

The Honorable Ricardo S. Martinez
Chief United States District Judge

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

Daniel Ramirez Medina,
Plaintiff,

v.

U.S. DEPARTMENT OF HOMELAND
SECURITY; U.S. IMMIGRATION AND
CUSTOMS ENFORCEMENT; and U.S.
CITIZENSHIP AND IMMIGRATION
SERVICES,

Defendants.

CASE NO. 2:17-CV-00218-RSM-JPD

**PLAINTIFF’S EX PARTE MOTION TO
EXPEDITE CONSIDERATION OF MOTION
FOR PRELIMINARY INJUNCTION (DKT.
122)**

Noted for Consideration: April 12, 2018

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1 Pursuant to this Court’s Local Rule 7(d)(1), Plaintiff Daniel Ramirez Medina respectfully
2 submits this *ex parte* motion to expedite consideration of his Motion for Preliminary Injunction, Dkt.
3 122 (“Motion”), because of the now heightened urgency for injunctive relief created by Defendants’
4 latest efforts to improperly strip Mr. Ramirez of his DACA status based on their false, yet persistent,
5 accusations of gang affiliation in the face of all evidence to the contrary and the government’s own
6 admissions regarding the lack of corroborating evidence.

7 Specifically, on or about April 3, 2018, Defendants—supposedly in compliance with the
8 February 26, 2018 preliminary injunction order issued by the Central District of California in *Inland*
9 *Empire–Immigrant Youth Collective v. Nielsen*, which required the government to restore to a
10 certified class of former DACA recipients (including Mr. Ramirez) their DACA and work
11 authorization¹—delivered to Mr. Ramirez confirmation that his DACA and work authorization were
12 being restored, *but also* separately and simultaneously delivered a Notice of Intent to Terminate
13 (“NOIT”) Mr. Ramirez’s just-restored DACA status. In other words, faced with the *Inland Empire II*
14 Order requiring the government to restore Mr. Ramirez’s DACA status, the government has restored
15 that status only to immediately begin new proceedings to wrongfully strip him of his DACA yet
16 again.

17 Worse, the government’s stated basis for issuing the NOIT is its continued wrongful
18 insistence that Mr. Ramirez poses a public safety concern because he allegedly is gang affiliated,
19 despite its earlier admission in Immigration Court that it had no evidence to support such a
20 conclusion. Moreover, the government has pursued this latest arbitrary and unsupported action while
21 Mr. Ramirez’s Motion is pending in this Court to enjoin Defendants from doing precisely what they
22 just have—using the false record that they created when they first illegally detained Mr. Ramirez
23 against him in subsequent proceedings. Worse yet, Defendants’ tactic appears designed to preempt
24 or at least frustrate this Court’s consideration of Mr. Ramirez’s pending motion.

25 This Court should not abide such behavior, and should promptly set a hearing on the Motion.
26 Mr. Ramirez has only until May 7, 2018—33 days after issuance of the NOIT—to contest it,

27 _____
28 ¹ 2018 WL 1061408 (C.D. Cal. Feb. 26, 2018) (“*Inland Empire II* Order”).

1 heightening the urgency for prompt consideration of the Motion, and for issuance of the requested
2 injunctive relief to prevent further violation of Mr. Ramirez’s rights and put a stop to the
3 government’s continuing abuses.

4 **A. Defendants’ Empty Compliance with the *Inland Empire II* Order Has Only Heightened
5 the Need for Immediate Injunctive Relief to Prevent Further Government Abuse and
6 Violation of Mr. Ramirez’s Rights**

7 In his pending preliminary injunction motion, Mr. Ramirez seeks an order restoring him to the
8 status quo before his unlawful detention—including the restoration of his DACA status and work
9 authorization pending a decision on the merits of his claims. The Motion also requests an order
10 directing the government to process Mr. Ramirez’s future DACA renewals and work authorization
11 applications without reliance on or reference to the false and unsubstantiated assertion that Mr.
12 Ramirez is a gang member, gang affiliated, or a threat to public safety or national security. Mot. 24;
13 *see also* Reply 11 (Dkt. 124); Am. Proposed Order 1 (Dkt 124-2). For the reasons set forth in the
14 Motion and Reply, such injunctive relief is necessary because of Defendants’ continued attempts to
15 wrongfully terminate Mr. Ramirez’s DACA status on the basis of alleged gang affiliation in the face
16 of all available evidence to the contrary—including the Defendants’ own prior administrative
17 determinations and in-court admissions, and the conclusion of an Immigration Judge (all detailed in
18 the Motion).

19 As discussed in Defendants’ Opposition to the Motion (Dkt. 123) and Mr. Ramirez’s Reply
20 (Dkt. 124), on February 26, 2018, in the case *Inland Empire–Immigrant Youth Collective v. Nielsen*,
21 the Central District of California issued an order certifying a class of former DACA recipients and
22 preliminarily enjoined the government to restore DACA status and work authorization to that class of
23 individuals who were denied proper process when the government wrongfully stripped such benefits.
24 Reply 7–9. That class includes Mr. Ramirez. *Id.* Indeed, in Defendants’ Opposition, they argued
25 that because “Plaintiff is a putative class member” in *Inland Empire*, “th[is] Court should refrain
26 from ruling on Plaintiff’s motion [for a preliminary injunction] because an order certifying the class
27 and enjoining the termination of class-members’ DACA, would render Plaintiff’s claims here subject
28 to dismissal, or *at the least address his alleged injuries.*” Opp. 7 (emphasis added).

1 Following issuance of the *Inland Empire II* Order, Mr. Ramirez’s counsel conferred with
2 Defendants’ counsel regarding whether and to what extent the relief provided by the *Inland Empire II*
3 Order might alleviate the need for relief in this action. Declaration of Nathaniel L. Bach in Support
4 of Ex Parte Motion (“Bach Decl.”) ¶¶ 2-4. At no time during the parties’ discussions did the
5 government indicate that it intended to immediately renew its efforts to terminate Mr. Ramirez’s
6 DACA after restoring it pursuant to the *Inland Empire II* Order. For example, on March 19, 2018,
7 Defendants’ counsel (the same counsel for the government in *Inland Empire*) informed Mr.
8 Ramirez’s counsel that “the reinstatement of [Mr. Ramirez’s] DACA and employment authorization
9 under the terms of that injunction will be addressed in the first batch of cases that USCIS reinstates,
10 which could happen as early as this week.” *Id.* ¶ 4 (Ex. A). Mistakenly assuming that the
11 government would finally do right by Mr. Ramirez, Mr. Ramirez’s counsel even offered to stipulate
12 to stay the instant action pending the final resolution of *Inland Empire*, provided that Defendants
13 would agree not to use the erroneous gang allegation against Mr. Ramirez in the future. *Id.* ¶¶ 2-3.

14 However, on April 5, 2018, while he was eagerly awaiting the restoration of his DACA and
15 work authorization pursuant to the *Inland Empire II* Order, Mr. Ramirez was again victimized by the
16 government’s ongoing inexplicable and wrongful campaign to deprive him of his rights. That day,
17 Defendants’ counsel informed Mr. Ramirez’s counsel that his DACA and employment authorization
18 had been reinstated, but simultaneously issued a NOIT to terminate Mr. Ramirez’s DACA status
19 anew based yet again on their false accusation of gang affiliation (to which Mr. Ramirez has only 33
20 days to respond from the date of issuance), writing that “unfortunately” the government “cannot
21 agree to . . . a stipulation that would preclude USCIS from relying on ICE’s conclusions about Mr.
22 Ramirez’s gang affiliation.” *Id.* ¶ 4 (Ex. A). In light of Defendants’ actions, their representation to
23 this Court in their Opposition that the *Inland Empire II* Order would “at the least address [Mr.
24 Ramirez’s] alleged injuries” has been proven false. Instead, the government’s empty compliance
25 with the *Inland Empire II* Order has exacerbated Mr. Ramirez’s situation and heightened the urgent
26 need for relief from this Court.

1 **B. Defendants’ Egregious Actions Underscore the Need for Immediate Relief, as Mr.**
 2 **Ramirez must Respond to the Notice of Intent to Terminate within 25 Days of this Filing**

3 Defendants’ latest actions only heighten the need for immediate relief from this Court, and the
 4 Court is well within its authority to act swiftly on the pending motion. *United States v. W.R. Grace*,
 5 526 F.3d 499, 509 (9th Cir. 2008) (en banc) (“There is a ‘well established’ principle that ‘[d]istrict
 6 courts have inherent power to control their dockets.’”) (citation omitted); *see Preminger v. Peake*,
 7 552 F.3d 757, 769 & n.11 (9th Cir. 2008) (courts have broad discretion to set the timeframe for their
 8 decisionmaking). Mr. Ramirez has only until May 7 to respond to the NOIT, after which the
 9 government may swiftly act to again deprive him of his DACA status and work authorization,
 10 underscoring the need for immediate relief from this Court. Indeed, Defendants have now done on an
 11 accelerated timeframe precisely what Mr. Ramirez seeks to prevent by his Motion: the government
 12 has used the “gang affiliation” accusation they concocted to support his unlawful arrest and to
 13 initially improperly strip him of his DACA status to *again* justify stripping his DACA status at the
 14 very moment when a federal court has ordered that such status be reinstated.

15 And the government’s basis for seeking to terminate Mr. Ramirez’s DACA is as baseless as it
 16 has always been. The NOIT makes clear that the false allegations of gang association are again the
 17 basis for seeking to terminate Mr. Ramirez’s DACA, claiming the following:

18 [Mr. Ramirez] admitted to previously associating with the “Sureno’s” criminal street
 19 gang in the state of California, and to currently associating with the “Paizas” criminal
 20 street gang in the state of Washington. While DHS email records indicate that you
 21 disputed in immigration court that you are a gang member and that the immigration
 22 judge accepted this claim, you nonetheless admitted in immigration court that gangs
 may identify you as a rival gang member because of your tattoo and you admitted that
 you withdrew your appeal from placement in a Level 2 gang population at the
 Norwest Detention Center because you wanted to remain with the gang population.
 Gang association poses a significant public safety risk. Therefore, it appears that you
 do not warrant favorable consideration for DACA.

23 Bach Decl. ¶ 6 (Ex. C). As further detailed in the Motion (Mot. 11–15), there are multiple falsehoods
 24 and other substantive problems contained within this paragraph. Incredibly, the government now
 25 claims in the NOIT that Mr. Ramirez’s statement to the Immigration Court in support of his asylum
 26 application that he fears being identified as a gang member *because of the government’s efforts to tar*
 27 *him as one* (see Dkt 124-1, p. 14 (Exh. B, excerpt of Jan. 17, 2018 Tr. Of Oral Decision of I.J. at 9))
 28 somehow establishes him as a gang member (or gang affiliated) and therefore a public safety risk,

1 despite the Immigration Judge’s finding (after considering all presented information) that Mr.
 2 Ramirez “was not in a gang, nor associated with one” (*id.*). As should be abundantly clear, it is the
 3 false accusation the government has made publicly about Mr. Ramirez that is likely to put him at risk
 4 of being targeted by actual gang members if he were deported to Mexico.² To argue that this credible
 5 fear on the part of Mr. Ramirez somehow brands him as gang affiliated is both nonsensical and cruel,
 6 but is regrettably consistent with Defendants’ prior arbitrary and unlawful actions that support Mr.
 7 Ramirez’s APA claims.

8 Moreover, even if the evidence suggested Mr. Ramirez were gang affiliated, which it does
 9 not, gang affiliation is not a crime (as Defendants have admitted, Opp. 10), and an investigation for,
 10 arrest for, or conviction of a “specified *crime*” is a predicate under the DHS’s National Standard
 11 Operating Procedures for seeking to terminate an individual’s DACA on the basis that he poses an
 12 egregious public safety (EPS) concern. *See* Mot. 14–15. Therefore, for multiple reasons, the NOIT’s
 13 reliance on the government’s prior false accusations of gang affiliation fail to establish an adequate
 14 basis for termination of Mr. Ramirez’s DACA.

15 The other basis that the NOIT cites for why Mr. Ramirez is not entitled to DACA status is that
 16 ICE is actively pursuing Mr. Ramirez’s removal. But, as explained in the Motion (Mot. 11), a
 17 removal order in and of itself is not a sufficient basis for termination of DACA status, as lack of
 18 lawful immigration status is a predicate to DACA eligibility and common among every DACA
 19 recipient. *See Inland Empire-Immigrant Youth Collective v. Duke*, 2017 WL 5900061, at *6 (C.D.
 20 Cal. Nov. 20, 2017) (“[I]ssuance of an NTA charging presence without admission does not provide a
 21 reasoned basis for terminating DACA.”) (internal quotation marks omitted). At bottom, the
 22 government is continuing to use the erroneous assertions it fabricated in the course of its initial bad
 23 act (wrongfully detaining Mr. Ramirez in violation of its own policies) as a predicate for seeking to
 24 strip his DACA status a second time (while again violating its own policies). The government’s
 25 circular and Kafkaesque position cannot justify the fundamental violations of Mr. Ramirez’s rights.

26 _____
 27 ² As Mr. Ramirez has made clear, “[he] understands the colloquial use of ‘Paisas’ to mean Mexicans, and was
 28 attempting to communicate that if given the option, he would prefer to be placed [in the detention center] with other
 Mexicans,” but that he “has no connection or affiliation whatsoever to the Paizas gang.” Dkt. 78 (SAC ¶ 54).

* * *

As set forth herein, Mr. Ramirez has established good cause why the Court should expedite consideration of his Motion by promptly settling a hearing thereon, and thereafter granting relief to restore Mr. Ramirez to the status quo ante and put an end to the government’s continued wrongful campaign against him.

DATED: April 12, 2018
Seattle, Washington

Respectfully submitted,

/s/ Theodore J. Boutrous, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that on April 12, 2018, 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 this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

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