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

11 ALBERTO LUCIANO GONZALEZ
 12 TORRES,
 Plaintiff,
 13 vs.
 14 U.S. DEPARTMENT OF
 15 HOMELAND SECURITY; U.S.
 16 CITIZENSHIP AND IMMIGRATION
 17 SERVICES; U.S. IMMIGRATION
 AND CUSTOMS ENFORCEMENT;
 U.S. CUSTOMS AND BORDER
 PROTECTION; Does 1-10, inclusive,
 18 Defendants.

Case No. --- '17CV1840 JM NLS

**PLAINTIFF'S EX PARTE
 EMERGENCY MOTION FOR
 TEMPORARY RESTRAINING
 ORDER AND/OR PRELIMINARY
 INJUNCTION; APPLICATION
 FOR ORDER SHORTENING
 TIME AND EXPEDITED
 HEARING PRIOR TO OCTOBER
 2017**

ORAL ARGUMENT REQUESTED

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1 In accordance with Federal Rule of Civil Procedure 65(b), Plaintiff Alberto
2 Luciano Gonzalez Torres (“Mr. Gonzalez”) respectfully moves this Court for a
3 temporary restraining order and/or preliminary injunction. Pursuant to Local Rules
4 7.1(a) and 7.1(e)(5), Mr. Gonzalez respectfully requests waiver of the 28-day
5 notice of motion requirement, and an expedited hearing prior to October 2017. Mr.
6 Gonzalez respectfully requests oral argument (in person or telephonically,
7 consistent with Local Rule 7.1(d)). Proposed orders have been properly submitted,
8 and Defendants are on notice. Mr. Gonzalez also requests that no fewer than seven
9 calendar days prior to the Court’s oral argument date, Defendants produce the
10 USCIS record upon which the determination to terminate Mr. Gonzalez’s Deferred
11 Action for Childhood Arrivals (“DACA”) status and employment authorization
12 was made.

13 For the reasons described below and set forth more fully in Mr. Gonzalez’s
14 accompanying Complaint for Declaratory and Injunctive Relief, Memorandum of
15 Points and Authorities, Declaration, Declaration of John C. Ulin, and exhibits
16 thereto, Mr. Gonzalez respectfully requests that this Court issue a temporary
17 restraining order and/or preliminary injunction temporarily enjoining Defendants’
18 revocation of his DACA status and employment authorization, in order for
19 Defendants to provide Mr. Gonzalez a Notice of Intent to Terminate DACA, an
20 opportunity to respond, and the opportunity to file a timely DACA renewal
21 application in advance of the October 5, 2017 deadline that Defendants imposed on
22 September 5, 2017. These procedures are mandated by Defendants’ internal
23 DACA policies and procedural due process.

24 Good cause exists for this Court to waive the 28-day notice requirement and
25 hold an expedited hearing. On September 5, 2017, Defendant Department of
26 Homeland Security (“DHS”) declared that Defendant United States Citizenship
27 and Immigration Services (“USCIS”) will (1) stop processing any *new* DACA
28 applications *permanently*, and (2) will not process any *renewal* DACA applications

1 *filed after October 5, 2017* (for those whose DACA status expires before March 5,
2 2018). Mr. Gonzalez’s DACA status (originally set to expire on December 22,
3 2017) was unlawfully revoked. He seeks this Court’s temporary restoration so that
4 he may apply for renewal. *See Coyotl v. Kelly*, 2017 WL 2889681, at *13 (N.D.
5 Ga. June 12, 2017) (ordering reinstatement of DACA status pending the
6 Government’s adjudication consistent with the DACA Standard Operating
7 Procedures).

8 As set forth more fully in Mr. Gonzalez’s accompanying Memorandum of
9 Points and Authorities, he satisfies each required element for a temporary
10 restraining order and/or preliminary injunction:

11 1. Mr. Gonzalez is likely to succeed on his claim that USCIS’s automatic
12 termination of his DACA status was arbitrary, capricious, an abuse of discretion,
13 and violated DHS’s DACA National Standard Operating Procedures (“DACA
14 SOP”) and USCIS’s November 7, 2011 Policy Memorandum. USCIS revoked Mr.
15 Gonzalez’s “lawful presence,” employment authorization, and other attendant
16 benefits (including the right to leave the country and lawfully return under certain
17 circumstances)—without any notice, opportunity to be heard, or opportunity to
18 appeal—simultaneous to Customs and Border Protection’s (“CBP”) charge that
19 Mr. Gonzalez was unlawfully present in the United States. That is the height of
20 arbitrary agency action. Because DACA status confers “lawful presence,” such an
21 automatic termination was arbitrary, capricious, and an abuse of discretion. It was
22 in violation of the DACA SOP, which requires a Notice of Intent to Terminate and
23 thirty-three days to respond before DACA termination. USCIS’s automatic
24 termination violated Mr. Gonzalez’s Fifth Amendment Procedural Due Process
25 rights by depriving him of liberty and property interests without any notice.

26 2. Mr. Gonzalez is suffering and will continue to suffer irreparable harm
27 as a result of Defendants’ unlawful termination of his DACA status and
28 employment authorization. Because of that unlawful termination, Mr. Gonzalez

1 has been stripped of “lawful presence” in the United States and was forced to leave
2 his lawful employment in the airline industry. He has been barred from lawful
3 employment for over a year, despite his former employer’s assurance that it would
4 welcome his reapplication upon restoration of his right to work. With DHS’s
5 September 5, 2017 decision to stop accepting DACA renewal applications after
6 October 5, 2017, Mr. Gonzalez is at a highly elevated risk of irreparable harm:
7 Unless Defendants’ unlawful termination of Mr. Gonzalez’s DACA status is
8 enjoined (in order to provide Mr. Gonzalez notice and an opportunity to respond),
9 Mr. Gonzalez will be precluded from submitting a DACA renewal application
10 because of USCIS’s own previous unlawful action.

11 3. The balance of hardships tips heavily in Mr. Gonzalez’s favor, and the
12 public interest is not served by countenancing Defendants’ unlawful and arbitrary
13 stripping of Mr. Gonzalez’s DACA status and employment authorization. The
14 Government stands to lose nothing (and never stood to lose anything) by providing
15 Mr. Gonzalez notice and an opportunity to respond before terminating his DACA
16 status *in accordance with its own guidelines and policies and basic principles of*
17 *procedural due process*. Mr. Gonzalez was released from immigration detention
18 fifteen months ago and has never been charged with a crime or further investigated
19 in connection with the events that led to his detention. He was twice granted
20 DACA status after affirmative determinations by the Government that he had a
21 spotless criminal record and that he otherwise posed no public safety threat. Since
22 being released from immigration detention, Mr. Gonzalez has resumed his place as
23 a model member of his family and community. In short, there is no reason to
24 maintain the unlawful revocation of his lawful presence in this country and
25 deprivation of his right to work and pay taxes, as he did for nearly three years as a
26 law-abiding DACA recipient. DHS’s artificial and arbitrary October 5, 2017
27 deadline for DACA renewal applications only makes the need to undo Defendants’
28 unlawful actions all the more pressing.

1 In pursuit of the relief sought here and for purposes of Defendants’
2 subsequent lawful adjudication of Mr. Gonzalez’s DACA termination and renewal,
3 Mr. Gonzalez requests that Defendants immediately present all relevant
4 documents, including but not limited to Mr. Gonzalez’s “A-file” and the entirety of
5 the USCIS record upon which the decision to automatically terminate Mr.
6 Gonzalez’s DACA status and employment authorization was based. *See Portland*
7 *Audubon Soc. v. Endangered Species Committee*, 984 F.2d 1534, 1548 (9th Cir.
8 1993) (“Section 706 of the APA provides that judicial review of agency action
9 shall be based on ‘the whole record,’” which “includes everything that was before
10 the agency pertaining to the merits of its decision.”). Mr. Gonzalez has a right to
11 review the agency record that formed the basis of Defendants’ actions, for which
12 Defendants must “articulate a satisfactory explanation,” including a “rational
13 connection between the facts found and the choice made.” *Motor Vehicle Mfrs.*
14 *Assoc. of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

15 Mr. Gonzalez submitted a FOIA request for these documents to Defendant
16 USCIS on July 19, 2017. In nearly two months, USCIS has failed to produce
17 anything or explain the reasons for delay of this simple request. Mr. Gonzalez
18 respectfully requests that the Court order Defendants to produce these documents
19 no fewer than seven calendar days prior to the Court’s oral argument date. Mr.
20 Gonzalez’s request is narrow, simple, in pursuit of his statutory and constitutional
21 rights, and does not place any undue burden on Defendants, who have been on
22 notice of this request for nearly two months. *See Smagin v. Yegiazaryan*, 2015 WL
23 12762270, at *2 (C.D. Sept. 18, 2015).

24 For all of these reasons, Mr. Gonzalez respectfully requests that this Court
25 order an expedited hearing and grant his motion for a temporary restraining order
26 and/or preliminary injunction temporarily restoring his DACA status and
27 employment authorization prior to October 2017.

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Dated: September 11, 2017

Respectfully submitted,

/s/ John C. Ulin
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