACA recipients that they  
12 would be entitled to continuously renew their DACA status so long as they stayed out of trouble and  
13 played by the rules.

14 **Benefits Provided Under the DACA Program**

15 27. DACA confers numerous important benefits on those who apply for and are granted  
16 DACA status. Notably, DACA recipients are granted the right not to be arrested or detained based  
17 solely on their immigration status during the time period their deferred action is in effect.<sup>19</sup>

18 28. DACA recipients are also eligible for work authorization under longstanding  
19 regulations. As USCIS has explained, “an individual whose case has been deferred is eligible to  
20 receive employment authorization for the period of deferred action . . . .”<sup>20</sup>

21  
22 

---

<sup>16</sup> *Id.*, Question 51.

23 <sup>17</sup> See DHS National Standard Operating Procedures (SOP): Deferred Action for Childhood Arrivals  
24 (DACA), at 132, 144–45 (Apr. 4, 2013),  
[https://cliniclegal.org/sites/default/files/attachments/daca\\_sop\\_4-4-13.pdf](https://cliniclegal.org/sites/default/files/attachments/daca_sop_4-4-13.pdf) (the “DACA SOP”).

25 <sup>18</sup> *Id.*

26 <sup>19</sup> See USCIS DACA FAQs, Question 9 (“[I]f an individual meets the guidelines for DACA, CBP  
27 or ICE should exercise their discretion on a case-by-case basis to prevent qualifying individuals  
from being apprehended.”); 2012 DACA Memorandum, at 2; see also *Ariz. Dream Act Coal. v.*  
*Brewer*, 757 F.3d 1053, 1058–59 (9th Cir. 2014).

28 <sup>20</sup> USCIS DACA FAQs, Question 1.

1           29.       DACA recipients are eligible to receive certain public benefits. These include  
2 Social Security, retirement, and disability benefits, and, in certain states, benefits such as driver’s  
3 licenses, health care, financial aid, tuition benefits, and unemployment insurance.<sup>21</sup>

4           30.       DACA also serves as a gateway to numerous other important public and private  
5 practical benefits, and enables recipients to open bank accounts, obtain credit cards, start businesses,  
6 purchase homes and cars, and conduct other aspects of daily life that would otherwise often be  
7 unavailable to them.

8           31.       DACA also confers certain immigration benefits and the ability to travel abroad.  
9 For example, DACA recipients do not accrue time under 8 U.S.C. § 1182(a)(9)(B)(i), and may  
10 briefly depart the U.S. and legally return under certain circumstances.<sup>22</sup>

11           32.       As the government has recognized, DACA has enabled hundreds of thousands of  
12 young people “to enroll in colleges and universities, complete their education, start businesses that  
13 help improve our economy, and give back to our communities as teachers, medical professionals,  
14 engineers, and entrepreneurs—all on the books.”<sup>23</sup>

15       **The Government’s Promises and Its Efforts to Promote DACA**

16           33.       When the DACA program was first launched, many eligible Dreamers were  
17 understandably reluctant to step forward and voluntarily disclose sensitive personal information  
18 (including their current home address) that could facilitate their removal from the United States and  
19 place their family members at risk. In response, the government launched an extensive outreach  
20 campaign and vigorously promoted the DACA program. Among other efforts, the government  
21 provided advice and guidance to civic organizations and education professionals about “best  
22 practices” they could use to encourage eligible individuals to apply for the program. The  
23 government also hosted informational workshops, and senior government officials—including  
24 President Obama—encouraged young people to apply for the program.

25  
26       <sup>21</sup> See 8 U.S.C. §§ 1611(b)(2)–(3), 1621(d); *Texas v. United States*, 809 F.3d 134, 148 (5th Cir.  
27       2015); *Ariz. Dream Act Coal. v. Brewer*, 81 F. Supp. 3d 795, 811 (D. Ariz. 2015); see also, e.g.,  
28       Cal. Educ. Code §§ 66021.6-66021.7, 68130.5, 76300.5; Cal. Code Regs. tit. 22, § 50301.3.

<sup>22</sup> See USCIS DACA FAQs, Question 57.

<sup>23</sup> Secretary Johnson Letter, at 2.

1           34.       The government reiterated these promises in its official correspondence, vowing  
2 that DACA recipients would not lose their benefits—including the ability to renew their DACA  
3 status—absent specified misconduct. For example, the approval notice granting deferred action  
4 under DACA lists only “fraud or misrepresentation” in the application process or “[s]ubsequent  
5 criminal activity” as grounds for revoking DACA.<sup>24</sup>

6           35.       The government also made promises about information provided by DACA  
7 recipients as part of its efforts to promote the program. In particular, since the inception of the  
8 DACA program, the government has repeatedly represented to applicants, Congress, and the general  
9 public that information provided by DACA applicants about themselves or others (including family  
10 members) would not be used for immigration enforcement purposes absent special circumstances.

11           36.       As then-Secretary of Homeland Security Jeh Johnson explained, “[s]ince DACA  
12 was announced in 2012, DHS has consistently made clear that information provided by applicants  
13 . . . will not later be used for immigration enforcement purposes except where it is independently  
14 determined that a case involves a national security or public safety threat, criminal activity, fraud, or  
15 limited other circumstances where issuance of a notice to appear is required by law.”<sup>25</sup>

16           37.       Secretary Johnson further explained that this approach was the “long-standing and  
17 consistent practice of DHS (and its predecessor INS)” for many “decades” in the use of information  
18 “submitted by people seeking deferred action” under a wide variety of programs, as well as  
19 applicants seeking immigration “benefits or relief” under a number of other programs.<sup>26</sup> According  
20 to Secretary Johnson, “DACA applicants most assuredly relied” upon “these representations” and  
21 the agency’s “consistent practice” stretching back decades.<sup>27</sup>

22           38.       The government’s promise not to use information provided by applicants for  
23 immigration enforcement purposes also appears in the USCIS’s official instructions regarding the  
24 DACA application process. Those instructions provide:

25 \_\_\_\_\_  
26 <sup>24</sup> The University of Washington, I-797 DACA Approval Sample, [https://registrar.washington.edu/i-797-daca-approval\\_sample](https://registrar.washington.edu/i-797-daca-approval_sample).

27 <sup>25</sup> Secretary Johnson Letter, at 1.

28 <sup>26</sup> *Id.* at 1–2.

<sup>27</sup> *Id.* at 1.

1 *Information provided in this request is protected from disclosure to ICE and U.S.*  
 2 *Customs and Border Protection (CBP) for the purpose of immigration enforcement*  
 3 *proceedings unless the requestor meets the criteria for the issuance of a Notice To Appear*  
 4 *or a referral to ICE under the criteria set forth in USCIS' Notice to Appear guidance*  
 5 *(www.uscis.gov/NTA). The information may be shared with national security and law*  
 6 *enforcement agencies, including ICE and CBP, for purposes other than removal,*  
 7 *including for assistance in the consideration of deferred action for childhood arrivals*  
 8 *request itself, to identify or prevent fraudulent claims, for national security purposes, or*  
 9 *for the investigation or prosecution of a criminal offense. The above information sharing*  
 10 *clause covers family members and guardians, in addition to the requestor.*<sup>28</sup>

11 39. The same promise appears on the DHS website, which states that “[i]nformation  
 12 provided in this request [for DACA] *is protected from disclosure* to ICE and CBP for the purpose of  
 13 immigration enforcement proceedings unless the requestor meets the criteria for the issuance of a  
 14 Notice To Appear or a referral to ICE under the criteria set forth in USCIS' Notice to Appear  
 15 guidance (www.uscis.gov/NTA). Individuals whose cases are deferred pursuant to DACA will not  
 16 be referred to ICE.”<sup>29</sup>

17 40. That same promise is also included in DHS's official, and statutorily-required,  
 18 Privacy Impact Assessment for the DACA program.<sup>30</sup>

19 41. Numerous public officials from both political parties have reinforced these promises  
 20 and have recognized that Dreamers have relied on the government to keep its word. For example, in  
 21 December 2016, then-Secretary of Homeland Security Jeh Charles Johnson acknowledged that there  
 22 are hundreds of thousands of Dreamers who have “relied on the U.S. government's representations”  
 23 about DACA, and he asserted that “representations made by the U.S. government, upon which  
 24 DACA applicants most assuredly relied, must continue to be honored.”<sup>31</sup>

25 <sup>28</sup> Instructions for Consideration of Deferred Action for Childhood Arrivals, USCIS Form I-821D at  
 26 13 (Jan. 9, 2017 ed.), <https://www.uscis.gov/sites/default/files/files/form/i-821dinstr.pdf>  
 27 (emphasis added).

28 <sup>29</sup> USCIS DACA FAQs, Question 19. The referenced Notice to Appearance guidance is USCIS  
 Policy Memorandum 602-0050 (Nov. 7, 2011) (“Revised Guidance for the Referral of Cases and  
 Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Removable Aliens”).

<sup>30</sup> DHS, *Privacy Impact Assessment, USCIS, Deferred Action for Childhood Arrivals* 13 (Aug. 15,  
 2012), [https://www.dhs.gov/sites/default/files/publications/privacy/privacy\\_pia\\_uscis\\_daca.pdf](https://www.dhs.gov/sites/default/files/publications/privacy/privacy_pia_uscis_daca.pdf);  
 see E-Government Act of 2002 Sec. 208(b), Pub L. No. 107-347, 116 Stat. 2899, 2921 (codified  
 as amended at 44 U.S.C. § 3501 note).

<sup>31</sup> Secretary Johnson Letter, at 1.

1           42.       In January 2017, Speaker of the House Paul Ryan stated that the government must  
2 ensure that “the rug doesn’t get pulled out from under” Dreamers, who have “organize[d] [their]  
3 li[ves] around” the DACA program.<sup>32</sup>

4           43.       Also in January 2017, Senator Lindsey Graham stated that the government should  
5 not “pull the rug out and push these young men and women—who came out of the shadows and  
6 registered with the federal government—back into the darkness.”<sup>33</sup>

7           44.       In February 2017, Congressman Raúl Grijalva described DACA as a  
8 “commitment,” and called for “the federal government to honor its word to protect” Dreamers.<sup>34</sup>

9           45.       On February 20, 2017, then-Secretary of Homeland Security John F. Kelly issued a  
10 memorandum that “immediately rescinded” all “conflicting directives, memoranda, or field  
11 guidance regarding the enforcement of our immigration laws and priorities for removal,” but  
12 specifically exempted the 2012 DACA Memorandum.<sup>35</sup>

13           46.       On March 29, 2017, then-Secretary Kelly reaffirmed that “DACA status” is a  
14 “commitment . . . by the government towards the DACA person, or the so-called Dreamer.”<sup>36</sup>

15           47.       On April 21, 2017, President Trump said that his administration is “not after the  
16 dreamers” and suggested that “[t]he dreamers should rest easy.” When asked if “the policy of [his]  
17 administration [is] to allow the dreamers to stay,” President Trump answered, “Yes.”<sup>37</sup>

18  
19 \_\_\_\_\_  
20 <sup>32</sup> Transcript of CNN Town Hall Meeting with House Speaker Paul Ryan, CNN (Jan. 12, 2017),  
21 <http://cnn.it/2oyJXJJ>.

22 <sup>33</sup> Lindsey Graham, *Graham, Durbin Reintroduce BRIDGE Act To Protect Undocumented Youth From Deportation* (Jan. 12, 2017),  
23 <https://www.lgraham.senate.gov/public/index.cfm/2017/1/graham-durbin-reintroduce-bridge-act-to-protect-undocumented-youth-from-deportation>.

24 <sup>34</sup> Congressional Progressive Caucus Leaders Respond to ICE Arrest of DACA Recipient (Feb. 16, 2017),  
25 <https://cpc-grijalva.house.gov/press-releases/congressional-progressive-caucus-leaders-respond-to-ice-arrest-of-daca-recipient>.

26 <sup>35</sup> Memorandum from Secretary John Kelly, Enforcement of the Immigration Laws to Serve the National Interest, at 2 (Feb. 20, 2017),  
27 [https://www.dhs.gov/sites/default/files/publications/17\\_0220\\_S1\\_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf](https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf) (hereinafter “Secretary Kelly Memo”).

28 <sup>36</sup> Ted Hesson & Seung Min Kim, Wary Democrats Look to Kelly for Answers on Immigration, Politico (Mar. 29, 2017), <http://politi.co/2mR3gSN>.

<sup>37</sup> *Transcript of AP Interview With Trump*, CBS News (Associated Press) (Apr. 24, 2017), <https://www.cbsnews.com/news/transcript-of-ap-interview-with-trump>.

1 **Ms. Garcia Relied on the Government's Promises Regarding DACA**

2 48. Dulce Garcia was brought to the United States from Mexico when she was four  
3 years old. Ms. Garcia was raised in a low-income, underserved neighborhood in San Diego,  
4 California. Throughout her childhood, Ms. Garcia lacked health care and her family struggled with  
5 poverty and occasional periods of homelessness.

6 49. Although she grew up fearing the police and immigration authorities, Ms. Garcia  
7 did not learn that she was undocumented until high school. Around this time, Ms. Garcia began to  
8 discover the limitations of being undocumented and was advised by her high school guidance  
9 counselor that she would be unable to enroll in college or secure federal financial aid despite her  
10 academic record.

11 50. Refusing to yield to these limitations, Ms. Garcia continuously sought to enroll at a  
12 local community college, despite repeatedly being denied admission because of her immigration  
13 status. Eventually, Ms. Garcia secured admission to the school. Ms. Garcia later transferred to the  
14 University of California, San Diego ("UCSD"), graduating in 2009 with a bachelor's degree in  
15 political science and securing honors every quarter she was enrolled at UCSD. During this time,  
16 Ms. Garcia worked full time as a legal assistant at a small law firm, which solidified her childhood  
17 dream of becoming an attorney, and often sought out second and third jobs in order to pay for tuition  
18 and books.

19 51. Ms. Garcia matriculated at the Cleveland-Marshall College of Law in Cleveland,  
20 Ohio in 2011. Because tuition was a flat rate regardless of the number of units, Ms. Garcia sought  
21 the Dean's approval to take extra classes during her second and third years. Ms. Garcia also worked  
22 throughout law school as legal assistant to cover tuition and her living expenses.

23 52. During her last year of law school, when money was especially tight, Ms. Garcia's  
24 mother gave her \$5,000 to help pay for tuition. This sum represented most of Ms. Garcia's mother's  
25 life savings, which she had earned working the night shift as a hotel housekeeper.

26 53. During Ms. Garcia's second year of law school, the government announced the  
27 DACA program. Ms. Garcia was overjoyed and broke down in tears when she heard the  
28 announcement. Although she was initially skeptical, Ms. Garcia decided that she could trust the

1 government to honor its promises. In reliance on the government's promises, she applied for  
2 DACA, providing the government with her personal information and the required fees. Ms. Garcia  
3 passed the background check and was granted DACA status in 2014. In reliance on the  
4 government's promises, Ms. Garcia successfully reapplied for DACA status and work authorization  
5 in 2016. Ms. Garcia was admitted to the California Bar in May 2016.

6 54. Being granted DACA status was a transformative experience for Ms. Garcia.  
7 DACA freed Ms. Garcia from the constant worry that she would be detained and deported every  
8 time she stepped outside her home. It also gave her the confidence to hire several employees, build  
9 a thriving law practice, and represent dozens of clients in immigration, civil litigation, and criminal  
10 defense cases. Finally, DACA enabled Ms. Garcia to dream about becoming a mother, allowing her  
11 to take the first steps toward becoming a foster parent, with the ultimate goal of adopting a child.

12 55. Ms. Garcia trusted the government to honor its promises and advised others that  
13 information provided as part of DACA would not be used for immigration enforcement purposes.  
14 Even after the new administration was sworn into office, Ms. Garcia continued to trust the  
15 government, helping to create a video encouraging eligible young people to apply for DACA.

16 **Ms. Chabolla Relied on the Government's Promises Regarding DACA**

17 56. Viridiana Chabolla was brought to the United States from Mexico when she was  
18 two years old. Ms. Chabolla grew up in Los Angeles, California. Ms. Chabolla confronted the  
19 reality of her undocumented status from an early age, and was unable to participate in certain club  
20 and community activities that required a Social Security number.

21 57. Ms. Chabolla was inspired to pursue a career in law by her grandfather, who  
22 suggested that becoming an attorney would give her "the power to fight injustice with words."  
23 Ms. Chabolla was further inspired after meeting a Latino judge from East Los Angeles, whose  
24 eloquence, impressive academic credentials, and commitment to the community left a deep  
25 impression on her.

26 58. Ms. Chabolla enrolled in Pomona College in the fall of 2009 and graduated with a  
27 Bachelor of Arts degree in Sociology and Chicana/o-Latina/o Studies in May 2013. Ms. Chabolla  
28 received numerous honors and awards and was deeply involved in campus life. At the same time,

1 Ms. Chabolla sought out ways to give back to her community, helping to coordinate academic and  
2 enrichment activities, SAT preparation classes, and college information sessions for hundreds of  
3 students from economically disadvantaged and underrepresented backgrounds. Ms. Chabolla also  
4 created and taught an elective course on the U.S. Civil Rights Movement to high school students.

5 59. In 2012, during her final year of college, Ms. Chabolla applied for and was granted  
6 DACA status. In reliance on the promises made by the government, Ms. Chabolla disclosed  
7 personal information about herself and her family, paid the required fee, and submitted to a DHS  
8 background check. In reliance on the government's promises, Ms. Chabolla successfully reapplied  
9 for DACA status in 2014 and again in 2016.

10 60. After graduating from Pomona, Ms. Chabolla was hired as a community organizer  
11 at Public Counsel, the nation's largest pro bono law firm. In that capacity, Ms. Chabolla assisted  
12 with landmark civil rights litigation involving educational inequities in the public education system,  
13 as well as with efforts to provide essential services to homeless veterans, women, and youth in Los  
14 Angeles County.

15 61. Ms. Chabolla's experiences at Public Counsel solidified her interest in helping  
16 underserved individuals and communities obtain justice through the legal system. In pursuit of this  
17 goal, Ms. Chabolla secured a special fellowship from the law firm of Munger, Tolles & Olson LLP,  
18 and enrolled earlier this year as a Public Interest Scholar at the University of California, Irvine  
19 School of Law.

20 **Mr. Latthivongskorn Relied on the Government's Promises Regarding DACA**

21 62. New Latthivongskorn was brought to the United States from Thailand when he was  
22 nine years old. Mr. Latthivongskorn was raised in California. His parents first settled in Fremont,  
23 California, where they worked cleaning toilets and mopping floors, and later waiting tables at  
24 various restaurants. In 2004, Mr. Latthivongskorn's parents moved the family to Sacramento to  
25 open their own restaurant, hoping that it would allow them to earn enough money to be able to send  
26 their children to college.

27 63. Growing up, Mr. Latthivongskorn lived with the constant fear that he or his parents  
28 might be deported. Mr. Latthivongskorn began to more acutely experience the challenges of being



1 undocumented as he grew older, often searching for excuses such as being “deathly afraid of  
2 driving” to explain to classmates why he lacked a driver’s license.

3 64. Mr. Latthivongskorn was inspired to become a doctor after his mother was  
4 diagnosed with ovarian tumors during his junior year of high school. Not only did  
5 Mr. Latthivongskorn witness the incredible power of medicine to help those in need, but he also  
6 experienced the barriers that low-income immigrants face in navigating the health care system.  
7 After this experience, Mr. Latthivongskorn decided that he wanted to devote his life to improving  
8 access to health care for immigrant and low-income communities.

9 65. Mr. Latthivongskorn’s parents taught him that hard work and education were the  
10 keys to success. In addition to waiting tables, washing dishes, and mopping floors in his family’s  
11 restaurant on nights and weekends, Mr. Latthivongskorn immersed himself in his studies, taking  
12 honors and AP classes. As a result of his hard work, Mr. Latthivongskorn graduated as salutatorian  
13 of his high school class and was accepted to UC Berkeley.

14 66. Because he lacked a Social Security number, Mr. Latthivongskorn was ineligible for  
15 federal financial aid. However, due to his record of achievement, Mr. Latthivongskorn was offered  
16 a prestigious scholarship that promised to cover a significant portion of his educational expenses for  
17 four years. This scholarship was revoked only weeks before classes began after UC Berkeley  
18 learned that Mr. Latthivongskorn lacked legal status. Mr. Latthivongskorn was devastated and  
19 considered attending a community college, but his family insisted that he enroll at UC Berkeley.

20 67. While Mr. Latthivongskorn thrived at UC Berkeley, he constantly worried about  
21 how to finance his education. To help pay for school, Mr. Latthivongskorn worked as a busboy at a  
22 Thai restaurant and secured scholarships from several nonprofit organizations. Despite his  
23 demanding academic and work commitments, Mr. Latthivongskorn devoted significant time to  
24 volunteering with several local nonprofit organizations.

25 68. In 2011, Mr. Latthivongskorn was robbed at gun point just five blocks from the UC  
26 Berkeley campus. He decided not to report the crime to the police out of fear that stepping forward  
27 to law enforcement might lead to him being deported.

28

1           69.       While at UC Berkeley, Mr. Latthivongskorn also developed into an activist and  
2 learned the power of grassroots community organizing. Among other efforts, Mr. Latthivongskorn  
3 advocated for federal legislation to assist Dreamers, and testified before the California Legislature in  
4 support of the California DREAM Act in 2011 and the California TRUST Act in 2013.

5           70.       In 2012, Mr. Latthivongskorn co-founded Pre-Health Dreamers (“PHD”), a national  
6 nonprofit organization that provides advising, resources, and advocacy for undocumented students  
7 interested in pursuing careers in health care and science. In January 2017, *Forbes* Magazine named  
8 Mr. Latthivongskorn to its “30 Under 30 in Education” list, commending him for being “on the  
9 frontline of getting undocumented students into medical professions and on the path to becoming  
10 physicians and health care professionals.”

11           71.       In 2012, Mr. Latthivongskorn graduated with honors from UC Berkeley, earning a  
12 degree in Molecular & Cellular Biology and Distinction in General Scholarship. In spite of his  
13 excellent academic record, Mr. Latthivongskorn was told by the deans of admissions at several  
14 medical schools that he should not apply to their programs because he was undocumented and that  
15 no medical school would invest their resources in training someone who might not be able to stay in  
16 the United States. Refusing to take “no” for an answer, Mr. Latthivongskorn applied to medical  
17 school anyway, but was initially turned down.

18           72.       Exactly one month after Mr. Latthivongskorn graduated from UC Berkeley, the  
19 government announced the DACA program. Believing that he could rely on the government to  
20 honor its promises, Mr. Latthivongskorn applied for DACA in the fall of 2012. He passed the  
21 background check and was granted DACA status on January 24, 2013. In reliance on the  
22 government’s promises, Mr. Latthivongskorn successfully reapplied for DACA status and work  
23 authorization in 2014 and then again in 2016.

24           73.       Being granted DACA status changed Mr. Latthivongskorn’s life. Because DACA  
25 recipients were granted permission to stay in the United States on a renewable basis, medical  
26 schools became willing to invest in these students for the several years it takes to complete medical  
27 school and residency programs. Mr. Latthivongskorn reapplied to medical schools, and in 2014, he  
28 enrolled at UCSF, one of the most prestigious and selective medical schools in the country.

1 Mr. Latthivongskorn is part of the Program in Medical Education for the Urban Underserved  
2 (“PRIME-US”), and is committed to using his degree to improve health care delivery systems and  
3 assist urban underserved communities.

4 74. In April 2017, Mr. Latthivongskorn was awarded a prestigious U.S. Public Health  
5 Service Excellence in Public Health Award, which is given to medical students who have helped to  
6 advance the U.S. Public Health Service’s mission to “protect, promote, and advance the health and  
7 safety of our Nation.”

8 75. In August 2017, Mr. Latthivongskorn began pursuing a Master of Public Health at  
9 Harvard University. His goal is to develop a better understanding of health care policy so that he  
10 can help to end health disparities and increase access to affordable, quality health care, particularly  
11 for immigrants and other underserved communities.

12 **Ms. Ramirez Relied on the Government’s Promises Regarding DACA**

13 76. Norma Ramirez was brought to the United States from Mexico when she was five  
14 years old. Ms. Ramirez attended public high school, where she was an honor roll student. Her  
15 undocumented status made an impact on her in high school when she was denied a driver’s license  
16 and learned that her dreams of going to college might be out of reach.

17 77. Ms. Ramirez attended the College of Southern Nevada, and later the University of  
18 Nevada, Las Vegas, where she earned a bachelor’s degree in psychology in 2014.

19 78. Ms. Ramirez could not believe the news in 2012 when her pastor sent her a text  
20 message telling her about the DACA program. Relying on the government’s promises under the  
21 DACA program, Ms. Ramirez applied for DACA status on August 15, 2012. Her application was  
22 approved on November 1, 2012. In further reliance on the government’s promises, Ms. Ramirez  
23 twice reapplied for DACA status and work authorization, and was reapproved in September 2014  
24 and October 2016.

25 79. Ms. Ramirez has been inspired to continue her education in clinical psychology in  
26 part because her experiences as a volunteer mentor have exposed her to the suffering of countless  
27 individuals who do not have access to mental health services, much less access to practitioners who  
28 speak their native language or share an understanding of the immigrant experience. Her motivation

1 also stems from her own difficulties in finding a supportive environment to discuss the challenges  
2 and barriers she has faced as an undocumented immigrant.

3 80. In 2015, Ms. Ramirez began her graduate work at the Fuller Theological Seminary  
4 in Pasadena, California. She earned her Master's degree in Clinical Psychology in 2017 and is  
5 currently pursuing her Ph.D. in Clinical Psychology. Since 2016, Ms. Ramirez has worked at an  
6 outpatient clinic in Monrovia, California, providing school and home-based therapy to patients in  
7 English and Spanish, and also has served as a member of the Board of Directors for the Immigration  
8 Resource Center of San Gabriel Valley.

9 81. DACA enabled Ms. Ramirez to pursue her dream of establishing a free clinic that  
10 provides mental health services to immigrant youth, Latinos, and their families. As a Dreamer,  
11 Ms. Ramirez understands the challenges faced by many of her patients, and is able to secure their  
12 trust in a way that many other mental health practitioners cannot.

13 **Ms. Gonzalez Relied on the Government's Promises Regarding DACA**

14 82. Miriam Gonzalez was brought to the United States from Mexico when she was six  
15 years old. She was raised in Los Angeles, California, and graduated from Roosevelt High School in  
16 2011.

17 83. Ms. Gonzalez first learned she was undocumented in the seventh grade, after talking  
18 with her friends about getting a summer job at an elementary school. When she asked her parents  
19 for her Social Security number so that she could apply to work with her friends, they informed her  
20 that she was undocumented and had no Social Security number.

21 84. In spite of their undocumented status, Ms. Gonzalez's parents pushed her to get  
22 good grades, with the hope that she would go to college. In high school, Ms. Gonzalez began telling  
23 her teachers that she was undocumented, and they provided her with resources about the application  
24 process and about a California law allowing undocumented students to pay in-state tuition.

25 85. Relying on the government's promises under the DACA program, Ms. Gonzalez  
26 applied for DACA status and work authorization in December 2012. Her application was approved  
27 in February 2013. In further reliance on the government's promises, Ms. Gonzalez successfully  
28 reapplied for DACA status and work authorization in December 2014 and October 2016.

1           86.       Ms. Gonzalez attended college at the University of California, Los Angeles  
2 (“UCLA”), graduating in 2016 with a Bachelor of Arts in Anthropology and a minor in Classical  
3 Civilizations. She was named to the Dean’s Honors List for her academic performance in the spring  
4 of 2015. While at UCLA, Ms. Gonzalez earned money by tutoring elementary, middle, and high  
5 school students, and by working as a campus parking assistant.

6           87.       Ms. Gonzalez has been active in community service since a young age, focusing her  
7 energy on immigrants’ rights and education for the underserved. While at UCLA, she helped to host  
8 the 2014 Immigrant Youth Empowerment Conference—the largest immigrant youth conference in  
9 the country—as well as an Educators Conference, a DACA clinic, and several additional  
10 immigrants’ rights workshops. Ms. Gonzalez also mentored two students at Van Nuys High School,  
11 motivating them to pursue a higher education and advising them on the college application process.

12           88.       Ms. Gonzalez ultimately decided that she could give the most to her community by  
13 teaching students in underserved communities. After graduating from UCLA in 2016,  
14 Ms. Gonzalez was accepted into the selective Teach For America (“TFA”) program. Through TFA,  
15 Ms. Gonzalez currently teaches Math and Reading Intervention to struggling middle school students  
16 at Crown Preparatory Academy in Los Angeles.

17           89.       In 2017, Ms. Gonzalez received her Preliminary Multiple Subject Teaching  
18 Credential from Loyola Marymount University, which is valid until 2022. Ms. Gonzalez is  
19 currently studying at Loyola Marymount to obtain a Master of Arts degree in Urban Education, with  
20 a focus in Policy and Administration. Upon her expected completion of her master’s program and  
21 her service with TFA in the spring of 2018, Ms. Gonzalez hopes to continue to teach in the Los  
22 Angeles area, mentoring and inspiring young students from disadvantaged communities to pursue a  
23 higher education and achieve their full potential.

24           **Mr. Jimenez Relied on the Government’s Promises Regarding DACA**

25           90.       Saul Jimenez was brought to the United States from Mexico when he was one year  
26 old. Mr. Jimenez was raised in the Boyle Heights neighborhood of Los Angeles, California. He  
27 attended Roosevelt High School, where he was a star athlete. Among other achievements, he was  
28 captain of the football team and an all-league wide receiver. Mr. Jimenez worked throughout high

1 school, helping his parents make ends meet by delivering newspapers and washing dishes at an  
2 Italian restaurant.

3 91. Following high school, Mr. Jimenez played football for two years at East Los  
4 Angeles Community College, viewing his commitment to the game as a ticket to a four-year  
5 university. At the same time, Mr. Jimenez was also working two or three jobs, and often struggled  
6 to stay awake during practice and team meetings. Mr. Jimenez explored becoming a firefighter and  
7 considered a career in law enforcement, but learned that his legal status prevented him from serving  
8 his community in these ways.

9 92. In 2007, Mr. Jimenez's hard work paid off and he was awarded a football  
10 scholarship to Oklahoma Panhandle State University. Mr. Jimenez again served as team captain and  
11 was chosen by his teammates as defensive MVP—now playing as an outside linebacker.

12 93. In Oklahoma, Mr. Jimenez began mentoring high school students through the U.S.  
13 Department of Education's Upward Bound program. Mr. Jimenez quickly found that he enjoyed  
14 working with young people and was able to connect with and help many of his students.

15 94. In 2010, Mr. Jimenez returned to Boyle Heights, working in low-wage jobs in  
16 warehouses and restaurants to support his parents and himself. However, after the government  
17 announced the DACA program in 2012, Mr. Jimenez began to believe that he could build a career  
18 for himself, and worked to improve his resume.

19 95. Relying on the government's promises under the DACA program, Mr. Jimenez  
20 successfully applied for DACA status in 2012. In further reliance on the government's promises,  
21 Mr. Jimenez successfully reapplied for DACA status and work authorization in 2014.

22 96. Shortly after receiving DACA status, Mr. Jimenez secured three part-time teaching  
23 and mentorship positions, working as a tutor, a sports coach in an after-school program, and as a  
24 manager at an adolescent rehabilitation center at night. After a few months, Mr. Jimenez accepted a  
25 full-time position as a program coordinator with the national nonprofit HealthCorps, which enabled  
26 him to continue to pursue his interest in teaching and mentorship.

27 97. In August 2016, Mr. Jimenez began working as a substitute teacher in the Los  
28 Angeles Unified School District. Mr. Jimenez is now a full-time special education teacher at

1 Stevenson Middle School, where he helps students with learning disabilities overcome their  
2 challenges.

3 98. Mr. Jimenez has also pursued coaching as a further means to inspire and uplift  
4 young people. In recent years, Mr. Jimenez has also served as the head junior varsity football coach,  
5 the head girls junior varsity soccer coach, and an assistant varsity football coach at Roosevelt High  
6 School. Through coaching, Mr. Jimenez seeks to teach young people skills and lessons that will  
7 apply broadly and benefit them throughout their lives.

8 **President Trump’s Statements and Actions Prior to Ending DACA**

9 99. The government’s decision to end the DACA program was motivated by improper  
10 discriminatory intent and animus toward Mexican nationals, individuals of Mexican heritage, and  
11 Latinos, who together account for 93 percent of approved DACA applications.

12 100. According to USCIS, approximately 79 percent of approved DACA applications  
13 through March 31, 2017, have been submitted by Mexican nationals.<sup>38</sup> No other nationality makes  
14 up more than 4 percent of approved DACA applications.<sup>39</sup> 93 percent of approved DACA  
15 applications have been submitted by individuals from Latin American countries.<sup>40</sup>

16 101. President Trump’s statements and actions reflect a pattern of bias against Mexicans  
17 and Latinos. For example, on February 24, 2015, President Trump demanded that Mexico “stop  
18 sending criminals over our border.”<sup>41</sup> On March 5, 2015, President Trump tweeted that he  
19 “want[ed] nothing to do with Mexico other than to build an impenetrable WALL . . . .”<sup>42</sup>

20  
21  
22  
23 <sup>38</sup> USCIS, Form I-821D Consideration of Deferred Action for Childhood Arrivals by Fiscal Year,  
24 Quarter, Intake, Biometrics and Case Status Fiscal Year 2012-2017 (Mar. 31, 2017),  
25 [https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigrati  
on%20Forms%20Data/All%20Form%20Types/DACA/daca\\_performancedata\\_fy2017\\_qtr2.pdf](https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigrati on%20Forms%20Data/All%20Form%20Types/DACA/daca_performancedata_fy2017_qtr2.pdf).

26 <sup>39</sup> *Id.*

27 <sup>40</sup> *Id.*

28 <sup>41</sup> Donald J. Trump, Tweet on February 24, 2015 at 4:47 PM.

<sup>42</sup> Donald J. Trump, Tweet on March 5, 2015 at 4:50 PM.

1           102.     On June 16, 2015, during his speech launching his presidential campaign, President  
2 Trump characterized immigrants from Mexico as criminals, “rapists,” and “people that have lots of  
3 problems.”<sup>43</sup> President Trump later asserted that these remarks were “100 percent correct.”<sup>44</sup>

4           103.     Three days later, President Trump tweeted that “[d]ruggies, drug dealers, rapists and  
5 killers are coming across the southern border,” and asked, “When will the U.S. get smart and stop  
6 this travesty?”<sup>45</sup>

7           104.     On August 6, 2015, during the first Republican presidential debate, President Trump  
8 said “the Mexican government is much smarter, much sharper, much more cunning. And they send  
9 the bad ones over because they don’t want to pay for them, they don’t want to take care of them.”<sup>46</sup>

10          105.     On August 21, 2015, two men urinated on a sleeping Latino man and then beat him  
11 with a metal pole. At the police station, they stated “Donald Trump was right; all these illegals need  
12 to be deported.” When asked about the incident, President Trump failed to condemn the men,  
13 instead stating that they were “passionate.” Specifically, President Trump said, “[i]t would be a  
14 shame . . . I will say that people who are following me are very passionate. They love this country  
15 and they want this country to be great again. They are passionate.”<sup>47</sup>

16          106.     On August 24, 2015, President Trump tweeted, “Jeb Bush is crazy, who cares that  
17 he speaks Mexican, this is America, English!”<sup>48</sup>

18  
19  
20           <sup>43</sup> Donald J. Trump, Presidential Announcement Speech (June 16, 2015), *available at*  
<http://time.com/3923128/donald-trump-announcement-speech/>.

21           <sup>44</sup> Sandra Guy, *Trump in Chicago: Says he’s ‘100 percent correct’ about Mexicans, blasts U.S. as*  
*‘laughingstock’ – ‘we’re all a bunch of clowns’*, Chicago Sun Times (June 24, 2016),  
22 [http://chicago.suntimes.com/news/trump-in-chicago-says-hes-100-percent-correct-about-](http://chicago.suntimes.com/news/trump-in-chicago-says-hes-100-percent-correct-about-mexicans-blasts-u-s-as-laughingstock-were-all-a-bunch-of-clowns/)  
[mexicans-blasts-u-s-as-laughingstock-were-all-a-bunch-of-clowns/](http://chicago.suntimes.com/news/trump-in-chicago-says-hes-100-percent-correct-about-mexicans-blasts-u-s-as-laughingstock-were-all-a-bunch-of-clowns/).

23           <sup>45</sup> Donald J. Trump, Tweet on June 19, 2015, at 7:22 PM.

24           <sup>46</sup> Andrew O’Reilly, *At GOP debate, Trump says ‘stupid’ U.S. leaders are being duped by Mexico*,  
Fox News (Aug. 6, 2015), [http://www.foxnews.com/politics/2015/08/06/at-republican-debate-](http://www.foxnews.com/politics/2015/08/06/at-republican-debate-trump-says-mexico-is-sending-criminals-because-us.html)  
25 [trump-says-mexico-is-sending-criminals-because-us.html](http://www.foxnews.com/politics/2015/08/06/at-republican-debate-trump-says-mexico-is-sending-criminals-because-us.html).

26           <sup>47</sup> Adrian Walker, *‘Passionate’ Trump fans behind homeless man’s beating?*, The Boston Globe  
27 (Aug. 21, 2015), [https://www.bostonglobe.com/metro/2015/08/20/after-two-brothers-allegedly-](https://www.bostonglobe.com/metro/2015/08/20/after-two-brothers-allegedly-beat-homeless-man-one-them-admiringly-quote-donald-trump-deporting-illegals/I4NXR3Dr7litLi2NB4f9TN/story.html)  
[beat-homeless-man-one-them-admiringly-quote-donald-trump-deporting-](https://www.bostonglobe.com/metro/2015/08/20/after-two-brothers-allegedly-beat-homeless-man-one-them-admiringly-quote-donald-trump-deporting-illegals/I4NXR3Dr7litLi2NB4f9TN/story.html)  
28 [illegals/I4NXR3Dr7litLi2NB4f9TN/story.html](https://www.bostonglobe.com/metro/2015/08/20/after-two-brothers-allegedly-beat-homeless-man-one-them-admiringly-quote-donald-trump-deporting-illegals/I4NXR3Dr7litLi2NB4f9TN/story.html).

<sup>48</sup> Donald J. Trump, Tweet on August 24, 2015 at 7:14 PM.



1           107.     On September 25, 2015, President Trump suggested that the United States would no  
2 longer “take care” of “anchor babies” from Mexico.<sup>49</sup>

3           108.     In May and June 2016, President Trump repeatedly attacked United States District  
4 Judge Gonzalo Curiel, asserting that because he was “of Mexican heritage” he had “an absolute”  
5 and “inherent conflict of interest” that precluded him from hearing a lawsuit against President  
6 Trump’s eponymous university.<sup>50</sup> Speaker of the House Paul Ryan characterized President Trump’s  
7 comments as “the textbook definition of a racist comment.”<sup>51</sup> Senator Susan Collins similarly  
8 asserted that President Trump’s “statement that Judge Curiel could not rule fairly because of his  
9 Mexican heritage” was “absolutely unacceptable.”<sup>52</sup>

10           109.     On August 31, 2016, President Trump raised concerns about immigrants, saying  
11 “we have no idea who these people are, where they come from. I always say Trojan Horse.”<sup>53</sup>

12           110.     In August 2017, President Trump asserted that a group of white supremacists  
13 marching in Charlottesville, Virginia included “some very fine people.”<sup>54</sup> Former Massachusetts  
14 Governor Mitt Romney suggested that these comments “caused racists to rejoice,”<sup>55</sup> while Senator  
15 Lindsay Graham noted that the President was “now receiving praise from some of the most racist  
16

17 <sup>49</sup> Donald J. Trump, Speech in Oklahoma City, OK at 41:31-42:30 YouTube (Sept. 25, 2015),  
<https://www.youtube.com/watch?v=2j4bY7NAFww>.

18 <sup>50</sup> Daniel White, *Donald Trump Ramps Up Attacks Against Judge in Trump University Case*, Time  
19 (June 2, 2016), <http://time.com/4356045/donald-trump-judge-gonzalo-curiel/>.

20 <sup>51</sup> Sarah McCammon, *Trump Says Comments About Judge ‘Have Been Misconstrued’*, Nat’l Pub.  
21 Radio (June 7, 2016), <http://www.npr.org/2016/06/07/481013560/ryan-trumps-criticism-of-judge-textbook-definition-of-a-racist-comment>.

22 <sup>52</sup> Susan Collins, *U.S. Senator Susan Collins’ Statement on Donald Trump’s Comments on the  
23 Judiciary* (June 6, 2016), <https://www.collins.senate.gov/newsroom/us-senator-susan-collins%E2%80%99-statement-donald-trump%E2%80%99s-comments-judiciary>.

24 <sup>53</sup> *Transcript of Donald Trump’s Immigration Speech*, N.Y. Times (Sept. 1, 2016),  
25 <https://www.nytimes.com/2016/09/02/us/politics/transcript-trump-immigration-speech.html?mcubz=0>.

26 <sup>54</sup> Meghan Keneally, *Trump lashes out at ‘alt-left’ in Charlottesville, says ‘fine people on both  
27 sides’*, ABC News (Aug. 15, 2017), <http://abcnews.go.com/Politics/trump-lashes-alt-left-charlottesville-fine-people-sides/story?id=49235032>.

28 <sup>55</sup> Emma Kinery, *Mitt Romney: President Trump’s Charlottesville comments ‘caused racists to  
rejoice’*, USA Today (Aug. 18, 2017), <https://www.usatoday.com/story/news/politics/onpolitics/2017/08/18/mitt-romney-criticizes-president-trump-charlottesville-statement/579410001/>.

1 and hate-filled individuals and groups in our country.”<sup>56</sup> Former Ku Klux Klan leader David Duke  
2 thanked President Trump for his “honesty and courage.”<sup>57</sup>

3 111. On August 22, 2017, during a rally in Phoenix, Arizona, President Trump described  
4 unauthorized immigrants as “animals” who bring “the drugs, the gangs, the cartels, the crisis of  
5 smuggling and trafficking.”<sup>58</sup>

6 112. On August 25, 2017, President Trump pardoned former Maricopa County Sheriff  
7 Joseph Arpaio, who had been convicted of criminal contempt by United States District Judge Susan  
8 R. Bolton for intentionally disobeying a federal court order to cease targeting Latinos. A  
9 comprehensive investigation by the United States Department of Justice found that under Sheriff  
10 Arpaio’s leadership the Maricopa County Sheriff’s Office engaged in a pattern and practice of  
11 unconstitutional conduct and violations of federal law based on its blatantly discriminatory practices  
12 against Latinos.<sup>59</sup> Among other conclusions, the Justice Department investigation uncovered “a  
13 pervasive culture of discriminatory bias against Latinos” and noted that Sheriff Arpaio’s officers  
14 routinely referred to Latinos as “wetbacks,” “Mexican bitches,” “fucking Mexicans,” and “stupid  
15 Mexicans.” In pardoning Sheriff Arpaio, President Trump praised him as an “American patriot”<sup>60</sup>  
16 and suggested that he was “convicted for doing his job.”<sup>61</sup>

17  
18  
19 <sup>56</sup> Eugene Scott & Miranda Green, *Trump, Graham feud over President’s Charlottesville response*,  
20 CNN Politics (Aug. 17, 2017), <http://www.cnn.com/2017/08/16/politics/lindsey-graham-donald-trump-charlottesville/index.html>.

21 <sup>57</sup> Z. Byron Wolf, *Trump’s defense of the ‘very fine people’ at Charlottesville white nationalist*  
22 *march has David Duke gushing*, CNN Politics (Aug. 15, 2017),  
<http://www.cnn.com/2017/08/15/politics/donald-trump-david-duke-charlottesville/index.html>.

23 <sup>58</sup> *President Trump Speaks Live in Phoenix, Arizona with Campaign-Style Rally*, CNN (Aug. 22,  
2017), <http://www.cnn.com/TRANSCRIPTS/1708/22/cnnt.01.html>.

24 <sup>59</sup> U.S. Dep’t of Justice, Office of Pub. Affairs, *Department of Justice Releases Investigative*  
25 *Findings on the Maricopa County Sheriff’s Office* (Dec. 15, 2011),  
<https://www.justice.gov/opa/pr/departments-justice-releases-investigative-findings-maricopa-county-sheriff-s-office>.

26 <sup>60</sup> Donald J. Trump, Tweet on August 25, 2017, at 7:00 PM.

27 <sup>61</sup> Julie Hirschfeld Davis & Maggie Haberman, *Trump Pardons Joe Arpaio, Who Became Face of*  
28 *Crackdown on Illegal Immigration*, N.Y. Times (Aug. 25, 2017),  
<https://www.nytimes.com/2017/08/25/us/politics/joe-arpaio-trump-pardon-sheriff-arizona.html>.

1 113. President Trump's recent comments and actions reflect an ongoing pattern and  
 2 practice of bias stretching back decades. In 1973, the United States Department of Justice sued  
 3 President Trump after a federal investigation found that his company had engaged in systematic  
 4 racial discrimination. To settle this lawsuit, President Trump agreed to a settlement in which he  
 5 promised not to discriminate further against people of color.<sup>62</sup>

#### 6 **The Termination of the DACA Program**

7 114. Throughout the first eight months of 2017, the Trump Administration sent strong  
 8 signals that Dreamers could and should continue to rely on the government's promises regarding the  
 9 DACA program. As noted above, then-Secretary of Homeland Security John D. Kelly specifically  
 10 exempted DACA from the Administration's broad repeal of other immigration programs, and  
 11 reaffirmed that DACA status is a "commitment" by the government.<sup>63</sup> On April 21, 2017, President  
 12 Trump said that his administration is "not after the dreamers," suggested that "[t]he dreamers should  
 13 rest easy," and responded to the question of whether "the policy of [his] administration [is] to allow  
 14 the dreamers to stay," by answering "Yes."<sup>64</sup>

15 115. On June 29, 2017, officials from ten states<sup>65</sup> that had previously challenged another  
 16 deferred action program, Deferred Action for Parents of Americans and Lawful Permanent  
 17 Residents ("DAPA"), sent a letter to Attorney General Jeff Sessions, asserting that the DACA  
 18

19  
 20 <sup>62</sup> Michael Kranish & Robert O'Harrow, Jr., *Inside the government's racial bias case against*  
 21 *Donald Trump's company, and how he fought it*, The Washington Post (Jan. 23, 2016),  
 22 [https://www.washingtonpost.com/politics/inside-the-governments-racial-bias-case-against-donald-trumps-company-and-how-he-fought-it/2016/01/23/fb90163e-bf8e-11e5-bcda-62a36b394160\\_story.html?utm\\_term=.b640592cbc5a](https://www.washingtonpost.com/politics/inside-the-governments-racial-bias-case-against-donald-trumps-company-and-how-he-fought-it/2016/01/23/fb90163e-bf8e-11e5-bcda-62a36b394160_story.html?utm_term=.b640592cbc5a).

23 <sup>63</sup> Secretary Kelly Memo, *supra* note 35; Hesson & Kim, *supra* note 36.

24 <sup>64</sup> *Transcript of AP Interview With Trump*, *supra* note 37.

25 <sup>65</sup> On September 1, 2017, Tennessee Attorney General Herbert H. Slattery III reversed course and  
 26 decided Tennessee would not join the suit, citing "a human element to this [issue]" that "should  
 27 not be ignored." *See* Letter from Tennessee Attorney General Herbert H. Slattery III to Sens.  
 28 Lamar Alexander and Bob Corker (Sept. 1, 2017),  
<http://static1.1.sqspcdn.com/static/f/373699/27673058/1504293882007/DACA%2Bletter%2B9-1-2017.pdf>. Attorney General Slattery further acknowledged that DACA recipients "have an  
 appreciation for the opportunities afforded them by our country," and that "[m]any . . . have  
 outstanding accomplishments and laudable ambitions, which if achieved, will be of great benefit  
 and service" to the United States. *Id.*

1 program is unlawful. The states threatened to challenge DACA in court unless the federal  
2 government rescinded the DACA program by September 5, 2017.<sup>66</sup>

3 116. On July 21, 2017, attorneys general from twenty states sent a letter to President  
4 Trump urging him to maintain DACA and defend the program in court, asserting that the arguments  
5 of the states which were threatening to bring suit were “wrong as a matter of law and policy.”<sup>67</sup>

6 117. On August 31, 2017, hundreds of America’s leading business executives sent a  
7 letter to President Trump urging him to preserve the DACA program.<sup>68</sup> The letter explains that  
8 “Dreamers are vital to the future of our companies and our economy” and are part of America’s  
9 “global competitive advantage.”<sup>69</sup>

10 118. On September 4, 2017, Attorney General Sessions wrote to Acting Secretary of  
11 Homeland Security Duke, describing his assessment that “DACA was effectuated by the previous  
12 administration through executive action, without proper statutory authority;” that DACA “was an  
13 unconstitutional exercise of authority by the Executive Branch;” and that “it is likely that potentially  
14 imminent litigation would yield similar results [as the DAPA litigation] with respect to DACA.”<sup>70</sup>

15 119. On September 5, 2017, Attorney General Sessions announced the government’s  
16 decision to end the DACA program. In his remarks, Attorney General Sessions recognized that  
17 DACA “essentially provided a legal status for recipients for a renewable two-year term, work  
18 authorization and other benefits, including participation in the social security program,” but asserted  
19  
20

21 <sup>66</sup> Letter from Texas Attorney General Ken Paxton, *et al.*, to U.S. Attorney General Jeff Sessions  
22 (June 29, 2017), [https://www.texasattorneygeneral.gov/files/epress/DACA\\_letter\\_6\\_29\\_2017.pdf](https://www.texasattorneygeneral.gov/files/epress/DACA_letter_6_29_2017.pdf).

23 <sup>67</sup> Letter from California Attorney General Xavier Becerra, *et al.*, to President Donald J. Trump  
24 (July 21, 2017), [https://oag.ca.gov/system/files/attachments/press\\_releases/7-21-17%20%20Letter%20from%20State%20AGs%20to%20President%20Trump%20re%20DACA.final\\_.pdf](https://oag.ca.gov/system/files/attachments/press_releases/7-21-17%20%20Letter%20from%20State%20AGs%20to%20President%20Trump%20re%20DACA.final_.pdf).

25 <sup>68</sup> Letter to President Donald J. Trump, *et al.*, (Aug. 31, 2017),  
26 <https://dreamers.fwd.us/business-leaders>.

27 <sup>69</sup> *Id.*

28 <sup>70</sup> Letter from U.S. Attorney General Jefferson B. Sessions to Acting Secretary of Homeland  
Security Elaine C. Duke (Sept. 4, 2017),  
[https://www.dhs.gov/sites/default/files/publications/17\\_0904\\_DOJ\\_AG-letter-DACA.pdf](https://www.dhs.gov/sites/default/files/publications/17_0904_DOJ_AG-letter-DACA.pdf).

1 that the program “is vulnerable to the same legal and constitutional challenges that the courts  
2 recognized with respect to the DAPA program.”<sup>71</sup>

3 120. Attorney General Sessions’s comments regarding the legality of the DACA program  
4 contradict conclusions previously reached by both the Department of Justice and the Department of  
5 Homeland Security. Specifically, the Department of Justice’s Office of Legal Counsel (“OLC”)   
6 provided a detailed analysis of DAPA in 2014, concluding that DAPA—as well as DACA—was a  
7 lawful exercise of the Executive Branch’s “discretion to enforce the immigration laws.”<sup>72</sup> More  
8 recently, in its brief before the U.S. Supreme Court in *United States v. Texas*, DHS concluded that  
9 programs like DACA are “lawful exercise[s]” of the Executive Branch’s “broad statutory authority”  
10 to administer and enforce the Immigration and Nationality Act, 8 U.S.C. § 1101, *et seq.*<sup>73</sup>

11 121. Nonetheless, on the same date as Attorney General Sessions’s announcement,  
12 Acting Secretary of Homeland Security Duke issued a memorandum formally rescinding the DACA  
13 program (the “Rescission Memorandum”).<sup>74</sup> Unlike OLC’s 2014 analysis, the Rescission  
14 Memorandum provides no reasoned evaluation of the legality and merits of the program. Instead, it  
15 states that the threat of litigation by numerous state attorneys general provoked the decision to  
16 terminate DACA.

17 122. In addition to the Rescission Memorandum, Secretary Duke also issued an  
18 accompanying statement asserting that the government had decided to end DACA rather than “allow  
19 the judiciary to *potentially* shut the program down completely and immediately.”<sup>75</sup> Secretary Duke

20 <sup>71</sup> U.S. Dep’t of Justice, Office of Pub. Affairs, *Attorney General Sessions Delivers Remarks on*  
21 *DACA* (Sept. 5, 2017), <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-daca>.

22 <sup>72</sup> Dep’t of Homeland Sec.’s Auth. to Prioritize Removal of Certain Aliens Unlawfully Present in  
23 the U.S. & to Defer Removal of Others, 2014 WL 10788677 (Op. O.L.C. Nov. 19, 2014).

24 <sup>73</sup> See Brief for Petitioners at 42, *United States v. Texas*, 136 S. Ct. 2271 (2016) (No. 15-674), 2016  
25 WL 836758 at \*42.

26 <sup>74</sup> Memorandum from Acting Secretary Elaine C. Duke, Rescission of the June 15, 2012  
27 Memorandum Entitled “Exercising Prosecutorial Discretion with Respect to Individuals Who  
28 Came to the United States as Children” (Sept. 5, 2017), <https://www.dhs.gov/news/2017/09/05/memorandum-rescission-daca>.

<sup>75</sup> Statement from Acting Secretary Duke on the Rescission Of Deferred Action For Childhood  
Arrivals (DACA) (Sept. 5, 2017), <https://www.dhs.gov/news/2017/09/05/statement-acting-secretary-duke-rescission-deferred-action-childhood-arrivals-daca> (emphasis added).

1 also expressed “sympath[y]” and “frustrat[ion]” on “behalf” of DACA recipients, candidly  
2 acknowledging that “DACA was fundamentally a lie.”<sup>76</sup>

3 123. Under the Rescission Memorandum, the federal government will continue to  
4 process DACA applications received by September 5, 2017. Furthermore, the federal government  
5 will issue renewals for recipients whose permits expire before March 5, 2018, provided they apply  
6 for renewal by October 5, 2017. The government will not approve any new or pending applications  
7 for advanced parole.

8 124. In a statement also issued on September 5, 2017, President Trump claimed that he  
9 decided to end DACA because he had been advised that “the program is unlawful and  
10 unconstitutional and cannot be successfully defended in court,” and because DACA “helped spur a  
11 humanitarian crisis—the massive surge of unaccompanied minors from Central America including,  
12 in some cases, young people who would become members of violent gangs throughout our country,  
13 such as MS-13.”<sup>77</sup>

14 125. The government also has taken affirmative steps to reduce the protections applicable  
15 to information provided in connection with the DACA program. In January 2017, President Trump  
16 issued an Executive Order directing all agencies, including DHS, to “ensure that their privacy  
17 policies exclude persons who are not United States citizens or lawful permanent residents from the  
18 protections of the Privacy Act regarding personally identifiable information.”<sup>78</sup> DHS has confirmed  
19 that its new privacy policy “permits the sharing of information about immigrants and non-  
20 immigrants with federal, state, and local law enforcement.”<sup>79</sup>

---

21  
22  
23 <sup>76</sup> *Id.*

24 <sup>77</sup> Statement from President Donald J. Trump (Sept. 5, 2017), <https://www.whitehouse.gov/the-press-office/2017/09/05/statement-president-donald-j-trump>.

25 <sup>78</sup> Exec. Order No. 13768, “Enhancing Public Safety in the Interior of the United States” (Jan. 25,  
26 2017), <https://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united>.

27 <sup>79</sup> DHS, Privacy Policy 2017-01 Questions & Answers, at 3 (Apr. 27, 2017),  
28 <https://www.dhs.gov/sites/default/files/publications/Privacy%20Policy%20Questions%20%20Answers%2C%2020170427%2C%20Final.pdf>.

1           126.     The Rescission Memorandum also provides no assurance that information provided  
 2 in connection with DACA applications or renewal requests will not be used for immigration  
 3 enforcement purposes. To the contrary, DHS posted public guidance about the impact of the  
 4 rescission on the same day that the Rescission Memorandum was issued. This guidance backtracks  
 5 on the government’s prior repeated assurances that “[i]nformation provided in [a DACA] request *is*  
 6 *protected from disclosure* to ICE and CBP for the purpose of immigration enforcement proceedings  
 7 . . . .”<sup>80</sup> Now, rather than affirmatively “protect[ing] [this information] from disclosure,” the  
 8 government represents only that such sensitive information “*will not be proactively provided* to ICE  
 9 and CBP for the purpose of immigration enforcement proceedings . . . .”<sup>81</sup> And even this policy  
 10 “may not be relied upon” by any party and can be changed “at any time without notice.”<sup>82</sup>

11           127.     Despite terminating DACA, other uses of deferred action and programs benefitting  
 12 other groups of immigrants remain in effect.

13     **The Termination of the DACA Program Will Inflict Severe Harm**

14           128.     The termination of the DACA program will severely harm Plaintiffs and hundreds  
 15 of thousands of other young Dreamers. Among other things, Plaintiffs stand to lose their ability to  
 16 access numerous federal, state, and practical benefits, and to reside in the United States with their  
 17 families. Nearly 800,000 other young people will similarly face the prospect of losing their jobs,  
 18 being denied vital benefits, and being separated from the family, friends, colleagues, and  
 19 communities that love and rely on them. The termination of the DACA program will also harm the  
 20 students, patients, clients, community members, family, and friends who have come to rely on  
 21 Plaintiffs for essential services and emotional and financial support.

22  
 23  
 24     <sup>80</sup> USCIS DACA FAQs, Question 19 (emphasis added). The referenced Notice to Appearance  
 25 guidance is USCIS Policy Memorandum 602-0050 (Nov. 7, 2011) (“Revised Guidance for the  
 26 Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and  
 27 Removable Aliens”).

28     <sup>81</sup> DHS, *Frequently Asked Questions: Rescission of Deferred Action for Childhood Arrivals (DACA)*  
 (Sept. 5, 2017) (emphasis added), <https://www.dhs.gov/news/2017/09/05/frequently-asked-questions-rescission-deferred-action-childhood-arrivals-daca>.

<sup>82</sup> *Id.*

1 129. With the sensitive personal information they provided to the federal government no  
2 longer “protected from disclosure,” Plaintiffs and other DACA recipients face the imminent risk that  
3 such information could be used against them “at any time,” “without notice,” for purposes of  
4 immigration enforcement, including detention or deportation.

5 130. Terminating DACA will also cause widespread economic harm.<sup>83</sup> DACA has  
6 enabled approximately 800,000 hardworking, ambitious, and educated young people to enter the  
7 labor force. Over 90 percent of DACA recipients are employed, and over 95 percent are bilingual, a  
8 valuable skill that is increasingly needed by American companies.<sup>84</sup>

9 131. Terminating the DACA program will also have a negative impact on the economy  
10 and American competitiveness.<sup>85</sup>

11 132. On August 31, 2017, in recognition of these costs and their concern for Dreamers,  
12 hundreds of America’s most important business leaders sent a letter to President Trump emphasizing  
13 the benefits of the DACA program and urging him to preserve it. The letter explains that “Dreamers  
14 are vital to the future of our companies and our economy” and part of America’s “global  
15 competitive advantage.”<sup>86</sup>

16 **CAUSES OF ACTION**

17 **FIRST COUNT**

18 **FIFTH AMENDMENT – DUE PROCESS**

19 133. Plaintiffs repeat and incorporate by reference each and every allegation contained in  
20 the preceding paragraphs as if fully set forth herein.

21  
22  
23 <sup>83</sup> See, e.g., Ike Brannon & Logan Albright, *The Economic and Fiscal Impact of Repealing DACA*,  
24 The Cato Institute (Jan. 18, 2017), [https://www.cato.org/blog/economic-fiscal-impact-repealing-](https://www.cato.org/blog/economic-fiscal-impact-repealing-daca)  
25 [daca](https://www.cato.org/blog/economic-fiscal-impact-repealing-daca); Immigrant Legal Resource Center, *Money on the Table: The Economic Cost of Ending*  
26 *DACA* (Dec. 2016), [https://www.ilrc.org/sites/default/files/resources/2016-12-13\\_ilrc\\_report\\_-](https://www.ilrc.org/sites/default/files/resources/2016-12-13_ilrc_report_-_money_on_the_table_economic_costs_of_ending_daca.pdf)  
27 [\\_money\\_on\\_the\\_table\\_economic\\_costs\\_of\\_ending\\_daca.pdf](https://www.ilrc.org/sites/default/files/resources/2016-12-13_ilrc_report_-_money_on_the_table_economic_costs_of_ending_daca.pdf).

28 <sup>84</sup> *Id.*

<sup>85</sup> See Ike Brannon & Logan Albright, *supra* note 83 (concluding that terminating DACA will cost the federal government \$60 billion in lost revenue and reduce GDP by \$215 billion).

<sup>86</sup> Letter to President Donald J. Trump, Speaker Paul Ryan, Leader Nancy Pelosi, Leader Mitch McConnell, and Leader Charles E. Schumer (Aug. 31, 2017), <https://dreamers.fwd.us/business-leaders>.



1           134.     Immigrants who are physically present in the United States are guaranteed the  
2     protections of the Due Process Clause. *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

3           135.     The Constitution “imposes constraints on governmental decisions which deprive  
4     individuals of ‘liberty’ or ‘property’ interests within the meaning of the Due Process Clause of the  
5     Fifth or Fourteenth Amendment.” *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). A threshold  
6     inquiry in any case involving a violation of procedural due process “is whether the plaintiffs have a  
7     protected property or liberty interest and, if so, the extent or scope of that interest.” *Nozzi v. Hous.*  
8     *Auth. of L.A.*, 806 F.3d 1178, 1190–91 (9th Cir. 2015) (citing *Bd. of Regents of State Colls. v. Roth*,  
9     408 U.S. 564, 569–70 (1972)).

10          136.     The property interests protected by the Due Process Clause “extend beyond tangible  
11     property and include anything to which a plaintiff has a ‘legitimate claim of entitlement.’” *Nozzi*,  
12     806 F.3d at 1191 (quoting *Roth*, 408 U.S. at 576–77). “A legitimate claim of entitlement is created  
13     [by] . . . ‘rules or understandings that secure certain benefits and that support claims of entitlement to  
14     those benefits.’” *Id.* (quoting *Roth*, 408 U.S. at 577).

15          137.     In addition to freedom from detention, *Zadvydas*, 533 U.S. at 690, the term “liberty”  
16     also encompasses the ability to work, raise a family, and “form the other enduring attachments of  
17     normal life.” *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (citing *Roth*, 408 U.S. at 572).

18          138.     DACA recipients, including Plaintiffs, have constitutionally protected liberty and  
19     property interests in their DACA status and the numerous benefits conferred thereunder, including  
20     the ability to renew their DACA status every two years. These protected interests exist by virtue of  
21     the government’s decision to grant DACA recipients certain benefits and its repeated representations  
22     and promises regarding the DACA program. *See Goldberg v. Kelly*, 397 U.S. 254, 262 (1970); *Perry*  
23     *v. Sindermann*, 408 U.S. 593, 601 (1972) (“A person’s interest in a benefit is a ‘property’ interest for  
24     due process purposes if there are such rules or mutually explicit understandings that support his claim  
25     of entitlement to the benefit and that he may invoke at a hearing.”).

26          139.     In establishing and continuously operating DACA under a well-defined framework  
27     of highly specific criteria—including nearly 150 pages of specific instructions for managing the  
28     program—the government created a reasonable expectation among Plaintiffs and other DACA

1 recipients that they are entitled to the benefits provided under the program, including the ability to  
2 seek renewal of their DACA status, as long as they continue to play by the rules and meet the  
3 program's nondiscretionary criteria for renewal.

4 140. DACA status is uniquely valuable to Plaintiffs and other Dreamers in that it serves  
5 as a gateway to numerous essential benefits. Revocation of DACA effectively deprives these young  
6 people of the ability to be fully contributing members of society.

7 141. The ability to renew DACA status at regular intervals has always been an essential  
8 element of the program and part of the deal offered by the government. The prospect of renewal was  
9 one of the primary benefits the government used to induce Plaintiffs and other Dreamers to step  
10 forward, disclose highly sensitive personal information, and subject themselves to a rigorous  
11 background investigation.

12 142. The government's arbitrary termination of the DACA program and deprivation of  
13 the opportunity to renew DACA status violates the due process rights of Plaintiffs and other DACA  
14 recipients.

15 143. The government's decision to terminate DACA after vigorously promoting the  
16 program and coaxing hundreds of thousands of highly vulnerable young people to step forward is an  
17 unconstitutional bait-and-switch. *See, e.g., Cox v. State of La.*, 379 U.S. 559, 571 (1965); *Raley v.*  
18 *State of Ohio*, 360 U.S. 423, 438–39 (1959). The government promised Plaintiffs and other young  
19 people that if they disclosed highly sensitive personal information, passed a background check, and  
20 played by the rules, they would be able to live and work in the United States. The government's  
21 termination of the DACA program is a breach of that promise. For the government to now "say . . .  
22 'The joke is on you. You shouldn't have trusted us,' is hardly worthy of our great government."  
23 *Moda Health Plan, Inc. v. United States*, 130 Fed. Cl. 436, 466 (Fed. Cl. 2017) (quoting *Brandt v.*  
24 *Hickel*, 427 F.2d 53, 57 (9th Cir. 1970)).

25 144. The Due Process Clause also forbids the government from breaking its promises,  
26 especially where, as here, individuals, have been induced to undertake actions with potentially  
27 devastating consequences in reliance on those promises.

28



1 omitted). “Determining whether invidious discriminatory purpose was a motivating factor demands a  
2 sensitive inquiry into such circumstantial and direct evidence of intent as may be available.” *Vill. of*  
3 *Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977). “The court analyzes  
4 whether a discriminatory purpose motivated the defendant by examining the events leading up to the  
5 challenged decision and the legislative history behind it, the defendant’s departure from normal  
6 procedures or substantive conclusions, and the historical background of the decision and whether it  
7 creates a disparate impact.” *Avenue 6E Invs., LLC v. City of Yuma, Ariz.*, 818 F.3d 493, 504 (9th Cir.  
8 2016).

9 151. As set forth above, the termination of DACA was motivated by improper  
10 discriminatory intent and bias against Mexican nationals, individuals of Mexican descent, and  
11 Latinos, who together account for 93 percent of approved DACA applications.

12 152. President Trump has a history of tweets, campaign speeches, debate responses, and  
13 other statements alleging that Mexican and Latino immigrants are rapists, criminals, and otherwise  
14 bad people. Moreover, shortly before terminating DACA, President Trump pardoned former  
15 Maricopa County Sheriff Joe Arpaio for a criminal contempt of court conviction related to Sheriff  
16 Arpaio’s discriminatory practices against Latinos, asserting that the Sheriff had been convicted of  
17 contempt merely for “doing his job.”

18 153. President Trump’s statements and actions, including the termination of the DACA  
19 program, appealed to voters who harbor hostility toward Mexican and Latino immigrants.

20 154. The government did not follow its normal procedures in reversing course and  
21 terminating the DACA program. In 2014, the OLC concluded, after conducting a detailed analysis,  
22 that DACA was a lawful exercise of the Executive Branch’s discretion. The government has made  
23 similar arguments to the Supreme Court. By contrast, Attorney General Sessions’s one-page letter  
24 to Acting Secretary Duke contained virtually no legal analysis, and Acting Secretary Duke’s  
25 Rescission Memorandum relied largely on Attorney General Sessions’s letter.

26 155. There are many strong policy reasons to maintain the DACA program. DACA has  
27 provided the government with enormous benefits, including an efficient allocation of immigration  
28 enforcement resources. DACA has also provided enormous benefits to American businesses and the

1 broader economy. And DACA has helped communities throughout the United States, who are able  
2 to benefit from the talents and contributions of DACA recipients.

3 156. DACA is a promise from the government to DACA recipients and those who rely  
4 on them. Separate from the policy rationales set forth above, the government is obligated to honor  
5 its commitments under the DACA program.

6 157. The government continues to operate programs that benefit other groups of  
7 immigrants. Because Mexicans and Latinos account for 93 percent of approved DACA  
8 applications, they will be disproportionately impacted by the termination of the DACA program.

9 158. The history, procedure, substance, context, and impact of the decision to terminate  
10 DACA demonstrate that the decision was motivated by discriminatory animus against Mexican and  
11 Latino immigrants. Because it was motivated by a discriminatory purpose, the decision to terminate  
12 DACA violates the equal protection guarantee of the Due Process Clause of the Fifth Amendment.

13 159. Defendants' violations have caused ongoing harm to Plaintiffs and other Dreamers.

14 **THIRD COUNT**

15 **ADMINISTRATIVE PROCEDURE ACT – CONSTITUTIONAL VIOLATIONS**

16 160. Plaintiffs repeat and incorporate by reference each and every allegation contained in  
17 the preceding paragraphs as if fully set forth herein.

18 161. Defendants are subject to the Administrative Procedure Act (“APA”). *See* 5 U.S.C.  
19 § 703. The termination of the DACA program is final agency action subject to judicial review  
20 because it marks the “consummation of the . . . decisionmaking process” and is one “from which  
21 legal consequences will flow.” *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (internal quotation marks  
22 omitted).

23 162. The “comprehensive” scope of the APA provides a “default” “remed[y] for all  
24 interactions between individuals and all federal agencies.” *W. Radio Servs. Co. v. U.S. Forest Serv.*,  
25 578 F.3d 1116, 1123 (9th Cir. 2009).

26 163. The APA requires that courts “shall . . . hold unlawful and set aside agency action,  
27 findings, and conclusions found to be . . . not in accordance with law . . . [or] contrary to  
28 constitutional right, power, privilege, or immunity.” 5 U.S.C. § 706(2)(A), (B).

1 164. For the reasons set forth above, the decision to terminate the DACA program is  
2 unconstitutional in numerous respects and therefore must be vacated.

3 **FOURTH COUNT**

4 **ADMINISTRATIVE PROCEDURE ACT – ARBITRARY AND CAPRICIOUS ACTION**

5 165. Plaintiffs repeat and incorporate by reference each and every allegation contained in  
6 the preceding paragraphs as if fully set forth herein.

7 166. Defendants are subject to the APA. *See* 5 U.S.C. § 703. The termination of the  
8 DACA program is final agency action subject to judicial review because it marks the “consummation  
9 of the . . . decisionmaking process” and is one “from which legal consequences will flow.” *Bennett*,  
10 520 U.S. at 178 (internal quotation marks omitted).

11 167. The “comprehensive” scope of the APA provides a “default” “remed[y] for all  
12 interactions between individuals and all federal agencies.” *W. Radio Servs. Co.*, 578 F.3d at 1123.

13 168. The APA requires that courts “shall . . . hold unlawful and set aside agency action,  
14 findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise  
15 not in accordance with law” or “without observance of procedure required by law.” 5 U.S.C.  
16 § 706(2)(A), (E).

17 169. In creating DACA, the government promised Plaintiffs that if they stepped forward,  
18 shared highly sensitive personal information, and passed a background check, they would be granted  
19 renewable protection and would be allowed to live and work in the United States as long as they  
20 played by the rules. The government also specifically and consistently promised that information  
21 disclosed through the DACA program would not be used for immigration enforcement purposes  
22 outside certain limited circumstances.

23 170. Plaintiffs and nearly 800,000 vulnerable young people reasonably relied on the  
24 government’s assurances and promises in taking the irreversible step of identifying themselves and  
25 providing the government with highly sensitive and potentially compromising personal information.  
26 DACA recipients also made numerous life-altering personal and professional decisions in reliance on  
27 the government’s promises regarding DACA.  
28

1 171. A government decision reversing a prior policy is “arbitrary and capricious” when it  
2 fails “tak[e] into account” these types of “serious reliance interests.” *Perez v. Mortg. Bankers Ass’n*,  
3 135 S. Ct. 1199, 1209 (2015).

4 172. The government’s disregard for the reasonable reliance of Plaintiffs and hundreds of  
5 thousands of other vulnerable young people is the hallmark of arbitrary and capricious action and an  
6 abuse of discretion, and the decision to terminate the DACA program is therefore in violation of the  
7 APA and must be vacated.

8 173. The government’s decision to terminate the DACA program is also arbitrary and  
9 capricious because the purported rationale for that decision is inconsistent with DHS’s new  
10 policy. *See Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29,  
11 55–56 (1983) (holding that the agency “failed to offer the rational connection between facts and  
12 judgment required to pass muster under the arbitrary capricious standard”). In particular, the  
13 government terminated DACA because it purportedly concluded that the Executive Branch lacks  
14 authority to continue the program, yet DHS will continue to adjudicate pending DACA applications,  
15 as well as renewal applications it receives before October 5, 2017 (for individuals whose benefits  
16 expire before March 5, 2018), thereby extending DACA for an additional two and a half years.

17 174. The government’s decision to set an October 5, 2017 deadline for accepting DACA  
18 renewal applications is also arbitrary. The Rescission Memorandum does not provide a reasoned  
19 analysis to support this short deadline, and the government has failed to provide sufficient time and  
20 notice to DACA recipients. On information and belief, the government has sent false and misleading  
21 renewal notices to certain DACA recipients, which have failed to advise them of the October 5, 2017  
22 deadline. Moreover, this short deadline is especially troubling for low-income DACA recipients,  
23 who have little time to gather the significant funds required to submit a DACA renewal application.

24 175. Moreover, the decision to terminate DACA is also arbitrary and capricious because  
25 the government itself previously determined that DACA is a lawful exercise of the Executive  
26 Branch’s immigration enforcement authority, and the government failed to conduct or provide a  
27 reasoned analysis for its change of policy. *See Nat’l Wildlife Fed’n v. Burford*, 871 F.2d 849, 855  
28 (9th Cir. 1989) (“a shift from settled policy requires a showing of reasoned analysis”).

1 176. The government’s decision to terminate DACA is also in violation of the APA  
2 because the stated rationale for ending the program is pretextual and incorrect as a matter of law.

3 **FIFTH COUNT**

4 **ADMINISTRATIVE PROCEDURE ACT – NOTICE-AND-COMMENT RULEMAKING**

5 177. Plaintiffs repeat and incorporate by reference each and every allegation contained in  
6 the preceding paragraphs as if fully set forth herein.

7 178. The APA, 5 U.S.C. §§ 553 and 706(2)(D), requires that federal agencies conduct  
8 rulemaking before engaging in action that impacts substantive rights.

9 179. DHS is an “agency” under the APA, and the Rescission Memorandum and the  
10 actions that DHS has taken to implement the Rescission Memorandum are “rules” under the APA.  
11 *See* 5 U.S.C. § 551(1), (4).

12 180. In implementing the Rescission Memorandum, federal agencies have changed the  
13 substantive criteria by which individual DACA grantees work, live, attend school, obtain credit, and  
14 travel in the United States. Defendants did not follow the procedures required by the APA before  
15 taking action impacting these substantive rights.

16 181. With exceptions that are not applicable here, agency rules must go through notice-  
17 and-comment rulemaking. *See* 5 U.S.C. § 553.

18 182. Defendants promulgated and implemented these rules without authority and without  
19 notice-and-comment rulemaking in violation of the APA.

20 183. Plaintiffs will be impacted because they have not had the opportunity to comment on  
21 the rescission of DACA.

22 184. Defendants’ violation has caused ongoing harm to Plaintiffs and other Dreamers.

23 **SIXTH COUNT**

24 **REGULATORY FLEXIBILITY ACT – REGULATORY FLEXIBILITY ANALYSES**

25 185. Plaintiffs repeat and incorporate by reference each and every allegation contained in  
26 the preceding paragraphs as if fully set forth herein.

27

28



1 186. The Regulatory Flexibility Act, 5 U.S.C. §§ 601–12 (“RFA”), requires federal  
2 agencies to analyze the impact of rules they promulgate on small entities and publish initial and final  
3 versions of those analyses for public comment. 5 U.S.C. §§ 603–04.

4 187. “Small entit[ies]” for purposes of the RFA includes “small organization[s]” and  
5 “small business[es].” *See* 5 U.S.C. §§ 601(3), (4), (6).

6 188. The actions that DHS has taken to implement the DHS Memorandum are “rules”  
7 under the RFA. *See* 5 U.S.C. § 601(2).

8 189. Defendants have not issued the required analyses of DHS’s new rules.

9 190. Defendants’ failure to issue the initial and final Regulatory Flexibility Analyses  
10 violates the RFA and is unlawful.

11 191. Defendants’ violations cause ongoing harm to Plaintiffs and other Dreamers.

12 **SEVENTH COUNT**

13 **EQUITABLE ESTOPPEL**

14 192. Plaintiffs repeat and incorporate by reference each and every allegation contained in  
15 the preceding paragraphs as if fully set forth herein.

16 193. Through its conduct and statements, the government represented to Plaintiffs and  
17 other DACA applicants that DACA was lawful and that information collected in connection with the  
18 DACA program would not be used for immigration enforcement purposes absent special  
19 circumstances.

20 194. In reliance on the government’s repeated assurances, Plaintiffs and other DACA  
21 applicants risked removal and deportation and came forward and identified themselves to the  
22 government, and provided sensitive personal information, including their fingerprints and personal  
23 history, in order to participate in DACA.

24 195. Throughout the life of DACA, the government has continued to make affirmative  
25 representations about the use of information as well as the validity and legality of DACA. Plaintiffs  
26 and other DACA applicants relied on the government’s continuing representations to their detriment.

27

28



1 204. There is an actual controversy regarding whether the DACA program is lawful.

2 205. Plaintiffs are entitled to a declaratory judgment pursuant to 28 U.S.C. § 2201(a) that  
3 the DACA program was lawful and is lawful today.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs pray that this Court grant the following relief:

- 6 (1) Issue a declaratory judgment pursuant to 28 U.S.C. § 2201(a) that the DACA program is  
7 lawful and constitutional;
- 8 (2) Issue a declaratory judgment pursuant to 28 U.S.C. § 2201(a) and 5 U.S.C. § 706(2) that  
9 the termination of the DACA program was unlawful and unconstitutional;
- 10 (3) Issue a declaratory judgment pursuant to 28 U.S.C. § 2201(a) that Defendants are  
11 equitably estopped from terminating the DACA program or from using information  
12 provided pursuant to DACA for immigration enforcement purposes, except as previously  
13 authorized under the program;
- 14 (4) Issue an injunction invalidating the Rescission Memorandum, preserving the status quo,  
15 and enjoining Defendants from terminating the DACA program;
- 16 (5) Issue an injunction enjoining Defendants from sharing or otherwise using information  
17 provided pursuant to the DACA program for immigration enforcement purposes except as  
18 previously authorized under the DACA program; and
- 19 (6) Grant any other and further relief that this Court may deem just and proper.

20  
21 DATED: September 18, 2017  
San Francisco, California

Respectfully submitted,  
/s/ Theodore J. Boutrous, Jr.  
GIBSON, DUNN & CRUTCHER LLP

22  
23 /s/ Mark D. Rosenbaum  
PUBLIC COUNSEL

24  
25 /s/ Luis Cortes Romero  
BARRERA LEGAL GROUP, PLLC

26  
27 /s/ Laurence H. Tribe  
28

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

/s/ Erwin Chemerinsky

/s/ Leah Litman

Attorneys for Plaintiffs DULCE GARCIA,  
MIRIAM GONZALEZ AVILA, SAUL JIMENEZ  
SUAREZ, VIRIDIANA CHABOLLA MENDOZ,  
NORMA RAMIREZ, and JIRAYUT  
LATTHIVONGSKORN

1 JAMES R. WILLIAMS, County Counsel (SBN 271253)  
 GRETA S. HANSEN (SBN 251471)  
 2 LAURA S. TRICE (SBN 284837)  
 MARCELO QUINONES (SBN 279132)  
 3 OFFICE OF THE COUNTY COUNSEL  
 COUNTY OF SANTA CLARA  
 4 70 West Hedding Street  
 East Wing, Ninth Floor  
 San Jose, CA 95110-1770  
 5 Telephone: (408) 299-5900  
 Facsimile: (408) 292-7240  
 6 laura.trice@cco.sccgov.org  
 marcelo.quinones@cco.sccgov.org  
 7

8 *Attorneys for Plaintiff County of Santa Clara*

9 JONATHAN WEISSGLASS (SBN 185008)  
 STACEY M. LEYTON (SBN 203827)  
 ERIC P. BROWN (SBN 284245)  
 10 ALTSHULER BERZON LLP  
 177 Post St., Suite 300  
 11 San Francisco, CA 94108  
 Telephone: (415) 421-7151  
 12 Facsimile: (415) 362-8064  
 jweissglass@altber.com  
 13 sleyton@altber.com  
 ebrown@altber.com  
 14

15 *Attorneys for all Plaintiffs*

16 IN THE UNITED STATES DISTRICT COURT  
 17 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 SAN JOSE DIVISION

18 COUNTY OF SANTA CLARA and  
 19 SERVICE EMPLOYEES  
 INTERNATIONAL UNION LOCAL 521,  
 20  
 Plaintiffs,

21 v.

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

27 Defendants.  
28

Case No. \_\_\_\_\_

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

**INTRODUCTION**

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

1. Plaintiffs County of Santa Clara (“County”) and Service Employees International Union Local 521 (“Local 521”), acting in its capacity as the representative of more than 10,000 County employees, challenge the actions of Defendants President Donald J. Trump, Attorney General Jefferson Beauregard Sessions, and Acting Department of Homeland Security (“DHS”) Secretary Elaine Duke related to the rescission of the Deferred Action for Childhood Arrivals (“DACA”) program. DACA affords a two-year period of “deferred action” status for young people who were brought to this country as children, meaning that recipients are not subject to immigration enforcement actions during that time. Recipients are also afforded the opportunity to receive work authorization, allowing them to work legally, report income, and pay taxes. Because of DACA, approximately 800,000 young people, brought to this country as children, have been able to come out of the shadows of American life, work legally to support themselves and their families, go to school, pay taxes, and participate more fully in their communities. The DACA program has been hugely successful. But the benefits the program provided communities locally and nationally are now at risk, as are the futures of DACA recipients.

2. Because of the stringent requirements governing eligibility for the DACA program from its inception, DACA recipients are undeniably contributing members of society who pose no threat to public safety or national security. These individuals find themselves on the wrong side of America’s immigration laws through no fault of their own, and have made substantial contributions to their communities despite the constant threat of removal they faced prior to receiving DACA status.

3. DACA has conferred innumerable benefits on recipients, their families, and their communities. DACA recipients can live their lives in the open and more fully participate in civic life, including by working legally, attending college (and receiving financial aid to do so), opening bank accounts, paying taxes, and living free of the daily fear of deportation. The families of DACA recipients benefit from the higher wages many recipients are able to earn and the stability of knowing that loved ones will not be separated. The communities in which DACA recipients live benefit not only from the taxes paid by recipients as they work legally and report income, but also

1 from DACA recipients' increased willingness to interact with government institutions, such as by  
2 contacting and cooperating with law enforcement.

3 4. To induce individuals to apply for DACA, the federal government assured potential  
4 applicants that the information they provided in connection with the program would not be used for  
5 immigration enforcement. These representations, made consistently throughout the life of the  
6 DACA program, were crucial to encouraging participation. The government asked DACA  
7 applicants to take a leap of faith in identifying themselves and, indirectly, their families, to the very  
8 government agency that possesses the authority to detain them and ultimately to deport them from  
9 the country. DACA applicants were asked to provide information concerning, among other things,  
10 their names, addresses, places of birth, dates of entry to the United States, and any criminal histories.  
11 Because of the huge risk undertaken by DACA applicants in providing this information to the  
12 federal government, most were willing to do so only in reliance on the government's repeated  
13 assurances that this information would not be used for immigration enforcement purposes.

14 5. The DACA program also provided recipients the opportunity to renew their deferred  
15 action status at the end of each two-year period for which status is granted. From the time that  
16 DACA was implemented until Defendants' recent actions, the federal government has consistently  
17 assured DACA applicants that they will remain eligible for renewed status and work authorization as  
18 long as they comply with all of the conditions of the program. This opportunity to renew is a critical  
19 aspect of the program because it would make little sense for individuals to risk coming forward to  
20 identify themselves as lacking regular immigration status in exchange for a temporary benefit.  
21 Similarly, it would make little sense for employers, like the County, to expend the time and  
22 resources to hire and train DACA recipients if their work authorization were so limited.

23 6. Despite the program's extensive benefits, on September 5, 2017, Acting Secretary  
24 Duke issued a memorandum formally rescinding DACA. The memorandum stated that DHS would  
25 not consider any initial DACA applications received after September 5, 2017 and explained that  
26 those individuals who currently have DACA status and work authorization would no longer be able  
27 to renew that status after October 5, 2017. Unlike the administrative actions creating the DACA  
28 program, which afforded officials significant discretion to decide on a case-by-case basis when it is

1 appropriate to grant deferred action status and work authorization, the policy announced by Acting  
2 Secretary Duke's September 5 memorandum is categorical – the DACA program is discontinued and  
3 no individual, no matter how deserving, will be able to apply for deferred action and work  
4 authorization pursuant to DACA. Acting Secretary Duke's memorandum did not explain the  
5 administration's reasons for rescinding DACA (other than to speculate that it may be held unlawful,  
6 despite the federal government's previous position to the contrary), and gave no indication that the  
7 administration had considered the benefits of the program before ending it so abruptly.

8         7. Defendants' actions in rescinding the DACA program are unlawful. First, they  
9 violate the Due Process Clause of the Fifth Amendment because they deprive Plaintiffs of  
10 constitutionally protected interests, including Plaintiffs' interests in their mutual employment  
11 agreements and DACA recipients' interest in the continuation of the DACA program, upon which  
12 they have been induced to rely. Indeed, the DACA program permitted recipients to work legally, to  
13 participate in other government programs, to open bank accounts, and to participate in civic life in  
14 myriad ways which will now be unavailable to them. Each of these activities gives rise to an interest  
15 protected by the Due Process Clause. Yet, deprivation of these interests has been accomplished  
16 without the due process required by law. Moreover, insofar as the government uses the information  
17 provided by DACA applicants for immigration enforcement purposes – and having broken one  
18 promise, there is no reason to believe that Defendants intend to keep this subsidiary promise – such  
19 use will independently violate the Due Process Clause. Under the Due Process Clause the  
20 government may not induce vulnerable individuals to share information to obtain a benefit with the  
21 promise that such information will not be used against them, only to turn around and use that  
22 information against them. Immigration enforcement, like all government law enforcement, must be  
23 fundamentally fair.

24         8. Second, Defendants' actions violate the Administrative Procedure Act ("APA"), 5  
25 U.S.C. §706(2)(A), because they constitute arbitrary and capricious decision-making. Indeed, this  
26 case presents an archetypal example of arbitrary decision-making in that Defendants have terminated  
27 a program implemented five years ago, and upon which millions of Americans (DACA recipients,  
28 their families, and employers) have come to rely, with no explanation whatsoever for the abrupt



1 about-face, much less the type of careful analysis one would expect before such a consequential  
2 action is taken. The APA requires that administrative agencies provide a reasoned explanation for  
3 their actions, and this obligation is especially important where the agency action in question reverses  
4 a prior policy that has engendered reliance by affected parties. Defendants' total disregard for  
5 Plaintiffs' and similarly situated parties' reliance on the DACA program is evident in their failure to  
6 provide any reasoned explanation for the rescission that takes into account the program's benefits.

7       9. Third, Defendants' actions violate the Equal Protection component of the Fifth  
8 Amendment. The Fifth Amendment requires that the federal government afford all individuals equal  
9 protection of the laws and refrain from discriminating against disfavored classes. In this case, it is  
10 inarguable that the rescission of DACA falls most heavily on two historically persecuted minorities,  
11 Latinos and Mexican immigrants. Indeed, 93% of the approved DACA applications (initial and  
12 renewal) since the program was implemented are from immigrants from Latin America and almost  
13 80% are from immigrants from Mexico. Moreover, there is extensive evidence, not least of which  
14 are the President's own statements, that the rescission was motivated by impermissible animus. Two  
15 years ago, the President launched his campaign by announcing: "When Mexico sends its people,  
16 they're not sending their best. . . . They're sending people that have lots of problems, and they're  
17 bring those problems with us [sic]. They're bringing drugs. They're bringing crime. They're  
18 rapists." This hostility toward immigrants, and particularly Mexican immigrants, remained a theme  
19 throughout his campaign and the first months of his administration. Coupled with the lack of a  
20 legitimate explanation for the rescission and the irregular (and unlawful) process by which the  
21 rescission was accomplished, the President's repeated statements of animus show that the rescission  
22 was motivated by animus in violation of the Fifth Amendment.

23       10. For all of these reasons, Plaintiffs ask this Court to declare the rescission of DACA  
24 unlawful and unenforceable, and to enjoin and restrain Defendants from taking further steps to  
25 rescind the program. Further, the Court should declare that Defendants are equitably estopped from  
26 rescinding the program or using information provided in connection with DACA applications for  
27 purposes of immigration enforcement, and should enjoin and restrain Defendants from doing so.

28

1 The DACA program has worked to the benefit of DACA recipients, their employers, local  
2 communities, and American society as a whole. All of these stakeholders deserve better.

3 **JURISDICTION AND VENUE**

4 11. This Court has jurisdiction pursuant to 28 U.S.C. §§1331, 1361, and 2201-2202,  
5 because this action arises under the Due Process Clause and Equal Protection component of the Fifth  
6 Amendment and the Administrative Procedure Act, 5 U.S.C. §551 *et seq.* This Court has additional  
7 remedial authority under the APA, 5 U.S.C. §§701-06.

8 12. There exists an actual and justiciable controversy between Plaintiffs and Defendants  
9 requiring resolution by this Court. Plaintiffs have no adequate remedy at law.

10 13. Venue is proper in the Northern District of California because Plaintiff County of  
11 Santa Clara is a public entity in this judicial district and a substantial part of the events or omissions  
12 giving rise to this action have occurred or will occur in this District. 28 U.S.C. §§1391(b)(2),  
13 1391(e)(1). Plaintiff Local 521 is located in the Northern District of California and many of its  
14 members, on behalf of whom it brings this lawsuit, reside and are employed within the Northern  
15 District of California. This is a civil action in which Defendants are agencies of the United States or  
16 officers thereof and no real property is involved in this action.

17 14. Intra-district assignment is proper in San Jose pursuant to Local Rules 3-2(c) and (e)  
18 because a substantial part of the events or omissions which give rise to Plaintiffs' claims occurred in  
19 Santa Clara County.

20 **PARTIES**

21 15. Plaintiff County of Santa Clara is a charter county organized and existing under the  
22 laws of the State of California. With an estimated population of more than 1.9 million people, Santa  
23 Clara County is the largest county in the Bay Area and the sixth largest county in California. As a  
24 county of immigrants, the County has especially benefited from DACA and is especially harmed by  
25 the program's rescission. Thirty-eight percent of Santa Clara County residents are foreign born, and  
26 approximately sixty percent of children in the county have at least one parent who is foreign born.  
27 Santa Clara County has the highest percentage of foreign-born residents of all counties in California.

28

1 More than half of county residents speak a language other than English at home, and more than 100  
2 languages and dialects are spoken within the county.

3 16. The County is the level of government tasked with provision of core safety-net  
4 services to this diverse community; it employs a workforce of more than 18,000, and must ensure  
5 that this workforce possesses the skills necessary to effectively serve this community. The County  
6 employs DACA recipients in key positions throughout the organization, providing upward mobility  
7 to young people who deserve the opportunity to serve their communities through the public sector,  
8 and leveraging the unique experience and skills these employees bring to the County government.

9 17. The County also operates the In-Home Supportive Services (“IHSS”) program, which  
10 provides in-home care in the form of assistance with activities of daily living, to eligible aged, blind,  
11 and disabled individuals who would otherwise be unable to remain safely in their own homes. The  
12 IHSS program is funded through a combination of federal, state, and county funds, and provides  
13 services to over 22,000 IHSS beneficiaries in Santa Clara County.

14 18. Plaintiff Service Employees International Union Local 521 is a labor union that  
15 represents approximately 40,000 public- and private-sector workers in the central Bay Area and  
16 California’s Central Valley, including more than 10,000 who are employed by the County of Santa  
17 Clara. Local 521 is an affiliate of the Service Employees International Union (“SEIU”), which  
18 represents 2.2 million working men and women around the world. A large percentage of Local  
19 521’s membership is Latino and many are first-generation immigrants. The primary mission of  
20 Local 521 is to organize, represent, and empower employees.

21 19. In addition, Local 521 works in partnership with SEIU and other groups to combat  
22 discrimination and mobilize for immigration reform at the national level. Local 521’s efforts include  
23 its Committee on Comprehensive Immigration Reform, a member-based committee that engages in  
24 organizing, advocacy, and education to help undocumented workers. Local 521 has conducted  
25 “know your rights” information sessions and workshops, engaged in legislative advocacy on  
26 immigration-related bills at the state level, held community forums on DACA and Deferred Action  
27 for Parents of Americans and Lawful Permanent Residents in conjunction with the California  
28 Attorney General, and participated as an amicus in litigation brought by the County of Santa Clara

1 and others challenging the Trump administration's threat to cut off federal funding to sanctuary cities  
2 and counties. Local 521 has members who are DACA recipients, including members who work for  
3 the County of Santa Clara. These members are able to work and, thus, to be Local 521 members,  
4 because of the work authorization they obtain through the DACA program.

5 20. Local 521 brings this action as an associational plaintiff on behalf of its members who  
6 are DACA recipients, asserting claims on behalf of those members. Local 521 also brings this  
7 lawsuit to protect the rights and interests of its members and prospective members, to preserve its  
8 ability to organize new members who are DACA recipients, and to preserve its representational  
9 relationship with current DACA recipients.

10 21. Defendant Donald J. Trump is the President of the United States. President Trump  
11 made the decision to rescind the DACA program and is sued in his official capacity.

12 22. Defendant Jefferson Beauregard Sessions is the Attorney General of the United  
13 States. Attorney General Sessions announced the rescission of the DACA program and has ultimate  
14 authority over the Department of Justice's prosecution of violations of immigration laws. He is sued  
15 in his official capacity.

16 23. Defendant Elaine Duke is the Acting Secretary of the Department of Homeland  
17 Security ("DHS"). Acting Secretary Duke is responsible for managing DHS, and oversees the  
18 United States Citizenship and Immigration Service ("USCIS") and the Immigration and Customs  
19 Enforcement ("ICE"). Her responsibilities include the administration and enforcement of policies  
20 and practices related to DACA. She is sued in her official capacity.

21 24. Defendant DHS is a federal agency responsible for implementing, administering and  
22 enforcing the nation's immigration laws and policies, including the DACA program. DHS is a  
23 Department of the Executive Branch and is an agency within the meaning of 5 U.S.C. §552(f)(1).

24 **FACTUAL BACKGROUND**

25 **The DACA Program**

26 25. DHS announced the DACA program in 2012, in a memorandum issued by former  
27 DHS Secretary Janet Napolitano. The reasoning behind the program was that it made no sense to  
28 punish individuals who were brought to the United States as children, through no fault of their own,

1 and who had proven themselves to be trustworthy, contributing members of their communities.  
2 DACA was also intended to generate the wide-reaching benefits that would accrue to recipients, their  
3 families and their communities, as undocumented individuals were permitted to live and work  
4 without the ever-present threat of deportation.

5       26.     DACA allows people who were brought to the United States as children and who  
6 meet certain criteria to apply for temporary deferral of deportation (sometimes referred to as  
7 “deferred action”) and for work authorization. According to USCIS, as of March 31, 2017,  
8 approximately 800,000 young people have been granted deferred action under DACA in the five  
9 years the program has been in place. Applicants are eligible for deferred action status under DACA  
10 only if they: (i) were under the age of 31 on June 15, 2012; (ii) were brought to the United States  
11 before their 16th birthday; (iii) continuously resided in the United States since June 15, 2007 to the  
12 present; (iv) were physically present in the United States on June 15, 2012, and at the time they made  
13 their DACA application; (v) did not have lawful immigration status on June 15, 2012; (vi) are  
14 currently in school, have graduated or obtained a GED, or were honorably discharged from the  
15 United States military or Coast Guard; and (vii) have not been convicted of a felony, significant  
16 misdemeanor, or three or more misdemeanors, and do not pose a threat to national security or public  
17 safety.

18       27.     To apply for deferred action status under DACA, applicants are required to pay a  
19 substantial fee of \$495, submit a detailed application, and submit to a background check and any  
20 other screening that DHS deems necessary.

21       28.     Pursuant to DACA, deferred action status, as well as work authorization, is granted  
22 for two-year periods. From the time DACA was first implemented, however, applicants were told  
23 that they would have the opportunity to apply for renewal of deferred action status and were given  
24 detailed instructions for doing so. In particular, recipients were instructed that they should apply for  
25 renewal approximately 120 days (but no more than 150 days) before the expiration of their 2-year  
26 period. Recipients were told that they would be eligible for renewal if they met the requirements for  
27 an initial DACA application and also: (i) had not departed the United States on or after June 15,  
28 2007; (ii) continuously resided in the United States since submission of their most recent DACA

1 application; and (iii) had not in the interim been convicted of a disqualifying crime or otherwise  
2 posed a threat to national security or public safety. The opportunity to renew is a crucial aspect of  
3 the DACA program. There is little reason for eligible individuals to run the risk of identifying  
4 themselves as lacking regular immigration status for a temporary benefit and, similarly, there is little  
5 reason for employers to take the time and effort to hire and train DACA recipients who have  
6 received work authorization unless there is some assurance that those individuals will be eligible to  
7 renew that authorization.

8         29. As part of the DACA application process, Defendants solicited extensive information  
9 from DACA recipients, including names, addresses, birthdates, country of origin, and educational  
10 and criminal history. Most significantly, by issuing an open invitation to apply for DACA, the  
11 government asked undocumented immigrants to take a leap of faith and identify themselves and,  
12 indirectly, their families to the federal government and acknowledge their undocumented status. To  
13 assuage fears that the DACA program was a cynical trap, Defendants expressly promised that the  
14 information provided by DACA applicants would not be used against them or their families for  
15 immigration enforcement purposes, except in narrow, specified circumstances that would not  
16 normally apply to individuals eligible for DACA.

17         30. The DACA program has been tremendously successful, creating much-needed  
18 stability for DACA recipients, their families and their communities, which has resulted in extensive  
19 benefits to all of those groups. Under DACA, law-abiding, long-term U.S. residents who lack legal  
20 immigration status have access to better jobs and improved working conditions. Because  
21 undocumented immigrants who lack work authorization must seek jobs that minimize their risk of  
22 being identified and deported, they often do not work in jobs that best fit their education, skills, and  
23 abilities, or those that would maximize their earning potential. Patrick Oakford, Center for  
24 American Progress, *Administrative Action on Immigration Reform, The Fiscal Benefits of Temporary*  
25 *Work Permits*, at 6 (September 2014), available at: [https://cdn.americanprogress.org/wp-](https://cdn.americanprogress.org/wp-content/uploads/2014/09/OakfordAdminRelief.pdf)  
26 [content/uploads/2014/09/OakfordAdminRelief.pdf](https://cdn.americanprogress.org/wp-content/uploads/2014/09/OakfordAdminRelief.pdf) (last visited Oct. 9, 2017). Making workers  
27 eligible to apply for deferred action and work permits allows them greater occupational mobility,  
28 enabling them to seek out a wider range of potential career opportunities. Moreover, “[t]he

1 interaction between our broken immigration system and employment and labor laws have made  
2 undocumented workers more susceptible to exploitation in the workplace, leading them to earn lower  
3 wages than they otherwise could.” *Id.* at 5. Eliminating the fear of retaliatory reporting of  
4 immigration violations and potential deportation allows these workers to better protect their own  
5 workplace rights and those of their co-workers, leading to higher real wages and fewer violations of  
6 employment and labor laws and regulations.

7 31. Those who have received DACA status enjoy increased earning potential, producing a  
8 positive multiplier effect on local economies. Fiscal Policy Institute, *President’s Immigration Action*  
9 *Expected to Benefit Economy* (Nov. 21, 2014), available at: <http://bit.ly/1FbnS7q> (last visited Oct. 9,  
10 2017) (estimating that wages for those eligible for work authorization will increase by five to 10  
11 percent); Oakford, *Administrative Action on Immigration Reform, The Fiscal Benefits of Temporary*  
12 *Work Permits*, at 3 (“Temporary work permits would increase the earnings of undocumented  
13 immigrants by about 8.5 percent as they are able to work legally and find jobs that match their  
14 skills.”). Indeed, the upward mobility afforded by DACA is apparent from the results of a national  
15 survey of 1,402 young adults who were approved for DACA through June 2013:

16 Since receiving DACA, young adult immigrants have become more integrated into  
17 the nation’s economic institutions. Approximately 61% of DACA recipients  
18 surveyed have obtained a new job since receiving DACA. Meanwhile, over half have  
19 opened their first bank account, and 38% have obtained their first credit card.

19 Roberto G. Gonzales and Veronica Terriquez, American Immigration Council, *How DACA is*  
20 *Impacting the Lives of Those who are now DACAmented: Preliminary Findings from the National*  
21 *UnDACAmented Research Project* (Aug. 15, 2013), available at: <http://bit.ly/1jaS0tq> (last visited  
22 Oct. 9, 2017). In short, DACA created significant economic benefits for qualifying individuals and  
23 for the nation at large by permitting greater levels of contribution to the workforce by educated  
24 individuals who previously had limited employment opportunities.

### 25 **The County’s Employment Relationships With DACA Recipients**

26 32. The County is one of the largest employers in the region, with more than 18,000  
27 employees performing a vast array of functions to meet the needs of this diverse community. One of  
28 the main ways in which the County has benefited from the DACA program is through its

1 employment relationships with DACA recipients. In particular, the County currently employs many  
2 DACA recipients as full-time employees. The County has expended significant resources, both time  
3 and money, in training these employees and relies upon them to provide County services. Because  
4 DACA recipients are under no obligation to identify themselves as such when they apply for a job,  
5 and they present the same form of work authorization card as other categories of immigrants, the  
6 County cannot determine with certainty the total number of DACA recipients it employs.

7 33. DACA recipients are also employed through the County's In-Home Supportive Services  
8 program, which is funded through a combination of federal, state, and county funds.

9 34. DACA recipients have special skills that make them especially valuable employees of  
10 the County. For example, over ninety-five percent of DACA recipients are bilingual. The County  
11 values this skill because it must employ a workforce that is able to meet residents' language needs to  
12 ensure meaningful access to County services, programs, and benefits. *See* County of Santa Clara,  
13 Board Policy 3.58. Indeed, forty-six percent of clients currently receiving health, financial, or  
14 employment assistance through the County Department of Employment and Benefit Services speak a  
15 primary language other than English. Santa Clara Valley Medical Center, a public hospital owned  
16 and operated by the County, is required by law to provide qualified interpreters to limited-English-  
17 proficient individuals and relies on medical interpreters to satisfy that requirement. It takes an  
18 average of five to six months to fill interpreter vacancies for the County's hospital and clinics, and  
19 the County has had difficulty filling several open positions.

20 35. If the DACA recipients currently employed by the County were to lose their work  
21 authorization, the County would be forced to expend significant resources to temporarily cover those  
22 employees' responsibilities, conduct searches for replacements, and train new employees. On  
23 average, it takes the County 81 days to fill a vacancy. Nearly all County employees, including Local  
24 521 members, are covered by merit system rules and collective bargaining agreements that protect  
25 them against arbitrary dismissal and other adverse employment actions, and that include anti-  
26 discrimination provisions. Despite these protections, County employment is contingent on valid  
27 work authorization. Without the DACA program, these valued employees will be unable to work for  
28



1 the County or, indeed, to work in any legal capacity for any employer, public or private, within Santa  
2 Clara County or the United States.

3 36. The County also employs at least three DACA recipients in its New Americans  
4 Fellowship Program. This program aims to identify, recruit, develop, and equip DACA-eligible  
5 youth with the skills and tools to serve as ambassadors to the Santa Clara County community.  
6 Fellows commit to working at least 20 hours per week, for a period of no less than 10 weeks, on a  
7 project-based fellowship under the supervision of a County Department, the County Office of  
8 Immigrant Relations, or a Member of the Board of Supervisors' Office. Examples of the types of  
9 projects on which fellows work include:

- 10 • Research on improving/bridging relationships between law enforcement and the  
11 immigrant community;
- 12 • Developing a plan for a "Community Safety Initiative" focused on establishing problem-  
13 solving relationships between the immigrant and refugee population and local law  
14 enforcement;
- 15 • Developing the framework for a "Civics Empowerment Education Program" to establish  
16 the curriculum for immigrants and refugees who want to learn more about law and  
17 policy;
- 18 • Creating a training in civic participation to inform the community about federal, state,  
19 and county government structures and delivering presentations to decision-making  
20 bodies;
- 21 • Providing information to the undocumented population, including the following: know  
22 your rights at home, in the work place, and when seeking services via immigration  
23 consultants;
- 24 • Fraud prevention and education;
- 25 • Drafting or updating existing resources on family emergency plans;
- 26 • Increasing awareness of public services programs such as Medi-Cal, CalFresh, and  
27 Covered California;
- 28 • Launching a countywide campaign to promote financial literacy among immigrants and  
29 refugees; and
- 30 • Collaborating with banking institutions on providing financial planning tools for  
31 immigrants and refugees.

32 37. The County began the New Americans Fellowship Program in July 2017. Since that  
33 time, 20 fellows have participated in the program and contributed significantly to the County and

1 their communities. The County assigned ten fellows to County departments and community-based  
2 organizations throughout Santa Clara County and ten fellows participated in the “Silicon Valley  
3 Dream Summer,” a fellowship program that places immigrant youth at community-based and social  
4 justice organizations. The County has allocated funding to support additional fellows during the  
5 2017-2018 fiscal year, but planning for the next cohort of fellows has been put on hold due to  
6 Defendants’ actions. Like other forms of County employment, the New Americans Fellowship  
7 Program cannot survive Defendants’ rescission of DACA, for once existing work authorizations  
8 expire, DACA participant-employees will no longer be able to work for the County and the County  
9 will lose this bridge to their communities.

#### 10 **Reliance on the DACA Program and the Government’s Representations**

11 38. Trusting the federal government’s representations about the program, hundreds of  
12 thousands of young people from across the country have applied for and received DACA status since  
13 the program was initiated in 2012. The DACA program has changed the lives of DACA recipients.  
14 Prior to DACA, many law-abiding undocumented young people saw little purpose to completing  
15 higher education because they would be unable to work legally upon graduation. DACA gave them  
16 the ability to attend college, work to earn money to pay for higher education, and to utilize their  
17 degrees to attain high-skilled jobs. It also gave them access to health care, and the opportunity to  
18 become more integrated into their communities. DACA gave these young people hope that a better  
19 life was possible, and allowed them to emerge from the shadows of society to serve their  
20 communities, including through work for government agencies like the County of Santa Clara.

21 39. Loss of DACA status and work authorization would be devastating for County  
22 workers who depend on the DACA program to maintain employment, health insurance, and other  
23 benefits. Indeed, several County employees with DACA status desired to join as individual plaintiffs  
24 in this litigation challenging the DACA rescission, but ultimately chose not to come forward out of  
25 fear that Defendants would retaliate against them or their families.

26 40. The County has also relied on the government’s representations concerning the  
27 DACA program. The County has expended significant time and financial resources in hiring and  
28 training DACA recipients for various positions in County. Those employees carry out important

1 functions in County government and make significant contributions in providing services to County  
2 residents. There is little reason for employers like the County to take the time and effort to hire and  
3 train DACA recipients who have received work authorization unless there is some assurance that  
4 those individuals will be eligible to renew that authorization.

5 **Other Benefits to the County from the DACA Program**

6 41. Santa Clara County is home to Silicon Valley, where many of the country's leading  
7 high-tech and Internet-based companies are located. Technology companies based in the county,  
8 including Apple and Google, employ tens of thousands of workers. Similarly, health care providers,  
9 including Kaiser Permanente, Stanford Hospital and Clinics, and the County's own hospital and  
10 clinics, employ additional tens of thousands. Many of these organizations employ DACA recipients.  
11 For example, Tim Cook, CEO of Apple, recently noted that 250 Apple employees are "Dreamers,"  
12 or DACA recipients. Silicon Valley is projected to face a shortfall of 72,500 private sector workers  
13 by the year 2020, and immigration policies such as DACA, which increase the availability of skilled  
14 workers, help address this shortfall. Indeed, Silicon Valley has long been reliant on the contributions  
15 of immigrants. One study noted that immigrants launched a quarter of all engineering and  
16 technology companies in the United States from 1995 to 2005, Vivek Wadhwa et al., *America's New*  
17 *Immigrant Entrepreneurs: Part I*, Duke Science, Tech. & Innovation Paper No. 23 (Jan. 4, 2007),  
18 available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=990152##](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=990152##) (last visited Oct. 9,  
19 2017), and over half of Silicon Valley start-ups in the same period count at least one immigrant as a  
20 key founder, Richard T. Herman, *Immigrant, Inc.: Why Immigrant Entrepreneurs Are Driving the*  
21 *New Economy (and how they will save the American worker)* 5 (2009).

22 42. In 2016, the Migration Policy Institute (MPI) estimated that there were 23,000 DACA-  
23 eligible individuals in Santa Clara County, including 15,000 who were immediately eligible. MPI,  
24 *Deferred Action for Childhood Arrivals Data Tools*, available at:  
25 <http://www.migrationpolicy.org/programs/data-hub/deferred-action-childhood-arrivals-daca-profiles>  
26 (last visited Oct. 9, 2017). According to MPI's estimates, Santa Clara County has the twelfth largest  
27 DACA-eligible population among counties nationwide, and the largest DACA-eligible population of  
28 all northern California counties. MPI, *National and County Estimates of Populations Eligible for*

1 Deferred Action for Childhood Arrivals Program, 2016, available at:  
2 <http://www.migrationpolicy.org/sites/default/files/datahub/State-County-DACA-Estimates.xlsx> (last  
3 visited Oct. 9, 2017).

4 43. Ninety-one percent of DACA recipients are employed. John W. Schoen, *DACA*  
5 *Deportations Could Cost US Economy More than \$400 Billion*, CNBC.com (Sept. 5, 2017),  
6 available at: [https://www.cnbc.com/2017/09/05/daca-deportations-could-cost-us-economy-more-](https://www.cnbc.com/2017/09/05/daca-deportations-could-cost-us-economy-more-than-400-billion.html)  
7 [than-400-billion.html](https://www.cnbc.com/2017/09/05/daca-deportations-could-cost-us-economy-more-than-400-billion.html) (last visited Oct. 9, 2017). It is estimated that if DACA recipients lose the  
8 ability to work legally, California alone would suffer a GDP loss of approximately \$11.3 billion a  
9 year. *Id.* As one of the counties with the largest number of DACA recipients, much of this negative  
10 economic effect will be felt in Santa Clara County.

11 44. Moreover, because they are able to work legally, DACA recipients are employed in  
12 more highly compensated jobs and contribute more in state and local taxes than they would without  
13 DACA. One recent study estimates that the 1.3 million young people immediately eligible for  
14 DACA contribute \$2 billion a year in state and local taxes. Institute on Taxation and Economic  
15 Policy, *State & Local Tax Contributions of Young Undocumented Immigrants* (Apr. 25, 2017),  
16 available at: <https://itep.org/state-local-tax-contributions-of-young-undocumented-immigrants/> (last  
17 visited Oct. 9, 2017). Indeed, “DACA-eligible individuals pay on average 8.9 percent of their  
18 income in state and local taxes. Their effective tax rate is higher than the average rate paid by the  
19 top 1% of taxpayers in state and local taxes . . . .” *Id.* “Repealing the temporary legal status and  
20 work authorizations permitted by DACA would reduce estimated state and local revenues by nearly  
21 \$800 million . . . .” *Id.* The same study estimates that DACA eligible individuals contribute more  
22 than \$530 million in state and local taxes in California alone and, because Santa Clara County has a  
23 large number of DACA-eligible residents, the County stands to lose significant tax revenue because  
24 of the rescission of DACA.

25 45. In addition to its broad negative effects on the County’s economy and fisc, the  
26 rescission of DACA will make it more difficult and expensive for the County to provide services to  
27 its residents. For example, DACA recipients who do not have employer-sponsored insurance and  
28 who satisfy income-eligibility requirements qualify for “full-scope” coverage under Medi-Cal,

1 California's Medicaid program. Through Medi-Cal, DACA recipients receive coverage for a core  
2 set of health benefits, including preventative care, doctor's visits, immunizations, prescriptions, and  
3 mental health and substance abuse services. If these individuals lose deferred action status, they will  
4 be eligible only for very limited Medi-Cal coverage of emergency and pregnancy-related services,  
5 increasing their reliance on other safety-net health care services provided by the County.

6 46. The County operates the Santa Clara Valley Medical Center ("SCVMC"), a public  
7 safety-net Level I trauma hospital that provides critical health care services to poor and uninsured  
8 County residents. Payments from these patients and from public insurance programs such as Medi-  
9 Cal do not cover the costs of services they receive at SCVMC. As a result, each year the County  
10 provides a substantial subsidy to SCVMC to cover deficits incurred by SCVMC in serving these  
11 patients. During the first three quarters of Fiscal Year 2017, SCVMC operated at a deficit of well  
12 over \$90 million. Rescission of the DACA program will negatively affect SCVMC. Because  
13 DACA recipients who are now employed pursuant to work authorization granted under the program  
14 will lose their jobs – and their employer-sponsored health insurance – former DACA recipients, and  
15 family members who were covered by the recipient's insurance, are more likely to fall back on  
16 safety-net hospitals like SCVMC. Additionally, lacking employer-sponsored health insurance,  
17 unable to access full-scope Medi-Cal, and burdened with a fear of detention and deportation, these  
18 individuals are less likely to obtain regular check-ups and routine, preventative care. As a result,  
19 they will be more likely to seek medical care only when health problems worsen – often at  
20 SCVMC's Emergency Department – at which point care becomes more difficult and more  
21 expensive. The rescission of DACA will increase the County's costs in subsidizing free and below-  
22 cost care at SCVMC.

23 47. In addition to health care, the County provides (and is often required to provide)  
24 many other services to community members regardless of immigration status, and it will become  
25 more difficult to provide these services to DACA recipients after they lose deferred action status  
26 because of their renewed hesitancy to interact with the government for fear of detention and  
27 deportation. At the same time, it will be even more critical for individuals who lose DACA status to  
28 access County services – and the County will need to spend more to support them – because the

1 same individuals will be losing work authorization and, thus, the ability to work legally to support  
2 themselves and their families.

3 48. For example, the County invests significant resources in programs to provide housing  
4 to the homeless and to prevent homelessness. In fiscal year (FY) 2015, the County allocated over  
5 \$73.8 million in resources to housing and related services countywide and, in 2015, the Board of  
6 Supervisors approved increasing these expenditures by a total of \$33.9 million over FY 2016-2018.  
7 In addition to providing housing to homeless individuals and families who utilize other County  
8 services, the County also funds homelessness prevention and emergency housing programs,  
9 including homeless shelters, a cold weather shelter program, interim housing for the chronically  
10 homeless, and 24-hour care shelter placements. Because DACA recipients are able to obtain work  
11 authorization and work legally, the program has helped recipients support themselves and their  
12 families, greatly reducing their risk of homelessness and reliance on County services. These benefits  
13 are lost with rescission of the DACA program.

14 49. The DACA program also reduces reliance on the County's safety-net services by  
15 keeping families together. Twenty-five percent of DACA recipients have at least one U.S.-born  
16 child. Dara Lind, *9 facts that explain DACA, the immigration program Trump is threatening to end*,  
17 Vox.com (Sept. 5, 2017), available at: [https://www.vox.com/policy-and-](https://www.vox.com/policy-and-politics/2017/8/31/16226934/daca-trump-dreamers-immigration)  
18 [politics/2017/8/31/16226934/daca-trump-dreamers-immigration](https://www.vox.com/policy-and-politics/2017/8/31/16226934/daca-trump-dreamers-immigration) (last visited Oct. 9, 2017). If these  
19 parents lose DACA status and are subject to deportation, some of their U.S. citizen children may  
20 enter the foster care system. The County provides financial support to foster parents to meet the  
21 basic needs of foster youth placed in their care. In the 2017 fiscal year, the County invested \$25  
22 million in foster care youth, and rescission of the DACA program could bring more young people  
23 into the system, increasing costs and placing greater strains on County resources.

24 50. Rescission of DACA would also hinder the County's ability to protect the public  
25 health and the safety of its residents. The County's Public Health Department ("PHD") runs  
26 numerous programs that protect the health not only of the individual served, but of the wider  
27 community. PHD provides immunization clinics, tuberculosis testing, STD testing, and other  
28 services that prevent the spread of communicable diseases. DACA has improved PHD's ability to

1 provide these critical services to immigrant communities by alleviating the fear of deportation that  
2 often prevents undocumented immigrants from seeking government services. If DACA recipients  
3 lose their deferred action status, they – and their U.S. citizen children – may be less likely to receive  
4 necessary immunizations and testing, thereby increasing health risks for the community as a whole.

5 51. For similar reasons, DACA has had a positive effect on the relationship between  
6 immigrant communities and local law enforcement. Because of a justified fear of detention and  
7 deportation, undocumented individuals are often hesitant to contact law enforcement even when they  
8 are victims of crimes. By providing an assurance that they are protected from immigration  
9 enforcement actions, DACA has permitted recipients to be more willing to report crimes, act as  
10 witnesses, and otherwise cooperate with local law enforcement, as well as with other emergency  
11 services and first responders. This improved relationship is invaluable not just to DACA recipients  
12 themselves, but also to their communities and the County.

13 52. DACA has had a similar effect on the County's Code Enforcement Division, which  
14 enforces zoning and building ordinances to ensure safe living conditions for county residents. The  
15 County has received reports that some tenants are reluctant to come forward with reports of code  
16 violations because landlords have threatened to report immigrants to ICE. DACA status  
17 substantially reduces that threat, thereby helping the County ensure that unsafe or unsanitary housing  
18 conditions are abated for the safety and benefit of the entire community.

19 53. DACA's benefits to the County are also evidenced by the County's willingness to  
20 invest in DACA recipients. For example, the County previously allocated \$200,000 for outreach and  
21 education concerning the DACA program, to ensure that eligible County residents know of and have  
22 support necessary to apply for DACA status. Just after the administration's announcement that  
23 DACA would be rescinded, the County allocated an additional \$200,000 from its emergency reserve  
24 to establish an emergency program to help DACA recipients submit renewal applications before the  
25 administration's arbitrary October 5, 2017 deadline. Additionally, the County has allocated  
26 \$400,000 to the New Americans Fellowship Program, described above.

27 54. In light of the many ways in which the County has benefited from the DACA  
28 program, on August 15, 2017, the County's Board of Supervisors unanimously adopted a resolution

1 affirming its support for the DACA program and its commitment to immigrant youth and young  
2 adults.

### 3 **Rescission of the DACA Program**

4 55. The administration's decision to rescind the DACA program was announced by  
5 Attorney General Jefferson Sessions at a press conference on September 5, 2017. In his statement,  
6 Attorney General Sessions made a number of factual assertions concerning the DACA program that  
7 are demonstrably false, including the statement that DACA had "denied jobs to hundreds of  
8 thousands of Americans" and that DACA "contributed to a surge of unaccompanied minors on the  
9 southern border that yielded terrible humanitarian consequences." Notably, the Attorney General  
10 provided no evidence to support these assertions and gave no indication that the administration had  
11 studied DACA or its effects in any meaningful or systematic fashion. Rather, he simply assumed  
12 that DACA had negative effects, completely ignored the program's positive effects, and concluded  
13 that "[o]ur collective wisdom is that the policy is vulnerable to the same legal and constitutional  
14 challenges that the courts recognized with respect to the [Deferred Action for Parents of Americans  
15 and Lawful Permanent Residents] program."

16 56. Shortly after the press conference, Acting Secretary Duke issued a memorandum  
17 formally rescinding DACA. The memorandum stated that DHS would not consider any initial  
18 DACA applications received after September 5, 2017. As for individuals who currently have DACA  
19 status and work authorization, the memorandum stated that DHS would adjudicate pending renewal  
20 requests properly filed and accepted by DHS as of September 5, 2017, and renewal requests properly  
21 filed and accepted by DHS by October 5, 2017 from individuals whose DACA benefits expire  
22 between September 5, 2017 and March 5, 2018. All other DACA renewal requests, including any  
23 requests received after October 5, 2017, would be rejected.

24 57. Acting Secretary Duke's memorandum did not explain the administration's reasons  
25 for rescinding DACA and gave no indication that the administration had considered the benefits of  
26 the program before abruptly ending it. Rather, the memorandum simply refers to the Attorney  
27 General's speculation that the DACA program may be held unlawful, explaining that the Fifth  
28 Circuit had held *different* programs (Deferred Action for the Parents of Americans and Lawful



1 Permanent Residents (“DAPA”) and an expansion of the DACA) to be unlawful, and that this  
2 decision was affirmed by an equally divided Supreme Court. Secretary Duke’s memorandum cites a  
3 September 4, 2017 letter from Attorney General Sessions, which provides no legal analysis  
4 whatsoever and simply concludes that “it is likely that potentially imminent litigation would yield  
5 similar results with respect to DACA.”

6 58. On the same day that Attorney General Sessions announced the rescission of DACA,  
7 DHS published guidance in the form of “frequently asked questions” (“FAQs”) concerning the  
8 rescission of DACA. These FAQs reflect a changed orientation toward the use of DACA applicants’  
9 information for immigration enforcement. Previously, applicants had been told that “Information  
10 provided in [a DACA] request is protected from disclosure to ICE and CBP [U.S. Customs and  
11 Border Protection] for the purpose of immigration enforcement proceedings unless the requestor  
12 meets the criteria for the issuance of a Notice to Appear or a referral to ICE under the criteria set  
13 forth in USCIS’ Notice to Appear guidance . . . .” USCIS, DACA Frequently Asked Questions,  
14 available at: <https://www.uscis.gov/archive/frequently-asked-questions> (last visited Oct. 9, 2017).  
15 By contrast, the September 5, 2017 guidance provides: “Information provided to USCIS in DACA  
16 requests will not be *proactively provided* to ICE and CBP for the purpose of immigration  
17 enforcement proceedings, unless the requestor meets the criteria for the issuance of a Notice to  
18 Appear or a referral to ICE under the criteria set forth in USCIS’ Notice to Appear guidance . . . .”  
19 DHS, Frequently Asked Questions: Rescission of Deferred Action for Childhood Arrivals (Sept. 5,  
20 2017) (emphasis added), available at: [https://www.dhs.gov/news/2017/09/05/frequently-asked-  
21 questions-rescission-deferred-action-childhood-arrivals-daca](https://www.dhs.gov/news/2017/09/05/frequently-asked-questions-rescission-deferred-action-childhood-arrivals-daca) (last visited Oct. 9, 2017). This change  
22 appears to indicate that information provided by DACA applicants *will* be used for immigration  
23 enforcement purposes, and made available to ICE and CBP upon request, even if not “proactively  
24 provided.”

25 **FIRST CLAIM FOR RELIEF**  
26 **Violation of Due Process**  
27 **U.S. Const. amend. V**

28 59. Plaintiffs re-allege and incorporate by reference all the allegations set forth in this  
Complaint.

1           60.     The County has a constitutionally protected interest in its employment relationships  
2 with its employees, including DACA recipients, as well as protected interests in the benefits that  
3 flow from those relationships. The County employs DACA recipients as full-time and part-time  
4 employees, and as fellows in the County's New Americans Fellowship Program. The County has  
5 made significant investments of employee-time and money to hire and train those employees. The  
6 rescission of the DACA program, and DACA recipients' consequent inability to apply for renewed  
7 work authorization, will necessarily result in the termination of those employment relationships.  
8 The County will therefore lose not only its investment in these employees, but also the benefit of  
9 their expertise and experience.

10           61.     County employees and others who participate in the DACA program, including Local  
11 521 members, have a constitutionally protected interest in their jobs. As a result of the rescission,  
12 when their current two-year authorization expires, employees who participate in the DACA program  
13 will no longer be able to keep their jobs with the County or with other employers.

14           62.     The County has a constitutionally protected interest in the programs and services it  
15 offers to County residents, including the funds expended to support those programs. It will become  
16 more difficult to provide these services to DACA recipients after they lose deferred action status  
17 because of their renewed hesitancy to interact with the government for fear of detention and  
18 deportation. At the same time, it will be even more critical for individuals who lose DACA status to  
19 access County services – and the County will need to spend more to support them – because the  
20 same individuals will be losing work authorization and, thus, the ability to work legally to support  
21 themselves and their families.

22           63.     Rescission of the DACA program and Defendants' actions in accordance therewith  
23 unlawfully deprive the County, its employees and its residents of these and other constitutionally  
24 protected interests without due process of law. Such deprivation occurred with no notice or  
25 opportunity to be heard.

26           64.     Moreover, to the extent that Defendants seek to use for purposes of immigration  
27 enforcement the information that DACA recipients provided in connection with their applications,  
28 such use would also violate due process. The Due Process Clause of the Fifth Amendment requires

1 that the federal government’s immigration enforcement actions be fundamentally fair. Defendants  
2 induced DACA applicants to provide this information with the express promise that it would not be  
3 used against the applicant in immigration enforcement proceedings. For Defendants to turn around  
4 and now use this information as they previously promised they would not, would abuse DACA  
5 applicants’ trust in government and offend fundamental principles of fairness and justice.

6 65. Rescission of the DACA program violated the Due Process Clause of the Fifth  
7 Amendment to the United States Constitution. Likewise, use of the information DACA recipients  
8 provided to Defendants as part of their DACA applications to target DACA recipients or their  
9 families for removal or to support removal proceedings would violate the Due Process Clause of the  
10 Fifth Amendment.

11 66. The County, its employees and its residents, and Local 521 and its members have  
12 been harmed and continue to be harmed by these unlawful acts.

13 **SECOND CLAIM FOR RELIEF**  
14 **Violation of Administrative Procedure Act**  
15 **Arbitrary and Capricious Agency Action**  
16 **5 U.S.C. §706**

17 67. Plaintiffs re-allege and incorporate by reference all the allegations set forth in this  
18 Complaint.

19 68. The Department of Homeland Security is subject to the requirements of the APA.  
20 *See* 5 U.S.C. §703. The termination of the DACA program is final agency action subject to judicial  
21 review because it marks the “consummation of the . . . decisionmaking process” and is one “from  
22 which legal consequences will flow.” *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (internal quotation  
marks omitted).

23 69. Under 5 U.S.C. §706(2), courts shall “hold unlawful and set aside” agency action  
24 found to be arbitrary, capricious, and abuse of discretion, or otherwise not in accordance with law;  
25 contrary to a constitutional right, power, privilege, or immunity; in excess of statutory jurisdiction,  
26 authority, or limitations, or short of statutory right; without observance of procedure required by law.

27 70. Rescission of the DACA program is final agency action subject to APA review by  
28 this Court.

1           71. Defendants' actions rescinding DACA are arbitrary and capricious, an abuse of  
2 discretion, and not in accordance with law because, among other things, Defendants have not  
3 identified a reasonable explanation for their decision to do so. Nor in rescinding the DACA program  
4 did Defendants consider all relevant factors, including the benefits provided by the program. Not  
5 only have Defendants failed to meaningfully assess the benefits of the DACA program, but they  
6 have not addressed the comprehensive legal arguments previously developed by DHS itself and the  
7 Department of Justice's Office of Legal Counsel as to why the DACA program is a lawful exercise  
8 of prosecutorial discretion. The failure to address these legal opinions, or offer any legal reasoning,  
9 is especially egregious in this case, given that the only rationale for rescinding DACA offered in  
10 Defendant Duke's September 5 memorandum is that the program is likely to be found unlawful.  
11 Defendants have committed a clear error in judgment.

12           72. Defendants also disregarded the serious reliance interests created by the DACA  
13 program, including those of the County and DACA recipients. On the basis of Defendants'  
14 representations that the DACA program would provide them an avenue to come out of the shadows  
15 and participate more fully in their communities, and that the information they provided to  
16 Defendants would not be used against them in immigration proceedings, DACA recipients applied  
17 for deferred action status and organized their lives around the expectation that they would be  
18 permitted to maintain that status as long as they were in compliance with program requirements.  
19 Where "longstanding policies may have 'engendered serious reliance interests,'" those interests  
20 "must be taken into account." *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2126 (2016)  
21 (quoting *FCC v. Fox Tele. Stations, Inc.*, 556 U.S. 502, 515 (2009)). "[A] reasoned explanation is  
22 needed for disregarding facts and circumstances that underlay or were engendered by the prior  
23 policy," *id.* (quoting *Fox*, 556 U.S. at 516), and "[i]t follows that an '[u]nexplained inconsistency' in  
24 agency policy is 'a reason for holding an interpretation to be an arbitrary and capricious change from  
25 agency practice.'" *Id.* (quoting *Nat'l Cable & Telecomm. Ass'n v. Brand X Internet Servs.*, 545 U.S.  
26 967, 981 (2005)).

27           73. The County, its employees, and its residents, and Local 521 and its members have  
28 been harmed and continue to be harmed by these unlawful acts.

**THIRD CLAIM FOR RELIEF**  
**Violation of Equal Protection**  
**U.S. Const. amend. V**

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

74. Plaintiffs re-allege and incorporate by reference all of the allegations set forth in this Complaint.

75. Defendants’ actions rescinding DACA target Latinos and, specifically, immigrants from Mexico, and are motivated by animus toward these groups. Of the approximately 1.59 million DACA applications (both initial and renewal) that were approved from the beginning of the program through March 2017, approximately 1.48 million, or approximately 93%, were submitted by people from countries in Latin America and approximately, 1.24 million, or approximately 80%, were from Mexican immigrants. Accordingly, the overwhelming majority of the direct beneficiaries of the DACA program have been Latinos and Mexican immigrants. There is no question but that rescission of the DACA program imposes a disproportionate burden on Latinos generally and, specifically, persons from Mexico.

76. The rescission is motivated by impermissible animus. From the moment he launched his campaign, President Trump has publicly announced his animus toward Latinos and Mexican immigrants. Indeed, such animus was a feature of his campaign, in which President Trump distinguished himself with his hardline stance on immigration, highlighted by harsh rhetoric disparaging Mexican immigrants. In the speech in which he announced his candidacy, President Trump stated: “When Mexico sends its people, they’re not sending their best. . . . They’re sending people that have lots of problems, and they’re bring those problems with us [sic]. They’re bringing drugs. They’re bringing crime. They’re rapists.” As an afterthought, he added, “[a]nd some, I assume, are good people.” Later, then-candidate Trump repeatedly disparaged the federal district judge presiding over a case brought by students alleging they were defrauded by Trump University, calling the judge a “hater” who is “very hostile” to President Trump because, as the President has explained on different occasions, he “happens to be Spanish,” is “Hispanic,” or “happens to be, we believe, Mexican.” More recently, in August 2017, at a rally in Phoenix, President Trump referred to undocumented immigrants as “animals” who are responsible for “the drugs, the gangs, the cartels, the crisis of smuggling and trafficking.” Throughout his campaign and in his first months in office,

1 the President has maintained this attitude, culminating in the decision to rescind the DACA program.

2 77. Moreover, other factors indicative of an intent to discriminate are present in this case.  
3 In rescinding the DACA program, Defendants departed significantly from normal procedures. In  
4 particular, Defendants elected to entirely forego the APA procedures required for implementation of  
5 a categorical rule such as the rescission of DACA. Additionally, the purported justifications offered  
6 for the rescission are plainly pretextual. The September 5, 2017 memorandum from Defendant  
7 Secretary Duke announcing the rescission explains only that the Fifth Circuit had held the *different*  
8 DAPA program and an expansion of DACA to be unlawful, and that this decision was affirmed by  
9 an equally divided Supreme Court. Secretary Duke's memorandum cites a September 4, 2017 letter  
10 from Attorney General Sessions, which provides no legal analysis whatsoever and simply concludes  
11 that "it is likely that potentially imminent litigation would yield similar results with respect to  
12 DACA." No court has considered the lawfulness of the DACA program at issue here.

13 78. As such, the rescission of DACA deprives Latino DACA recipients of equal  
14 protection of the laws, guaranteed by the Fifth Amendment. The County, Local 521, and its  
15 members are harmed and continue to be harmed by Defendants' actions.

16 **FOURTH CLAIM FOR RELIEF**  
17 **Declaratory Relief – Equitable Estoppel**

18 79. Plaintiffs re-allege and incorporate by reference all of the allegations set forth in this  
19 Complaint.

20 80. The federal government, by its conduct and explicit statements, represented to  
21 eligible applicants that the information applicants provided in connection with applications for  
22 deferred action status would not be used in immigration enforcement proceedings, except in certain  
23 limited circumstances, and that DACA recipients would have the opportunity to apply for renewed  
24 deferred action status at the end of their respective two-year authorization periods.

25 81. In reliance on these assurances, DACA applicants identified themselves to the  
26 government, acknowledging their undocumented status, and provided important information about  
27 themselves and their family members that exposed them to the risk of deportation.

28



1 F. Preliminarily and permanently enjoin and restrain Defendants, their agents, servants,  
2 employees, attorneys, and all persons in active concert or participation with any of them, from  
3 implementing or enforcing the rescission of DACA and from taking any other action that is not in  
4 compliance with applicable law;

5 G. Preliminarily and permanently enjoin and restrain Defendants, their agents, servants,  
6 employees, attorneys, and all persons in active concert or participation with any of them, from  
7 sharing or otherwise using information provided pursuant to the DACA program for immigration  
8 enforcement purposes, except as previously authorized under the program;

9 H. Award Plaintiffs reasonable attorneys' fees and costs; and

10 I. Grant Plaintiffs such further and additional relief as the Court deems just and proper.

11 Dated: October 10, 2017

Respectfully submitted,

/s/ James R. Williams

JAMES R. WILLIAMS, County  
Counsel  
GRETA S. HANSEN  
LAURA S. TRICE  
MARCELO QUIÑONES  
OFFICE OF THE COUNTY COUNSEL  
COUNTY OF SANTA CLARA  
70 West Hedding Street  
East Wing, Ninth Floor  
San Jose, CA 95110-1770  
Telephone: (408) 299-5900  
Facsimile: (408) 292-7240  
laura.trice@cco.sccgov.org  
marcelo.quinones@cco.sccgov.org

*Attorneys for Plaintiff County of Santa  
Clara*

/s/ Eric P. Brown

JONATHAN WEISSGLASS  
STACEY M. LEYTON  
ERIC P. BROWN  
ALTSHULER BERZON LLP  
177 Post St., Suite 300  
San Francisco, CA 94108  
Telephone: (415) 421-7151  
jweissglass@altber.com;  
sleyton@altber.com;  
ebrown@altber.com

*Attorneys for all Plaintiffs*



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



**Homeland  
Security**

November 20, 2014

MEMORANDUM FOR: León Rodríguez  
Director  
U.S. Citizenship and Immigration Services

Thomas S. Winkowski  
Acting Director  
U.S. Immigration and Customs Enforcement

R. Gil Kerlikowske  
Commissioner  
U.S. Customs and Border Protection

FROM: Jeh Charles Johnson  
Secretary

A handwritten signature in black ink, appearing to be "Jeh Charles Johnson", written over a circular stamp or mark.

SUBJECT: **Exercising Prosecutorial Discretion with Respect to  
Individuals Who Came to the United States as  
Children and with Respect to Certain Individuals  
Who Are the Parents of U.S. Citizens or Permanent  
Residents**

This memorandum is intended to reflect new policies for the use of deferred action. By memorandum dated June 15, 2012, Secretary Napolitano issued guidance entitled *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children*. The following supplements and amends that guidance.

The Department of Homeland Security (DHS) and its immigration components are responsible for enforcing the Nation's immigration laws. Due to limited resources, DHS and its Components cannot respond to all immigration violations or remove all persons illegally in the United States. As is true of virtually every other law enforcement agency, DHS must exercise prosecutorial discretion in the enforcement of the law. Secretary Napolitano noted two years ago, when she issued her prosecutorial discretion guidance regarding children, that "[o]ur 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."

Deferred action is a long-standing administrative mechanism dating back decades, by which the Secretary of Homeland Security may defer the removal of an undocumented immigrant for a period of time.<sup>1</sup> A form of administrative relief similar to deferred action, known then as “indefinite voluntary departure,” was originally authorized by the Reagan and Bush Administrations to defer the deportations of an estimated 1.5 million undocumented spouses and minor children who did not qualify for legalization under the *Immigration Reform and Control Act* of 1986. Known as the “Family Fairness” program, the policy was specifically implemented to promote the humane enforcement of the law and ensure family unity.

Deferred action is a form of prosecutorial discretion by which the Secretary deprioritizes an individual’s case for humanitarian reasons, administrative convenience, or in the interest of the Department’s overall enforcement mission. As an act of prosecutorial discretion, deferred action is legally available so long as it is granted on a case-by-case basis, and it may be terminated at any time at the agency’s discretion. Deferred action does not confer any form of legal status in this country, much less citizenship; it simply means that, for a specified period of time, an individual is permitted to be lawfully present in the United States. Nor can deferred action itself lead to a green card. Although deferred action is not expressly conferred by statute, the practice is referenced and therefore endorsed by implication in several federal statutes.<sup>2</sup>

Historically, deferred action has been used on behalf of particular individuals, and on a case-by-case basis, for classes of unlawfully present individuals, such as the spouses and minor children of certain legalized immigrants, widows of U.S. citizens, or victims of trafficking and domestic violence.<sup>3</sup> Most recently, beginning in 2012, Secretary Napolitano issued guidance for case-by-case deferred action with respect to those who came to the United States as children, commonly referred to as “DACA.”

<sup>1</sup> Deferred action, in one form or another, dates back to at least the 1960s. “Deferred action” per se dates back at least as far as 1975. See, Immigration and Naturalization Service, Operation Instructions § 103.1(a)(1)(ii) (1975).

<sup>2</sup> INA § 204(a)(1)(D)(i)(II), (IV) (*Violence Against Women Act (VAWA) self-petitioners not in removal proceedings are “eligible for deferred action and employment authorization”*); INA § 237(d)(2) (*DHS may grant stay of removal to applicants for T or U visas but that denial of a stay request “shall not preclude the alien from applying for . . . deferred action”*); REAL ID Act of 2005 § 202(c)(2)(B)(viii), Pub. L. 109-13 (*requiring states to examine documentary evidence of lawful status for driver’s license eligibility purposes, including “approved deferred action status”*); National Defense Authorization Act for Fiscal Year 2004 § 1703(c) (d) Pub. L. 108-136 (*spouse, parent or child of certain U.S. citizen who died as a result of honorable service may self-petition for permanent residence and “shall be eligible for deferred action, advance parole, and work authorization”*).

<sup>3</sup> In August 2001, the former-Immigration and Naturalization Service issued guidance providing deferred action to individuals who were eligible for the recently created U and T visas. Two years later, USCIS issued subsequent guidance, instructing its officers to use existing mechanisms like deferred action for certain U visa applicants facing potential removal. More recently, in June 2009, USCIS issued a memorandum providing deferred action to certain surviving spouses of deceased U.S. citizens and their children while Congress considered legislation to allow these individuals to qualify for permanent residence status.

By this memorandum, I am now expanding certain parameters of DACA and issuing guidance for case-by-case use of deferred action for those adults who have been in this country since January 1, 2010, are the parents of U.S. citizens or lawful permanent residents, and who are otherwise not enforcement priorities, as set forth in the November 20, 2014 [Policies for the Apprehension, Detention and Removal of Undocumented Immigrants Memorandum](#).

The reality is that most individuals in the categories set forth below are hard-working people who have become integrated members of American society. Provided they do not commit serious crimes or otherwise become enforcement priorities, these people are extremely unlikely to be deported given this Department's limited enforcement resources—which must continue to be focused on those who represent threats to national security, public safety, and border security. Case-by-case exercises of deferred action for children and long-standing members of American society who are not enforcement priorities are in this Nation's security and economic interests and make common sense, because they encourage these people to come out of the shadows, submit to background checks, pay fees, apply for work authorization (which by separate authority I may grant), and be counted.

#### A. Expanding DACA

DACA provides that those who were under the age of 31 on June 15, 2012, who entered the United States before June 15, 2007 (5 years prior) as children under the age of 16, and who meet specific educational and public safety criteria, are eligible for deferred action on a case-by-case basis. The initial DACA announcement of June 15, 2012 provided deferred action for a period of two years. On June 5, 2014, U.S. Citizenship and Immigration Services (USCIS) announced that DACA recipients could request to renew their deferred action for an additional two years.

In order to further effectuate this program, I hereby direct USCIS to expand DACA as follows:

**Remove the age cap.** DACA will apply to all otherwise eligible immigrants who entered the United States by the requisite adjusted entry date before the age of sixteen (16), regardless of how old they were in June 2012 or are today. The current age restriction excludes those who were older than 31 on the date of announcement (*i.e.*, those who were born before June 15, 1981). That restriction will no longer apply.

**Extend DACA renewal and work authorization to three-years.** The period for which DACA and the accompanying employment authorization is granted will be extended to three-year increments, rather than the current two-year increments. This change shall apply to all first-time applications as well as all applications for renewal effective November 24, 2014. Beginning on that date, USCIS should issue all work

authorization documents valid for three years, including to those individuals who have applied and are awaiting two-year work authorization documents based on the renewal of their DACA grants. USCIS should also consider means to extend those two-year renewals already issued to three years.

**Adjust the date-of-entry requirement.** In order to align the DACA program more closely with the other deferred action authorization outlined below, the eligibility cut-off date by which a DACA applicant must have been in the United States should be adjusted from June 15, 2007 to January 1, 2010.

USCIS should begin accepting applications under the new criteria from applicants no later than ninety (90) days from the date of this announcement.

**B. Expanding Deferred Action**

I hereby direct 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 those individuals who:

- have, on the date of this memorandum, a son or daughter who is a U.S. citizen or lawful permanent resident;
- have continuously resided in the United States since before January 1, 2010;
- are physically present in the United States on the date of this memorandum, *and* at the time of making a request for consideration of deferred action with USCIS;
- have no lawful status on the date of this memorandum;
- are not an enforcement priority as reflected in the November 20, 2014 [Policies for the Apprehension, Detention and Removal of Undocumented Immigrants Memorandum](#); and
- present no other factors that, in the exercise of discretion, makes the grant of deferred action inappropriate.

Applicants must file the requisite applications for deferred action pursuant to the new criteria described above. Applicants must also submit biometrics for USCIS to conduct background checks similar to the background check that is required for DACA applicants. Each person who applies for deferred action pursuant to the criteria above shall also be eligible to apply for work authorization for the period of deferred action, pursuant to my authority to grant such authorization reflected in section 274A(h)(3) of

the Immigration and Nationality Act.<sup>4</sup> Deferred action granted pursuant to the program shall be for a period of three years. Applicants will pay the work authorization and biometrics fees, which currently amount to \$465. There will be no fee waivers and, like DACA, very limited fee exemptions.

USCIS should begin accepting applications from eligible applicants no later than one hundred and eighty (180) days after the date of this announcement. As with DACA, the above criteria are to be considered for all individuals encountered by U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), or USCIS, whether or not the individual is already in removal proceedings or subject to a final order of removal. Specifically:

- ICE and CBP are instructed to immediately begin identifying persons in their custody, as well as newly encountered individuals, who meet the above criteria and may thus be eligible for deferred action to prevent the further expenditure of enforcement resources with regard to these individuals.
- ICE is further instructed to review pending removal cases, and seek administrative closure or termination of the cases of individuals identified who meet the above criteria, and to refer such individuals to USCIS for case-by-case determinations. ICE should also establish a process to allow individuals in removal proceedings to identify themselves as candidates for deferred action.
- USCIS is instructed to implement this memorandum consistent with its existing guidance regarding the issuance of notices to appear. The USCIS process shall also be available to individuals subject to final orders of removal who otherwise meet the above criteria.

Under any of the proposals outlined above, immigration officers will be provided with specific eligibility criteria for deferred action, but the ultimate judgment as to whether an immigrant is granted deferred action will be determined on a case-by-case basis.

This memorandum confers no substantive right, immigration status or pathway to citizenship. Only an Act of Congress can confer these rights. It remains within the authority of the Executive Branch, however, to set forth policy for the exercise of prosecutorial discretion and deferred action within the framework of existing law. This memorandum is an exercise of that authority.

---

<sup>4</sup> INA § 274A(h)(3), 8 U.S.C. § 1324a(h)(3) (“As used in this section, the term ‘unauthorized alien’ means, with respect to the employment of an alien at a particular time, that the alien is not at that time either (A) an alien lawfully admitted for permanent residence, or (B) authorized to be so employed by this chapter or by the[Secretary].”); 8 C.F.R. § 274a.12 (regulations establishing classes of aliens eligible for work authorization).



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

June 29, 2017

The Honorable Jeff Sessions  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530-0001

Re: *Texas, et al. v. United States, et al.*, No. 1:14-cv-00254 (S.D. Tex.)

Dear Attorney General Sessions:

The State plaintiffs that successfully challenged the Obama Administration's DAPA and Expanded DACA programs commend the Secretary of Homeland Security for issuing his June 15, 2017 memorandum rescinding, in large part, his predecessor's November 20, 2014 memorandum creating those DAPA and Expanded DACA programs.

As you know, this November 20, 2014 memorandum creating DAPA and Expanded DACA would have granted eligibility for lawful presence and work authorization to over four million unlawfully present aliens. Courts blocked DAPA and Expanded DACA from going into effect, holding that the Executive Branch does not have the unilateral power to confer lawful presence and work authorization on unlawfully present aliens simply because the Executive chooses not to remove them. Rather, "[i]n specific and detailed provisions, the [Immigration and Nationality Act] expressly and carefully provides legal designations allowing defined classes of aliens to be lawfully present." *Texas v. United States*, 809 F.3d 134, 179 (5th Cir. 2015), *aff'd by an equally divided court*, 136 S. Ct. 2271 (2016) (per curiam). "Entirely absent from those specific classes is the group of 4.3 million illegal aliens who would be eligible for lawful presence under DAPA." *Id.* Likewise, "[t]he INA also specifies classes of aliens eligible and ineligible for work authorization . . . with no mention of the class of persons whom DAPA would make eligible for work authorization." *Id.* at 180-81. Thus, "DAPA is not authorized by statute," *id.* at 184, and "DAPA is foreclosed by Congress's careful plan," *id.* at 186.



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

For these same reasons that DAPA and Expanded DACA's unilateral Executive Branch conferral of eligibility for lawful presence and work authorization was unlawful, the original June 15, 2012 DACA memorandum is also unlawful. The original 2012 DACA program covers over one million otherwise unlawfully present aliens. *Id.* at 147. And just like DAPA, DACA unilaterally confers eligibility for work authorization, *id.*, and lawful presence without any statutory authorization from Congress.<sup>1</sup>

Nevertheless, the Secretary of Homeland Security's June 15, 2017 memorandum provided that "[t]he June 15, 2012 DACA memorandum, however, will remain in effect," and some "Expanded DACA" permits will also remain in effect.

We respectfully request that the Secretary of Homeland Security phase out the DACA program. Specifically, we request that the Secretary of Homeland Security rescind the June 15, 2012 DACA memorandum and order that the Executive Branch will not renew or issue any new DACA or Expanded DACA permits in the future. This request does not require the Executive Branch to immediately rescind DACA or Expanded DACA permits that have already been issued. This request does not require the Secretary to alter the immigration enforcement priorities contained in his separate February 20, 2017 memorandum.<sup>2</sup> And this request does not require the federal government to remove any alien.

If, by September 5, 2017, the Executive Branch agrees to rescind the June 15, 2012 DACA memorandum and not to renew or issue any new DACA or Expanded DACA permits in the future, then the plaintiffs that successfully challenged DAPA and Expanded DACA will voluntarily dismiss their lawsuit currently pending in the Southern District of Texas. Otherwise, the complaint in that case will be amended to challenge both the DACA program and the remaining Expanded DACA permits.

---

<sup>1</sup> *See, e.g.*, USCIS, DACA Frequently Asked Questions, <https://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-process/frequently-asked-questions> (last visited June 29, 2017) (DACA recipients "are considered to be lawfully present").

<sup>2</sup> *See* DHS, Enforcement of Immigration Laws to Serve the National Interest, [https://www.dhs.gov/sites/default/files/publications/17\\_0220\\_S1\\_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf](https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf).



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

We appreciate the opportunity to continue working with you, and the entire Presidential Administration, to cooperatively enforce federal immigration laws.

Sincerely,

Handwritten signature of Ken Paxton in blue ink.

Ken Paxton  
Attorney General of Texas

Handwritten signature of Jeff Landry in black ink.

Jeff Landry  
Attorney General of Louisiana

Handwritten signature of Steve Marshall in black ink.

Steve Marshall  
Attorney General of Alabama

Handwritten signature of Doug Peterson in black ink.

Doug Peterson  
Attorney General of Nebraska

Handwritten signature of Leslie Rutledge in black ink.

Leslie Rutledge  
Attorney General of Arkansas

Handwritten signature of Alan Wilson in black ink.

Alan Wilson  
Attorney General of South Carolina

Handwritten signature of Lawrence G. Wasden in black ink.

Lawrence G. Wasden  
Attorney General of Idaho

Handwritten signature of Herbert Slatery III in black ink.

Herbert Slatery III  
Attorney General and Reporter of  
Tennessee

Handwritten signature of C.L. "Butch" Otter in black ink.

C.L. "Butch" Otter  
Governor of Idaho

Handwritten signature of Patrick Morrisey in black ink.

Patrick Morrisey  
Attorney General of West Virginia

Handwritten signature of Derek Schmidt in black ink.

Derek Schmidt  
Attorney General of Kansas



**CERTIFICATE OF SERVICE**

I hereby certify that on February 13, 2018, I electronically filed the foregoing Excerpts of Record (Vol. II of III) with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

*s/ Mark B. Stern*  
\_\_\_\_\_  
MARK B. STERN