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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.
 CITIZENSHIP AND IMMIGRATION
 16 SERVICES; U.S. IMMIGRATION
 AND CUSTOMS ENFORCEMENT;
 17 U.S. CUSTOMS AND BORDER
 PROTECTION; Does 1-10, inclusive,

18 Defendants.

Case No. 17 CV 1840 JM(NLS)

**PLAINTIFF’S NOTICE OF
 MOTION AND MOTION TO
 MODIFY ORDER GRANTING
 MOTION FOR PRELIMINARY
 INJUNCTION [Docket No. 12]**

Hearing: December 18, 2017
Time: 10:00 a.m.
Courtroom: 5D
Judge: Jeffrey T. Miller

1 TO DEFENDANTS AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on December 18, 2017, at 10:00 a.m., or as
3 soon thereafter as the matter may be heard, in the courtroom of the Honorable
4 Jeffrey T. Miller, in the United States District Court for the Southern District of
5 California, located at 221 West Broadway, Courtroom 5D, San Diego, CA 92101,
6 Plaintiff Alberto Luciano Gonzalez Torres will and hereby does move to modify
7 the Court’s September 29, 2017 Order Granting Motion for Preliminary Injunction
8 [Docket No. 12].

9 The Court’s Order reinstated Mr. Gonzalez’s Deferred Action for Childhood
10 Arrivals (“DACA”) status and attendant employment authorization; enjoined
11 Defendants from enforcing their unlawful revocation of Mr. Gonzalez’s DACA
12 status and employment authorization; and required Defendants to accept Mr.
13 Gonzalez’s DACA and employment authorization renewal application. The Order
14 requires Defendants to fully comply with the DACA Standard Operating
15 Procedures (“SOP”) in adjudicating Mr. Gonzalez’s DACA status. Following the
16 Court’s Order, Mr. Gonzalez submitted a timely renewal application, which
17 remains pending before Defendant United States Citizenship and Immigration
18 Services. His current DACA status and employment authorization will expire on
19 December 22, 2017.

20 According to Defendants’ public guidance, DACA renewal applications may
21 remain pending for several months (120 to 150 days from the date of submission).
22 The only reason Mr. Gonzalez did not and could not apply for renewal well in
23 advance of his December 22 expiration date was by virtue of Defendants’ unlawful
24 revocation of his DACA status and employment authorization. Therefore, Mr.
25 Gonzalez respectfully requests that the Court modify its Order to ensure that Mr.
26 Gonzalez retains his DACA status and employment authorization as long as his
27 renewal application remains pending, including any time to respond to a Notice of
28 Intent to Deny his application, and/or during the course of any litigation stemming

1 from Defendants’ denial of his application to ensure full compliance with the
2 DACA SOP and all other applicable laws and guidelines. This modification
3 should not affect any of the Court’s current orders, including the requirement that
4 “Defendants shall fully comply with the DACA SOP should Defendants elect to
5 reconsider Plaintiff’s DACA status.”

6 This motion is based on this Notice of Motion and Motion; the
7 accompanying Memorandum of Points and Authorities and Declaration of John C.
8 Ulin and exhibits thereto; the [Proposed] Order granting the motion; any oral
9 argument heard by the Court; such additional evidence as may be submitted to the
10 Court; and such other matters as the Court deems proper.

11 The parties’ counsel conferred regarding this motion on November 8, 2017.

12
13 Dated: November 13, 2017 Respectfully submitted,

14 /s/ John C. Ulin
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CERTIFICATE OF SERVICE

I hereby certify that on November 13, 2017, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document should automatically be served on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ John C. Ulin

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11 ALBERTO LUCIANO GONZALEZ
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14 U.S. DEPARTMENT OF
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 16 SERVICES; U.S. IMMIGRATION
 AND CUSTOMS ENFORCEMENT;
 17 U.S. CUSTOMS AND BORDER
 PROTECTION; Does 1-10, inclusive,

18 Defendants.

Case No. 17 CV 1840 JM(NLS)

**PLAINTIFF’S MEMORANDUM
 OF POINTS AND AUTHORITIES
 IN SUPPORT OF MOTION TO
 MODIFY ORDER GRANTING
 MOTION FOR PRELIMINARY
 INJUNCTION [Docket No. 12]**

Hearing: December 18, 2017
Time: 10:00 a.m.
Courtroom: 5D
Judge: Jeffrey T. Miller

1 **I. INTRODUCTION**

2 Plaintiff Alberto Luciano Gonzalez Torres (“Mr. Gonzalez”) seeks a
3 modification of the Court’s September 29, 2017 Order granting his motion for a
4 preliminary injunction. Mr. Gonzalez’s Deferred Action for Childhood Arrivals
5 (“DACA”) status and attendant employment authorization (collectively, “DACA
6 status”) are set to expire on December 22, 2017. Had Defendants not unlawfully
7 revoked Mr. Gonzalez’s DACA status, he would have applied for renewal well in
8 advance of his expiration date. But he was barred from applying for renewal until
9 this Court restored his DACA status, and Defendants’ adjudication of his renewal
10 application may stretch well beyond his expiration date. The Court should
11 therefore enjoin the expiration of Mr. Gonzalez’s DACA status and employment
12 authorization pending final resolution of his renewal application, including any
13 time to respond to a Notice of Intent to Deny his application, and/or the litigation
14 of any denial of his application to ensure full compliance with the DACA Standard
15 Operating Procedures (“SOP”) and all other applicable laws and guidelines.

16 **II. BACKGROUND**

17 On September 29, 2017, the Court granted Mr. Gonzalez’s motion for a
18 preliminary injunction, “enjoin[ing] the revocation of the legal status he obtained
19 through the [DACA] program in order to permit him to apply for an extension of
20 his DACA status.” Dkt. 12 at 1. The Court ordered Defendants to “accept
21 Plaintiff’s DACA renewal application” and “preliminarily enjoined [Defendants]
22 from terminating Plaintiff’s employment authorization” “pending further Order of
23 this Court.” *Id.* at 13-14. The Court further ordered that “Defendants shall fully
24 comply with the DACA SOP should Defendants elect to reconsider Plaintiff’s
25 DACA status.” *Id.* at 13.

26 In reaching its decision, the Court held that Mr. Gonzalez “has made a
27 strong showing that he is likely to prevail on his APA claim that Defendants acted
28 arbitrarily, capriciously, and abused their discretion” in revoking his DACA status

1 without following the DACA SOP. *Id.* at 11-12. The Court “categorically
2 reject[ed]” Defendants’ position that they had not acted unlawfully. *Id.* at 10.

3 The Court also held that Defendants’ unlawful revocation of Mr. Gonzalez’s
4 DACA status caused him ongoing irreparable harm, in the form of a “constant
5 threat of apprehension” and the “deprivation of employment.” *Id.* at 12.

6 Mr. Gonzalez submitted a timely DACA renewal application on October 4.
7 It remains pending before Defendant USCIS. Mr. Gonzalez’s “myUSCIS Case
8 Status” webpage indicates that “[a]s of October 25, 2017, [USCIS] is actively
9 reviewing” his application. *See* Declaration of John C. Ulin (filed concurrently),
10 Ex. A (last visited Nov. 13, 2017). It does not indicate how soon Mr. Gonzalez
11 may expect action in his case. However, USCIS has long urged DACA recipients
12 to apply for renewal 150 to 120 days in advance of their expiration dates to ensure
13 that their DACA status did not lapse during adjudication. *See* Dkt. 2-11 at 16, Ulin
14 Dec., Ex. H, DACA FAQ, Q49 (“USCIS strongly encourages you to submit your
15 [DACA] renewal request between 150 days and 120 days before the expiration
16 date located on your current . . . DACA approval notice and Employment
17 Authorization Document (EAD).”); *id.* (“USCIS’ current goal is to process DACA
18 renewal requests within 120 days.”). 120 days from October 4, 2017 is February 1,
19 2018, nearly a month and a half after Mr. Gonzalez’s current DACA status (and
20 right to work) expires.

21 Were it not for Defendants’ unlawful revocation of Mr. Gonzalez’s DACA
22 status, he would have submitted his DACA renewal application well in advance of
23 his current expiration date. Indeed, when Mr. Gonzalez renewed his DACA status
24 in 2014, he did so with over three months to spare, resulting in a renewal that
25 started a month before his initial DACA status even expired. *See* Dkt. 2-19,
26 Gonzalez Dec. ¶ 4 (explaining that Mr. Gonzalez’s DACA status was renewed on
27 December 24, 2014, approximately a month before his initial status would have
28 expired on January 21, 2015).

1 **III. ARGUMENT**

2 **A. THE COURT HAS BROAD AUTHORITY TO MODIFY THE**
3 **TERMS OF ITS EQUITABLE RELIEF IN LIGHT OF THE**
4 **CIRCUMSTANCES OF THIS CASE**

5 The Court should exercise its “wide discretion” to modify the precise terms
6 of its injunction. *System Federation No. 91 v. Wright*, 364 U.S. 642, 648 (1961);
7 *see Taheny v. Wells Fargo Bank, N.A.*, 2011 WL 864678, at *1 (E.D. Cal. Mar. 10,
8 2011) (“Courts issuing injunctions have inherent power to modify them.”).

9 Modification of an injunction is appropriate as part of the Court’s “continuing
10 supervision [and] continuing willingness to apply its powers and processes on
11 behalf of the party who obtained that equitable relief.” *System Federation*, 364
12 U.S. at 647; *accord State v. Trump*, 871 F.3d 646, 654 (9th Cir. 2017) (“The
13 district court has the power to supervise compliance with an injunction and to
14 ‘modify a preliminary injunction in consideration of new facts.’”) (quoting *A&M*
15 *Records Inc. v. Napster, Inc.*, 284 F.3d 1091, 1096 (9th Cir. 2002)). Modification
16 may also be necessary to “describe in reasonable detail . . . the act or acts
17 restrained or required.” Fed. R. Civ. P. 65(d)(1)(C).

18 The Court “should not hesitate to modify its injunction” as part of its “equity
19 jurisdiction” as required by the circumstances of a given case. *U.S. v. Washington*,
20 853 F.3d 946, 979 (9th Cir. 2017). As part of this continuing supervision,
21 modification is appropriate when necessary to “achieve the purposes” of an
22 injunction. *U.S. v. United Shoe Machinery Corp.*, 391 U.S. 244, 249 (1968). The
23 prevailing party “can request modification in the future to add, upon competent
24 proof, specific other terms” to the injunction. *Columbia Pictures Industries, Inc. v.*
25 *Fung*, 710 F.3d 1020, 1048 (9th Cir. 2013).

1 **B. MR. GONZALEZ HAS DEMONSTRATED THE NECESSITY**
2 **AND PROPRIETY OF A MODIFICATION OF THE TERMS**
3 **OF THE COURT’S INJUNCTION**

4 In accordance with these principles, Mr. Gonzalez is entitled to a
5 modification of the terms of the Court’s injunction. The Court should enter a
6 modified order extending his DACA status until either (1) USCIS approves or
7 denies his renewal application, including during the 33-day period provided by the
8 DACA SOP to respond to a Notice of Intent to Deny, and/or (2) until the resolution
9 of any litigation to ensure full compliance with the DACA SOP and all other
10 applicable laws and guidelines in the event that USCIS denies his renewal
11 application.

12 The Court has already determined that Defendants revoked Mr. Gonzalez’s
13 DACA status unlawfully. And Mr. Gonzalez’s past behavior indicates that he
14 otherwise would have submitted a timely renewal application and prevented the
15 lapse of his DACA status upon its December 22, 2017 expiration—had he not been
16 denied the right to apply for renewal prior to this Court’s September 29 Order.
17 Therefore, to achieve the purposes of the Court’s injunction—*i.e.*, to remedy the
18 irreparable harm suffered by Mr. Gonzalez as a result of Defendants’ unlawful
19 revocation and to provide him a fair adjudication of his renewal application—the
20 Court should modify its injunction.

21 Defendants’ adjudication of Mr. Gonzalez’s renewal application may, by the
22 terms of USCIS’s own public guidance, stretch into February 2018 or beyond.
23 This would unjustly strip Mr. Gonzalez of his DACA status and employment
24 authorization, leaving him in fear of apprehension and unable to work and provide
25 for himself. Such an outcome would defeat the purpose of the Court’s injunction,
26 which is to undo the effects of Defendants’ unlawful revocation of his DACA
27 status. As the Court has already held:

28 Plaintiff will suffer significant irreparable harm in the
 absence of an injunction by losing his DACA status
 The potential harm caused by Defendants’ conduct

1 includes the loss of employment, a core benefit under
2 DACA. The deprivation of employment impacts
3 Plaintiff's ability to financially provide for himself and
4 his family. The loss of DACA status also undermines
5 one's sense of well-being and subjects Plaintiff to a
6 constant threat of apprehension and possible removal
7 from the only country he has called home. This
8 threatened harm far exceeds any harm suffered by the
9 government.

10 Dkt. 12 at 12. In short, allowing Mr. Gonzalez's lawful presence and employment
11 authorization to lapse merely because he was barred from applying for renewal
12 early—*i.e.*, as a direct result of Defendants' unlawful revocation of his DACA
13 status—would cause him the same irreparable harm as the revocation in the first
14 instance and would defeat the purpose of the Court's injunction.

11 **IV. CONCLUSION**

12 Mr. Gonzalez respectfully requests that the Court modify its September 29,
13 2017 Order to make clear that Mr. Gonzalez's DACA status will remain in effect
14 pending final resolution of his renewal application, including the 33-day period
15 provided by the DACA SOP to respond to a Notice of Intent to Deny his
16 application, and/or the litigation of a denial of his application to ensure
17 Defendants' full compliance with the DACA SOP and all other applicable laws
18 and guidelines. *See Coyotl v. Duke*, No. 1:17-CV-1670-MHC, Dkt. 54, Order
19 (Oct. 26, 2017) (Declaration of John C. Ulin (filed concurrently), Ex. B) (upon
20 defendants' denial of plaintiff's DACA renewal application and motion to dissolve
21 preliminary injunction, court ordering that "Plaintiff's DACA and employment
22 authorization shall remain in effect . . . until further Order from this Court, which
23 will issue only after Defendants have submitted sufficient proof that they have
24 followed all relevant standard operating procedures regarding the adjudication of
25 Plaintiff's renewal application and any termination of Plaintiff's DACA status.").

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Dated: November 13, 2017

Respectfully submitted,

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