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11 IN THE UNITED STATES DISTRICT COURT
 12 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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

Civil Case No.: 3:17-cv-05235-WHA

17 Plaintiffs,

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

18 v.

19 **U.S. DEPARTMENT OF HOMELAND**
 20 **SECURITY; CHAD F. WOLF**, in his
 purported official capacity as Acting Secretary
 21 of Homeland Security; **U.S. CITIZENSHIP**
AND IMMIGRATION SERVICES;
 22 **JOSEPH EDLOW**, in his purported official
 capacity as Deputy Director for Policy of the
 23 U.S. Citizenship and Immigration Services;
 and **UNITED STATES OF AMERICA,**

24 Defendants.
 25

INTRODUCTION

1
2 1. Defendants continue to take unlawful actions to diminish the protections that the
3 Deferred Action for Childhood Arrivals (DACA) program provides for individuals who were
4 brought to this country as children, in spite of the United States Supreme Court’s June 18, 2020
5 decision finding Defendants’ 2017 rescission of DACA unlawful. *Dep’t of Homeland Sec. v.*
6 *Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1914–15 (2020) (*Regents III*). Defendants’ latest
7 actions are unlawful for the same reason that the Supreme Court rejected the original rescission—
8 they fail the Administrative Procedure Act’s (APA) core requirement that government action be
9 rational, based on consideration of the relevant factors, and sufficiently explained. This Court
10 should invalidate these arbitrary and capricious actions, which are also unlawful because the
11 officials who took them were not properly appointed to the positions they purportedly held.

12 2. On July 28, 2020, Defendant Chad F. Wolf, purported Acting Secretary of the
13 Department of Homeland Security, issued a memorandum making a number of changes to
14 DACA. Ex. A, Mem. from Chad F. Wolf, Acting Sec’y of Homeland Security, to Mark Morgan,
15 Senior Official Performing the Duties of Comm’r, U.S. Customs and Border Protection (CBP), et
16 al., *Reconsideration of the June 15, 2012 Memorandum Entitled “Exercising Prosecutorial*
17 *Discretion with Respect to Individuals Who Came to the United States as Children”* (July 28,
18 2020) (Wolf Memorandum). Pursuant to that memorandum, the Department of Homeland
19 Security (DHS) reduced the period of deferred action and work authorization granted under the
20 DACA program from two years to one year. DHS also again decided to reject any applications
21 from individuals who had not previously received a grant of deferred action under DACA, and to
22 reject requests for advance parole (i.e., authorization for DACA recipients to re-enter the United
23 States after travelling abroad) except in extraordinary circumstances. DHS further decided to
24 apply these policies to all initial DACA applications and applications for advance parole
25 submitted before the issuance of the Wolf Memorandum but after the Supreme Court affirmed the
26 vacatur of DHS’s 2017 rescission.

27 3. On August 21, 2020, Defendant Joseph Edlow, purported Deputy Director for
28 Policy for U.S. Citizenship and Immigration Services (USCIS), issued a memorandum

1 implementing the Wolf Memorandum. Ex. B, Mem. from Joseph Edlow, Deputy Dir. for Pol’y, to
2 Assoc. Dirs. and Program Off. Chiefs, *Implementing Acting Secretary Chad Wolf’s July 28, 2020*
3 *Memorandum, “Reconsideration of the June 15, 2012 Memorandum ‘Exercising Prosecutorial*
4 *Discretion with Respect to Individuals Who Came to the United States as Children’”* (Aug. 21,
5 2020) (Edlow Memorandum). Under the terms of the Edlow Memorandum, USCIS will reject
6 DACA renewal requests received more than 150 days (five months) prior to the expiration of
7 DACA recipients’ current DACA validity period. As a result, many recipients will face lapses in
8 the renewal of their DACA protections and accompanying work authorizations because of the
9 lengthy processing times for renewal applications at USCIS centers, which currently extend up to
10 14 months.

11 4. Defendants’ actions are invalid, in part, because on July 28, 2020, when Defendant
12 Wolf issued the Wolf Memorandum, he was unlawfully exercising the functions and duties of the
13 Secretary of Homeland Security, in violation of the U.S. Constitution, the Federal Vacancies
14 Reform Act, and, as at least two courts have held, the Homeland Security Act. Moreover,
15 Defendant Wolf’s subsequent attempts to ratify his actions are unavailing.

16 5. Defendants’ latest efforts to diminish the protections provided by the DACA
17 program also violate the APA and significantly harm the Plaintiff States’ interests. The State of
18 California is home to more DACA recipients than any other state by far, and the States of
19 California, Maine, Maryland, and Minnesota (collectively, Plaintiff States) combined are
20 currently home to more than 197,000 DACA recipients. Since 2012, this program has allowed
21 nearly 800,000 people (including over 220,000 Californians) who have come of age in the United
22 States—many of whom have known no other home—to study and work here without fear of
23 removal, enriching our States and communities. As the Supreme Court recognized, “DACA
24 recipients have ‘enrolled in degree programs, embarked on careers, started businesses, purchased
25 homes, and even married and had children, all in reliance’ on the DACA program.” *Regents III*,
26 140 S. Ct. at 1914 (quoting Br. for Resp’t Regents of Univ. of Cal. et al.).

27 6. Further, an estimated 56,000 additional individuals (including tens of thousands in
28 the Plaintiff States) have become eligible for DACA since Defendants’ 2017 rescission, but have

1 been—and, under Defendants’ recent actions, will continue to be—prohibited from receiving
2 DACA, despite the Supreme Court’s ruling, further harming the States.

3 7. DACA recipients residing in Plaintiff States are employed by companies and non-
4 profits, large and small, as well as State and municipal agencies, all of which benefit from their
5 skills and productivity. Through their employment and broader participation in the economy,
6 DACA recipients contribute to the economic activity and tax base of Plaintiff States and the
7 Nation. DACA recipients have also pursued educational opportunities at public and private post-
8 secondary institutions within the Plaintiff States, enriching the educational experiences of all
9 students and faculty by contributing their diverse life experiences and perspectives, while
10 building their upward career mobility. In addition to substantially benefitting from DACA
11 themselves, DACA recipients have taken advantage of the opportunities made available to them
12 through DACA in ways that have significantly enhanced Plaintiff States.

13 8. As a direct result of Defendants’ recent decision to limit the eligibility period for
14 deferred action and work authorization under DACA, DACA recipients are now required to
15 demonstrate to their employers that they are authorized to work yearly rather than every two
16 years. Approximately 56 percent of respondents to a survey of DACA recipients were concerned
17 that this shortened eligibility period for DACA would make it more difficult for them to keep
18 their jobs.¹ Concomitantly, employers (including the States) will incur the administrative cost of
19 verifying that their DACA recipient employees are authorized to work twice as often, effectively
20 doubling their administrative costs and burdens. In light of the increased administrative costs and
21 the additional uncertainty regarding the status of their DACA employees’ work authorizations
22 caused by this change, some employers may find that hiring or retaining DACA employees will
23 not merit the expenditure of substantial resources in hiring and training, and DACA recipients
24 may lose or be unable to obtain employment.

25 9. Moreover, the reduced window of time for DACA recipients to seek renewal under
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27 ¹ Lora Adams, et al., Presidents’ All. on Higher Educ. and Immigr., *Discouraging and*
28 *Denying Renewals: An Assessment on the Impact of the July 2020 DHS Memorandum on DACA*
(Sept. 29, 2020), <https://tinyurl.com/y233qfqt>.

1 the Edlow Memorandum increases the probability that some DACA recipients' work
2 authorization will lapse while renewal requests are pending in light of the often-lengthy
3 processing times for such requests, which could force employers to place DACA recipients on
4 unpaid leave or terminate their employment. As a result of losing employment, DACA recipients
5 face the loss of employer-based health insurance, which has not only benefited them and their
6 families personally, but has reduced Plaintiff States' expenditures on healthcare to uninsured
7 people and enhanced public health overall.

8 10. Some DACA recipients who are enrolled in colleges and universities may be
9 forced to disenroll, because the barriers to employment created by the Wolf and Edlow
10 Memoranda will create financial obstacles to maintaining enrollment. Forty percent of DACA
11 recipients surveyed were concerned that having only one year of DACA would make it more
12 difficult for them to stay in college.² Others may disenroll simply because they will no longer be
13 able to achieve career objectives commensurate with their skills and qualifications in light of the
14 reduced length of DACA work authorization available. Those DACA recipients who choose to
15 remain enrolled in school will be unable to participate equally in other opportunities generally
16 available to students, such as paid internships and externships, as well as study abroad programs.
17 This also harms the States' post-secondary education systems, where thousands of DACA-
18 eligible individuals are enrolled or have been admitted, and deprives other participants in these
19 programs of DACA-eligible students' diverse life experiences and perspectives.

20 11. The State of California, recognizing the significant benefits that DACA brings to
21 DACA recipients, their families, and communities, and the State as a whole, has long supported
22 DACA applicants by providing fee payment assistance. To date, California has invested
23 approximately \$14.8 million in providing such assistance. The Wolf Memorandum's reduction of
24 the renewal period from two years to one year will dramatically increase the demand for these
25 services by forcing DACA renewal applicants to pay the \$495 renewal fee twice as frequently,
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27 ² Tom K. Wong et al., Ctr. for Am. Progress, *Results from 2020 National DACA Study*
28 (Sept. 10, 2020), <https://tinyurl.com/y48v2sjcf>.

1 straining the State’s resources. According to a recent survey of DACA recipients, almost two-
2 thirds of respondents were concerned that the cost of applying to renew DACA every year would
3 be too much for them to afford.³

4 12. Since the 2017 rescission, it is estimated that 56,000 young people have become
5 eligible for DACA by “aging in” to the program or on other bases such as employment or
6 education. Defendants have continued to deny DACA-eligible individuals the opportunity to
7 receive DACA, which further harms the States, as these individuals’ contributions to the States
8 will be limited.

9 13. Under the DACA program, recipients were authorized to apply for advance parole,
10 which allowed them to return to the United States after traveling abroad for educational or work
11 purposes, or to visit relatives when family emergencies arose. In 2017, Defendants abruptly
12 terminated this authorization; pursuant to the Wolf Memorandum, Defendants are now rejecting
13 all applications for advance parole absent undescribed “exceptional circumstances.” Ex. A, Wolf
14 Mem., at 5. The Edlow Memorandum makes it clear that effectively all advance parole
15 applications for educational- or employment-related purposes, or to visit family, will be denied.
16 Ex. B, Edlow Mem., at 6-9. As a result, thousands of residents of Plaintiff States have been and
17 will continue to be unable to travel abroad for these purposes.

18 14. In short, Defendants’ unlawful actions to curtail DACA will harm hundreds of
19 thousands of Plaintiff States’ residents, injure the States’ colleges and universities, hurt employers
20 in the States (including the States themselves), disrupt the States’ statutory and regulatory
21 interests, and damage the economies and tax bases of Plaintiff States.

22 **JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT**

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

24 16. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2) and (e)(1). A
25 substantial part of the events or omissions giving rise to this action occurred in this district;
26 Plaintiff State of California resides in this district; and no real property is involved in the action.

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³ *Id.*

1 This is a civil action in which Defendants are agencies of the United States or officers of such an
2 agency.

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

6 **PARTIES**

7 **PLAINTIFF STATE OF CALIFORNIA**

8 18. The State of California, represented by and through its Attorney General, is a
9 sovereign State of the United States of America.

10 19. Governor Gavin Newsom is the chief executive officer of the State. The Governor
11 is responsible for overseeing the operations of the State and ensuring that its laws are faithfully
12 executed. As the leader of the executive branch, the Governor is the chief of California's
13 executive branch agencies, including those whose injuries are discussed in this Complaint. Cal.
14 Const. art V, § 1.

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

18 21. California is aggrieved by the actions of Defendants and has standing to bring this
19 action because of the injury to its state sovereignty caused by Defendants' diminishment of
20 DACA, including immediate and irreparable injuries to its interests.

21 22. California is home to 395,000 DACA-eligible residents.⁴ As of July 2020, USCIS
22 had approved 238,623 initial DACA applications and 555,895 renewals from immigrants residing
23 in California. Ex. C, USCIS, Number of Form I-821D, Consideration of Deferred Action for
24 Childhood Arrivals, Status, by Fiscal Year, Quarter, and Case Status: Aug. 15, 2012 to June 30,
25 2020 (July 1, 2020) (USCIS Numbers). Thus, California is home to over 156,000 additional
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27 ⁴ Migration Pol'y Inst., *National and State Estimates of Immigrant Populations Eligible*
28 *for the Deferred Action for Childhood Arrivals (DACA) Program* (June 2020),
<https://tinyurl.com/y4gngn5>.

1 individuals who are eligible for DACA but would face automatic rejection of their applications
2 under the Wolf Memorandum. Nearly 30 percent of all DACA recipients in the entire country
3 reside in California and California has by far the largest population of DACA recipients of any
4 state. *Id.* It is estimated that 16,000 young people in California have become eligible for DACA
5 by “aging in” to the program or on other bases such as employment or education since the 2017
6 rescission.

7 23. California’s interest in protecting the health, safety, and well-being of its residents,
8 including their physical and economic health, extends to all residents, regardless of immigration
9 status. *See, e.g.*, Cal. Civ. Code § 3339(a); Cal. Gov’t Code § 7285(a); Cal. Health & Safety Code
10 § 24000(a); Cal. Lab. Code § 1171.5(a).

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

21 25. California has an interest in promoting and preserving the public health of
22 California residents. Defendants’ actions to curtail DACA will shrink the pipeline for health care
23 workers, exacerbating the existing shortage of physicians and home healthcare workforce for
24 seniors and people with disabilities. California can ill afford such an outcome, particularly in the
25 midst of the COVID-19 pandemic; indeed, approximately 29,000 doctors, nurses, dentists,
26 physician assistants, and other healthcare workers who have benefitted from DACA are on the
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1 front lines confronting the ongoing pandemic every day.⁵ Further, DACA-eligible individuals
2 barred from filing applications face an increased risk of experiencing mental health conditions
3 like depression, anxiety, and suicide attempts as they continue to face an uncertain future, which
4 in turn will impact California’s healthcare system.

5 26. The new limitations on the DACA program will also harm California’s interests in,
6 and expenditures on, its educational priorities. California’s state universities and colleges have
7 made significant investments in financial aid and other programs to support students with DACA,
8 consistent with the interests of those institutions and the State in ensuring diversity and
9 nondiscrimination. *See Regents III*, 140 S. Ct. at 1914 (discussing harms to “schools where
10 DACA recipients study”). The University of California (“UC”) system has over 4,000
11 undocumented students, including approximately 1,700 current DACA recipients. It is estimated
12 that between 54,000 and 100,000 undocumented students attend California’s community colleges,
13 and 9,800 attend the California State Universities; a significant number of these students are
14 DACA recipients. The Wolf Memorandum’s requirement that students with DACA renew on an
15 annual basis, instead of every two years, increases the risk that their DACA protections will lapse,
16 making it more difficult or impossible for students to continue their studies and in turn harming
17 the States’ investments and interests.

18 27. Further, the Wolf Memorandum’s change to DACA eligibility threatens significant
19 additional harms to California’s community college system by pushing students out of education,
20 depriving the system of significant revenues and wasting significant investments that the State has
21 made in these students. In 2018-2019, undocumented students and those with DACA accounted
22 for between 2.1 million and 3.4 million credits attempted and between 750,000 and 2.2 million
23 noncredit course enrollments at the California Community Colleges. Further, in 2018-2019, the
24 California Community Colleges provided between 450,000 and 900,000 noncredit enrollments to
25 students who were working toward credentials that would allow them to become DACA eligible.

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27 ⁵ *See* Nicole Prchal Svajlenka, Ctr. for Am. Progress, *A Demographic Profile of DACA*
28 *Recipients on the Frontlines of the Coronavirus Response* (Apr. 6, 2020),
<https://tinyurl.com/y7c8ky88>.

1 Further marginalizing these students by reducing their opportunities to obtain or renew their
2 DACA would constitute a significant risk of revenue loss to the California Community Colleges,
3 amounting to millions of dollars annually.

4 28. Further, the Wolf Memorandum's denial of DACA to thousands of individuals
5 who are eligible will make it difficult or impossible for these otherwise qualified young people to
6 enter the States' post-secondary institutions due to their inability to work, and thus support tuition
7 and other costs of higher education. As many as 1,700 undocumented students in the UC system,
8 2,540 in the California State University system, and at least 27,000 students in the California
9 Community Colleges system are individuals who are DACA-eligible, but are barred from
10 receiving DACA under the Wolf Memorandum.

11 29. UC also employs many DACA recipients at UC campuses and in UC medical
12 centers as teaching assistants, research assistants, post-doctoral researchers, and health care
13 providers. DACA recipients often possess valuable skills, including fluency in foreign languages
14 that can be difficult for employers to replace. As a result of the Wolf Memorandum, UC (1) is
15 only assured that these employees are eligible to work legally for one year, rather than two years,
16 and (2) will lose the opportunity to employ individuals in these capacities who would have been
17 eligible for DACA but whose initial applications will automatically be denied. *See id.* (discussing
18 harms to "schools where DACA recipients . . . teach").

19 30. Similarly, California's primary and secondary schools, as well as the California
20 State University and California Community College systems, will be harmed because they
21 currently employ professors, teachers, teachers' aides, administrators, and nurses under DACA
22 work authorizations. The Wolf Memorandum's reduced renewal period frustrates California's
23 interests in the education of all its residents and harms Californians. Further, the Wolf
24 Memorandum's prohibition on the issuance of DACA to new applicants harms these schools
25 because they are unable to hire individuals who would have been eligible for DACA but whose
26 initial applications will now automatically be denied.

27 31. Immigration is an important economic driver in California, the fifth-largest
28 economy in the world. California is home to many small businesses, large corporations, non-

1 profit organizations, public and private hospitals, and colleges and universities that will be
2 adversely affected by the limitations imposed on DACA by Defendants.

3 32. The cumulative economic harm to California from Defendants' diminishment of
4 DACA protections in the Wolf Memorandum is significant. According to one estimate, California
5 will suffer over \$2 billion in economic losses over a ten-year period as a result of Defendants'
6 denial of employment authorization to DACA-eligible individuals. *See id.* (discussing potential
7 loss in economic activity from "excluding DACA recipients from the lawful labor force").

8 33. DACA recipients also contribute significantly to state and local tax revenues. *See*
9 *id.* (discussing \$1.25 billion annual loss in tax revenue to state and local governments from
10 rescission). DACA recipients average higher earning capacities than their undocumented peers
11 and are able to better contribute to the economy. Studies show that after receiving DACA, many
12 recipients purchase houses and cars for the first time, boosting the economy and generating state
13 and local tax revenues. According to one estimate, DACA-eligible residents contribute more than
14 \$534 million annually in state and local taxes in California. California state and local
15 governments stand to lose an estimated \$262 million in tax revenues over ten years if DACA-
16 eligible individuals are denied the ability to receive employment authorization through DACA.

17 34. Shortening the work authorization period provided under DACA from two years to
18 one year will increase costs for employers (including the State of California, as discussed below).
19 First, the decreased work authorization period will put the "significant investments in hiring and
20 training" DACA recipients that employers have made, *Regents of Univ. of Cal. v. U.S. Dep't of*
21 *Homeland Sec.*, 279 F. Supp. 3d 1011, 1033 (N.D. Cal. 2018) (*Regents I*), at risk of being lost
22 after just one year. Second, the shortened work authorization period will impose administrative
23 costs on employers by requiring them to verify DACA recipients' employment every year, rather
24 than every two years. Third, given the generally lengthy, multi-month processing times for
25 DACA renewal requests, the more compressed window of time for DACA recipients to seek
26 renewal of their work authorization under the Wolf and Edlow Memoranda increases the
27 probability that some DACA recipients' work authorization will lapse while timely renewal
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1 requests are pending, forcing employers to place employees on leave or terminate their
2 employment and imposing additional costs to hire and train replacements.

3 35. Some of the largest companies in California, and indeed, the Nation, have been
4 vocal in support of DACA recipients, urging the President to retain DACA and not undermine its
5 protections. More than 140 employers and trade associations from different and varied American
6 industries signed on to a letter earlier this year under the banner of an organization called
7 Coalition for the American Dream, calling on the President to “leave DACA in place and refrain
8 from taking any additional administrative actions that would negatively impact the DACA
9 program,” which they state would both “disrupt the economic recovery of our companies and
10 communities, [and] jeopardize the health and safety of these vulnerable individuals.”⁶

11 36. California, too, has an interest in ensuring that it has access to the best possible
12 employees—including current and prospective DACA recipients—as well as fully realizing its
13 investments in the employees it recruits, hires, and trains. The State employs at least 288 DACA
14 recipients across 26 agencies and departments, many of whom were hired because of their
15 specialized skills and qualifications and who will be affected by the limitations imposed on
16 DACA. These state employees help further California’s priorities to ensure, *inter alia*: public
17 safety at the Department of Corrections and Rehabilitation and the Department of Forestry and
18 Fire Protection; public health at the Departments of Health Care Services, State Hospitals, and
19 Developmental Services; infrastructure at the Departments of Transportation and Water
20 Resources; and support for veterans at the Department of Veterans’ Affairs. In addition, the
21 California State University system employs at least 645 DACA recipients in a variety of roles.
22 California has expended time and funds to hire, train, and manage these DACA recipients.

23 37. Cutting the renewal period for DACA recipients in half both reduces the value of
24 the State’s investment by increasing uncertainty as to DACA recipients’ future employability, *see*
25 *Regents I*, 279 F. Supp. 3d at 1033 (discussing “consequences . . . to the employers who have

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27 ⁶ Coal. for the Am. Dream, Letter to President Trump (July 11, 2020),
28 <https://tinyurl.com/y6bgchnr> (including companies and organizations such as the U.S. Chamber of Commerce, General Motors, Target, Levi Strauss, Marriott, Molson Coors, Apple, Microsoft, Facebook, Amazon, Google, and Starbucks as signatories).

1 invested time and money in training [DACA recipients]”), and increasing administrative costs to
2 verify employment eligibility every year rather than every two years. For DACA recipients
3 employed by the State of California, the additional employment verifications required by the
4 Wolf Memorandum will require approximately two hours of state employee time per verification
5 to verify continued employment eligibility and update the corresponding employee file, taking an
6 estimated total 575 hours of state employee time, at an additional cost to the State of
7 approximately \$21,558 annually. In addition, some State agencies may need to incur the
8 administrative burden of terminating the employment of these individuals when their work
9 authorization expires and expending resources to find, hire, and train replacement employees, at
10 an average cost per employee of \$15,000. The California State University system estimates that
11 its costs would increase by more than \$57,000 per year.

12 38. State agencies that provide assistance to DACA recipients in the form of funding
13 for application fees face additional time and resource expenditures as a result of higher renewal
14 fees and shorter renewal periods associated with the Wolf Memorandum. For example, the
15 California Department of Social Services’ (CDSS) DACA Legal Services Program has provided
16 over \$14 million to cover the cost of DACA application fees for over 28,000 individuals through
17 FY 2019-20. Based on CDSS’s experience with high demand and unmet need for DACA
18 recipients to pay renewal fees, and the anticipated increase in costs to recipients due to the annual
19 renewal requirement, the State of California will likely expend millions more in future assistance
20 than it would have in the absence of the Wolf Memorandum.

21 39. Defendants’ actions in severely limiting DACA recipients’ ability to receive
22 advance parole for educational or employment purposes also harms the State of California,
23 because it impacts, for example, the ability of students at California’s public universities to study
24 abroad, the ability of faculty at California public universities to travel internationally for
25 conferences and research, and the ability of California state employees to travel abroad for State
26 business.

27 40. In sum, Defendants’ actions limiting the period of deferred action available under
28 DACA, effectively denying advance parole for DACA recipients, and rejecting initial

1 applications for DACA harm the State of California through their effects on California residents
2 with DACA, their families, and California businesses and institutions.

3 **PLAINTIFF STATE OF MAINE**

4 41. The State of Maine, represented by and through its Attorney General, is a
5 sovereign State of United States of America.

6 42. The Attorney General of Maine, Aaron M. Frey, is a constitutional officer with the
7 authority to represent the State of Maine in all matters and serves as its chief legal officer with
8 general charge, supervision, and direction of the State's legal business. Me. Const. art. IX, § 11;
9 Me. Rev. Stat. tit. 5 § 191 *et seq.* The Attorney General's powers and duties include acting on
10 behalf of the State and the people of Maine in the federal courts on matters of public interest. The
11 Attorney General has the authority to file suit to challenge action by the federal government that
12 threatens the public interest and welfare of Maine residents as a matter of constitutional, statutory,
13 and common law authority.

14 43. Maine is aggrieved by Defendants' actions and has standing to bring this action
15 because of the injury to its State sovereignty caused by Defendants' diminishment of DACA,
16 including immediate and irreparable injuries to its interests.

17 44. Maine is home to an estimated 50 DACA recipients. An additional 50 residents are
18 eligible for but not enrolled in DACA. As of July 2020, USCIS had accepted 135 renewal
19 applications for the DACA program in Maine. Ex. C, USCIS Numbers.

20 45. On a national basis, fifty-five percent of DACA recipients are employed.⁷
21 Applying the rate of 55% to the 50 DACA recipients in Maine, it is estimated that 27 DACA
22 recipients are employed in Maine.

23 46. Maine has an interest in hiring, training and retaining a qualified workforce. The
24 State has extended an employment offer to a DACA recipient, which has been accepted. Cutting
25 the renewal period for DACA recipients in half reduces the value of the State's investments in
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27 _____
28 ⁷ Jie Zong, et al., Migration Pol'y Inst., *A Profile of Current DACA Recipients by Education, Industry, and Occupation* (Nov. 2017), <https://tinyurl.com/ycxuhjru>.

1 hiring and training by increasing uncertainty as to this employee's future employability, and that
2 of other potential state employees.

3 47. Maine will suffer economic harm from Defendants' diminishment of DACA
4 protections in the Wolf Memorandum. DACA recipients average higher earning capacities than
5 their undocumented peers and are able to better contribute to the economy. Studies show that
6 after receiving DACA, many recipients purchase houses and cars for the first time, boosting the
7 economy and generating state and local tax revenues. According to one estimate, Maine will incur
8 \$400,000 in economic losses over a ten-year period as a result of the limitations on DACA in the
9 Wolf Memorandum. *See Regents III*, 140 S. Ct. at 1914 (discussing potential loss in economic
10 activity from "excluding DACA recipients from the lawful labor force").

11 48. Through this economic activity, DACA recipients contribute to state and local tax
12 revenues. *See id.* (discussing \$1.25 billion annual loss in tax revenue to state and local
13 governments from rescission). The additional 50 Maine residents who are DACA-eligible but not
14 enrolled contribute over \$178,600 in Maine state and local taxes annually. They contribute over
15 \$41,800 in state and local taxes annually, bringing the total annual tax contributions of the 100
16 DACA-eligible Maine residents to over \$220,400. According to one estimate, Maine state and
17 local governments stand to lose over \$53,000 in tax revenues over ten years if DACA-eligible
18 individuals are denied the ability to receive employment authorization through DACA.

19 49. Shortening the work authorization period provided under DACA from two years to
20 one year will increase costs for employers. First, the decreased work authorization period will put
21 the "significant investments in hiring and training" DACA recipients that employers have made,
22 *Regents I*, 279 F. Supp. 3d at 1033, at risk of being lost after just one year. Second, the shortened
23 work authorization period will impose administrative costs on employers by requiring them to
24 verify DACA recipients' employment authorization each year, rather than once every two years.
25 Third, given the lengthy multi-month processing times for DACA renewal requests, the more
26 compressed window of time for DACA recipients to seek renewal of their work authorization
27 under the Wolf and Edlow Memoranda increases the probability that some DACA recipients'
28 work authorization will lapse while timely renewal requests are pending, forcing employers to

1 place employees on leave or terminate their employment and imposing additional costs to hire
2 and train replacements.

3 50. The reduced window of time for DACA recipients to seek renewal under the
4 Edlow Memorandum increases the probability that some DACA recipients' work authorization
5 will lapse while renewal requests are pending in light of the often lengthy processing times for
6 such requests, which could force employers to place DACA recipients on unpaid leave or
7 terminate their employment.

8 51. As a result of losing employment, DACA recipients face the loss of employer-
9 based health insurance. Without employer-based benefits, more Maine residents are likely to
10 refrain from seeking needed medical care. As a result of forgoing treatment, including for
11 preventative purposes, these residents will impose higher healthcare costs on Maine.

12 **PLAINTIFF STATE OF MARYLAND**

13 52. The State of Maryland is a sovereign State of the United States of America.

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

22 54. Maryland is aggrieved by Defendants' actions and has standing to bring this action
23 because of the injury to its State sovereignty caused by Defendants' diminishment of DACA,
24 including immediate and irreparable injuries to its interests.

25 55. Maryland is home to an estimated 27,000 DACA-eligible residents.⁸ As of July
26 2020, USCIS had accepted 11,504 initial applications and 24,560 renewal applications for the
27

28 ⁸ National and State Estimates, *supra* note 4.

1 DACA program in Maryland. Ex. C, USCIS Numbers. Thus, Maryland is home to over 15,000
2 additional individuals who are eligible for DACA but would face automatic rejection of their
3 applications under the Wolf Memorandum.

4 56. According to one estimate, Maryland will suffer over \$98.9 million in economic
5 losses over a ten-year period as a result of Defendants' actions in denying DACA to new
6 applicants.

7 57. DACA-eligible individuals contribute more than \$33.6 million per year in state
8 and local taxes. Maryland state and local governments stand to lose an estimated \$12 million in
9 tax revenues over ten years if DACA-eligible individuals are denied the ability to receive
10 employment authorization through DACA.

11 58. Maryland has a cognizable interest in protecting the economic health and welfare
12 of its residents. More than 72% of Maryland's undocumented immigrants aged 16 and older are
13 employed,⁹ and Maryland is home to an estimated 5,000 employed DACA recipients.¹⁰ DACA
14 recipients work for both large and small businesses, all of which are critical to the State's
15 economic vitality. In addition, DACA recipients in Maryland work in a wide array of fields,
16 including healthcare, education, law, and social services.

17 59. Shortening the work authorization period provided under DACA from two years to
18 one year will increase costs for employers. First, the decreased work authorization period will put
19 the "significant investments in hiring and training" DACA recipients that employers have made,
20 *Regents I*, 279 F. Supp. 3d at 1033, at risk of being lost after just one year. Second, the shortened
21 work authorization period will impose administrative costs on employers by requiring them to
22 verify DACA recipients' employment authorization each year, rather than once every two years.
23 Third, given the often lengthy multi-month processing times for DACA renewal requests, the
24 more compressed window of time for DACA recipients to seek renewal of their work

25 _____
26 ⁹ Migration Pol'y Inst., *Profile of the Unauthorized Population: Maryland*,
<https://tinyurl.com/y4hecbew>.

27 ¹⁰ Migration Pol'y Inst., *National and State Estimates of Employed Workers among*
28 *Current Deferred Action for Childhood Arrivals (DACA) Recipients (as of March 31, 2020)*,
<https://tinyurl.com/y2wj65pf>.

1 authorization under the Wolf and Edlow Memoranda increases the probability that some DACA
2 recipients' work authorization will lapse while timely renewal requests are pending, forcing
3 employers to place employees on leave or terminate their employment and imposing additional
4 costs to hire and train replacements.

5 60. As a result of losing employment, DACA recipients face the loss of employer-
6 based health insurance. Without employer-based benefits, more Maryland residents are likely to
7 refrain from seeking needed medical care. As a result of forgoing treatment, including for
8 preventative purposes, these residents will impose higher healthcare costs on Maryland.

9 61. Maryland also has an interest in hiring and training a qualified workforce. Both the
10 State and local jurisdictions employ DACA recipients, many of whom have specialized skills and
11 qualifications. Cutting the renewal period for DACA recipients in half reduces the value of the
12 State and local governments' significant investments in hiring and training them by increasing
13 uncertainty as to their future employability.

14 62. The restrictions on DACA will adversely impact current DACA recipients enrolled
15 in colleges and universities. These students' educational and employment plans could be
16 disrupted, if not aborted, by the Wolf Memorandum's requirement to renew their DACA
17 protections on an annual basis, instead of every two years, and will risk lapses in their DACA
18 protections and work authorizations, making it more difficult or impossible for them to continue
19 their studies.

20 63. Disenrollment by DACA recipients will also harm Maryland's public colleges and
21 universities. An estimated 27% of all university and college students in Maryland are first or
22 second-generation immigrants.¹¹ The University System of Maryland has emphasized that the
23 DACA program is "critical to the growth and prosperity of our state and our nation" and "remains
24 a key component" of the University System's "strategy to foster a highly skilled workforce that
25 will help attract and create jobs."¹² In 2011, Maryland passed a law allowing undocumented

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27 ¹¹ Jeanne Batalova & Miriam Feldblum, Migration Pol'y Inst., *Immigrant-Origin Students*
28 *in U.S. Higher Education: A Data Profile* (Oct. 2020), <https://tinyurl.com/y56bl3yp>.

¹² Univ. System of Md., *Statement on Supreme Court Decision Regarding the Deferred*

1 students brought to the United States as children, or “Dreamers,” to receive in-state tuition breaks
2 at the State’s public institutions, and voters later approved the law in a referendum. 2011 Md.
3 Laws, Ch. 191. In the 2019-20 academic year, over 600 Dreamers were enrolled in Maryland
4 public colleges at in-state tuition rates.¹³ The restrictions on DACA will make it more difficult or
5 impossible for students to continue their studies, harming both the individual students as well as
6 their schools. Maryland’s public institutions will lose the diversity and enrichment this population
7 brings to the school community.

8 64. Defendants’ actions in severely limiting DACA recipients’ ability to receive
9 advance parole for educational or employment purposes also harms the State of Maryland,
10 because it impacts, for example, the ability of students at Maryland’s public universities to study
11 abroad, the ability of faculty at Maryland’s public universities to travel internationally for
12 conferences and research, and the ability of Maryland state employees to travel abroad for State
13 business.

14 65. DACA’s value to Maryland’s economy and its education system will be
15 diminished significantly, and the State and its residents will incur increased administrative and
16 other costs, due to limitations imposed under the Wolf and Edlow Memoranda, including denial
17 of DACA benefits to thousands of eligible individuals, a more compressed window of time for
18 DACA recipients to seek renewal of their work authorization, shortening of the work
19 authorization period provided under DACA from two years to one year, and rejection of pending
20 and future applications for advance parole.

21 **PLAINTIFF STATE OF MINNESOTA**

22 66. The State of Minnesota, represented by and through its Attorney General, is a
23 sovereign State of the United States of America.

24 67. Attorney General Keith Ellison is the chief legal officer of the State of Minnesota.
25 The Attorney General’s powers and duties include acting in federal court in matters of State

26 *Action for Childhood Arrivals (DACA) Program* (June 18, 2020),
27 <https://www.usmd.edu/newsroom/news/2058>.

28 ¹³ Sec’y James D. Fielder, Md. Dep’t of Higher Educ., Letter to Senate President and
Speaker of the House of Delegates (Aug. 8, 2020).

1 concern. Minn. Stat. § 8.01.

2 68. Minnesota is aggrieved by the actions of Defendants and has standing to bring this
3 action because of the injury to its state sovereignty caused by Defendants' rescission of DACA,
4 including immediate and irreparable injuries to its interests.

5 69. Minnesota is home to an estimated 12,000 DACA-eligible residents.¹⁴ As of July
6 2020, USCIS had approved 6,500 initial DACA applications from individuals residing in
7 Minnesota. Ex. C, USCIS Numbers. Thus, Minnesota is home to over 5,000 additional
8 individuals who are eligible for DACA but would face automatic rejection of their applications
9 under the Wolf Memorandum.

10 70. Minnesota has cognizable interests in protecting the health and well-being, both
11 economic and physical, of all its residents.

12 71. The new limitations on the DACA program will harm Minnesota's interests in, and
13 expenditures on, its educational priorities. Minnesota seeks to extend educational opportunities to
14 all of its residents, regardless of immigration status. In 2013, the Minnesota Legislature passed
15 the Prosperity Act (commonly referred to as the "Minnesota Dream Act"). Prosperity Act, ch. 99,
16 art. 4, 2013 Minn. Laws. This legislation changed the definition of a resident student under
17 Minnesota law to include DACA recipients and other individuals without lawful immigration
18 status. *See* Minn. Stat. § 135A.043. Minnesota has chosen to extend benefits to DACA recipients,
19 including eligibility for resident tuition rates. *Id.* Importantly, the Minnesota Dream Act's
20 inclusion of DACA recipients as Minnesota residents for postsecondary education purposes has
21 made DACA recipients eligible for state grants, aid, and scholarships. *See* Minn. Stat. Ch. 136A.
22 Minnesota has further invested in the education of individuals holding DACA by extending
23 student child care grants, teacher candidate grants, and student loan programs to DACA
24 recipients. Minn. Stat. §§ 136A.125, .1275, .15-.1795.

25 72. Minnesota has invested in supporting post-secondary students with DACA. The
26 Minnesota Office of Higher Education ("OHE") is a state agency providing students with

27
28 ¹⁴ National and State Estimates, *supra* note 4.

1 financial aid programs and other assistance to gain access to postsecondary education. OHE
2 proactively works to improve access to the state educational benefits made available to DACA
3 recipients through the Minnesota Dream Act, including through a state financial aid application
4 specific to DACA recipients and undocumented students.

5 73. Minnesota’s state colleges and universities have likewise invested in financial aid
6 and other programs to support DACA recipients. These investments and expenditures are
7 consistent with the interests of Minnesota’s state educational institutions—and those of the State
8 itself—in diversity and nondiscrimination. *See Regents III*, 140 S. Ct. at 1914 (discussing harms
9 to “schools where DACA recipients study”). The Wolf Memorandum’s reduction of students’
10 DACA protection from two years to one and the inevitable lapses in renewal of their DACA
11 protections and work authorizations will harm these investments and interests by making it more
12 difficult or impossible for impacted students to continue their studies.

13 74. Minnesota State Colleges and Universities (“Minnesota State”) is the fourth largest
14 system of two-year colleges and four-year universities in the nation. Minnesota State does not
15 include the University of Minnesota. Minnesota State is comprised of 30 two-year and 7 four-year
16 state colleges and universities with 54 campuses located in 47 Minnesota communities. The
17 diversity of Minnesota State’s student body is one of its greatest assets. Of the credit students
18 system-wide, 27% are students of color, 56% are women, 4% are students with disabilities, and
19 30% are PELL eligible. In addition, 45.8% are the first in their families attending higher
20 education. Minnesota State is a state entity governed by a 15-member Board of Trustees.
21 Minnesota State’s operating statute is set forth in Minnesota Statutes Chapter 136F. In fiscal year
22 2017, Minnesota State contributed over \$8 billion to the State’s economy. Students who are
23 DACA recipients or who otherwise meet the qualifications for DACA bring important vibrancy
24 and perspective to Minnesota State’s campuses that add to the diversity of thought and experience
25 critical to fostering the type of learning environments that Minnesota State students need and
26 deserve. Minnesota State’s campuses are critical to the economic success of Minnesota’s regional
27 and local economies.

28 75. OHE maintains information regarding the post-secondary students in Minnesota

1 who have applied for state educational benefits pursuant to the Minnesota Dream Act. According
2 to OHE's data, 147 students attending the colleges and universities of Minnesota State are DACA
3 recipients, and an additional 45 DACA recipients attend the separate University of Minnesota
4 system.¹⁵ Other students attending Minnesota State and the University of Minnesota would be
5 eligible to apply for DACA and would like to pursue DACA benefits but have been prevented
6 from doing so because of the Wolf Memorandum and prior DHS memoranda, which have barred
7 the acceptance of new initial applications for DACA.

8 76. The Wolf Memorandum's continued denial of DACA to individuals in Minnesota
9 who otherwise meet the program's criteria also makes it difficult or impossible for thousands of
10 young people to enter the State's post-secondary institutions.

11 77. The State of Minnesota and its public employers also employ DACA recipients.
12 DACA recipients often possess valuable skills, including fluency in foreign languages, that can be
13 difficult for employers to replace. As a result of the Wolf Memorandum's limitations, the State of
14 Minnesota is only assured that DACA recipient employees are eligible to work legally for one
15 year, rather than two years, and the State of Minnesota has lost the opportunity to employ
16 individuals who would have otherwise been eligible to submit an initial DACA application.

17 78. Minnesota faces economic harm due to the diminishment of DACA protections in
18 the Wolf Memorandum. As noted above, immigration is an important economic driver in
19 Minnesota. Minnesota is home to businesses ranging from 16 companies listed in the Fortune 500
20 to small businesses struggling to survive through the COVID-19 pandemic. Estimates of DACA
21 recipients employed within the State of Minnesota range from 3,000 individuals to over 5,400,
22 and their contribution to Minnesota's GDP is estimated at over \$376 million annually.

23 79. As these economic figures reflect, and as recognized by the Supreme Court,
24 DACA recipients make significant contributions to state and local tax revenues. Indeed, the State

25 _____
26 ¹⁵ OHE verifies an individual's DACA status as part of its administration of the state
27 benefits made available to DACA recipients pursuant to the Minnesota Dream Act. It should be
28 noted that these statistics reflect only those DACA recipients who have applied for the state
educational benefits made available through the Minnesota Dream Act. DACA recipients
attending Minnesota State or the University of Minnesota who have not applied for Minnesota
Dream Act benefits are not included in these statistics.

1 of Minnesota stands to lose an estimated \$7,444,000 in state and local tax contributions over ten
2 years if DACA-eligible individuals are denied the ability to receive employment authorization
3 through DACA.

4 80. Shortening the work authorization period provided under DACA from two years to
5 one year will increase costs for public employers in Minnesota. First, a decreased work
6 authorization period puts the significant investments in hiring and training DACA recipients that
7 employers have made at risk of being lost after just one year. Second, the shortened work
8 authorization period will impose administrative costs on employers by requiring them to verify
9 DACA recipients' employment authorization yearly rather than every two years. Third, given the
10 multi-month processing times for DACA renewal requests, the more compressed window of time
11 for DACA recipients to seek renewal of their work authorization under the Wolf and Edlow
12 Memoranda increases the probability that some DACA recipients' work authorization will lapse
13 while timely renewal requests are pending, forcing employers to place employees on leave or
14 terminate their employment and imposing additional costs to hire and train replacements.

15 81. Large companies in Minnesota, including Target and Best Buy, have been vocal in
16 support of DACA recipients, urging the President to retain DACA and not undermine its
17 protections.¹⁶ Public employers in Minnesota also have an interest in ensuring that they have
18 access to the best possible employees—including current and prospective DACA recipients—as
19 well as fully realizing their investments in the employees they recruit, hire, and train. DACA
20 recipients are employed by the State and other public employers across multiple entities and
21 agencies in Minnesota. These employees will be affected by the DACA limitations imposed by
22 Defendants.

23 82. Defendants' actions in severely limiting DACA recipients' ability to receive
24 advance parole for educational or employment purposes also harms the State of Minnesota,
25 because it impacts, for example, the ability of Minnesota's public university students to study
26 abroad and the ability of Minnesota's public employees to travel abroad for any business-related

27
28 ¹⁶ Coal. for the Am. Dream, *supra* note 6.

1 purpose.

2 83. Defendants' actions limiting the period of deferred action available under DACA,
3 essentially terminating advance parole for DACA recipients, and denying initial applications for
4 DACA harm the State of Minnesota through their effects on Minnesota residents, families,
5 businesses, and institutions.

6 **DEFENDANTS**

7 84. Defendant DHS is a federal cabinet agency responsible for implementing the
8 DACA program. DHS is a department of the Executive branch of the United States government,
9 and is an agency within the meaning of 5 U.S.C. § 552(f)(1).

10 85. Defendant Chad F. Wolf is the purported Acting Secretary of Homeland Security.
11 He is purportedly responsible for implementing and enforcing immigration laws, and oversees
12 DHS. He is the author of the July 28, 2020 memorandum restricting DACA. He is sued in his
13 purported official capacity.

14 86. Defendant USCIS is a component of Defendant DHS responsible for
15 implementing the DACA program. USCIS is the federal agency that oversees lawful immigration
16 to the United States and is an agency within the meaning of 5 U.S.C. § 552(f)(1).

17 87. Defendant Joseph Edlow is the purported Deputy Director for Policy of USCIS.
18 He is the author of the August 21, 2020 memorandum implementing the Wolf Memorandum. He
19 is sued in his purported official capacity.

20 88. Defendant United States of America includes all government agencies and
21 departments responsible for the implementation of the DACA program, including any actions to
22 restrict, limit, or rescind the DACA program.

23 **ALLEGATIONS**

24 **I. ESTABLISHMENT OF DACA**

25 89. On June 15, 2012, then-Secretary of Homeland Security Janet Napolitano issued a
26 memorandum establishing the DACA program. Ex. D, Memorandum from Janet Napolitano,
27 Sec'y of DHS, to David V. Aguilar, Acting Comm'r, U.S. Customs and Border Protection
28 ("CBP"), et al., *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the*

1 *United States as Children* (June 15, 2012) (Napolitano Memorandum). Under the Napolitano
2 Memorandum, individuals who were brought to the United States as children and met specific
3 criteria could request deferred action for a period of two years, subject to renewal.

4 90. The Napolitano Memorandum systematized the application of existing
5 prosecutorial discretion for any applicant who satisfied each of the following criteria:

6 a. Arrived in the United States under the age of sixteen;

7 b. Had continuously resided in the United States for at least five years preceding the
8 date of the memorandum and was present in the United States on the date of the memorandum;

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

12 d. Had not been convicted of a felony offense, a significant misdemeanor offense,
13 multiple misdemeanor offenses, or otherwise posed a threat to national security or public safety;
14 and

15 e. Was not above the age of thirty.

16 *Id.* at 1.

17 91. According to the Napolitano Memorandum, DACA's purpose was to ensure that
18 DHS's resources were appropriately allocated to individuals who were higher priorities for
19 immigration enforcement. In that memorandum, Secretary Napolitano recognized that there are
20 "certain young people who were brought to this country as children and know only this country as
21 home" and that immigration laws are not "designed to remove productive young people to
22 countries where they may not have lived or even speak the language." *Id.* at 1-2.

23 **II. DACA PROVIDES NUMEROUS BENEFITS**

24 92. DACA recipients are provided with numerous benefits. Most importantly, as
25 individuals who are low priorities for enforcement, DHS will not place them in removal
26 proceedings or remove them based solely on their immigration status during the designated period
27 of their deferred action. *See id.* at 2-3.

28

1 93. Pursuant to a separate regulation promulgated before DACA was adopted, DACA
2 recipients, like other individuals granted deferred action, are granted eligibility to receive
3 employment authorization. *See* 8 C.F.R. § 274a.12(c)(14).

4 94. Also pursuant to a separate statutory and regulatory scheme, DACA opened the
5 door for DACA recipients to travel for important purposes. DACA recipients were allowed to
6 request—and routinely received—advance parole to legally return to the United States after brief
7 trips abroad for limited purposes, such as to visit an ailing relative, attend funeral services for a
8 family member, seek medical treatment, or further educational or employment purposes. 8 U.S.C.
9 § 1182(a)(9)(B)(i); 8 C.F.R. § 212.5(f). Leisure travel was not permitted.

10 95. Separate statutory and regulatory authority also permits DACA recipients to
11 receive certain public benefits, including federal Social Security, retirement, and disability
12 benefits. *See* 8 U.S.C. §§ 1611(b)(2)-(3), 1621(d); 8 C.F.R. § 1.3(a)(4)(vi); 42 C.F.R.
13 § 417.422(h). DACA recipients are also eligible for state benefits; for example, in California
14 DACA recipients are eligible for income assistance.

15 96. DACA recipients are able to secure equal access to other benefits and
16 opportunities on which Americans depend, including opening bank accounts, obtaining credit
17 cards, starting businesses, purchasing homes and cars, and conducting other aspects of daily life
18 that are otherwise often unavailable for undocumented immigrants.

19 97. DACA fundamentally changed the lives of DACA recipients. They have obtained
20 employment, sought higher education, pursued career paths, and become fully contributing
21 members of society who pay taxes and participate in civic life.

22 98. Many DACA recipients have also started families here; there are “200,000 U.S.-
23 citizen children” whose parents are legally in the United States thanks to DACA. *Regents III*, 140
24 S. Ct. at 1914.

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

1 shortly after the attempted rescission in 2017, President Trump tweeted regarding DACA
2 recipients: “Does anybody really want to throw out good, educated and accomplished young
3 people who have jobs, some serving in the military? Really!”¹⁷ DACA recipients’ contributions
4 to society have also generated benefits to many sectors of the Plaintiff States’ economies. *See,*
5 *e.g., Regents III*, 140 S. Ct. at 1914.

6 **III. DHS’S ARBITRARY AND CAPRICIOUS ATTEMPT TO RESCIND DACA IN 2017**

7 100. On September 5, 2017, then-Acting Secretary of Homeland Security Elaine Duke
8 issued a memorandum rescinding DACA. Ex. F, Memorandum from Elaine C. Duke, Acting
9 Sec’y of Homeland Security to James W. McCament, Acting Dir., USCIS, et al., *Rescission of the*
10 *June 15, 2012 Memorandum Entitled “Exercising Prosecutorial Discretion with Respect to*
11 *Individuals Who Came to the United States as Children”* (Sept. 5, 2017) (Duke Memorandum).
12 Pursuant to that memorandum, DHS immediately began rejecting all new initial applications for
13 DACA, immediately ceased granting advance parole, and declared that it would only issue
14 renewals for current recipients whose DACA protection expired on or before March 5, 2018, and
15 who applied for renewal by October 5, 2017.

16 101. Acting Secretary Duke asserted that DACA “should be terminated” based on
17 consideration of two factors: (1) the appellate rulings in a case regarding a 2014 memorandum
18 from then-DHS Secretary Johnson that expanded DACA and created a new program, Deferred
19 Action for Parents of Americans and Lawful Permanent Residents (DAPA), *Texas v. United*
20 *States*, 809 F.3d 134 (5th Cir. 2015), *aff’d by an equally divided court sub nom. United States v.*
21 *Texas*, 136 S. Ct. 2271 (2016); and (2) a September 4, 2017, letter from then-Attorney General
22 Jefferson B. Sessions claiming that DACA was “unconstitutional” and was invalid for the same
23 reasons the Fifth Circuit struck down DAPA in the *Texas* case. Ex. G, Letter from Jefferson B.
24 Sessions to Duke (Sept. 4, 2017) (Sessions Letter). Other than these conclusory assertions of
25 DACA’s legal infirmity, Acting Secretary Duke failed to offer any explanation of why she
26 believed that rescinding DACA was warranted.

27 _____
28 ¹⁷ Donald J. Trump (@realDonaldTrump), Twitter (Sept. 24, 2017, 3:28 a.m.)
<https://tinyurl.com/y63m36ez>.

1 102. On September 11, 2017, Plaintiff States filed a complaint with this Court,
 2 requesting that it invalidate the Duke Memorandum on a number of grounds, including that
 3 DHS’s action was arbitrary and capricious in violation of the APA. The States and other plaintiffs
 4 moved for a preliminary injunction, which this Court granted and the Ninth Circuit affirmed. *See*
 5 *Regents of Univ. of Cal. v. U.S. Dep’t of Homeland Sec.*, 279 F. Supp. 3d 1011 (N.D. Cal. 2018),
 6 *aff’d*, 908 F.3d 476 (9th Cir. 2018) (*Regents II*), *rev’d in part, vacated in part sub nom. Dep’t of*
 7 *Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891 (2020). On June 22, 2020, the
 8 Supreme Court affirmed a decision by the district court for the District of Columbia vacating the
 9 Duke Memorandum, holding that the action was arbitrary and capricious in violation of the APA.
 10 *Regents III*, 140 S. Ct. at 1916.¹⁸

11 **IV. DEFENDANTS’ RECENT ARBITRARY AND CAPRICIOUS ACTIONS DIMINISHING**
 12 **DACA PROTECTIONS**

13 103. After the Supreme Court upheld the vacatur of the Duke Memorandum, on June
 14 30, 2020, Attorney General William Barr withdrew the Sessions Letter in a letter to Defendant
 15 Wolf, also stating that he had requested the Office of Legal Counsel at the U.S. Department of
 16 Justice to withdraw earlier guidance that it had provided to DHS regarding DACA. Ex. H, Letter
 17 from William P. Barr to Chad F. Wolf (June 30, 2020). Attorney General Barr expressed no
 18 opinion as to the legality of DACA, but indicated that he wished to remove any determination that
 19 might constrain Defendant Wolf’s discretion in considering “whether and how to rescind
 20 DACA.” *Id.* Attorney General Barr stated that he wished “to wipe the slate clean to make clear
 21 beyond doubt that [Defendant Wolf was] free to exercise [his] own independent judgment in
 22 considering the full range of legal and policy issues implicated by a potential rescission or
 23 modification of DACA.” *Id.*

24 104. On July 28, 2020, Defendant Wolf issued a memorandum announcing that DHS
 25 would limit the period of deferred action and work authorization granted under DACA to one

26 _____
 27 ¹⁸ During the pendency of this litigation, then-DHS Secretary Kirsten Nielsen issued a
 28 memorandum purporting to “provid[e] a fuller explanation” of DHS’s rescission decision.
Regents III, 140 S. Ct. at 1904. The Supreme Court held that this memorandum was an
 “impermissible post hoc rationalization[.]” and thus not properly before the Court. *Id.* at 1909.

1 year, accept no new applications for DACA, reject any pending initial applications for DACA,
2 and reject all requests for advance parole absent exceptional circumstances. Ex. A, Wolf Mem.
3 The Wolf Memorandum indicates that DHS made these “immediate changes” to “facilitate
4 [Defendant Wolf’s] thorough consideration of how to address DACA in light of the Supreme
5 Court’s decision,” *id.* at 1, as well as “mitigate [Defendant Wolf’s] concerns” about DACA
6 pending his reconsideration of the policy as a whole, *id.* at 5.

7 105. While only making passing mention of “significant questions of law and legal
8 policy,” *id.* at 4—all but abandoning the concerns about legality that undergirded the Duke
9 Memorandum—the Wolf Memorandum identifies several “enforcement policy” concerns that
10 Defendant Wolf asserts could warrant a full rescission of DACA. However, the policy concerns
11 identified by Defendant Wolf fail to provide a reasoned basis for the changes to DACA policy
12 and practice in the Wolf Memorandum.

13 106. First, Defendant Wolf asserts that rescinding DACA might “create a more pressing
14 need for Congress to decide whether it wants to address” the concerns of DACA-eligible
15 individuals as well as “other efforts to reform our immigration system in a manner that advances
16 the national interest.” *Id.* at 4-5. The Executive’s desire to place political pressure on a co-equal
17 branch of government to enact immigration reforms—including, apparently, changes to the
18 immigration system unrelated to DACA—is not a rational basis for agency action impacting the
19 lives of hundreds of thousands of DACA recipients, and those of their families, employers,
20 schools, and communities. Further, even assuming that this is a legitimate rationale, Defendant
21 Wolf has not explained how the measures outlined in his memorandum (e.g., limiting renewals of
22 deferred action and work authorization to one year, rather than two years), mitigate his asserted
23 policy concern that Congress, not the executive, should enact policies like DACA.

24 107. Defendant Wolf further claims that he has “reservations as a matter of policy about
25 setting out a list of detailed criteria, and maintaining a formal process, for non-enforcement” and
26 claims that he is “concerned that doing so may tilt the scales in deciding which aliens should
27 receive deferred action and may inhibit individualized consideration of each case, at least for a
28 non-enforcement policy of this scale.” *Id.* at 5. Defendant Wolf’s cursory discussion is

1 unsupported by any data or other supporting evidence to justify imposing the limitations on
2 DACA contained in the Wolf Memorandum. This brief discussion cannot pass muster under the
3 APA’s requirement for “reasoned analysis.” *Regents III*, 140 S. Ct. at 1913. This is particularly
4 true given the robust precedent of DHS and its predecessor agencies’ use of deferred action for
5 decades, including policies that could have impacted tens or hundreds of thousands of immigrants
6 such as the Emergency Program for Hungarian Refugees and Family Fairness Program. *See*
7 *Regents I*, 279 F. Supp. 3d at 1021–22; *Regents II*, 908 F.3d at 488–89.

8 108. Defendant Wolf also advances a concern that the existence of DACA encourages
9 “illegal immigration” in general and of children specifically. Wolf Mem. at 5. However, the Wolf
10 Memorandum contains no evidence suggesting that the existence of DACA has affected rates of
11 migration either of children or in general. Indeed, as Defendant Wolf notes, children entering the
12 United States today are ineligible for DACA, *id.* at 5; individuals must have lived in the United
13 States since 2007 to be eligible. Again, Defendant Wolf also fails to explain how limiting
14 renewals of deferred action and work authorization to one year, rather than two years, mitigates
15 this asserted policy concern.

16 109. Moreover, in deciding to limit the DACA renewal period to one year, Defendant
17 Wolf failed to consider important aspects of the problem at issue. These include the fact that (1)
18 many DACA recipients seeking renewals already face lengthy delays in processing of their
19 applications, and effectively doubling USCIS’s workload in this regard by reducing renewal times
20 from two years to one will only exacerbate this problem; and (2) effectively doubling the fees for
21 renewal requests will impose a significant financial burden on many DACA recipients. While
22 Defendant Wolf briefly acknowledges that “shortening renewal periods . . . will increase[e] the
23 total amount of renewal fees that an alien will be required to pay over a multi-year period,” *id.* at
24 6, he fails to address this issue other than to suggest that “DHS personnel should consider whether
25 it is possible to reduce renewal fees during this interim period of reconsideration.” *Id.* at 6-7.

1 Indeed, there is no indication that DHS has taken any steps to reduce the \$495 fee, which USCIS
2 claims “cannot be waived.”¹⁹

3 110. Additionally, Defendant Wolf failed to consider other important aspects of the
4 problem. These include the reliance interests of third parties, including state and local government
5 agencies that employ DACA recipients, and the harms that Defendants’ actions impose on those
6 third parties. *See Regents III*, 140 S. Ct. at 1913–14 (where longstanding policies have
7 engendered reliance interests, such as the reliance interests of “employers who have invested time
8 and money in training,” it is arbitrary and capricious to ignore them). Defendant Wolf asserts that
9 such third parties will “continue to receive the same derivative benefits” under a one-year renewal
10 period. Ex. A, Wolf Mem., at 6. This ignores the important fact that for an employer, the certainty
11 that an employee is eligible to work legally for two years, rather than just one year, is highly
12 valuable; employers have “invested substantial resources in hiring and training” such employees,
13 and would “need to expend additional resources to hire and train replacements.” *Regents I*, 279 F.
14 Supp. 3d at 1033.

15 111. Defendant Wolf also fails to consider other harms that this change will cause to
16 third parties, including state agencies employing DACA recipients. Employers incur
17 administrative costs and burdens to verify DACA recipients’ continuing eligibility for
18 employment. Cutting the renewal period in half will in turn double these costs to third parties, as
19 employers now incur these costs every year rather than every two years. Further, the shortened
20 renewal period, combined with the months-long processing times for DACA renewal requests,
21 increases the probability that DACA recipients’ work authorizations will lapse. This could force
22 employers to terminate DACA recipients’ employment and to incur additional costs to hire and
23 train their replacements, or to place DACA recipients on administrative leave and lose these
24 employees’ valuable services during their period of ineligibility.

25 112. On August 21, 2020, Defendant Joseph Edlow, purported Deputy Director for

26 _____
27 ¹⁹ USCIS, *I-821D, Consideration of Deferred Action for Childhood Arrivals*,
28 <https://www.uscis.gov/i-821d> (last reviewed/updated: Aug. 4, 2020). The Edlow Memorandum
only acknowledges that “USCIS is currently considering the merits and feasibility of reducing
DACA-related fees.” Ex. B, Edlow Mem., at 5-6.

1 Policy for U.S. Citizenship and Immigration Services, issued a memorandum implementing the
2 Wolf Memorandum. Ex. B, Edlow Mem. The Edlow Memorandum (1) establishes a policy that
3 “USCIS will generally reject DACA renewal requests received more than 150 days prior to the
4 expiration of the DACA recipients’ current DACA validity period”; (2) states that USCIS will
5 reject all advance parole applications filed before the Wolf Memorandum; and (3) provides that,
6 in most instances, USCIS will reject advance parole requests to travel abroad for educational or
7 employment-related purposes, or to visit family members. *Id.*

8 113. The Edlow Memorandum’s provision that USCIS will reject DACA renewal
9 requests received more than 150 days (five months) prior to the expiration of the DACA
10 recipients’ current DACA validity period will create serious problems for many DACA
11 recipients. Current USCIS estimates show that DACA renewal processing times vary widely,
12 between 2 months to 14 months. For example, as of October 29, 2020, the USCIS Vermont
13 Processing Center was processing DACA renewal applications from September 3, 2019, and
14 estimated that a DACA renewal application would be processed in 11 to 14 months.²⁰ Reflecting
15 this lengthy process, up to 11 percent of respondents to recent surveys of DACA recipients
16 indicated that it took longer than 150 days for their DACA renewal application to be approved.²¹
17 Further, on August 25, 2020, USCIS announced plans to undertake “[a]ggressive spending
18 reduction measures,” which “will impact all agency operations,” including “longer case
19 processing times.”²² Given the shortened eligibility period, USCIS’s already lengthy processing
20 times, the expected further delays in processing times, and the fact that USCIS will reject
21 applications submitted more than 150 days before a DACA recipient’s grant expires, some
22 recipients will face lapses in the renewal of their DACA grants and accompanying work
23 authorizations.

24 114. Defendants failed entirely to consider this important aspect of the problem,

25 _____
26 ²⁰ USCIS, *Check Case Processing Times (I-821D Consideration for Deferred Action for
Childhood Arrivals)*, <https://egov.uscis.gov/processing-times/>.

27 ²¹ Wong, *supra* note 2 (8.5 percent); Adams, *supra* note 1 (11 percent).

28 ²² USCIS, *USCIS Averts Furlough of Nearly 70% of Workforce* (Aug. 25, 2020),
<https://tinyurl.com/y45yeejf>.

1 ignoring altogether that their actions will undermine the purpose and value of many DACA
2 recipients' work authorizations by causing those authorizations to lapse (and, in turn, resulting in
3 termination or unpaid administrative leave for DACA recipients).

4 **V. DEFENDANT WOLF'S APPOINTMENT IS CONTRARY TO FEDERAL LAW AND THE U.S.**
5 **CONSTITUTION**

6 115. Defendant Wolf issued the Wolf Memorandum in exercise of the functions and
7 duties of the office of the Secretary of Homeland Security. However, Defendant Wolf was not
8 authorized to exercise such functions and duties under the U.S. Constitution, the Homeland
9 Security Act, or the Federal Vacancies Reform Act. Accordingly, the Wolf Memorandum is
10 without force or effect, may not be ratified, and was issued in excess of statutory authority or
11 otherwise not in accordance with law under the APA.

12 **A. Defendant Wolf's Purported Service as Acting Secretary Violates the**
13 **Appointments Clause**

14 116. The Appointments Clause of the U.S. Constitution requires that principal officers
15 of the United States be appointed by the President "by and with the Advice and Consent of the
16 Senate." U.S. Const. art. II, § 2, cl. 2. The Appointments Clause is a critical element of the U.S.
17 Constitution's separation of powers. The "advice and consent" requirement is "an excellent check
18 upon a spirit of favoritism in the President" and "the necessity of [the Senate's] co-operation in
19 the business of appointments will be a considerable and salutary restraint upon the conduct of"
20 the President. The Federalist No. 76 (Alexander Hamilton). "The Framers understood . . . that by
21 limiting the appointments power, they could ensure that those who wielded it were accountable to
22 political force and the will of the people." *Freytag v. Comm'r of Internal Revenue*, 501 U.S. 868,
23 884 (1991).

24 117. DHS is an Executive Department and the Secretary of Homeland Security is a
25 principal officer who must be appointed by the President by and with the advice and consent of
26 the Senate under both the Appointments Clause and federal statute. 6 U.S.C. § 112(a)(1). Such
27 offices are commonly known as "presidentially appointed, Senate-confirmed" (PAS) offices.

28 118. Despite this, there has not been a Senate-confirmed Secretary of Homeland

1 Security since the resignation of Secretary Kirstjen Nielsen on or about April 10, 2019, nearly 19
2 months ago.

3 119. A number of other DHS offices are also PAS offices, including the Deputy
4 Secretary, the Under Secretary for Management, the General Counsel, the Commissioner of CBP,
5 the Director of USCIS, and the Director of Immigration and Customs Enforcement (ICE). 6
6 U.S.C. § 113(a)(1).

7 120. Currently, the offices of Deputy Secretary, the Under Secretary for Management,
8 the General Counsel, the Commissioner of CBP, the Director of USCIS, and the Director of ICE
9 are all vacant, with various individuals purporting to exercise the functions and duties of those
10 offices under the title of “Senior Official Performing the Duties of” the offices. Nearly all of these
11 offices have been vacant for more than a year. The office of Deputy Secretary has been vacant
12 since April 14, 2018. The office of Under Secretary for Management has been vacant since April
13 10, 2019. The office of General Counsel has been vacant since September 17, 2019. The office of
14 Director of USCIS has been vacant since June 1, 2019. The office of Commissioner of CBP has
15 been vacant since November 13, 2019. The office of Director of ICE has been vacant since
16 January 20, 2017, the first day of President Trump’s presidency.

17 121. Upon information and belief, Congress has not provided for the position of “Senior
18 Official Performing the Duties” of any executive office in any statute.

19 122. President Trump has repeatedly expressed his intention to circumvent the
20 requirements and accountability of the Appointments Clause by appointing acting officials. The
21 President has stated that:

22 a. “Well, I’m in no hurry. I have ‘acting’ . . . I sort of like ‘acting.’ It gives me more
23 flexibility; do you understand that? I like ‘acting.’”²³

24 b. “It’s easier to make moves when they’re acting . . . I like acting because I can
25 move so quickly. It gives me more flexibility.”²⁴

26 _____
27 ²³ Felicia Sonmez, *Trump Says He’s ‘in No Hurry’ to Replace Acting Cabinet Members*,
Wash. Post (Jan. 6, 2019), <https://tinyurl.com/y7v5fme3>.

28 ²⁴ *Transcript: President Trump on “Face the Nation,”* CBS News (Feb. 3, 2019),

1 c. “Acting gives you much greater flexibility. A lot easier to do things.”²⁵

2 d. “I’m generally not going to make a lot of the appointments that would normally
3 be—because you don’t need them.”²⁶

4 123. By holding PAS positions, including the office of Secretary of Homeland Security,
5 vacant for lengthy periods of time, while relying on acting officials to perform the functions and
6 duties of those offices, Defendants have violated the Appointments Clause. *See United States v.*
7 *Eaton*, 169 U.S. 331, 333 (1898) (acting officials may be designated only “for a limited time, and
8 under special and temporary conditions”).

9 124. Defendant Wolf purports to serve as Acting Secretary pursuant to a designation by
10 CBP Commissioner Kevin McAleenan, who was at the time of the designation purporting to
11 serve as Acting Secretary of Homeland Security.

12 125. Although the Appointments Clause requires that principal officers be appointed by
13 the President with the advice and consent of the Senate, the Clause permits Congress to vest the
14 appointment of “inferior Officers . . . in the President alone, in the Courts of Law, or in the Heads
15 of Departments.” U.S. Const. art. II, § 2, cl. 2. Acting officers are designated pursuant to this
16 exception, rendering them inferior officers within the meaning of the Appointments Clause.
17 *United States v. Smith*, 962 F.3d 755, 765 (4th Cir. 2020) (noting “the basic principle that *acting*
18 heads of departments are not principal officers because of the temporary nature of the office”).
19 Inferior officers lack the authority under the Appointments Clause to appoint other inferior
20 officers; that power is reserved for the President, the courts, or Heads of Departments pursuant to
21 a congressional authorization.

22 126. Because Commissioner McAleenan was merely purportedly the Acting Secretary
23 of Homeland Security when he purported to amend the order of succession as described below, he
24 was an inferior officer, and not a Head of Department. Accordingly, he lacked constitutional

25 <https://tinyurl.com/y8l38g72>.

26 ²⁵ Editorial Board, *An Administration of Temps*, Bloomberg Opinion (July 25, 2019),
27 <https://tinyurl.com/yyuz3nzb>.

28 ²⁶ Randall Lane, *Inside Trump’s Head: An Exclusive Interview with the President, and the
Single Theory That Explains Everything*, Forbes (Oct. 10, 2017), <https://tinyurl.com/y5mlmxbn>.

1 authority to appoint inferior officers, and his purported amendment of the order of succession to
2 designate Defendant Wolf as Acting Secretary of Homeland Security violated the Appointments
3 Clause of the U.S. Constitution.

4 127. As of July 28, 2020, Defendant Wolf had been neither nominated nor confirmed as
5 Secretary of Homeland Security. On August 25, 2020, President Trump announced his intention
6 to nominate Defendant Wolf to the position of Secretary of Homeland Security via Twitter.²⁷ The
7 nomination of Defendant Wolf was submitted to the Senate on September 10, 2020.

8 **B. Defendant Wolf’s Purported Service as Acting Secretary Violates the**
9 **FVRA and HSA.**

10 128. Congress has recognized that while the nomination and confirmation process
11 proceeds, someone must be authorized to act to ensure that federal agencies continue to function.
12 To that end, Congress enacted the Federal Vacancies Reform Act (“FVRA”). In enacting the
13 FVRA, Congress sought to safeguard its authority under the Appointments Clause to advise and
14 consent to appointments. *Nat’l Lab. Rel. Bd. v. SW General, Inc.*, 137 S. Ct. 929, 936 (2017).

15 129. The FVRA limits who may serve as an acting official if “an officer of an
16 Executive Agency . . . whose appointment is required to be made by the President, by and with
17 the advice and consent of the Senate . . . resigns.” 5 U.S.C. § 3345(a). Although the default rule is
18 that the “first assistant” will take on the acting role, the FVRA permits the President to select a
19 Senate-confirmed appointee or certain agency employees instead. 5 U.S.C. § 3345(a).

20 130. The FVRA provides that the President may direct a person to fill a vacant principal
21 office in an acting capacity for no more than 210 days from the date of the vacancy, the
22 submission of a nomination for the office, or from the rejection of a nomination. 5 U.S.C.
23 §§ 3345(a)(2), 3346. Once the time period runs out, “the office shall remain vacant” except in
24 certain limited circumstances not applicable here. 5 U.S.C. § 3348(b)(1).

25 131. The FVRA is “the exclusive means for temporarily authorizing an acting official
26 to perform the functions and duties of any office of an Executive agency . . . for which

27 _____
28 ²⁷ Donald J. Trump (@realDonaldTrump), Twitter (Aug. 25, 2020, 9:30 a.m.)
<https://tinyurl.com/y26476js>.

1 appointment is required to be made by the President, by and with the advice and consent of the
2 Senate, unless . . . a statutory provision expressly . . . designate[s] an officer or employee to
3 perform the functions and duties of a specific office temporarily in an acting capacity.” 5 U.S.C.
4 § 3347(a).

5 132. The Homeland Security Act (“HSA”) expressly designates a line of succession in
6 the event that the Secretary of Homeland Security is unavailable to exercise the office. In the
7 event of a vacancy, the duties of the Secretary are to be fulfilled first by the Deputy Secretary of
8 Homeland Security, who is designated as the Secretary’s first assistant for the purposes of the
9 FVRA. 6 U.S.C. § 113(a)(1)(A). Then, if the office of Deputy Secretary is likewise vacant, the
10 duties of the Secretary are to be fulfilled by the Under Secretary for Management. 6 U.S.C.
11 § 113(g)(1). The Secretary may designate a further order of succession if both of these offices are
12 vacant. 6 U.S.C. § 113(g)(2).

13 133. In February 2019, then-Secretary Nielsen designated an order of succession in the
14 event of a vacancy resulting from the resignation of the Secretary of Homeland Security. That
15 order of succession was never properly amended to permit either Defendant Wolf or his
16 predecessor, Commissioner McAleenan, to serve as Acting Secretary of Homeland Security.
17 Accordingly, both Commissioner McAleenan’s and Defendant Wolf’s services as purported
18 Acting Secretary violated the FVRA and the HSA, and actions taken by Defendant Wolf in
19 exercise of the functions and duties of the Secretary of Homeland Security are without force or
20 effect, may not be ratified, and are in excess of statutory authority.

21 134. On February 15, 2019, then-Secretary Kirstjen Nielsen issued HSA Delegation
22 00106, Revision No. 08.4. Ex. I (February Delegation).

23 135. The February Delegation included different orders of succession for the office of
24 Secretary of Homeland Security for two different scenarios. First, Section II.A of the February
25 Delegation provided that “[i]n case of the Secretary’s death, resignation, or inability to perform
26 the functions of the Office, the orderly succession of officials is governed by Executive Order
27 13753, amended on December 9, 2016.” *Id.* at § II.A.

28 136. Executive Order 13753, in turn, set the order of succession, beginning with the

1 Deputy Secretary of Homeland Security and the Under Secretary for Management. Executive
2 Order Amending the Order of Succession in the Department of Homeland Security, 81 Fed. Reg.
3 90,667 (Dec. 9, 2016). The Commissioner of U.S. Customs and Border Protection was listed
4 seventh in the order of succession. *Id.* Executive Order 13753 further provided that
5 “[n]otwithstanding the provisions of this section, the President retains discretion, to the extent
6 permitted by the Vacancies Act, to depart from this order in designating an acting Secretary.” *Id.*

7 137. The February Delegation further provided that in the event the Secretary was
8 “unavailable to act during a disaster or catastrophic emergency,” the Secretary’s powers are
9 delegated to the officials listed in Annex A to the Delegation, in the order listed. February
10 Delegation at § II.B.

11 138. The February Delegation further provided that “[u]nless formally appointed by the
12 Secretary, persons appointed on an acting basis, or on some other temporary basis, are ineligible
13 to serve as a successor; therefore, the order of succession would fall to the next designated official
14 in the approved order of succession.” *Id.* at § II.G.

15 139. On April 7, 2019, then-Secretary Nielsen submitted a letter of resignation,
16 “effective April 7th 2019.” Letter from Kirstjen Nielsen, U.S. Sec’y of Homeland Security, to
17 President Donald J. Trump (Apr. 7, 2019). That evening, President Trump tweeted “Secretary of
18 Homeland Security Kirstjen Nielsen will be leaving her position, and I would like to thank her for
19 her service . . . I am pleased to announce that Kevin McAleenan, the current U.S. Customs and
20 Border Protection Commissioner, will become Acting Secretary for @dhsgov.”²⁸ However, later
21 that evening, then-Secretary Nielsen tweeted that she had “agreed to stay on as Secretary through
22 Wednesday, April 10th to assist with an orderly transition and ensure that key DHS missions are
23 not impacted.”²⁹

24 140. On or about April 10, 2019, then-Secretary Nielsen amended Annex A to
25 Delegation No. 00106, titled “Order for Delegation of Authority by the Secretary of the

26 ²⁸ Donald J. Trump (@realDonaldTrump), Twitter (Apr. 7, 2019, 3:02 p.m.)
27 <https://tinyurl.com/yxqq5o4j>.

28 ²⁹ Kirsten Nielsen (@SecNielsen), Twitter (Apr. 7, 2019, 7:36 p.m.)
<https://tinyurl.com/y58zop5j>.

1 Department of Homeland Security,” to place the Commissioner of U.S. Customs and Border
2 Protection third in the order of delegation, after the Deputy Secretary of Homeland Security and
3 Under Secretary for Management. Ex. J, HSA Delegation 00106, Revision No. 08.5 (April
4 Delegation).

5 141. However, then-Secretary Nielsen did not amend the provision in Section II.A. of
6 the Delegation for the order of succession in the event of the Secretary’s resignation.
7 Accordingly, pursuant to the April Delegation, the order of succession in the event of the
8 Secretary’s resignation was governed by Executive Order No. 13753.

9 142. On April 11, 2019, Kevin McAleenan, who was serving as the Commissioner of
10 CBP, began serving as the purported Acting Secretary of Homeland Security. Defendant DHS has
11 claimed that Commissioner McAleenan took the position of Acting Secretary of Homeland
12 Security pursuant to the April Delegation. However, two Senate-confirmed officers who were
13 listed fourth and sixth in the order of succession outlined in Executive Order No. 13753—
14 Christopher Krebs, the Director of the Cybersecurity and Infrastructure Security Agency, and
15 David Glawe, the Under Secretary for Intelligence and Analysis—were serving on the date that
16 Commissioner McAleenan purportedly took the position. Commissioner of CBP was listed
17 seventh in the order of succession outlined in Executive Order No. 13753. Accordingly,
18 Commissioner McAleenan’s designation as Acting Secretary of Homeland Security was not valid
19 under the HSA.

20 143. On November 8, 2019, the 212th day of McAleenan’s tenure as purported Acting
21 Secretary of Homeland Security, he purported to amend Section II.A. of Delegation No. 00106,
22 specifying that Annex A governed the order of succession in the event of the Secretary’s
23 resignation and elevating the Under Secretary for Strategy, Policy, and Plans to fourth in the order
24 of succession. Ex. K, DHS, Orders of Succession and Delegations of Authorities for Named
25 Positions, Delegation No. 00106, Revision No. 08.6 (Nov. 8, 2019) (November Delegation). Such
26 an amendment would have been superfluous had Secretary Nielsen’s order already accomplished
27 this goal.
28

1 144. As multiple district courts have held, because Commissioner McAleenan's
2 purported succession was not authorized by Executive Order No. 13753, the February Delegation,
3 or the HSA, Commissioner McAleenan lacked lawful authority to exercise the powers or
4 authority of Acting Secretary of Homeland Security, including amending the order of succession
5 to the office of Secretary of Homeland Security. Accordingly, Commissioner McAleenan's
6 purported November Delegation was without force or effect. *See Immigrant Legal Res. Ctr. v.*
7 *Wolf*, No. 20-CV-05883-JSW, 2020 WL 5798269, at *7–9 (N.D. Cal. Sept. 29, 2020); *Casa de*
8 *Maryland, Inc. v. Wolf*, No. 8:20-CV-02118-PX, 2020 WL 5500165, at *20–23 (D. Md. Sept. 11,
9 2020).

10 145. Moreover, even if Commissioner McAleenan's designation as Acting Secretary
11 pursuant to the April Delegation and the HSA were proper, and to the extent that and even if he
12 was designated Acting Secretary pursuant to the FRVA, he lacked authority to issue the
13 November Delegation, as the 210-day time limit for service as Acting Secretary under the FVRA
14 had passed and no nomination for the position of Secretary of Homeland Security had been
15 submitted.

16 146. Because the November Delegation was issued without lawful authority and was
17 therefore without force or effect, the order of succession contained in the April Delegation and in
18 Executive Order No. 13753 continued to govern upon Commissioner McAleenan's resignation.
19 On November 13, 2019, the first three offices in the order of succession contained in Executive
20 Order No. 17573 were vacant; the fourth office, Director of the Cybersecurity and Infrastructure
21 Security Agency, was filled by Senate-confirmed appointee Christopher Krebs.³⁰ Accordingly,
22 pursuant to the HSA, the April Delegation, and Executive Order No. 13753, Director Krebs
23 should have been designated as Acting Secretary of Homeland Security.

24 147. Nevertheless, after Defendant Wolf's nomination as Under Secretary for Strategy,
25 Policy, and Plans was confirmed by the Senate on November 13, 2019, Defendant Wolf purported

26 _____
27 ³⁰ At the time Executive Order No. 17573 was issued, the position of the Director of
28 Cybersecurity and Infrastructure Security Agency was called the Undersecretary for National
Protection and Programs. The office was retitled pursuant to the Cybersecurity and Infrastructure
Security Agency Act of 2018. 6 U.S.C. § 652(b).

1 to begin serving as the Acting Secretary of Homeland Security. However, Defendant Wolf's
2 designation as Acting Secretary of Homeland Security was improper and unlawful under the
3 FVRA and HSA.

4 148. Furthermore, pursuant to the FVRA, Defendant Wolf cannot lawfully exercise the
5 functions and duties of the Secretary of Homeland Security because the time limit for service in
6 an acting capacity had expired prior to November 13, 2019. On November 7, 2019, the office of
7 Acting Secretary had been vacant for 211 days without a nomination being submitted to the
8 Senate. Accordingly, pursuant to the FVRA, the office was required to "remain vacant." 5 U.S.C.
9 § 3348(b)(1).

10 149. On November 15, 2019, the Chairman of the House Committee on Homeland
11 Security and the Acting Chairwoman of the House Committee on Oversight and Reform sent a
12 letter to the Comptroller General and the Government Accountability Office (GAO), expressing
13 concerns about the legality of Defendant Wolf's designation as Acting Secretary of Homeland
14 Security. The letter requested an expedited review to determine whether Defendant Wolf and
15 purported Senior Official Performing the Duties of Deputy Secretary Ken Cuccinelli were legally
16 serving in those positions. A copy of the letter was sent to Defendant Wolf.

17 150. On August 14, 2020, the GAO issued a decision determining that Defendant Wolf
18 was improperly designated as Acting Secretary of Homeland Security by reference to an invalid
19 order of succession. U.S. Gov't Accountability Off., Decision, File No. 331650 (Aug. 14, 2020)
20 2, 11, <https://www.gao.gov/assets/710/708830.pdf>.

21 151. On August 17, 2020, DHS Acting General Counsel Chad Mizelle sent a letter to
22 the GAO requesting that the GAO rescind its report. *See* Off. of the Gen'l Couns., DHS, *Letter to*
23 *Thomas A. Armstrong, General Counsel, GAO* (Aug. 17, 2020), <https://tinyurl.com/y5ohnvfl>.

24 152. On August 21, 2020, the GAO declined to rescind its report, stating that DHS had
25 neither demonstrated that the GAO's decision contained material errors of fact or law nor
26 provided additional information that warranted reconsideration. *See* U.S. Gov't Accountability
27 Off., B-332451, *Decision Letter on Legality of Service of Acting Secretary of Homeland Security*
28

1 *and Service of Senior Official Performing the Duties of Deputy Secretary of Homeland Security—*
2 *Reconsideration* (Aug. 17, 2020), <https://www.gao.gov/assets/710/708944.pdf>.

3 153. On September 10, 2020, Peter T. Gaynor, Administrator of the Federal Emergency
4 Management Agency, issued an order purporting to amend the order of succession, relying on
5 “any authority vested in [him] as Acting Secretary of Homeland Security,” and placing the Under
6 Secretary for Strategy, Policy, and Plans fourth in the line of succession. Ex. L, Order
7 Designating the Order of Succession for the Secretary of Homeland Security (Sept. 10, 2020)
8 (Gaynor Order). The Gaynor Order stated that “in accordance with the President’s advance
9 exercise of his authority to name an Acting Secretary under the FVRA,” Gaynor was relying on
10 “any authority [he] may have been granted by the FVRA to designate the order of succession for
11 the Secretary of Homeland Security pursuant to 6 U.S.C. § 113(g)(2).” Mr. Gaynor stated that his
12 issuance of the order of succession terminated his authority, if any, under the FVRA.

13 154. On September 17, 2020, Defendant Wolf issued a memorandum purporting to
14 ratify “any and all actions involving delegable duties that [he had] taken from November 13,
15 2019, through September 10, 2020.” Ratification of Department Actions, 85 Fed. Reg. 59,651
16 (Sept. 23, 2020).

17 155. On October 7, 2020, Defendant Wolf issued a second memorandum purporting to
18 ratify actions taken by Commissioner McAleenan and Defendant Edlow, including the Edlow
19 Memorandum. Ratification of Department Actions, 85 Fed. Reg. 65,653 (Oct. 16, 2020).

20 156. Under the FVRA, “an action taken by any person” who is unlawfully exercising
21 the authority of a vacant office “in the performance of any function or duty of a vacant office . . .
22 shall have no force or effect” and “may not be ratified.” 5 U.S.C. § 3348(d)(1), (2); *see also SW*
23 *General*, 137 S. Ct. at 938 n. 2 (noting “general rule that actions taken in violation of the FVRA
24 are void *ab initio*”). Such actions have no force and effect and may not be ratified whether a
25 person is purportedly exercising authority under the FVRA or under an agency-specific statute.
26 *See* 5 U.S.C. § 3348(d)(1), (2) (referring to actions taken by a “person who is not acting under
27 section 3345, 3346, or 3347”).
28

1 157. The HSA provides that “[t]he Secretary is the head of the Department and shall
2 have direction, authority, and control over it” and that “[a]ll functions of all officers, employees,
3 and organizational units of the Department are vested in the Secretary.” 6 U.S.C. § 112(a)(2), (3).
4 The Secretary of Homeland Security is responsible for “[e]stablishing national immigration
5 enforcement policies and priorities.” 6 U.S.C. § 202(5). The Secretary of Homeland Security is
6 also “charged with the administration and enforcement of . . . all . . . laws relating to the
7 immigration and naturalization of aliens” and is required to “establish such regulations; . . . issue
8 such instructions; and perform such other acts as he deems necessary for carrying out his
9 authority.” 8 U.S.C. § 1103(a)(1), (3).

10 158. In issuing the Wolf Memorandum, Defendant Wolf took an action in the
11 performance of a function or duty of the vacant office of Secretary of Homeland Security. *See Ex.*
12 *A*, Wolf Mem., at 3 (noting that the memorandum was issued “in the exercise” of Defendant
13 Wolf’s purported “authority and discretion in establishing national immigration enforcement
14 policies and priorities”).

15 159. Because Defendant Wolf was improperly and unlawfully designated as Acting
16 Secretary of Homeland Security under the FVRA and HSA, he lacked authority to issue the Wolf
17 Memorandum.

18 160. Moreover, on the date that the Wolf Memorandum was issued, July 28, 2020, the
19 office of Secretary of Homeland Security had not been occupied by a Senate-confirmed appointee
20 for 475 days, well beyond the time limit provided in the FVRA for service in an acting capacity.

21 161. Because Defendant Wolf was improperly and unlawfully performing the functions
22 and duties of the Secretary of Homeland Security on July 28, 2020, the Wolf Memorandum has
23 no force or effect and may not be ratified, and Defendant Wolf’s purported ratification of that
24 action is ineffective.

25 162. In addition, because Defendant Wolf lacked authority under the U.S. Constitution,
26 the FVRA, or the HSA to serve as Acting Secretary of Homeland Security, the issuance and
27 implementation of the Wolf Memorandum was and is in excess of statutory authority or otherwise
28 not in accordance with law pursuant to the APA. 5 U.S.C. § 706(2).

1 163. Among the recipients of the Wolf Memorandum is Defendant Joseph Edlow,
 2 purported Deputy Director of Policy at USCIS. Defendant Wolf purportedly designated
 3 Defendant Edlow as Deputy Director at USCIS on February 19, 2020. Because, for the reasons
 4 discussed above, Defendant Wolf lacked legal authority to perform the functions and duties of the
 5 Secretary of Homeland Security, he likewise lacked legal authority to designate Defendant Edlow
 6 to that position. In turn, because Defendant Edlow was improperly designated to the role of
 7 Deputy Director of Policy at USCIS, he lacked legal authority to issue the Edlow Memorandum,
 8 and the issuance and implementation of the Edlow Memorandum was and is in excess of statutory
 9 authority or otherwise not in accordance with law pursuant to the APA. 5 U.S.C. § 706(2).

10 164. With certain limited exceptions not applicable here, the FVRA prohibits a person
 11 from serving as an acting officer if the President submits to the Senate a nomination of that
 12 person to the office, and during the 365 days prior to the vacancy, the person was not first
 13 assistant to the office or was first assistant for less than 90 days. 5 U.S.C. § 3345(b)(1). Defendant
 14 Wolf has never served as first assistant to the Secretary of Homeland Security. Nevertheless,
 15 despite the submission of his nomination to the position of Secretary of Homeland Security to the
 16 Senate on September 10, 2020, Defendant Wolf continues to purport to serve as Acting Secretary
 17 of Homeland Security in violation of the FVRA.

FIRST CAUSE OF ACTION

Violation of Administrative Procedure Act—5 U.S.C. § 706

CONTRARY TO LAW

21 165. Plaintiff States re-allege and incorporate by reference the allegations set forth in
 22 each of the preceding paragraphs of this Complaint.

23 166. The APA requires the Court to “hold unlawful and set aside agency action” that is
 24 “(A) . . . not in accordance with law; (B) contrary to constitutional right, power, privilege, or
 25 immunity; [or] (C) in excess of statutory jurisdiction, authority, or limitations, or short of
 26 statutory right[.]” 5 U.S.C. § 706(2).

27 167. In issuing and implementing the Wolf Memorandum while Defendant Wolf was
 28 unlawfully performing the functions and duties of the Secretary of Homeland Security in

1 violation of the Appropriations Clause, the FVRA, and the HSA, Defendants have acted not in
2 accordance with law, contrary to constitutional power, and in excess of statutory authority in
3 violation of the APA.

4 168. In issuing and implementing the Edlow Memorandum when Defendant Edlow was
5 improperly designated to the position of Deputy Director of Policy at USCIS by Defendant Wolf,
6 who lacked any legal authority to designate Defendant Edlow to that position, Defendants have
7 acted not in accordance with law, contrary to constitutional power, and in excess of statutory
8 authority in violation of the APA.

9 169. Defendants' violation causes ongoing harm to Plaintiff States and their residents,
10 who are within the zone of interests of the relevant statutes and/or constitutional provisions.

11 **SECOND CAUSE OF ACTION**

12 **Violation of Administrative Procedure Act—5 U.S.C. § 706**

13 **ARBITRARY AND CAPRICIOUS**

14 170. Plaintiff States re-allege and incorporate by reference the allegations set forth in
15 each of the preceding paragraphs of this Complaint.

16 171. The APA requires courts to “hold unlawful and set aside” agency action that is
17 “arbitrary,” “capricious,” or an “abuse of discretion.” 5 U.S.C. § 706(2)(A).

18 172. In issuing and implementing the Wolf and Edlow Memoranda, Defendants have
19 acted arbitrarily and capriciously and abused their discretion in violation of the APA. Defendants
20 have not offered a reasoned basis for these actions and failed to consider important aspects of the
21 problem, including, but not limited to, the reliance interests of third parties, including the Plaintiff
22 States.

23 173. Defendants' violation causes ongoing harm to Plaintiff States and their residents,
24 who are within the zone of interests of the relevant statutes and/or constitutional provisions.

25 **THIRD CAUSE OF ACTION**

26 **Violation of Federal Vacancies Reform Act—5 U.S.C. §§ 3345-3349c**

27 174. Plaintiff States re-allege and incorporate by reference the allegations set forth in
28 each of the preceding paragraphs of this Complaint.

1 175. The office of Secretary of Homeland Security is an office to which the FVRA
2 applies. 5 U.S.C. § 3345. The FVRA provides that “the person serving as an acting officer as
3 described under section 3345 may serve in the office for no longer than 210 days beginning on
4 the date the vacancy occurs.” 5 U.S.C. § 3346(a)(1). Once the time periods in the statute have
5 elapsed, “the office shall remain vacant” and “an action taken by any person who is not acting”
6 pursuant to the FVRA “in the performance of any function or duty of a vacant office” to which
7 the FVRA applies “shall have no force or effect” and “may not be ratified.” 5 U.S.C.
8 § 3348(b)(1), (d)(1)-(2).

9 176. Defendant Wolf issued the Wolf Memorandum in the performance of a function or
10 duty of the Secretary of Homeland Security.

11 177. Defendant Wolf designated Defendant Edlow to the position of Deputy Director of
12 Policy at USCIS in the performance of a function or duty of the Secretary of Homeland Security.

13 178. Because, on the date that the order of succession for Secretary of Homeland
14 Security was purportedly amended by Commissioner McAleenan, more than 210 days had passed
15 since the office of Secretary of Homeland Security had become vacant and no nomination for
16 such office had been submitted to the Senate, Commissioner McAleenan was performing the
17 functions or duties of the Secretary of Homeland Security in violation of the Federal Vacancies
18 Reform Act, and his purported amendment to the order of succession had no force or effect and
19 may not be ratified.

20 179. Because, on the date that the Wolf Memorandum was issued, more than 210 days
21 had passed since the office of Secretary of Homeland Security had become vacant and no
22 nomination for such office had been submitted to the Senate, Defendant Wolf was performing the
23 functions or duties of the Secretary of Homeland Security in violation of the Federal Vacancies
24 Reform Act, and the Wolf Memorandum has no force or effect and may not be ratified.

25 180. Because, on the date that Defendant Edlow was designated as Deputy Director of
26 Policy at USCIS, more than 210 days had passed since the office of Secretary of Homeland
27 Security had become vacant and no nomination for such office had been submitted to the Senate,
28 Defendant Wolf was performing the functions or duties of the Secretary of Homeland Security in

1 violation of the Federal Vacancies Reform Act, and the designation of Defendant Edlow has no
2 force or effect and may not be ratified.

3 **FOURTH CAUSE OF ACTION**

4 **Violation of Homeland Security Act, 6 U.S.C. §§ 112-113**

5 181. Plaintiff States re-allege and incorporate by reference the allegations set forth in
6 each of the preceding paragraphs of this Complaint.

7 182. The Secretary of Homeland Security may be appointed only with the advice and
8 consent of the Senate. 6 U.S.C. § 112(a)(1).

9 183. In the event of a vacancy in the office of Secretary of Homeland Security, the
10 order of succession is governed by 6 U.S.C. § 113(g) and by the order of succession designated
11 by the Secretary of Homeland Security.

12 184. Defendant Wolf is not legally authorized to perform the functions and duties of
13 Secretary of Homeland Security or to hold the position of Acting Secretary of Homeland Security
14 pursuant to 6 U.S.C. § 113(g) and the relevant, valid order of succession in effect on the date that
15 Defendant Wolf purported to assume the position of Acting Secretary.

16 185. Because Defendant Wolf is performing the functions and duties of the Secretary of
17 Homeland Security without having been confirmed in that position by the Senate, and without
18 statutory authorization pursuant to the HSA or any other legal authority, his actions, including his
19 purported issuance of the Wolf Memorandum and purported designation of Defendant Edlow as
20 Deputy Director for Policy of USCIS, are invalid and void.

21 **FIFTH CAUSE OF ACTION**

22 **Violation of the Appointments Clause, U.S. Const. art. II, § 2, cl. 2**

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

25 187. The Appointments Clause of the U.S. Constitution requires that principal officers
26 of the United States be appointed by the President “by and with the advice and consent of the
27 Senate.” U.S. Const. art. II, § 2, cl. 2.
28

1 188. The Department of Homeland Security is an Executive Department, 5 U.S.C. §
2 101, and the Secretary of Homeland Security is a principal subject to the Appointments Clause.

3 189. Defendant Wolf has not been confirmed by the Senate to the position of Secretary
4 of Homeland Security.

5 190. Because (1) the office of Secretary of Homeland Security has been vacant for a
6 lengthy and unreasonable period of time, and (2) Commissioner McAleenan, as an inferior
7 officer, lacked authority under the Appointments Clause to appoint an inferior officer, and (3)
8 Defendant Wolf has been unlawfully performing the functions and duties of the Secretary of
9 Homeland Security in an acting capacity, Defendant Wolf is serving in the position of Acting
10 Secretary in violation of the Appointments Clause, and his issuance of the Wolf Memorandum is
11 unlawful.

12 SIXTH CAUSE OF ACTION

13 Ultra Vires

14 191. Plaintiff States re-allege and incorporate by reference the allegations set forth in
15 each of the preceding paragraphs of this Complaint.

16 192. Neither a federal official nor an agency can take any action that exceeds the scope
17 of their constitutional and/or statutory authority.

18 193. Defendants Wolf and Edlow have acted ultra vires in promulgating the Wolf and
19 Edlow Memoranda without legal authority.

20 194. For the reasons stated herein, Plaintiffs are entitled to a declaration that
21 Defendants' promulgation of the Wolf and Edlow Memoranda are unlawful, and the Court should
22 enjoin Defendants' implementation of those actions.

23 PRAYER FOR RELIEF

24 WHEREFORE, Plaintiff States respectfully request that this Court enter judgment in their
25 favor, and grant the following relief:

26 1. Declare that Defendants' actions in promulgating the Wolf and Edlow Memoranda
27 are arbitrary, capricious, abuses of discretion, contrary to constitutional power, in excess of
28

1 statutory authority, and otherwise not in accordance with law in violation of the Administrative
2 Procedure Act, 5 U.S.C. §§ 702-706;

3 2. Declare that Defendants' actions in promulgating the Wolf and Edlow Memoranda
4 are ultra vires;

5 3. Declare that Defendant Wolf's service as Acting Secretary of Homeland Security
6 violates the Federal Vacancies Reform Act, 5 U.S.C. §§ 3345-3349c;

7 4. Declare that Defendant Wolf's actions taken as Acting Secretary of Homeland
8 Security and/or in the performance of the functions or duties of the Secretary of Homeland
9 Security, including his purported change to DACA policy and procedure, have no force and effect
10 and may not be ratified pursuant to the Federal Vacancies Reform Act, 5 U.S.C. § 3348(d);

11 5. Declare that Defendant Wolf's service as Acting Secretary of Homeland Security
12 violates the Homeland Security Act, 6 U.S.C. § 113(g)(2);

13 6. Enjoin Defendants from altering and limiting DACA or engaging in any action to
14 frustrate its full and continued implementation without complying with the APA and other
15 relevant laws;

16 7. Vacate and set aside the Wolf and the Edlow Memoranda; and

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

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1 Dated: November 2, 2020

Respectfully Submitted,

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