

The Honorable Ricardo S. Martinez
Chief United States District Judge

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

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

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.

**THIRD AMENDED COMPLAINT AND
DEMAND FOR JURY TRIAL**

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INTRODUCTION

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2 In February 2017, Immigration and Customs Enforcement (“ICE”) arrested Plaintiff Daniel
3 Ramirez Medina (“Mr. Ramirez”) without a warrant or probable cause, and detained him for more
4 than six weeks without justification, in violation of his constitutional rights. Defendants targeted Mr.
5 Ramirez despite their knowledge that he is a “Dreamer” who was twice granted deferred action and
6 work authorization under the Deferred Action for Childhood Arrivals (“DACA”) program after
7 rigorous vetting of applications he submitted under the program. Defendants have twice been
8 enjoined from revoking Mr. Ramirez’s DACA status and work authorization—once by this Court and
9 once by the United States District Court for the Central District of California in *Inland Empire-*
10 *Immigrant Youth Collective v. Nielsen* (“*Inland Empire*”), No. 17-2048. Nevertheless, in what has
11 become a personal vendetta against Mr. Ramirez, the father of a five-year-old U.S. citizen,
12 Defendants remain determined to unlawfully strip Mr. Ramirez of his DACA status and work
13 authorization.

14 After Mr. Ramirez first challenged the government’s unlawful and unconstitutional actions,
15 Defendants launched a campaign to smear his reputation, falsely accusing him of being a gang
16 member to strip him of DACA by any means possible. Defendants continued this campaign despite
17 repeatedly confirming and being forced to admit that they had no actual evidence that Mr. Ramirez
18 had any gang affiliation. Even worse, Defendants had determined that Mr. Ramirez was neither a
19 gang member nor an “EPS” (egregious public safety) concern but failed to inform Mr. Ramirez or the
20 Court that they had done so. Specifically, in an internal U.S. Citizenship and Immigration Services
21 (“USCIS”) email dated March 20, 2018, the government admitted that “there is not sufficient
22 evidence to conclude [Mr. Ramirez] is currently a known or suspected gang member,” and “[t]here is
23 NOT sufficient evidence to conclude [Mr. Ramirez] is an EPS concern.”¹ Despite knowing its gang
24 accusations were false, just two weeks later, on April 3, 2018, the government tried again to
25 terminate Mr. Ramirez DACA’s on the basis that he was a gang member and told this Court on May
26 1, 2018 that it was continuing to rely on that allegation as its basis to do so.

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¹ Ex. A (Mar. 20, 2018 USCIS Email) (capitalization in original).

1 After this Court granted Mr. Ramirez’s preliminary injunction motion on May 15, 2018
 2 (“Preliminary Injunction Order”), enjoining Defendants from continuing their unlawful campaign and
 3 terminating his DACA, Mr. Ramirez believed he would be able to get back to peacefully living his
 4 life and working to support his son. But Defendants have now attempted a new unlawful gambit,
 5 arbitrarily and capriciously denying Mr. Ramirez’s most recent request to renew his DACA status, in
 6 December 2018—requests that are otherwise approved 99% of the time—thereby violating both the
 7 letter and spirit of this Court’s Preliminary Injunction Order.

8 Mr. Ramirez asks this Court to remedy the government’s latest unconstitutional actions by
 9 restoring his DACA status and work authorization, and confirming that the benefits he was provided
 10 under DACA are protected by the Fifth Amendment’s Due Process Clause.

11 * * * * *

12 The federal government established the DACA program with great fanfare in 2012. Under
 13 DACA, individuals brought to the United States as children who meet certain criteria, and who are
 14 found by the Department of Homeland Security (“DHS”) to pose no threat to public safety or national
 15 security, are granted deferred action for a two-year period, subject to renewal. These young people
 16 are commonly referred to as “Dreamers” in recognition that they have played by the rules, cooperated
 17 with the government, and are working hard to be part of the American Dream. As the government
 18 has explained, Dreamers are “considered by DHS to be lawfully present during the period deferred
 19 action is in effect,” and are eligible to receive employment authorization and other important
 20 benefits.² Indeed, on March 29, 2017, the Secretary of Homeland Security reaffirmed that “DACA
 21 status is a commitment . . . by the government towards the DACA person, or the so-called Dreamer.”³

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 24 ² Ex. B, at 2 (*Frequently Asked Questions*, U.S. Citizenship & Immigration Servs.: Consideration
 25 of Deferred Action for Childhood Arrivals Process, [https://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-
 26 process/frequently-asked-questions](https://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-process/frequently-asked-questions)) (hereinafter “USCIS DACA FAQs”); *see also Texas v.*
 27 *United States*, 809 F.3d 134, 166 (5th Cir. 2015) *aff’d by an equally divided court*, 136 S. Ct.
 2271 (2016) (“Deferred action . . . is much more than nonenforcement: It . . . affirmatively
 confer[s] ‘lawful presence’ and associated benefits”); *Ariz. Dream Act Coal. v. Brewer*, 81 F.
 Supp. 3d 795, 811 (D. Ariz. 2015).

28 ³ Ted Hesson & Seung Min Kim, *Wary Democrats Look to Kelly for Answers on Immigration*,
 Politico (Mar. 29, 2017), <http://politi.co/2mR3gSN>.

1 As a result of the government’s representations and promises, hundreds of thousands of
2 Dreamers have applied for, and been granted, deferred action under DACA. To apply for DACA,
3 eligible young people are required to provide DHS with highly sensitive personal information, pay a
4 substantial fee, and submit to a rigorous background check. Mr. Ramirez did all of that not once, but
5 three times—once in 2013, again in 2016 when he successfully renewed his DACA status, and most
6 recently in May of 2018. In so doing, Mr. Ramirez—like nearly 750,000 other Dreamers—“relied on
7 the U.S. government’s representations” that it would honor its commitments under the DACA
8 program.⁴ As a result of his reasonable expectations, Mr. Ramirez (and his fellow Dreamers) has
9 constitutionally protected liberty and property interests in the benefits granted under DACA, which
10 include, among other things, the ability to live and work in the United States without fear of arbitrary
11 arrest or detention.

12 Notwithstanding these promises, Defendants arrested and detained Mr. Ramirez without a
13 warrant or probable cause. They handcuffed him, forcibly removed him from a private residence,
14 and transported him to an ICE detention facility where he was coercively interrogated. They
15 summarily revoked his DACA status and work authorization without notice, justification, or due
16 process, and detained him with dangerous criminals for more than six weeks.

17 Once Mr. Ramirez filed a petition for habeas corpus in this Court, the government doubled
18 down, mounting a sustained campaign to publicly vilify him as a “gang member,” despite having no
19 credible evidence to support that allegation. Indeed, as the government later admitted to an
20 Immigration Judge—and as it has since admitted in an internal USCIS email—there is insufficient
21 evidence to even argue that Mr. Ramirez is a danger to the community. Despite these remarkable
22 concessions, the government continued to falsely accuse Mr. Ramirez of gang affiliation.

23 Mr. Ramirez therefore sought a preliminary injunction to prohibit the government from
24 terminating his DACA status and work authorization on these discredited allegations. While Mr.
25 Ramirez’s preliminary injunction motion was pending before this Court, a class-wide injunction was
26 entered on February 26, 2018 in *Inland Empire* that required the government to restore to a class of
27 former DACA recipients—including Mr. Ramirez—their DACA status and work authorization.

28 ⁴ Ex. C, at 1 (Letter from Secretary Jeh Charles Johnson to Rep. Judy Chu (Dec. 30, 2016)).

1 On April 3, 2018, the same day that Defendants complied with the *Inland Empire* order by
 2 restoring Mr. Ramirez’s benefits, they simultaneously initiated a new process to strip Mr. Ramirez of
 3 his just-restored DACA status and work authorization, issuing a Notice of Intent to Terminate
 4 (“NOIT”) on the same false, discredited basis that Mr. Ramirez was a gang member. Remarkably,
 5 USCIS had determined at least two weeks prior to issuing the April 3, 2018 NOIT—as demonstrated
 6 in a March 20, 2018 internal USCIS email—that Mr. Ramirez posed no threat as there was
 7 insufficient evidence to sustain any allegation that he is a gang member:

8 Description of Current Criminal History: No criminality on rap sheet. Gang information obtained from EARM.
 9 ICE interview of DACA recipient. HOWEVER, there is not sufficient evidence to conclude he is currently a
 10 known or suspected gang member. If this was a pending case, it would have been further vetted and likely referred
 11 to a field office for a gang interview. There is NOT sufficient evidence to conclude this person is an EPS concern.

12 Ex. A (underlining added). Moreover, the government only produced this document to Mr. Ramirez
 13 in September 2018, after being compelled to do so by this Court. USCIS therefore ignored its own
 14 determination that Mr. Ramirez was not a gang member and issued a NOIT just two weeks later on
 15 the same false basis that Mr. Ramirez was a gang member. There has rarely been a case in which the
 16 government’s animus against a particular individual has so clearly driven an unlawful vendetta based
 17 on a fiction.

18 On May 1, 2018, this Court held a hearing on Mr. Ramirez’s preliminary injunction motion,
 19 and after supplemental briefing from the parties, on May 15, 2018 it issued its Preliminary Injunction
 20 Order. The Court ordered that “Defendants shall not terminate Plaintiff’s DACA status and work
 21 authorization pending a final decision by this Court on the merits of his claims,” and enjoined
 22 Defendant USCIS from “asserting, adopting, or relying in any proceedings on any statement or
 23 record made as of this date purporting to allege or establish that Mr. Ramirez is a gang member, gang
 24 affiliated, or a threat to public safety.”⁵ Thereafter, and although the government was subsequently
 25 enjoined from terminating Mr. Ramirez’s DACA status pending trial on the merits, Mr. Ramirez filed
 26 a DACA renewal notice to ensure there would be no question about his entitlement to such benefits.

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⁵ Dkt. #133, at 23 (Preliminary Injunction Order).

1 old. Mr. Ramirez was twice granted deferred action and work authorization under the DACA
 2 program. He moved from California to Washington in or around January 2017 in order to obtain
 3 more lucrative employment to better support his son. After being arrested without a warrant or
 4 probable cause, Mr. Ramirez was detained in the Northwest Detention Center for more than six
 5 weeks. He successfully obtained release from custody after the government conceded he was not a
 6 threat to public safety, and later, on May 15, 2018, obtained an order from this Court enjoining
 7 Defendants from terminating his DACA, Defendants have now unlawfully denied Mr. Ramirez's
 8 request to renew his DACA.

9 5. The Department of Homeland Security is a cabinet department of the United States
 10 federal government with responsibility for, among other things, administering and enforcing the
 11 nation's immigration laws.

12 6. U.S. Immigration and Customs Enforcement is a law enforcement agency that is
 13 part of DHS. According to its website, "ICE's primary mission is to promote homeland security and
 14 public safety through the criminal and civil enforcement of federal laws governing border control,
 15 customs, trade, and immigration."⁷

16 7. U.S. Citizenship and Immigration Services is a federal agency that is part of DHS.
 17 According to its website, USCIS "is the government agency that oversees lawful immigration to the
 18 United States."⁸ USCIS administers the DACA program, including by processing applications and
 19 renewals, and issuing notices of termination.

20 STATEMENT OF FACTS

21 Establishment of the DACA Program

22 8. On June 15, 2012, then-Secretary of Homeland Security Janet Napolitano issued a
 23 memorandum establishing the DACA program (the "2012 DACA Memorandum").⁹ Under the
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25 ⁷ See, e.g., *ICE Initiative to Increase Community Engagement*, U.S. Immigration & Customs
 26 Enforcement: News Releases (Mar. 10, 2016), <https://www.ice.gov/news/releases/ice-initiative-increase-community-engagement>.

27 ⁸ United States Citizenship & Immigration Servs., *About Us*, <https://www.uscis.gov/aboutus>.

28 ⁹ Ex. D, at 1 (Memorandum from Secretary Janet Napolitano, Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children (June 15, 2012)) (hereinafter "2012 DACA Memorandum").

1 DACA framework, individuals who were brought to the United States as young children and meet
2 certain specific criteria may request deferred action for a period of two years, subject to renewal. In
3 exchange, DACA applicants are required to provide the government with highly sensitive personal
4 information, submit to a rigorous background check, and pay a considerable fee.

5 9. Deferred action is a well-established form of prosecutorial discretion under which
6 the government defers removal action against an individual for a specified period, subject to
7 renewal. The 2012 DACA Memorandum explained that DACA covers “certain young people who
8 were brought to this country as children and know only this country as home” and that the
9 immigration laws are not “designed to remove productive young people to countries where they may
10 not have lived or even speak the language.”¹⁰

11 10. The 2012 DACA Memorandum established criteria that “should be satisfied before
12 an individual is considered for an exercise of prosecutorial discretion.”¹¹ They are that the applicant:

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

22 11. In addition, the 2012 DACA Memorandum provided that “[n]o individual should
23 receive deferred action . . . unless they first pass a background check.”¹³

26 ¹⁰ *Id.* at 1–2.

27 ¹¹ *Id.* at 1.

28 ¹² *Id.*

¹³ *Id.* at 2.

1 12. USCIS describes DACA as follows: “Deferred action is a discretionary
2 determination to defer a removal action of an individual as an act of prosecutorial discretion. For
3 purposes of future inadmissibility based upon unlawful presence, an individual whose case has been
4 deferred is not considered to be unlawfully present during the period in which deferred action is in
5 effect. An individual who has received deferred action is authorized by DHS to be present in the
6 United States, and is therefore considered by DHS to be lawfully present during the period deferred
7 action is in effect. However, deferred action does not confer lawful status upon an individual, nor
8 does it excuse any previous or subsequent periods of unlawful presence.”¹⁴

9 13. Like other forms of deferred action, DACA serves the government’s interests by
10 allowing the government to prioritize its resources and exercise discretion for its own convenience.
11 As the government has recognized, our nation “continue[s] to benefit . . . from the contributions of
12 those young people who have come forward and want nothing more than to contribute to our
13 country and our shared future.”¹⁵

14 14. On February 20, 2017, Secretary of Homeland Security John D. Kelly issued a
15 memorandum that “immediately rescinded” all “conflicting directives, memoranda, or field
16 guidance regarding the enforcement of our immigration laws and priorities for removal,” but
17 specifically exempted the 2012 DACA Memorandum.¹⁶

18 15. On September 5, 2017, Acting Secretary of Homeland Security Elaine Duke issued
19 a memorandum rescinding the DACA program (the “Rescission Memorandum”), announcing the
20 government’s intention to terminate the DACA program as of March 5, 2018.

21 16. On January 9, 2018 and February 13, 2018, United States District Courts in the
22 Northern District of California and the Eastern District of New York, respectively, issued
23 nationwide preliminary injunctions prohibiting the government from terminating DACA on the
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¹⁴ Ex. B, at 2 (USCIS DACA FAQs, Question 1).

¹⁵ Ex. C, at 2 (Letter from Secretary Jeh Charles Johnson to Rep. Judy Chu (Dec. 30, 2016)).

¹⁶ Ex. E, at 2 (Memorandum from Secretary John Kelly, Enforcement of the Immigration Laws to
27 Serve the National Interest (Feb. 20, 2017)).
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1 ground that the decision to rescind the program was arbitrary and capricious.¹⁷ These injunctions
 2 require the government to maintain DACA on the same terms and conditions that existed prior to the
 3 Rescission Memorandum, except that the government need not accept new DACA applications from
 4 individuals who have never received DACA previously and need not continue granting advance
 5 parole to allow DACA recipients to travel internationally.

6 17. On August 17, 2018, the United States District Court for the District of Columbia
 7 vacated the Rescission Memorandum, again on the ground that the decision was arbitrary and
 8 capricious.¹⁸ Similar to the earlier preliminary injunctions, the order of vacatur excluded first-time
 9 DACA applications and requests for advance parole, but otherwise required the government to
 10 maintain the DACA program and process renewal applications.

11 18. On November 8, 2018, the United States Court of Appeals for the Ninth Circuit
 12 upheld the nationwide preliminary injunction issued by the United States District Court for the
 13 Northern District of California.¹⁹

14 19. The DACA program remains in place at this time, and the government continues to
 15 accept and process DACA renewal applications.

16 **The DACA Application Process**

17 20. Before the issuance of the Rescission Memorandum, when the government was still
 18 processing new requests for deferred action under DACA, first-time DACA applicants were
 19 required to submit extensive documentation establishing that they meet the above-mentioned
 20 criteria.²⁰ Applicants were also required to submit a Form I-765 Application for Employment
 21 Authorization, and pay hundreds of dollars in fees.²¹

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 24 ¹⁷ *Regents of the Univ. of Cal. v. Dep't of Homeland Sec.*, 279 F. Supp. 3d 1011 (N.D. Cal. 2018);
Batalla Vidal v. Nielsen, 279 F. Supp. 3d 401 (E.D.N.Y. 2018).

25 ¹⁸ *NAACP v. Trump*, 321 F. Supp. 3d 143, 146 (D.D.C. 2018).

26 ¹⁹ *Regents of the Univ. of Cal. v. Dep't of Homeland Sec.*, 908 F.3d 476 (9th Cir. 2018).

27 ²⁰ Ex. B, at 9–15 (USCIS DACA FAQs, Questions 28–41).

28 ²¹ *Id.* at 3 (USCIS DACA FAQs, Question 7); *see also* USCIS, I-821D, Consideration of Deferred
 Action for Childhood Arrivals, <https://www.uscis.gov/i-821d> (explaining that the filing fee for a
 DACA application is currently set at \$495 and cannot be waived).

1 21. DACA applicants were also required to undergo biometric and biographic
2 background checks. When conducting these checks, DHS reviewed the applicant’s biometric and
3 biographic information “against a variety of databases maintained by DHS and other federal
4 government agencies.”²² If any information “indicate[d] that [the applicant’s] presence in the United
5 States threatens public safety or national security,” the applicant would be ineligible for DACA
6 absent “exceptional circumstances.”²³

7 22. Indicators that an individual poses a national security threat include “gang
8 membership.”²⁴ Accordingly, “[a]ll DACA requests presenting information that the requestor is or
9 may be a member of a criminal street gang are referred to the Background Check Unit (BCU).”²⁵ If
10 gang membership was confirmed, the DACA application was denied absent a determination by
11 USCIS that an exception should be made given the totality of the circumstances.²⁶

12 23. USCIS evaluates renewal requests based on the same criteria as initial requests, and
13 also requires that the renewal applicant (1) has not departed the United States on or after August 15,
14 2012 without advance parole; (2) has continuously resided in the United States since his or her most
15 recent DACA request was approved; and (3) has not been convicted of a felony, a significant
16 misdemeanor, or three or more misdemeanors, and does not otherwise “pose a threat to national
17 security or public safety.”²⁷

18 24. In 2015, USCIS conducted an additional screening of all individuals granted
19 deferred action under DACA—including Mr. Ramirez—“to identify records that contained
20 information indicating known or suspected gang association.”²⁸

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23 ²² Ex. B, at 7 (USCIS DACA FAQs, Question 23).

24 ²³ *Id.* at 23 (USCIS DACA FAQs, Question 65).

25 ²⁴ *Id.*

26 ²⁵ Ex. F, at 1 (Letter from USCIS Director León Rodríguez to Senate Judiciary Committee
Chairman Charles E. Grassley (Apr. 17, 2015)) (hereinafter, “USCIS Letter”).

27 ²⁶ *Id.* at 2.

28 ²⁷ Ex. B, at 18 (USCIS DACA FAQs, Question 51).

²⁸ Ex. F at 4 ¶ 2 (USCIS Letter).

1 25. Once DACA has been granted, internal USCIS “Standard Operating Procedures”
 2 dictate that, absent an “Egregious Public Safety” issue, DACA status should not be revoked until the
 3 government has provided a “Notice of Intent to Terminate” which “thoroughly explain[s]” the
 4 grounds for the termination.²⁹ DHS policy further provides that the recipients of such notice should
 5 be afforded 33 days to “file a brief or statement contesting the grounds cited in the Notice of Intent
 6 to Terminate” prior to termination of DACA status.³⁰

7 **Benefits Provided Under the DACA Program**

8 26. DACA confers numerous benefits on those who apply for and are granted DACA
 9 status. Notably, DACA recipients are granted the right not to be arrested or detained based solely on
 10 their immigration status during the time period their deferred action is in effect.³¹

11 27. DACA recipients are also eligible for work authorization. As USCIS has explained,
 12 “an individual whose case has been deferred is eligible to receive employment authorization for the
 13 period of deferred action”³²

14 28. DACA recipients are eligible to receive certain public benefits. These include
 15 Social Security, retirement, and disability benefits, and, in certain states, benefits such as driver’s
 16 licenses or unemployment insurance.³³ In Washington, DACA holders are also eligible for certain
 17 state financial aid programs and state-funded food assistance.³⁴

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 20 ²⁹ Ex. G, at 136 & App’x I (DHS National Standard Operating Procedures (SOP): Deferred Action
 for Childhood Arrivals (DACA) (Aug. 28, 2013)) (hereinafter, “DACA SOP”).

21 ³⁰ *Id.* at 136 & App’x I.

22 ³¹ *See* Ex. B, at 5 (USCIS DACA FAQs, Question 9) (“[I]f an individual meets the guidelines for
 23 DACA, CBP or ICE should exercise their discretion on a case-by-case basis to prevent qualifying
 24 individuals from being apprehended.”); Ex. D, at 2 (2012 DACA Memorandum); *see also* *Ariz.*
Dream Act Coal. v. Brewer, 757 F.3d 1053, 1059 (9th Cir. 2014) (“DHS considers DACA
 25 recipients not to be unlawfully present in the United States because their deferred action is a
 period of stay authorized by the Attorney General.”).

26 ³² Ex. B, at 2 (USCIS DACA FAQs, Question 1).

27 ³³ *See* 8 U.S.C. §§ 1611(b)(2)–(3), 1621(d); *Texas*, 809 F.3d at 148; *Ariz. Dream Act Coal.*,
 81 F. Supp. 3d at 811.

28 ³⁴ *See* Wash. Rev. Code § 28B.92.010; Wash. Admin. Code §§ 388-400-0050, 388-424-0001,
 388-424-0030.

1 29. DACA serves as a gateway to numerous other benefits, and enables recipients to
2 open bank accounts, obtain credit cards, start businesses, purchase homes and cars, and conduct other
3 aspects of daily life that are otherwise often unavailable for undocumented immigrants.³⁵

4 30. DACA has enabled hundreds of thousands of Dreamers to “to enroll in colleges and
5 universities, complete their education, start businesses that help improve our economy, and give
6 back to our communities as teachers, medical professionals, engineers, and entrepreneurs—all on
7 the books.”³⁶

8 31. DACA also confers other immigration benefits and the ability to travel. For
9 example, DACA recipients do not accrue time under Section 212(a)(9)(B)(i) of the Immigration and
10 Nationality Act (“INA”),³⁷ and, at least prior to the Rescission Memorandum, could briefly depart
11 the United States and legally return under certain circumstances.³⁸

12 **The Government’s Promise to Dreamers**

13 32. When the DACA program was first launched, many Dreamers were reluctant to
14 voluntarily disclose information that could help facilitate their removal from the United States. To
15 combat this fear, DHS repeatedly promised applicants that information they provided as part of the
16 DACA application process would “not later be used for immigration enforcement purposes.”³⁹

17 33. The government has reiterated this commitment in its correspondence with
18 Dreamers. Moreover, the approval notice granting deferred action under DACA lists only “fraud or
19 misrepresentation” in the application process or “[s]ubsequent criminal activity” as grounds for
20 revoking DACA.⁴⁰

21 34. The government’s commitment to the DACA program is further codified in its
22 publication entitled “National Standard Operating Procedures (SOP): Deferred Action for Childhood
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24 ³⁵ See Dkt. #38-1, at 2 (Amicus Curiae Brief of United We Dream).

25 ³⁶ Ex. C, at 2 (Letter from Secretary Jeh Charles Johnson to Rep. Judy Chu (Dec. 30, 2016)).

26 ³⁷ 8 U.S.C. § 1182(a)(9)(B)(i).

27 ³⁸ Ex. B, at 19 (USCIS DACA FAQs, Question 57).

28 ³⁹ Ex. C, at 1 (Letter from Secretary Jeh Charles Johnson to Rep. Judy Chu (Dec. 30, 2016)).

⁴⁰ Ex. H (DACA Approval Notice).

1 Arrivals (DACA).”⁴¹ This document effectively limits the exercise of agency discretion concerning
 2 DACA applications with “nearly 150 pages of specific instructions for granting or denying deferred
 3 action.” *Texas*, 809 F.3d at 173 (citation omitted) (citing the DACA SOP as evidence that DACA is
 4 not truly a discretionary program).

5 35. Numerous public officials from both political parties have reinforced this promise,
 6 and have recognized that Dreamers have relied on the government to keep its word. For example, in
 7 December 2016, then-Secretary of Homeland Security Jeh Charles Johnson acknowledged that there
 8 are 750,000 Dreamers who have “relied on the U.S. government’s representations” about DACA,
 9 and asserted that “representations made by the U.S. government, upon which DACA applicants
 10 most assuredly relied, must continue to be honored.”⁴²

11 36. In January 2017, Speaker of the House Paul Ryan stated that the government must
 12 ensure that “the rug doesn’t get pulled out from under” Dreamers, who have “organize[d] [their]
 13 li[ves] around” the DACA program.⁴³

14 37. In February 2017, Congressman Raúl Grijalva described DACA as a
 15 “commitment,” and called for “the federal government to honor its word to protect” Dreamers.⁴⁴

16 38. On March 29, 2017, then-Secretary Kelly reaffirmed that “DACA status” is a
 17 “commitment . . . by the government towards the DACA person, or the so-called Dreamer.”⁴⁵

18 39. On April 21, 2017, President Trump confirmed that his administration’s policy is
 19 not to deport Dreamers, and suggested that “[D]reamers should rest easy.”⁴⁶

22 ⁴¹ Ex. G (DACA SOP).

23 ⁴² Ex. C, at 1 (Letter from Secretary Jeh Charles Johnson to Rep. Judy Chu (Dec. 30, 2016)).

24 ⁴³ Transcript of CNN Town Hall with Speaker Paul Ryan, CNN (Jan. 12, 2017),
<http://cnn.it/2oyJXJJ>.

25 ⁴⁴ Congressional Progressive Caucus Leaders Respond to ICE Arrest of DACA Recipient (Feb. 16,
 26 2017), <https://cpc-grijalva.house.gov/press-releases/congressional-progressive-caucus-leaders-respond-to-ice-arrest-of-daca-recipient>.

27 ⁴⁵ Ted Hesson & Seung Min Kim, *Wary Democrats Look to Kelly for Answers on Immigration*,
 Politico (Mar. 29, 2017), <http://politi.co/2mR3gSN>.

28 ⁴⁶ Excerpts from AP interview with President Donald Trump, The Associated Press (Apr. 21, 2017),
<https://apnews.com/182009c26d70499a97d486afa8d7a34d>.

1 **Mr. Ramirez Was Twice Granted Deferred Action Under DACA**

2 40. In late 2013, Mr. Ramirez first applied for deferred action and work authorization
3 pursuant to DACA. As part of this process, Mr. Ramirez provided the government with his birth
4 certificate, school records, and information about where he lived, and was required to attend a
5 biometrics appointment so that USCIS could take his fingerprints and photographs. Mr. Ramirez
6 was nervous about providing this information, but trusted that the government would keep its word.
7 Mr. Ramirez was granted deferred action and work authorization in 2014.

8 41. In 2016, Mr. Ramirez reapplied for DACA, and once again was granted deferred
9 action and work authorization after being subject to rigorous vetting. As part of this process, the
10 government sent Mr. Ramirez an approval notice (the “2016 DACA Approval Notice”) informing
11 him that his request for deferred action had been granted. The 2016 DACA Approval Notice
12 provides that “[u]nless terminated, this decision to defer removal action will remain in effect for 2
13 years” and is valid to May 4, 2018.⁴⁷ The 2016 DACA Approval Notice informed Mr. Ramirez that
14 his deferred action could be terminated if he engaged in “[s]ubsequent criminal activity.”⁴⁸

15 42. DHS has therefore confirmed on three separate occasions prior to Mr. Ramirez’s
16 unlawful arrest that Mr. Ramirez does not pose a threat to national security or public safety—first in
17 2014 when he applied for DACA, then again in 2015 when USCIS conducted an additional
18 screening of all DACA beneficiaries, and finally in 2016 when he reapplied for DACA.

19 **Mr. Ramirez’s Unconstitutional Arrest and Subsequent Interrogation**

20 43. On February 10, 2017, at approximately 9:00 a.m., a team of ICE agents arrested
21 Mr. Ramirez’s father outside of the apartment where Mr. Ramirez, his father, and his brother were
22 then living. The ICE agents subsequently entered the apartment; neither Mr. Ramirez nor his
23 brother are aware of any consent to permit the ICE agents to enter or search the premises.

24 44. Upon seeing Mr. Ramirez in the apartment, the ICE agents began to question him.
25 Mr. Ramirez provided the agents with his name and birthdate, and told them that he was born in
26 Mexico. At this point, one of the agents placed Mr. Ramirez in handcuffs.

27 _____
28 ⁴⁷ Ex. H (DACA Approval Notice).

⁴⁸ *Id.*

1 45. Mr. Ramirez told the ICE agents repeatedly that he had a legal work permit, but the
2 ICE agents refused to release him. Mr. Ramirez's father also repeatedly informed the ICE agents
3 that Mr. Ramirez had a legal work permit, and questioned why Mr. Ramirez was being detained.
4 The ICE agents did not ask any questions at the apartment regarding whether Mr. Ramirez was
5 involved with a gang, nor did they ask him about his tattoo.

6 46. The ICE agents did not have an arrest warrant for Mr. Ramirez, nor did they have
7 any reason to believe that he had committed a crime or was not authorized to be in the United States.
8 On the contrary, the ICE agents had reason to know that Mr. Ramirez had a work permit and was
9 therefore lawfully living and working in the United States. Despite these facts, Mr. Ramirez was
10 taken into custody and transported to an ICE holding facility in Tukwila, Washington.

11 47. At the holding facility, the ICE agents confiscated Mr. Ramirez's work permit. This
12 permit was marked with a "C33" designation, which clearly identified Mr. Ramirez as a DACA
13 recipient with work authorization pursuant to DACA.⁴⁹

14 48. The ICE agents also fingerprinted Mr. Ramirez and used this information to access
15 his records, which revealed that Mr. Ramirez has no criminal history, had twice been granted DACA
16 status, and possessed valid employment authorization through May 4, 2018.

17 49. Defendants refused to release Mr. Ramirez even after they confirmed his DACA
18 status. When Mr. Ramirez again protested that he had a work permit, he was told by Defendants
19 that it did not matter because he "was not from the United States." Defendants subsequently cited
20 Mr. Ramirez's receipt of DACA as evidence of his "illegal" status in the Form I-213.⁵⁰

21 50. The ICE agents then began to interrogate Mr. Ramirez. They asked him at least five
22 times whether he was in a gang, and each time he denied any gang affiliation. The ICE agents
23 repeatedly pressed him as to whether he had ever known anyone who was a gang member.
24 Mr. Ramirez told the agents that although that he knew students who had attended middle school
25 and high school with him who were in gangs, he was not gang affiliated and never had been.

26 _____
27 ⁴⁹ Ex. G, at 116 (DACA SOP) ("To distinguish DACA-related EADs from other deferred action
EADs, the (c)(33) code will be used.").

28 ⁵⁰ Dkt. #93, at 29 (ICE CAR 000028 (I-213 Record of Deportable/Inadmissible Alien (Feb. 10,
2017))).

1 51. The ICE agents also interrogated Mr. Ramirez about the tattoo on his forearm. Mr.
2 Ramirez obtained this tattoo when he was 18 years old—before he first applied for DACA. The
3 tattoo consists of the words “La Paz – BCS” and a nautical star. “La Paz” is Mr. Ramirez’s
4 birthplace, and “BCS” stands for Baja California Sur, the region in which La Paz is located. Mr.
5 Ramirez decided to include the city of his birth because he had seen others do the same, and
6 ultimately selected the nautical star (rather than a whale’s tail, which he had also considered)
7 because he liked the way it looked. Nautical stars are popular symbols for tattoos.

8 52. During the interrogation, one of the ICE agents stated that if Mr. Ramirez was from
9 Fresno, he was “definitely a gang member” because everyone in Fresno is a member of the
10 “bulldogs” gang. He said that Mr. Ramirez’s tattoo was a “bulldogs” tattoo. Mr. Ramirez
11 repeatedly told the ICE agents that the tattoo is not a gang tattoo, but they refused to believe him.

12 53. Prior to his transfer to the Northwest Detention Center, the ICE agents asked
13 Mr. Ramirez if there were any gangs with which he would like to avoid being placed for his safety.
14 Mr. Ramirez again stated that he had no gang affiliation and would not have problems being placed
15 with anyone. Upon continued questioning, Mr. Ramirez ultimately indicated that if he had to be
16 placed with any group, he would prefer “the Paisas.” Mr. Ramirez understands the colloquial use of
17 “Paisas” to mean Mexicans, and was attempting to communicate that if given the option, he would
18 prefer to be placed with other Mexicans. Mr. Ramirez, who has no criminal history and was never
19 previously in custody, has no connection or affiliation whatsoever to the Paizas gang.

20 **Mr. Ramirez’s Unconstitutional Detention**

21 54. Mr. Ramirez was then transferred to Northwest Detention Center, where he
22 remained in custody for the next 47 days.

23 55. The Northwest Detention Center is a privately owned detention facility located on a
24 contaminated “Superfund” site.⁵¹ According to the Environmental Protection Agency, industrial
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27 ⁵¹ U.S. Env’tl. Prot. Agency, Fourth Five-Year Review Report for Commencement Bay
28 Nearshore/Tideflats Superfund Site, Pierce Cty., Wash., at vi (Dec. 1, 2014),
<https://semspub.epa.gov/work/HQ/181285.pdf>.

1 pollutants have been found in the soil and water near the Northwest Detention Center, and
 2 environmental remediation efforts at the site remain ongoing.⁵²

3 56. In April 2017, hundreds of detainees at the Northwest Detention Center went on a
 4 hunger strike to protest the inhumane conditions at the facility, including poor hygiene, lack of
 5 access to medical care, lack of recreational opportunities, poor quality food, and unreasonable
 6 commissary prices.⁵³

7 57. The more than six weeks that Mr. Ramirez spent at the Northwest Detention Center
 8 were extremely difficult for him. He spent his twenty-fourth birthday in detention, and was unable
 9 to see or speak to his young son for the duration of his detention. Mr. Ramirez had difficulty
 10 sleeping, and experienced significant distress, sadness, fear, and anxiety as a result of his unjust
 11 detention. Mr. Ramirez also began to experience vision problems, and was informed by the medical
 12 staff at the Northwest Detention Center that this was likely due to depression.

13 58. Defendants classified Mr. Ramirez as a “medium-high” security risk, and placed
 14 him in a housing unit with gang members and dangerous criminals. Mr. Ramirez requested that he
 15 be reclassified because, as he again explained, he was not, and never had been, gang affiliated, but
 16 this request was denied. Because of the government’s false statements to the media, many of the
 17 detainees at the Northwest Detention Center believed that Mr. Ramirez was a gang member and
 18 questioned him about his gang affiliation. This caused Mr. Ramirez to fear for his personal safety,
 19 and he was afraid to leave his cell out of fear that he would be assaulted.

20 **The Government Revokes Mr. Ramirez’s DACA Status and Work Authorization**

21 59. Defendants issued a Notice to Appear (“NTA”) on February 10, 2017.⁵⁴ Defendants
 22 assert that Mr. Ramirez’s DACA status terminated on the day the NTA was issued.⁵⁵

23 _____
 24 ⁵² *Id.* at vi–vii.

25 ⁵³ Mike Carter, *Hundreds of immigrant detainees at Tacoma ICE facility on hunger strike, activists*
 26 *say*, The Seattle Times (Apr. 12, 2017), [http://www.seattletimes.com/seattle-news/group-](http://www.seattletimes.com/seattle-news/group-hundreds-of-detainees-at-tacoma-ice-facility-on-hunger-strike)
 27 *hundreds-of-detainees-at-tacoma-ice-facility-on-hunger-strike*; Steve Miletich, *ICE: Hunger*
 28 *strike winding down at Tacoma immigration detention center*, The Seattle Times (Apr. 14, 2017),
<http://www.seattletimes.com/seattle-news/crime/ice-hunger-strike-abates-at-detention-center>.

⁵⁴ Dkt. #93, at 7–8 (ICE CAR 000005 (Notice to Appear)).

⁵⁵ See Dkt. #32, at 2–3 (Respondents’ Brief Regarding the Court’s February 14, 2017 Order).

1 60. USCIS sent Mr. Ramirez a Notice of Action (“NOA”) dated February 17, 2017.
2 The NOA states that Mr. Ramirez’s deferred action and employment authorization terminated on the
3 date the NTA was issued, and provides that “[a]n appeal or motion to reopen/reconsider this notice
4 of action may not be filed.”⁵⁶

5 61. Under DHS policy, the government must provide a “Notice of Intent to Terminate”
6 and 33 days for a response prior to terminating DACA status, unless the case involves an “Egregious
7 Public Safety” issue.⁵⁷ Mr. Ramirez was never provided with a Notice of Intent to Terminate, nor
8 was he given 33 days to respond to such a notice or otherwise contest the revocation of his DACA
9 status or work permit.

10 **The Government Publicly Labels Mr. Ramirez as a “Gang Member”**

11 62. After Mr. Ramirez sought relief from this Court on February 13, 2017, Defendants
12 concocted a shifting story about the circumstances surrounding his arrest and detention. Defendants
13 sought to justify their unlawful actions based on the false assertion that Mr. Ramirez is a gang
14 member, and initiated a sustained campaign to publicly vilify him as such, despite knowing that
15 there existed no reliable evidence to support such a characterization.

16 63. Spokespersons for ICE and DHS issued statements alleging that Mr. Ramirez was a
17 gang member, and falsely informed the national media that the government possessed
18 “corroborating evidence” to support that allegation. Additionally, on information and belief,
19 Defendants coordinated with each other and leaked false information to members of the media in
20 furtherance of this smear campaign.

21 64. On February 14, 2017, an ICE spokesperson stated that “ICE officers took
22 Mr. Ramirez into custody *based on* his admitted gang affiliation and risk to public safety.”⁵⁸ This
23 false allegation contradicts the Form I-213 prepared by Defendants, which notes that ICE agents did
24 not discuss Mr. Ramirez’s purported gang affiliation with him until *after* he was transported to the

25 ⁵⁶ Ex. I, at 1 (Notice of Action).

26 ⁵⁷ Ex. G, at 136 & App’x I (DACA SOP).

27 ⁵⁸ Sue Horton et al., *Mexican ‘DREAMer’ Nabbed in Immigrant Crackdown*, Reuters U.S. Top
28 News (Feb. 14, 2017), [http://www.reuters.com/article/us-usa-trump-immigration-arrest-exclusive-idUSKBN15T307](http://www.reuters.com/article/us-usa-trump-immigration-arrest-exclusive/idUSKBN15T307) (emphasis added).

1 ICE holding facility in Tukwila, Washington, at which point his DACA status and lack of a criminal
2 record had been confirmed.⁵⁹

3 65. On February 15, 2017, ICE officials were pressed by the news media for additional
4 evidence demonstrating that Mr. Ramirez was a gang member. In response, Defendants informed
5 the media that they had “additional evidence including photos and social media content that
6 illustrate his gang affiliation.”⁶⁰

7 66. On February 15, 2017, an unnamed ICE official informed members of the national
8 news media that there was corroborating evidence to support their allegations of gang membership.⁶¹
9 No such corroborating evidence has been produced or filed in any court, despite requests by
10 Mr. Ramirez and his counsel.

11 67. On February 15, 2017, DHS issued a statement labeling Mr. Ramirez as “a gang
12 member.”⁶²

13 68. Defendants have since backed away from these false and defamatory allegations.
14 For example, in their filings in this Court, Defendants have alleged merely that Mr. Ramirez “hangs
15 out” with gang members.⁶³ In the Immigration Court, the government has admitted that the evidence
16 does not support any conclusion that Mr. Ramirez is a threat to public safety.

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21 ⁵⁹ Dkt. #93, at 29 (ICE CAR 000028 (I-213 Record of Deportable/Inadmissible Alien (Feb. 10, 2017))).

22 ⁶⁰ *First 100 Days: Chaffetz: We Want Inspector General to Investigate Leaks; Attorney for Arrested*
23 *‘Dreamer’ Speaks Out*, FoxNews.com (Feb. 15, 2017),
24 <https://www.foxnews.com/transcript/chaffetz-we-want-inspector-general-to-investigate-leaks-attorney-for-arrested-dreamer-speaks-out>.

25 ⁶¹ *‘DREAMer’ Protected under Obama Detained in Seattle Area*, CBSnews.com (Feb. 15, 2017),
26 <http://www.cbsnews.com/news/daniel-ramirez-medina-dreamer-protected-under-obama-detained-in-seattle>.

27 ⁶² *DHS Statement on Arrest of Alien Gang Member in Washington* (Feb. 15, 2017),
28 <https://www.dhs.gov/news/2017/02/15/dhs-statement-arrest-admitted-alien-gang-member-washington>.

⁶³ *E.g.*, Dkt. #52, at 7 (Respondents’ Motion to Dismiss).

1 **Mr. Ramirez Is Released from Custody After 47 Days in Detention**

2 69. Pursuant to an order of this Court, Mr. Ramirez received a bond hearing in
3 Immigration Court on March 28, 2017.⁶⁴ At the bond hearing, Mr. Ramirez testified about his arrest,
4 interrogation, and detention. Mr. Ramirez was released on bond on March 29, 2017.⁶⁵

5 70. In a startling admission, counsel for the government conceded at the conclusion of
6 the bond hearing that Mr. Ramirez is not a danger to the community. The government’s statements
7 (and lack of evidence) at the bond hearing affirm that the government has never had any justification
8 for revoking Mr. Ramirez’s DACA status or for detaining him for more than six weeks.

9 71. After considering the evidence, the Immigration Judge concluded that Mr. Ramirez
10 is neither a flight risk nor a danger to the community and should be released on bond.⁶⁶ The
11 Immigration Judge’s decision to release Mr. Ramirez underscored Defendants’ inability to support
12 their allegations of gang affiliation.

13 **The Government Fails to Provide Any Credible Evidence to Support Its Gang Allegations**

14 72. Both before and after that bond hearing, Defendants have failed to produce any
15 credible evidence to support their false allegations that Mr. Ramirez is gang affiliated. In sharp
16 contrast, Mr. Ramirez submitted extensive evidence demonstrating that he is not, and never has
17 been, a gang member. In addition to evidence demonstrating that he successfully passed three
18 separate DHS background checks, Mr. Ramirez submitted numerous sworn declarations attesting to
19 the fact that he has never had any gang affiliation.⁶⁷

20 73. Additionally, three independent experts have rebutted Defendants’ allegations that
21 Mr. Ramirez is gang affiliated. Martin Flores, who has served as a gang expert in more than 700
22 cases, stated that he has “never seen a gang member with a similar tattoo nor would [he] attribute
23

24 _____
25 ⁶⁴ See Dkt. #69, at 3.

26 ⁶⁵ Ex. J, at 1 (Notice to EOIR).

27 ⁶⁶ Ex. K, at 1 (Custody Order); see also 8 C.F.R. § 236.1(c)(8) (2017).

28 ⁶⁷ E.g., Dkt. #35-1, ¶¶ 19–20 (Declaration of Daniel Ramirez Medina); Dkt. #35-2, ¶ 4 (Declaration of Josue L.); Dkt. # 35-3, ¶¶ 8–9 (Declaration of Luz L.); Dkt. #35-5, ¶ 8 (Declaration of Nancy L.).

1 this tattoo to have any gang-related meaning.”⁶⁸ Another gang expert, Dr. Edwina Barvosa,
2 similarly stated that there is “no apparent evidence that Mr. Ramirez Medina has ever been a gang
3 member himself.”⁶⁹ And Carlos García, a Mexican researcher who has written extensively on gangs
4 in California and Central America, noted that “[a]ny argument about gang ties based on
5 [Mr. Ramirez’s] tattoo is weak at best; this tattoo does not show any gang affiliation.”⁷⁰

6 74. Despite the means and ample opportunity to collect evidence to support their claims,
7 Defendants have failed to produce *any* credible evidence to support any of their allegations against
8 Mr. Ramirez. Unlike Mr. Ramirez, Defendants have access to numerous (and perhaps all) law
9 enforcement and public safety databases. Yet, Defendants have never suggested that they have
10 located Mr. Ramirez’s name or supposed gang affiliation in any of those databases or records. To
11 the contrary, the government has admitted numerous times that Mr. Ramirez is not a public safety
12 threat, including at his March 28, 2017 bond hearing and in USCIS’s March 20, 2018 internal email
13 confirming that there is not sufficient evidence to conclude he is a gang member or safety threat.

14 75. Likewise, Defendants placed great weight on Mr. Ramirez’s alleged “gang tattoo,”
15 yet have never provided *any* evidence (from an expert or otherwise) that this tattoo is associated
16 with gang membership. Defendants have been unable to do so because it is not a gang tattoo.
17 Instead, Defendants shifted tacks, when, in Immigration Court they submitted “evidence” in the
18 form of articles located on the internet that discuss how some gangs discourage their members from
19 getting tattoos so they are not identified as gang members. In other words, Defendants first argued
20 Mr. Ramirez’s tattoo was a gang tattoo, and when that argument collapsed, argued that a lack of
21 gang tattoos actually supports their contention that Mr. Ramirez was gang affiliated. That
22 contention collapsed, too, when the Immigration Judge found, in January 2018 that “[Mr. Ramirez]
23 was not in a gang, nor associated with one.”

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26 ⁶⁸ Dkt. #35-7, ¶ 11 (Declaration of Martin M. Flores).

27 ⁶⁹ Dkt. #35-8, ¶ 10 (Declaration of Edwina Barvosa, PhD).

28 ⁷⁰ Jonathan Blitzer, *A case that could determine the future for Dreamers*, The New Yorker (Mar. 15, 2017), <http://www.newyorker.com/news/news-desk/a-case-that-could-determine-the-future-for-dreamers>.

1 76. At the May 1, 2018 hearing on Mr. Ramirez’s Motion for Preliminary Injunction,
 2 the government stated that there is no “record that establishes, one way or the other, with absolute
 3 conclusiveness, about Mr. Ramirez’s gang affiliations or lack thereof.” Remarkably, that statement
 4 was made to this Court at the time the government’s own record *did* show that Mr. Ramirez lacked
 5 gang affiliation—as confirmed by the government’s own March 20, 2018 internal email, it knew
 6 that “there is not sufficient evidence to conclude [Mr. Ramirez] is currently a known or suspected
 7 gang member.”⁷¹

8 **Defendants’ Motion to Dismiss Is Denied in Its Entirety**

9 77. On June 26, 2017, Defendants filed a motion to dismiss the Second Amended
 10 Complaint for lack of subject-matter jurisdiction and for failure to state a claim.⁷² On November 8,
 11 2017, this Court denied that motion in its entirety.⁷³ This Court determined that the issues presented
 12 in this action—whether Defendants complied with their own non-discretionary procedures when
 13 taking Mr. Ramirez into custody, questioning him at the Tukwila facility and ultimately terminating
 14 his DACA status—do not trigger the jurisdiction-stripping provisions of the INA. This Court also
 15 determined that all claims advanced in the Second Amended Complaint were plausibly pleaded.

16 **The Government Is Twice Enjoined from Revoking Mr. Ramirez’s DACA Status and Work** 17 **Authorization**

18 78. On January 17, 2018, an Immigration Judge issued an order of removal directing
 19 Mr. Ramirez’s return to Mexico, while also finding that “[Mr. Ramirez] was not in a gang, nor
 20 associated with one.”⁷⁴ On February 6, 2018, Mr. Ramirez filed a motion for a preliminary
 21 injunction to restore his DACA and work authorization (the “Preliminary Injunction Motion”).⁷⁵
 22 While that motion was pending, in a separate action a preliminary injunction order was issued on
 23 February 26, 2018 by the United States District Court for the Central District of California in *Inland*

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 25 ⁷¹ Ex. A (Mar. 20, 2018 USCIS Email).

26 ⁷² See Dkt. #90 (Defendants’ Mot. to Dismiss the Second Amended Complaint).

27 ⁷³ See Dkt. #116 (Court’s Nov. 8, 2017 Order).

28 ⁷⁴ See Dkt. #122-1, at 35 (Third Supplemental Declaration of Daniel Ramirez Medina); Dkt. #124-1, p. 14 (Excerpt of Trans. of Oral Decision of Immigration Judge).

⁷⁵ See Dkt. #122 (Plaintiff’s Motion for Preliminary Injunction).

1 *Empire-Immigrant Youth Collective v. Nielsen* (“*Inland Empire Order*”), No. 17-cv-2048. That
 2 order required the government to restore to a certified class of former DACA recipients their DACA
 3 status and work authorization. As a member of the *Inland Empire* class, Mr. Ramirez was to have
 4 his DACA restored.

5 79. On or about April 3, 2018, the government delivered two notices to Mr. Ramirez.
 6 One notice informed Mr. Ramirez that his DACA status and work authorization had been reinstated
 7 and extended to May 5, 2018, pursuant to the *Inland Empire Order*.⁷⁶ The government
 8 simultaneously issued Mr. Ramirez a NOIT to terminate his just-restored DACA status.⁷⁷ In other
 9 words, faced with the *Inland Empire Order*, the government restored Mr. Ramirez’s status only to
 10 immediately begin new proceedings to wrongfully strip him of that status.

11 80. The government’s stated basis for the issuance of the NOIT was its continued
 12 wrongful insistence that Mr. Ramirez posed a risk to public safety because he allegedly was gang
 13 affiliated. This theory was inconsistent with multiple background checks the government had
 14 previously run in connection with Mr. Ramirez’s DACA application and renewals, the government’s
 15 concession at his March 28, 2017 bond hearing that it had no evidence to support a finding that Mr.
 16 Ramirez was a risk to public safety,⁷⁸ and the Immigration Judge’s January 2018 finding that he does
 17 not present a risk to public safety because the evidence submitted showed he was “not in a gang, nor
 18 associated with one.”⁷⁹ And the government’s stated basis for the NOIT flatly contradicted its own
 19 internal March 20, 2018 email assessment conceding Mr. Ramirez lacks any gang affiliation or
 20 criminal history.⁸⁰ The NOIT also stated that termination of Mr. Ramirez’s DACA status was
 21 warranted because ICE was “actively pursuing” his removal, even though a removal order in and of
 22 itself is not a sufficient basis for termination of DACA status.

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 25 ⁷⁶ See Ex. L, at 1 (Reinstatement Notice).

26 ⁷⁷ See Ex. M, at 1 (Notice of Intent to Terminate).

27 ⁷⁸ See Dkt. #122-1, at 31 (Mar. 28, 2017 Tr. of Oral Decision of I.J.).

28 ⁷⁹ See Dkt. #124-1, at 14 (Jan. 17, 2018 Tr. of Oral Decision of I.J.).

⁸⁰ Ex. A (March 20, 2018 USCIS Email).

1 81. On May 15, 2018, this Court granted Mr. Ramirez’s Preliminary Injunction Motion,
 2 concluding that Mr. Ramirez is likely to succeed on the merits of his claims because the
 3 government’s continued reliance on “unfounded allegations” of gang affiliation was arbitrary,
 4 capricious, and an abuse of discretion and also implicated Mr. Ramirez’s constitutional “right to an
 5 opportunity to be heard in a meaningful matter.”⁸¹ The remaining elements—irreparable harm,
 6 balance of hardships and the public interest—also favored preliminary injunctive relief.

7 82. Consistent with these rulings, this Court entered its Preliminary Injunction Order, in
 8 which it ordered that (1) “Defendants shall not terminate Plaintiff’s DACA status and work
 9 authorization pending a final decision by this Court on the merits of his claims” and (2) “Defendant
 10 USCIS is ENJOINED from asserting, adopting, or relying in any proceedings on any statement or
 11 record made as of this date purporting to allege or establish that Mr. Ramirez is a gang member,
 12 gang affiliated, or a threat to public safety.”⁸²

13 **The Government Denies Mr. Ramirez’s DACA Renewal Application**

14 83. On May 21, 2018, in an abundance of caution given that this Court had already
 15 enjoined Defendants from terminating his benefits, Mr. Ramirez submitted a request to the
 16 government to renew his DACA status and work authorization. Notwithstanding the Preliminary
 17 Injunction Order, on September 26, 2018, the government issued a Notice of Intent to Deny
 18 (“NOID”) that request. The NOID stated that the government intended to deny Mr. Ramirez’s
 19 renewal request for four reasons. The first—that ICE is actively pursuing Mr. Ramirez’s removal—
 20 simply repeated one of the bases for the prior NOIT that this Court enjoined and is deficient for the
 21 reasons described above. Each of the other three attempted to portray Mr. Ramirez as a threat to
 22 public safety: (1) that he was reported for having sexual intercourse with his son’s mother in 2013
 23 (resulting in the conception of his son), when he was 20 years old and his son’s mother was 17 years
 24 old, even though no charges were filed, the relationship was consensual, and both sets of parents
 25 approved of the relationship and the pregnancy that resulted therefrom; (2) Mr. Ramirez’s own

27 ⁸¹ *Medina v. Dep’t of Homeland Sec.*, 313 F. Supp. 3d 1237, 1251 (W.D. Wash. 2018) (internal
 28 quotations omitted); *see also* Dkt. #133, at 22–23 (Preliminary Injunction Order).

⁸² *Id.* at 23.

1 admission that he was cited for possession of a small quantity of marijuana in Oregon in 2014; and
2 (3) that he has not fully paid off certain fines he incurred for traffic violations. None of these other
3 three grounds was previously cited by the government as a basis for terminating Mr. Ramirez’s
4 DACA status and work authorization, although *each was previously known* to the government at the
5 time it renewed Mr. Ramirez’s DACA in 2016—at which time it did not determine any to be a basis
6 for denial of renewal—and certainly at the time it issued the April 3, 2018 NOIT. None of these
7 bases suggests that Mr. Ramirez poses a public safety concern, and none establishes an adequate
8 basis for termination of his DACA status. Indeed, USCIS conceded in its internal March 20, 2018
9 email describing his “current criminal history”—sent two months *after* it claimed it learned for the
10 first time of the “offense history” that it now cites for denial—that Mr. Ramirez’s file shows “no
11 criminality” and that “[t]here is NOT sufficient evidence to conclude [he] is an [egregious public
12 safety] concern.”⁸³ Instead, these bases for denial of renewal—particularly when set in the context
13 of the government’s continuing campaign against Mr. Ramirez—are yet another unlawful attempt to
14 terminate his DACA.

15 84. On October 24, 2018, Mr. Ramirez submitted his lengthy response to the NOID,
16 objecting to the stated bases for denial of DACA renewal, providing evidence of the harm such
17 denial would cause him, and confirming that doing so would be a violation of this Court’s
18 Preliminary Injunction Order.

19 85. On December 19, 2018, USCIS issued its final “Decision,” denying Mr. Ramirez’s
20 DACA renewal application for the reasons contained in the NOID.⁸⁴ In doing so, Defendants
21 violated the Preliminary Injunction Order which enjoins USCIS “from asserting, adopting, or
22 relying in any proceedings on any statement or record made as of this date purporting to allege that
23 Mr. Ramirez is a gang member, gang affiliated, *or a threat to public safety*.”⁸⁵ Contrary to USCIS’s
24 perfunctory statement in the Decision that it was not relying on such information, the agency clearly
25 was relying on statements and records dated prior to May 15, 2018 that it views as relevant to

26 ⁸³ Ex. A (Mar. 20, 2018 USCIS Email).

27 ⁸⁴ Ex. N (Dec. 19, 2018 Decision Denying DACA Renewal).

28 ⁸⁵ Dkt. #133, at 23 (emphasis added).

1 whether Mr. Ramirez is a threat to public safety—the NOID cites the California Penal Code, the
2 criminal U.S. Code, and references five traffic safety-related violations—in support of its stated
3 conclusion that he “do[es] not warrant a favorable exercise of prosecutorial discretion.”⁸⁶ USCIS’s
4 avoidance of the phrase “public safety” in issuing this NOID does not bring it beyond the scope of
5 the Preliminary Injunction Order, as the substantive bases for the NOID are manifestly public
6 safety-related. Moreover, the government’s claim that it was unaware of or could not have known
7 of these offenses at the time it renewed Mr. Ramirez’s DACA in 2016 is incorrect, and irrelevant in
8 any event given the mandates of the Preliminary Injunction Order. Therefore, not only is the
9 government’s latest action to deny renewal a violation of the APA and Mr. Ramirez’s due process
10 rights, but it violates this Court’s Preliminary Injunction Order.

11 86. Moreover, the Preliminary Injunction Order requires that the government not
12 “terminate [Mr. Ramirez’s] DACA status and work authorization pending a final decision by [the]
13 Court on the merits of his claims.” However, USCIS did just that, denying renewal of Mr.
14 Ramirez’s DACA, even though such processed renewals are routinely approved 99% of the time. In
15 so doing, Defendants have affirmatively terminated Mr. Ramirez’s DACA and work authorization
16 benefits, thereby violating the Preliminary Injunction Order for this additional reason.

17 **Mr. Ramirez Continues to Suffer Harm as a Result of Defendants’ Unlawful Conduct**

18 87. Mr. Ramirez was detained from February 10, 2017 to March 29, 2017. He will
19 never get back the six weeks that he spent in the Northwest Detention Center. Since his release,
20 Mr. Ramirez has reunited with his family, but has been unable to fully piece his life back together.
21 Mr. Ramirez must work to provide for himself and his family, but Defendants’ actions have
22 impaired his ability to find gainful employment.

23 88. Mr. Ramirez also continues to experience the profound emotional and psychological
24 consequences of his detention. For more than six weeks, he was confined under conditions that
25 caused him to experience significant distress, humiliation, embarrassment, discomfort, fear, and
26 anxiety. He constantly feared that he would be attacked based on Defendant’s false claims about his
27 supposed gang affiliation.

28 ⁸⁶ Ex. N, at 4 (Dec. 19, 2018 Decision Denying DACA Renewal).

1 89. Mr. Ramirez also continues to suffer the stigma of being associated with a gang.
2 Not only has Mr. Ramirez's reputation been damaged as a result of Defendants' conduct, but the
3 reputation of his family has suffered as well. Mr. Ramirez cares deeply about his family, and it has
4 been very difficult for him to see how Defendants' actions have caused his family harm.

5 90. Further, Mr. Ramirez has suffered harm and significant distress arising out of both
6 the unlawful issuance of the NOID and subsequent final Decision to deny his DACA renewal
7 request. After this Court issued the Preliminary Injunction Order, Mr. Ramirez believed he would
8 finally be treated fairly and justly by the government so that he could get back to living his life and
9 providing for his family. That Preliminary Injunction Order provided Mr. Ramirez peace of mind
10 that the government's campaign against him might finally cease. But Defendants were undaunted
11 by this Court's order, and their continued pursuit of Mr. Ramirez and denial of his DACA renewal
12 have caused him great additional emotional harm, have interfered with his ability to earn a living
13 wage, to enjoy the other benefits of DACA status, to raise his son (who is a U.S. citizen), and to
14 peacefully carry on living his life in the United States.

15
16 **CAUSES OF ACTION**

17 **COUNT ONE**

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

19 91. Mr. Ramirez repeats and incorporates by reference each and every allegation
20 contained in the preceding paragraphs as if fully set forth herein.

21 92. This Count is brought against all Defendants and seeks declaratory and injunctive
22 relief under the APA.

23 93. The APA provides that courts "shall . . . hold unlawful and set aside agency action"
24 that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."
25 5 U.S.C. § 706(2)(A) (2017). Here, Defendants have acted arbitrarily and capriciously in taking
26 actions to terminate Mr. Ramirez's DACA status on multiple occasions since they unlawfully
27 detained him in February 2017. Three actions in particular embody such arbitrary and capricious
28 treatment: (1) the revocation of Mr. Ramirez's DACA status and work authorization in February

1 2017; (2) the issuance of the NOIT in April 2018 in reliance on unfounded allegations of gang
 2 affiliation; and (3) the issuance of the December 19, 2018 Decision to deny Mr. Ramirez’s DACA
 3 renewal request on the insufficient grounds provided, which also violated the terms of the
 4 Preliminary Injunction Order and contradict Defendants’ own internal records. In each instance, the
 5 government acted in a manner that was arbitrary, capricious, an abuse of discretion, and in violation
 6 of the Defendants’ own established procedures.

7 94. The February 2017 revocation of Mr. Ramirez’s DACA status and work
 8 authorization constitutes final agency action and cannot be appealed.⁸⁷ The denial of Mr. Ramirez’s
 9 renewal request in December 2018 also constitutes final agency action and cannot be appealed.⁸⁸

10 95. Defendants’ decision to revoke Mr. Ramirez’s DACA status and work authorization
 11 in February 2017, despite the fact that multiple prior and more thorough analyses had concluded that
 12 he was eligible for DACA, and despite the government own internal determination that he does not
 13 present a public safety concern even after learning of the facts on which it based denial of renewal, is
 14 the sort of inconsistency that is the hallmark of arbitrary action. *See, e.g., Nat’l Parks Conservation*
 15 *Ass’n v. E.P.A.*, 788 F.3d 1134, 1145 (9th Cir. 2015).⁸⁹ Indeed, as discussed above, Defendants
 16 examined Mr. Ramirez’s background on at least three separate occasions and concluded that he was
 17 eligible for DACA. The decision to summarily reverse that conclusion was arbitrary, capricious, and
 18 an abuse of discretion. That the government again acknowledged that Mr. Ramirez is not a threat to
 19 public safety at his March 2017 bond hearing and in USCIS’s March 20, 2018 internal email further
 20 underscores the arbitrary and capricious nature of his DACA revocation.

21 96. Defendants’ assertions that Mr. Ramirez is gang affiliated were implausible and ran
 22 “counter to the evidence before the agency” (*Ctr. for Biological Diversity v. Bureau of Land Mgmt.*,

23
 24 ⁸⁷ As discussed above, the NOA expressly provides that an “appeal or motion to reopen/reconsider
 this notice of action may not be filed.” Ex. I, at 1.

25 ⁸⁸ Ex. N (Dec. 19, 2018 Decision Denying DACA Renewal) (“You may not file an appeal or motion
 to reopen/reconsider this decision.”)

26 ⁸⁹ *See also F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). While an agency may
 27 change course based upon new “factual findings that contradict those” upon which it based its
 prior determination, it must provide a “detailed justification,” particularly when the “prior policy
 28 has engendered serious reliance interests that must be taken into account.” *Id.* at 515–16 (citing
Smiley v. Citibank (South Dakota), N. A., 517 U.S. 735, 742 (1996)).

1 833 F.3d 1136, 1146 (9th Cir. 2016) (citation omitted)), as was their December 2018 determination
 2 that Mr. Ramirez had an “offense history” that warranted denial of his DACA renewal. Defendants
 3 had before it all relevant information regarding Mr. Ramirez’s history, offense or otherwise, when
 4 improperly determining in April 2018 and December 2018 that he was a public safety concern. But
 5 that determination ran contrary to the evidence before USCIS, as in March 20, 2018 USCIS had
 6 determined and admitted that Mr. Ramirez had “[n]o criminality,” that “there is not sufficient
 7 evidence to conclude he is currently a known or suspected gang member,” and that “[t]here is NOT
 8 sufficient evidence to conclude [he] is an EPS concern.”⁹⁰

9 97. Relatedly, Defendants acted unlawfully and in violation of the *Accardi* doctrine
 10 because they failed to “adhere to [their] own internal operating procedures” when they summarily
 11 revoked Mr. Ramirez’s DACA status and work authorization in February 2017 but failed to provide
 12 him the appropriate notice and opportunity to contest that determination. *Church of Scientology of*
 13 *Cal. v. United States*, 920 F.2d 1481, 1487 (9th Cir. 1990) (citing *United States ex rel. Accardi v.*
 14 *Shaughnessy*, 347 U.S. 260, 268 (1954)).⁹¹

15 98. Defendants then acted arbitrarily and capriciously in issuing Mr. Ramirez the NOIT
 16 the same day they restored his DACA status pursuant to the *Inland Empire* Order. As noted, the
 17 NOIT stated that Mr. Ramirez was a risk to public safety due to his alleged gang affiliation even
 18 though Defendants had twice acknowledged that there was no support for this conclusion—first, at
 19 his bond hearing in March 2017 and again in an internal DHS email dated approximately two weeks
 20 before the NOIT was issued, which stated that there was “[n]o criminality on [his] rap sheet” nor
 21 “sufficient evidence to conclude he is currently a known or suspected gang member.”⁹² Basing the
 22 NOIT on such baseless and discredited allegations was arbitrary and capricious, and this Court found
 23 in its Preliminary Injunction Order that Mr. Ramirez was likely to prevail on this argument.

24
 25 ⁹⁰ Ex. A (Mar. 20, 2018 USCIS Email).

26 ⁹¹ The *Accardi* requirement “extends beyond formal regulations,” including to “policy
 27 statement[s],” “handbook[s],” “operating procedures,” “Order[s],” “Weekly Bulletin[s],”
 unpromulgated rules documenting “usual practice,” “Standards,” and “Directive[s].” *Alcaraz v.*
 28 *I.N.S.*, 384 F.3d 1150, 1162 (9th Cir. 2004) (citing cases).

⁹² Ex. A (March 20, 2018 USCIS Email).

1 99. Defendants’ denial of Mr. Ramirez’s renewal request in December 2018 was also
2 arbitrary and capricious. The government cites as the reason for the denial Mr. Ramirez’s “offense
3 history,” which consists of a 2013 Police Report regarding Mr. Ramirez’s romantic relationship with
4 the mother of his son for which no investigation was ever initiated (and for which no charges were
5 ever pursued given the consent of all parties and their families), a citation for possession of a small
6 quantity of marijuana in 2014, and various tickets for traffic violations. The conclusion reached by
7 Defendants that Mr. Ramirez no longer warrants favorable consideration for DACA due to his
8 “offense history” cannot be lawfully reconciled with DHS’s March 2018 determination that there is
9 “[n]o criminality on [Mr. Ramirez’s] rap sheet.” Even setting aside this inconsistency, the denial of
10 Mr. Ramirez’s renewal request on this basis is arbitrary and capricious, as 99% of processed renewal
11 requests are approved, including for DACA recipients who, like Mr. Ramirez, have committed minor,
12 non-violent infractions in the past. Moreover, all of these facts were available to the government at
13 the time it issued the NOIT, in April 2018, yet the government did not cite these minor, non-violent
14 infractions at that time, doing so only after this Court blocked its efforts to terminate his DACA by
15 falsely accusing him of gang membership. There is good reason why the government did not cite
16 these bases in the April 2018 NOIT—they do not rise to the level of violent offenses warranting
17 denial of DACA, and Defendants’ reliance on them to deny renewal is arbitrary and capricious.

18 100. Defendants’ denial of Mr. Ramirez’s renewal request in December 2018 also
19 violates the *Accardi* doctrine. Under the DACA SOP, a DACA request that presents “issues of
20 criminality” must be reviewed and adjudicated by the USCIS Background Check Unit (“BCU”) *DACA Team*.⁹³ In March 2018, approximately two months before Mr. Ramirez submitted his
21 renewal request, a member of the BCU DACA Team determined that Mr. Ramirez had “[n]o
22 criminality on [his] rap sheet.” Defendants nonetheless denied Mr. Ramirez’s most recent renewal
23 request based on his alleged criminal or “offense” history. This was in violation of the SOP
24 guidelines governing the processing of DACA applications for two reasons. First, it contravened the
25 conclusion reached by the BCU DACA Team in March 2018 regarding Mr. Ramirez’s lack of
26 criminal history. The SOP does not provide for a process by which determinations of the BCU

27
28 ⁹³ Ex. G, at 82, 93–96 (DACA SOP).

1 DACA Team with respect to an applicant’s criminal history may be overridden. Second, there is no
2 evidence whatsoever in administrative record that the BCU DACA Team actually adjudicated Mr.
3 Ramirez’s most recent renewal request and reached a conclusion contrary to the March 2018
4 determination.

5 101. For all of the foregoing reasons, Defendants violated the APA when revoking Mr.
6 Ramirez’s DACA status and work authorization in February 2017, issuing a NOIT based upon false
7 allegations of gang affiliation in April 2018, and denying his renewal request in December 2018.

8 **COUNT TWO**

9 **ADMINISTRATIVE PROCEDURE ACT – UNCONSTITUTIONAL ACTION**

10 102. Mr. Ramirez repeats and incorporates by reference each and every allegation
11 contained in the preceding paragraphs as if fully set forth herein.

12 103. This Count is brought against all Defendants and seeks declaratory and injunctive
13 relief under the APA.

14 104. The APA dictates that courts “shall . . . hold unlawful and set aside agency action”
15 that is “contrary to constitutional right, power, privilege, or immunity.” 5 U.S.C. § 706(2)(B). Here,
16 Defendants violated the APA because their threats, revocations, and failure to renew Mr. Ramirez’s
17 DACA status and work authorization violated his rights under the Due Process Clause. The February
18 2017 revocation of Mr. Ramirez’s DACA status and work authorization constitutes final agency
19 action and cannot be appealed. The denial of Mr. Ramirez’s renewal request in December 2018 also
20 constitutes final agency action.⁹⁴

21 105. Aliens who are physically present in the United States are guaranteed the protections
22 of the Due Process Clause. *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (“[T]he Due Process
23 Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here
24 is lawful, unlawful, temporary, or permanent.”).

25 106. The Constitution “imposes constraints on governmental decisions which deprive
26 individuals of ‘liberty’ or ‘property’ interests within the meaning of the Due Process Clause of the
27 Fifth or Fourteenth Amendment.” *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). A threshold

28 ⁹⁴ *See supra* note 88.

1 inquiry in any case involving a violation of procedural due process “is whether the plaintiffs have a
2 protected property or liberty interest and, if so, the extent or scope of that interest.” *Nozzi v. Hous.*
3 *Auth. of L.A.*, 806 F.3d 1178, 1190–91 (9th Cir. 2015) (citing *Bd. of Regents of State Colls. v. Roth*,
4 408 U.S. 564, 569–70 (1972)).

5 107. Here, Defendants deprived Mr. Ramirez of liberty interests protected by the Due
6 Process Clause. As previously discussed, DACA grants beneficiaries the right not to be arrested or
7 detained based solely on their immigration status during the time period that their deferred action is
8 in effect. Such “[f]reedom from imprisonment—from government custody, detention, or other forms
9 of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.”
10 *Zadvydas*, 533 U.S. at 690. The term “liberty” also encompasses the ability to work, raise a family,
11 and “form the other enduring attachments of normal life.” *Morrissey v. Brewer*, 408 U.S. 471, 482
12 (1972); *Roth*, 408 U.S. at 572. Where, as here, an individual reasonably relies on a conferred status
13 to pursue these activities, the government cannot revoke that status without adequate procedural due
14 process. See *Bell v. Burson*, 402 U.S. 535, 539 (1971) (holding that once a benefit is granted
15 “continued possession may become essential in the pursuit of a livelihood”).

16 108. The fact that Defendants previously revoked Mr. Ramirez’s DACA status and work
17 authorization based on false allegations of gang affiliation also deprived him of protected liberty
18 interests in his reputation. See *Paul v. Davis*, 424 U.S. 693, 709 (1976) (explaining that while
19 reputation alone may not be a protected liberty interest, “the invocation of procedural safeguards” is
20 justified when defamatory allegations accompany an altered legal status); *Goss v. Lopez*, 419 U.S.
21 565, 574 (1975); *Wisconsin v. Constantineau*, 400 U.S. 433, 437 (1971) (“Where a person’s good
22 name, reputation, honor, or integrity is at stake because of what the government is doing to him,
23 notice and an opportunity to be heard are essential.”). Defendants’ denial of Mr. Ramirez’s renewal
24 application was similarly made on the erroneous grounds that he is a public safety threat, thereby
25 furthering harm to his reputation.

26 109. Defendants also deprived Mr. Ramirez of property interests protected by the Due
27 Process Clause. The property interests protected by the Due Process Clause “extend beyond tangible
28 property and include anything to which a plaintiff has a ‘legitimate claim of entitlement.’” *Nozzi*,

1 806 F.3d at 1191 (citing *Roth*, 408 U.S. at 576–77). “A legitimate claim of entitlement is created [by]
 2 . . . ‘rules or understandings that secure certain benefits and that support claims of entitlement to
 3 those benefits.’” *Id.* Therefore, an individual has a protected property interest where they have a
 4 reasonable expectation of entitlement to that interest.

5 110. Here, Mr. Ramirez possessed a protected property interest in his DACA status and
 6 the numerous benefits provided to him under the DACA program. As discussed above, these benefits
 7 include, among other things, the ability to legally work in the United States,⁹⁵ eligibility for important
 8 state and federal benefits,⁹⁶ and the ability to travel internationally under certain circumstances. *See*
 9 *Texas*, 809 F.3d at 166 (“Deferred action . . . is much more than nonenforcement: It would
 10 affirmatively confer ‘lawful presence’ and associated benefits on a class of unlawfully present aliens.
 11 Though revocable, that change in designation would trigger . . . eligibility for federal benefits—for
 12 example, under title II and XVIII of the Social Security Act—and state benefits—for example,
 13 driver’s licenses and unemployment insurance—that would not otherwise be available to illegal
 14 aliens.”); *Ariz. Dream Act Coal.*, 757 F.3d at 1059 (“DHS considers DACA recipients not to be
 15 unlawfully present in the United States because their deferred action is a period of stay authorized by
 16 the Attorney General.”).

17 111. These protected property interests exist because of the government’s decision to
 18 grant Mr. Ramirez these benefits, and by virtue of its promise to Mr. Ramirez (and hundreds of
 19 thousands of similarly situated young people) to adhere to the strict framework of the DACA
 20 program, including the ability to renew one’s status. *See Goldberg v. Kelly*, 397 U.S. 254, 262
 21 (1970); *Perry v. Sindermann*, 408 U.S. 593, 601 (1972) (“A person’s interest in a benefit is a
 22 ‘property’ interest for due process purposes if there are such rules or mutually explicit understandings
 23 that support his claim of entitlement to the benefit and that he may invoke at a hearing.”). In
 24 establishing and operating DACA under a well-defined framework and highly specific criteria, the

25 _____
 26 ⁹⁵ Revocation of (or denial of renewal regarding) DACA is therefore the sort of “complete
 27 prohibition of the right to engage in a calling” that directly implicates the Due Process Clause.
 28 *Conn v. Gabbert*, 526 U.S. 286, 292 (1999).

⁹⁶ Courts routinely find that revocation of public benefits triggers the Due Process Clause. *See, e.g.*,
Mathews, 424 U.S. at 332.

1 government created a reasonable expectation among DACA recipients—including Mr. Ramirez—
2 that they are entitled to the benefits provided under the program.⁹⁷

3 112. While DACA is premised on the exercise of prosecutorial discretion, that discretion
4 is limited and constrained by the rules and criteria on which DACA is based and operated, and by the
5 government’s decision to twice grant Mr. Ramirez deferred action and work authorization. These
6 constraints on discretion further support Mr. Ramirez’s claim of a protected property interest. *See*
7 *Nozzi*, 806 F.3d at 1191 (finding a protected property right in government benefits where government
8 regulations “greatly restrict the discretion” of those who administer the benefits) (citation omitted).

9 113. Defendants’ conduct in depriving Mr. Ramirez of his protected liberty and property
10 interests is evaluated under the three-part *Eldridge* test. “[I]n *Mathews v. Eldridge*, the Supreme
11 Court set forth a three-part inquiry to determine whether the procedures provided to protect a liberty
12 or property interest are constitutionally sufficient. First, courts must look at the nature of the interest
13 that will be affected by the official action, and in particular, to the degree of potential deprivation that
14 may be created. Second, courts must consider the fairness and reliability of the existing procedures
15 and the probable value, if any, of additional procedural safeguards. Finally, courts must assess the
16 public interest, which includes the administrative burden and other societal costs that would be
17 associated with additional or substitute procedures.” *Nozzi*, 806 F.3d at 1192–93 (internal quotations
18 and citations omitted). This test requires courts to balance the affected interests to see whether the
19 procedures provided are constitutionally sufficient.

20 114. Here, both the revocation of and then the denial of renewal of Mr. Ramirez’s DACA
21 status and work authorization without adequate procedural protections fail the *Eldridge* test. First,
22 Mr. Ramirez’s protected interests are extremely significant—they include, among other things, his
23 physical liberty, his right to be free from arrest or detention based solely on his immigration status,
24 and his ability to earn a living to help support himself and his family. Second, the procedures
25 provided were wholly inadequate. “The essence of due process is the requirement . . . [of] notice . . .

26
27 ⁹⁷ “[T]he identification of property interests under constitutional law turns on the substance of the
28 interest recognized, not the name given that interest by the state.” *Newman v. Sathyavaglswaran*,
287 F.3d 786, 797 (9th Cir. 2002) (citations omitted).

1 [and] a meaningful opportunity to present [one’s] case.” *Mathews*, 424 U.S. at 348–49. Here,
 2 Defendants initially revoked Mr. Ramirez’s DACA status without any advance notice.⁹⁸ Defendants
 3 then continued to rely on unsubstantiated allegations of gang affiliation in threatening to terminate
 4 Mr. Ramirez’s DACA status, and subsequently failed to give fair and impartial consideration to his
 5 DACA renewal application after deciding that they would take whatever steps necessary to terminate
 6 Mr. Ramirez’s DACA, including attempting to skirt this Court’s Preliminary Injunction Order to
 7 deny a routine renewal. This Court has already held that such conduct “implicates [Mr. Ramirez’s]
 8 right to an opportunity to be heard in a meaningful manner.”⁹⁹ And third, there is no credible burden
 9 “associated with additional or substitute procedures,” or public benefit from their absence. *Nozzi*,
 10 806 F.3d at 1193 (internal quotations and citations omitted).¹⁰⁰

11 115. Separate from the inadequate procedural protections it has provided Mr. Ramirez
 12 throughout this process, the government’s treatment of Mr. Ramirez also violates his substantive
 13 rights under the Due Process Clause. The government’s actions demonstrate that it has not been
 14 motivated by a legitimate purpose; rather, the government has been motivated by animus and spite
 15 toward an individual who challenged the government’s false allegations and stood up for his
 16 individual rights. Such illegitimate and retaliatory rationales cannot support the government’s
 17 deprivation of Mr. Ramirez’s protected liberty and property interests. *Cty. of Sacramento v. Lewis*,
 18 523 U.S. 833, 845 (1998) (“The touchstone of due process is protection of the individual against
 19 arbitrary action of the government.” (quoting *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974))); *Ms. L.*
 20 *v. ICE*, 302 F. Supp. 3d 1149, 1166 (S.D. Cal. 2018) (“[S]ubstantive due process protects against
 21 government power arbitrarily and oppressively exercised.”).

22 116. For similar reasons, Defendants’ retaliatory actions have violated Mr. Ramirez’s
 23 rights under the First Amendment. Even if the government’s actions were lawful, which they were

24 ⁹⁸ The risk of “erroneous deprivation” is particularly high where, as here, an agency disregards its
 25 own extensive prior due diligence in favor of a spur-of-the-moment judgment by a few
 26 individuals based on extremely limited evidence. Under these circumstances, *any* “additional
 procedural safeguards” would have had obvious “probable value.” *Nozzi*, 806 F.3d at 1193.

27 ⁹⁹ *Medina*, 313 F. Supp. 3d at 1251 (internal quotations omitted).

28 ¹⁰⁰ As previously noted, Defendants also violated the government’s policy of providing notice and 33
 days to respond before terminating DACA status. *See* Dkt. #78-6, Ex. F, at 132, Appendix I
 (DACA SOP).

1 not, such “[o]therwise lawful government action may nonetheless be unlawful if motivated by
2 retaliation for having engaged in activity protected under the First Amendment.” *O’Brien v. Welty*,
3 818 F.3d 920, 932 (9th Cir. 2016); *see also Wilkie v. Robbins*, 551 U.S. 537, 555 (2007) (“[T]he
4 government may not retaliate for exercising First Amendment speech rights.”). To succeed on a
5 First Amendment retaliation claim, a plaintiff must demonstrate that “(1) he was engaged in a
6 constitutionally protected activity, (2) the defendant’s actions would chill a person of ordinary
7 firmness from continuing to engage in the protected activity[,] and (3) the protected activity was a
8 substantial or motivating factor in the defendant’s conduct.” *O’Brien*, 818 F.3d at 932 (quoting
9 *Pinard v. Clatskanie Sch. Dist. 6J*, 467 F.3d 755, 770 (9th Cir. 2006) and holding that complaint
10 stated a plausible First Amendment retaliation claim).

11 117. Defendants’ decision to deny renewal of Mr. Ramirez’s DACA status and work
12 authorization in December 2018 violated the First Amendment’s prohibition against retaliation for
13 protected speech. Mr. Ramirez first filed suit to challenge the government’s unconstitutional
14 conduct on February 13, 2017, and Defendants have consistently taken punitive and retaliatory
15 action against him ever since. “Litigation seeking to expose . . . wrongful governmental activity is,
16 by its very nature, a matter of public concern” that is protected by the First Amendment. *Alpha*
17 *Energy Savers, Inc. v. Hansen*, 381 F.3d 917, 927 (9th Cir. 2004); *see also id.* at 925
18 (“[P]roceedings before a judicial or administrative body constitute a matter of public concern if they
19 bring to light potential or actual discrimination, corruption, or other wrongful conduct by
20 government agencies or officials.”). In an abundance of caution, Mr. Ramirez submitted a request to
21 renew his DACA less than one week after the Preliminary Injunction Order, which enjoined
22 Defendants from terminating his DACA. Four months later, in the next action Defendants took with
23 respect to Mr. Ramirez’s renewal application, Defendants informed Mr. Ramirez of their intent to
24 deny his request. In light of the history of Defendants’ treatment of Mr. Ramirez—and considering
25 the fact that virtually all DACA renewal requests are granted—the motivation behind Defendants’
26 denial of Mr. Ramirez’s request is clear: to silence Mr. Ramirez and to retaliate against him for his
27 efforts to pursue relief for Defendants’ past unlawful conduct.

28

1 118. For all of the foregoing reasons, the threatened and actual revocation of Mr.
2 Ramirez's DACA status and work authorization, and the denial of his DACA renewal application,
3 violated his rights under the Due Process Clause and the First Amendment, and was therefore in
4 violation of the APA.

5 **COUNT THREE**

6 **EQUITABLE ESTOPPEL**

7 119. Mr. Ramirez repeats and incorporates by reference each and every allegation
8 contained in the preceding paragraphs as if fully set forth herein.

9 120. This Count is brought against all Defendants and seeks a declaration that Defendants
10 are equitably estopped from terminating Mr. Ramirez's DACA status and work authorization.

11 121. The government may be subject to equitable estoppel in an immigration case if it
12 has engaged in "affirmative misconduct." *Salgado-Diaz v. Gonzales*, 395 F.3d 1158, 1165 (9th Cir.
13 2005). Equitable estoppel against the government also requires a showing that the government has
14 "made a knowing false representation or concealment of material facts to a party ignorant of the facts,
15 with the intention that the other party rely on it, where the other party actually and detrimentally
16 relies on it" and that its "wrongful act will cause a serious injustice, and the public's interest will not
17 suffer undue damage by imposition of the liability." *Mukherjee v. I.N.S.*, 793 F.2d 1006, 1008-09
18 (9th Cir. 1986) (quoting *Morgan v. Heckler*, 779 F.2d 544, 545 (9th Cir. 1985)).

19 122. Here, Defendants should be estopped from terminating or declining to renew Mr.
20 Ramirez's DACA status and work authorization. Defendants repeatedly, intentionally, and falsely
21 asserted that Mr. Ramirez is gang affiliated or otherwise presents a risk to public safety. Mr. Ramirez
22 is, to this day, ignorant of Defendants' motivation in instituting and pursuing an unlawful course of
23 harassing conduct to deny him of the benefits to which he is entitled under DACA—except as
24 retaliation against Mr. Ramirez for exercising his rights. Defendants have now however, improperly
25 and wrongfully adopted a new gambit to attempt to deprive Mr. Ramirez of his DACA, using
26 information that the government had available to it all along, but that it never previously raised in
27 connection with his prior approved DACA renewal nor in the April 2018 NOIT, which was
28 principally based on the false accusation of gang affiliation.

1 123. Believing he was protected against further government abuse by the Preliminary
2 Injunction Order (which he expected the government would not violate), Mr. Ramirez reasonably
3 relied on the government's prior false statements of alleged gang affiliation as the principal basis for
4 attempting to terminate his DACA (which it reiterated at the May 1, 2018 hearing on the Preliminary
5 Injunction Motion):

6 THE COURT: Let me ask you this: Is the plaintiff correct that by filing the notice to
7 terminate, that you intend to once again rely on the allegations that Mr. Ramirez is a
8 gang member, has associated with gang members, and therefore needs to have that
9 DACA status terminated?

10 MR. ROBINS: Essentially, yes, Your Honor.¹⁰¹

11 124. Mr. Ramirez understandably believed that this allegation—false as it was—was the
12 government's principal basis on which it would attempt to terminate his DACA, and that if it was
13 aware of existing legitimate bases on which to terminate (or refuse to renew) his benefits, it would
14 have at the very least included them in the April 2018 NOIT. But based on the government's
15 representations in the NOIT and at the May 1, 2018 hearing, he did not and could not have expected
16 the government to dredge up past minor violations—of which the government was aware at the time
17 it issued the April 2018 NOIT—as a pretext to deny his DACA renewal and attempt to skirt
18 requirements of the Preliminary Injunction Order, particularly where other DACA recipients'
19 renewals are routinely granted in the face of such minor violations.

20 125. Mr. Ramirez planned his future based on the government's representations in this
21 regard, including planning to work using his employment authorization to provide for his son. In that
22 belief, he reasonably relied on the government's prior representations in connection with the NOIT
23 and its statements to this Court in submitting his DACA renewal application in good faith and paying
24 the renewal fee; therefore, he expected that his renewal application would be fairly processed and
25 approved as it had been before (as processed renewals are routinely approved, 99% of the time).

26 126. The injustice to Mr. Ramirez arising out of Defendants' misconduct outweighs any
27 possible harm to the public interest by the restoration of his benefits. Mr. Ramirez has lived in the

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¹⁰¹ Dkt. # 130-1, p. 25 (Trans. of May 1, 2018 Hrg., p. 20).

1 United States since he was ten years old, has gone to school and worked here, and is the father of a
2 United States citizen for whom he wishes to provide, but the government's retaliatory campaign and
3 false representations have severely impaired his ability to do so.

4 **COUNT FOUR**

5 **DECLARATORY RELIEF**

6 127. Mr. Ramirez repeats and incorporates by reference each and every allegation
7 contained in the preceding paragraphs as if fully set forth herein.

8 128. As explained above, Defendants' revocation of Mr. Ramirez's DACA status and
9 work authorization in February 2017, and their decision to deny renewal of his DACA in December
10 2018, violated his rights under the First and Fifth Amendments. Mr. Ramirez therefore seeks a
11 declaration that: (i) he has constitutionally protected interests in his DACA status and the benefits
12 conferred thereunder; and (ii) Defendants' revocation of these interests was unlawful and invalid.
13 *See Akhtar v. Burzynski*, 384 F.3d 1193, 1202 (9th Cir. 2004); *Walters v. Reno*, 145 F.3d 1032,
14 1036, 1042-44 (9th Cir. 1998).

15 129. For the same reasons, Mr. Ramirez is entitled to an order directing Defendants to
16 reinstate his DACA status. 5 U.S.C. § 706.

17 **DEMAND FOR JURY TRIAL**

18 130. Mr. Ramirez demands a jury trial on his claims.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Mr. Ramirez prays that this Court grant the following relief:

- 21 (1) Award damages according to proof;
- 22 (2) Find the agency actions to deny Mr. Ramirez's DACA to be arbitrary and capricious and
23 unlawful;
- 24 (3) Issue a declaratory judgment pursuant to 28 U.S.C. § 2201(a) that: (i) Mr. Ramirez has
25 constitutionally protected interests in his DACA status and the benefits conferred thereunder;
26 and (ii) Defendants' revocation of and failure to renew Mr. Ramirez's DACA status and benefits
27 was unlawful and in violation of his constitutional rights;
- 28 (4) Order Defendants to reinstate Mr. Ramirez's DACA status and work authorization;

- 1 (5) Enjoin Defendants from terminating or declining to renew Mr. Ramirez’s DACA status and
2 work authorization;
- 3 (6) Award Mr. Ramirez reasonable costs and attorneys’ fees; and
- 4 (7) Grant any other and further relief that this Court may deem fit and proper.

5 DATED: May 29, 2019

6 Seattle, Washington

7
8 Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 29, 2019, 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.

/s/ Theodore J. Boutrous, Jr.