No. 18-1469

In The
Supreme Court of the United States

U.S. DEPARTMENT OF HOMELAND SECURITY, ET AL.,

Petitioners,

v.

CASA DE MARYLAND, ET AL.,

Respondents.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Fourth Circuit

BRIEF FOR RESPONDENTS IN OPPOSITION

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QUESTIONS PRESENTED

The questions presented are as follows:

1. Whether the Department of Homeland Security's rescission of the Deferred Action for Childhood Arrivals (DACA) program is immune from judicial review.

2. Whether the rescission of the DACA program is lawful under the Administrative Procedure Act.

LIST OF PARTIES TO THE PROCEEDING IN THE UNITED STATES COURT OF APPEALS

Respondents:

Casa de Maryland;
Coalition for Humane Immigrant Rights;
Fair Immigration Movement;
One America;
Promise Arizona;
Make the Road Pennsylvania;
Michigan United;
Arkansas United Community Coalition;
Junta for Progressive Action, Inc.;
Angel Aguiluz;
Estefany Rodriguez;
Heymi Elvir Maldonado;
Nathaly Uribe Robledo;
Eliseo Mages;
Jesus Eusebio Perez;
Josue Aguiluz;
Missael Garcia;
Jose Aguiluz;
Maricruz Abarca;
Annabelle Martines Herra;
Maria Joseline Cuellar Baldelomar;
Brenda Moreno Martinez;
Luis Aguilar;
J.M.O., a minor child;
Adriana Gonzales Mago, next of friend to J.M.O.;
A.M., a minor child; and
Isabel Cristina Aguilar Arce, next of friend to A.M.

Petitioners:

Donald J. Trump, President of the United States;
William P. Barr, Attorney General of the United States;
Kevin K. McAleenan, Acting Secretary of the U.S. Department of Homeland Security;
U.S. Department of Homeland Security;

L. Francis Cissna, Director of U.S. Citizenship and Immigration Services;
U.S. Citizenship and Immigration Services;
Matthew T. Albence, Acting Director of U.S. Immigration and Customs Enforcement;
U.S. Immigration and Customs Enforcement;
John P. Sanders, Acting Commissioner of U.S. Customs and Border Protection;
U.S. Customs and Border Protection; and
the United States.

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INTRODUCTION

Petitioners have presented no compelling reason to grant a writ of certiorari. *See* Sup. Ct. R. 10. The Fourth Circuit correctly applied basic principles of administrative law established by clear and longstanding precedents of this Court. Further, as Petitioners readily concede, there is no conflict between the Fourth Circuit's decision and the decision of any other court that has addressed the questions presented here. Pet. at 17. Finally, even if there was some uncertainty in this Court's precedents that would otherwise warrant review, this case does not provide a good vehicle to decide such questions.

Petitioners' arguments in favor of certiorari are based on a fundamentally false premise: that there is some critical urgency to determine the legality of the DACA program's rescission. But that premise is wrong. Petitioners have not demonstrated, and lack any basis upon which to demonstrate, that the continuing operation of the DACA program is harmful or prejudicial in any way.

DACA has been in place for almost seven years. Each of the government's individual decisions to grant DACA status to the almost 800,000 recipients has been based on a thorough review of the background and eligibility of each such applicant. The program has strict eligibility requirements, including that every applicant: had immigrated as a child; is engaged in or has completed his or her high school education or military service; and poses no risk to public safety or national security. And under the program's terms, the eligibility of each current DACA beneficiary can be revoked at any time, if the beneficiary presents a risk to national security.

Indeed, Petitioners do not argue that review of the questions they present is urgently needed for reasons

of national security or any other compelling reason. Therefore, the Petition should be denied. S. Ct. R. 10.

STATEMENT OF THE CASE

I.

DACA

Prior to 2012, hundreds of thousands of people raised in this country were forced to hide from the government despite having built deep ties to the United States. Brought to this country as children, often as infants, these individuals contributed to their communities, raised their families, attended schools, and helped to support the American economy. But because they lacked documentation, their lives lacked the stability of those around them -- they could not travel to visit family, open bank accounts, obtain health insurance, or be legally employed. Most importantly, they lived in fear of law enforcement, as any interaction could lead to deportation.

On June 15, 2012, to ensure that the government did not spend resources on efforts to deport the "low priority cases" of "certain young people who were brought to [the United States] as children and know only this country as home," then-Department of Homeland Security (DHS) Secretary Janet Napolitano issued a memorandum promulgating the Deferred Action for Childhood Arrivals (DACA) program. The DACA program allows eligible individuals to apply for temporary protection from deportation. Pet. App. 67a. If approved, DACA recipients must reapply every two years to renew their status. Pet. App. 66a-67a. Many of these individuals were brought to the United States by parents fleeing violence or economic hardship in their

countries of origin. 87 percent of Americans support the protections provided by DACA. Pet. App. 71a.

DACA allowed young people in this country to achieve tremendous success. With the help of the nine Respondent immigrant rights organizations, most of the individual Respondents and thousands of other individuals were able to obtain DACA status and reach their goals -- including enrolling in college, working as teachers and nurses, and starting their own small businesses. App. 39a ¶ 92. None of these achievements would have been possible without the DACA program.

The government evaluated DACA applicants on a case-by-case basis. To be considered for deferred action under DACA, applicants had to undergo biometric screening and a rigorous background check by DHS, and submit extensive sensitive personal information about themselves and their family members. App. 123a; App. 156a-158a. DACA applicants provided that information after a promise from the government that it would not use the personal information they submitted for immigration enforcement. App. 48a ¶ 107. Since 2012, nearly 800,000 individuals have registered for DACA protection. Pet. App. 67a. With DACA benefits, recipients have been able to pursue their education, obtain legal employment to support their families, and build lives in the only nation many of them have ever known as home.

No court has ever concluded DACA was unlawful. Prior to DACA's rescission, the government repeatedly and successfully defended its legality for more than five years. *See*, *e.g.*, *Arpaio v. Obama*, 797 F.3d 11 (D.C. Cir. 2015) (rejecting a challenge to DACA's legality); *Crane v. Johnson*, 783 F.3d 244 (5th Cir. 2015) (same). In a 2014 opinion that it has never

withdrawn, the U.S. Department of Justice's Office of Legal Counsel (OLC) concluded that DACA was lawful "provided that immigration officials retained discretion to evaluate each application on an individualized basis." The Department of Homeland Security's Authority to Prioritize Removal of Certain Aliens Unlawfully Present in the United States and to Defer Removal of Others, 2014 WL 10788677, at *18 n.8 (Op. O.L.C. Nov. 19, 2014); see also Br. for United States as Amicus Curiae Supporting Appellees at *1, *Ariz. Dream Act Coal. v. Brewer*, 855 F.3d 957 (9th Cir. 2017) (No. 15-15307), 2015 WL 5120846.

Even after President Trump took office, the government twice declined to terminate DACA. In February 2017, then-DHS Secretary John Kelly issued a memorandum revising DHS's enforcement priorities, but maintaining the low priority status of DACA recipients, characterizing "DACA status" as a "commitment…by the government towards the DACA person." App165a. In June 2017, then-Secretary Kelly formally rescinded a proposed (but enjoined and never implemented) deferred action program known as the Deferred Action for Parents of Americans and Lawful Permanent Residents [DAPA] program, but again left DACA in place. App. 119a-122a. And in public comments, President Trump stated that DACA recipients should "rest easy" and that his administration would "allow [DACA recipients] to stay." App. 60a-61a ¶ 124.

On September 4, 2017, the government abruptly reversed course. That day, then-Attorney General Jefferson Sessions announced in a one-page letter that DACA was "an unconstitutional exercise of authority by the Executive Branch." App. 85a-86a.

The next day, on September 5, then-Acting DHS Secretary Elaine Duke issued a memorandum rescinding DACA. App. 87a-94a. That memorandum, which instructed DHS to cease accepting new DACA applications immediately, contained only one sentence of reasoning: "Taking into consideration the Supreme Court's and the Fifth Circuit's rulings in the ongoing [DAPA] litigation, and the September 4, 2017, letter from the Attorney General, it is clear that the June 15, 2012, DACA program should be terminated." App. 92a. But then-Attorney General Sessions's letter contained no legal analysis whatsoever and merely concluded that DACA "ha[d] the same legal and constitutional defects that the courts recognized as to DAPA," despite the fact that DACA and DAPA were entirely separate immigration enforcement programs and even though not a single court had found DACA unlawful or unconstitutional. App. 86a. Then-Attorney General Sessions's letter contained no analysis to support the conclusory sentence that DACA suffered from legal and constitutional defects.

Several days later, DHS issued guidance regarding the rescission of DACA that altered the government's prior commitment not to share DACA applicant information with immigration enforcement authorities. App. 110a-116a. Nothing in the Sessions letter, the Duke memorandum, or the rescission guidance addressed the prior OLC memorandum asserting DACA's legality. Nor did they address the impact of the government's changed position on DACA recipients or the reliance interests of those recipients.

The government's actions upended the lives of nearly 800,000 DACA recipients and their families, and shut the door on the opportunity to apply for DACA status for hundreds of thousands more

potentially eligible individuals. The government's decision also followed repeated statements from senior administration officials, including President Trump, expressing anti-Latino bias and threatening Latino immigrants with deportation, leaving no doubt that the decision to rescind DACA stemmed from racial animus.

II.

PROCEEDINGS BELOW

Respondents sued in the United States District Court for the District of Maryland to challenge the government's decision to rescind DACA and to permit the sharing of DACA-applicant information in a manner inconsistent with the government's prior representations. Respondents asked the District Court to enjoin and declare illegal both the government's rescission of the DACA program and its threat to share the personal information of DACA applicants and beneficiaries with immigration authorities. Respondents alleged violations of the Administrative Procedure Act (APA) and an estoppel claim.

Respondents also asserted due process and equal protection guarantees of the Fifth Amendment based on the government's racial animus in rescinding DACA. In support of all claims, Respondents identified nearly 25 anti-Latino statements made by President Trump and senior officials within his administration leading up to the rescission of DACA. App. 45a-46a ¶ 96; 18a-19a ¶ 18; 10a-12a ¶¶ 21-25; 39a-63a ¶¶ 92-128; 69a-73a ¶¶ 162-66. Respondents also cited racial disparities in the demographics of the populations who were harmed by the government's decision to end DACA and the beneficiaries of other

deferred action immigration programs that the government has allowed to continue, as well as numerous procedural irregularities in the government's rescission of DACA. App. 11a-12a ¶¶ 24-25; 40a-46a ¶¶ 94-96; 61a-63a ¶¶ 125-26; 68a-69a ¶¶ 154-61.

Several weeks later, Petitioners produced the Administrative Record on which it claimed then-Acting Secretary Duke relied in rescinding DACA. App. 80a-84a. That Administrative Record consisted of 14 documents totaling 256 pages; 217 were copies of court decisions regarding DAPA, and 32 were the OLC opinion confirming DACA's legality as discussed above. The Administrative Record contained no materials considered by anyone other than then-Secretary Duke; it failed to include any cost or legal analysis of the impact of the decision; it did not reference or analyze the reliance interests of DACA recipients; and it presented only wholly conclusory justifications for the government's change in position. App. 80a-84a. That same day, Petitioners moved to dismiss or in the alternative for summary judgment. App. 95a-96a.

Respondents filed an opposition with supporting declarations, including a statement of material facts as to which there was a genuine dispute. Respondents also filed a Rule 56(d) declaration informing the District Court as to the need for discovery on both the completeness of the Administrative Record and the constitutional claims. Attached to that declaration were draft discovery requests and discovery requests propounded in parallel district court litigation challenging the DACA rescission. App. 97a-109a.

After oral argument, on March 5, 2018, the District Court denied Petitioners' Rule 12(b)(1) motion, finding that Respondents had standing and rejecting

Petitioners' argument that Respondents' claims were not justiciable. Pet. App. 75a-79a. The Court also granted summary judgment to Respondents as to their estoppel claim, entering an injunction requiring the government to comply with the information-sharing policy from the genesis of the program, still in place in September 2017. Pet. App. 94a-97a.

The District Court granted summary judgment to Petitioners as to the remaining claims. Pet. App. 81a-92a. The District Court failed to consider Respondents' request for discovery under Rule 56, and misapplied other governing standards, including failing to construe claims in the light most favorable to the nonmoving party, and failing to address Respondents' statement of material facts. The District Court applied the incorrect legal standards in assessing Respondents' APA and constitutional claims. App. 117a-118a.

Both Petitioners and Respondents appealed to the Fourth Circuit, which affirmed the District Court's Rule 12(b)(1) findings, Pet. App. 14a-25a, but otherwise reversed the District Court's decision in large part. Specifically, the Fourth Circuit agreed with all other courts to have considered the issue[1] that Respondents' claims are justiciable and that the

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[1] *Batalla Vidal v. Duke*, 295 F. Supp. 3d 127 (E.D.N.Y. 2017); *Batalla Vidal* v. *Nielsen*, 279 F. Supp. 3d 401 (E.D.N.Y. 2018); *NAACP v. Trump*, 298 F. Supp. 3d 209 (D.D.C. 2018); *NAACP v. Trump*, 315 F. Supp. 3d 457 (D.D.C. 2018); *Regents of Univ. of Cal. v. U.S. Dep't of Homeland Security*, 279 F. Supp. 3d 1011 (N.D. Cal. 2018); *Regents of Univ. of Cal. v. U.S. Dep't of Homeland Security*, 908 F.3d 476 (9th Cir. 2018).

(. . . continued)

government's rescission of DACA was arbitrary and capricious in violation of the APA.[2] Pet. App. 28a-33a.

Having concluded that the rescission of DACA violated the APA, the Fourth Circuit declined to decide whether the government had violated Respondents' equal protection and due process rights, vacating the district court's decision. Pet. App. 38a n.20. The court also declined to address Respondents' other arguments challenging the District Court's grant of summary judgment to Petitioners. In particular, the Fourth Circuit declined to address that the District Court: (1) failed to afford Respondents a reasonable opportunity for discovery on their constitutional claims; (2) did not consider or address Respondents' statement of material facts in dispute; and (3) did not view the facts in the light most favorable to Respondents. *Id.* The Fourth Circuit also declined to consider Respondents' argument that the District Court misapplied the APA by granting summary judgment to the government without addressing Respondents' contention that the government's Administrative Record was incomplete and that the District Court failed to consider evidence of "bad faith and improper behavior" by government officials. *Id.*

REASONS FOR DENYING THE PETITION

The Court should deny the petition because (1) the Fourth Circuit's decision is correct; (2) the Fourth Circuit's opinion is not in conflict with any other

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[2] The Fourth Circuit reversed the District Court's injunction regarding the government's changes to its information-sharing policies. That portion of the Fourth Circuit's decision is not at issue before this Court.

court's decision on the issues presented; and (3) granting certiorari will not resolve all claims pending in this litigation.

I.

THE FOURTH CIRCUIT DECISION WAS CORRECT

The Fourth Circuit correctly applied this Court's precedent to determine that Respondents' claims are justiciable and that the government violated the APA by rescinding DACA.

First, the Fourth Circuit properly followed this Court's express holding that 8 U.S.C. § 1252(g) bars judicial review only of "three discrete actions that the [Secretary of Homeland Security] may take: her 'decision or action' to 'commence proceedings, adjudicate cases, or execute removal orders.'" Pet. App. 14a (emphasis omitted), citing *Reno v. American-Arab Anti-Discrimination Comm. (AADC)*, 525 U.S. 471, 482 (1999). None of the actions that Section 1252(g) excludes from judicial review is at issue here: the rescission of DACA is not a commencement of proceedings, an adjudication of a case, or an execution of a removal order.

Second, the Fourth Circuit properly concluded that Petitioners' rescission of DACA was reviewable, properly applying what this Court has called the "strong presumption" of reviewability of agency action under the APA. Pet. App. 17a (citing *Bowen v. Mich. Acad. of Family Physicians*, 476 U.S. 667, 670 (1986)). *See also Abbott Labs. v. Gardner*, 387 U.S. 136, 139-40 (1967); *Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 410 (1971). The Fourth Circuit also noted that neither the Supreme Court nor appellate courts have applied *Heckler v. Chaney*, 470 U.S. 821

(1985), in the expansive way urged by Petitioners to preclude review in comparable circumstances. Pet. App. 17a-25a.

Third, the Fourth Circuit correctly found the government's rescission of DACA to be arbitrary and capricious, because the government failed to articulate a reasoned explanation for its decision and to consider the reliance interests at issue. Pet. App. 29a-33a.

The Fourth Circuit faithfully applied this Court's precedent requiring agencies to provide a "satisfactory explanation" for their decisions. Pet. App. 29a-33a (quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc., v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). The Fourth Circuit also correctly applied this Court's holding in *Encino Motorcars, LLC v. Navarro*, 136 S.Ct. 2117, 2125 (2016), that the provision of "adequate reasons" for an agency's decision is "[o]ne of the basic procedural requirements of administrative rulemaking." Pet. App. 29a.

Moreover, the Fourth Circuit found that the Government did not "adequately account for the reliance interests that would be affected by its decision." Pet. App. 33a. The court concluded that "hundreds of thousands of people had structured their lives" on the DACA program, and the Government's decision to rescind DACA "makes no mention" of these reliance interests. *Id.* DHS's failure to address reliance interests is fatal here, particularly because the "prior policy has engendered serious reliance interests." *FCC v. Fox Television Stations, Inc.*, 556 U.S. 503, 515 (2009). In reliance on this precedent, the Fourth Circuit correctly held that the Government's thread-bare justification and minimal Administrative Record failed to provide the "reasoned explanation" this Court requires. Pet. App. 31a.

Because the Fourth Circuit followed clear precedent of this Court, there is no reason to grant certiorari.

II. THERE IS NO DISAGREEMENT AMONG THE COURTS THAT HAVE RULED ON THESE ISSUES.

Demonstrating the clarity of this Court's precedents, the Fourth Circuit's decision is fully aligned with the decisions of the other courts to have addressed the questions presented here. As Petitioners themselves expressly concede: "The court of appeals' decision is of a piece with the related decisions pending before this Court . . . ." Pet. App. at 17.

As discussed below, in parallel proceedings, every lower court to have considered the issues Petitioners put before this Court has expressly rejected Petitioners' positions. Like the Fourth Circuit, those courts correctly held that (a) DHS's decision to rescind DACA is judicially reviewable, and (2) the decision to rescind DACA was (or substantially likely was) arbitrary and capricious. Thus, there is no conflict in the decisions of the lower courts for this Court to resolve.

A. The Courts Have Agreed that DHS's Decision to Rescind the DACA Program is Subject to Judicial Review.

In all pending cases concerning DACA's rescission, including this one, the courts below have found that DHS's decision is not insulated from judicial review. The rescission of DACA does not run afoul of the jurisdictional bar of § 1252(g), as it cannot be said to 'arise from' the three listed actions." Pet. 15a (citing

Jennings v. Rodriguez, 138 S. Ct. 830, 841 (2018) (Alito, J. plurality); *accord Regents*, 908 F.3d at 503-04; *Batalla Vidal*, 295 F. Supp. 3d at 152 (same); *NAACP*, 298 F. Supp. 3d at 224 (same).

The lower courts also agreed that the DACA rescission was not exempt from judicial review as a decision "committed to agency discretion by law" pursuant to 5 U.S.C. § 701(a)(2). Pet. App. 17a-25a. Agency action is subject to judicial review except "in those rare instances" where "there is no law to apply." *Citizens to Pres. Overton Park*, 401 U.S. at 410. The government's Petition makes clear that the basis for the DACA rescission is a legal question -- the legal determination that DACA was unlawful. *See* Pet. at 6 (asserting that the government rescinded DACA "rather than confront litigation challenging DACA"). Accordingly, there was ample "law to apply" in assessing the legal validity of DACA, rendering the DACA rescission solidly within the purview of judicial review under the APA.

Every court to consider the question of the reviewability of the DACA rescission has reached the same conclusion. *See NAACP*, 298 F. Supp. 3d at 234-235 (concluding that DACA rescission was subject to judicial review as "a general enforcement policy predicated on DHS's legal determination that the program was invalid when it was adopted."); *NAACP v. Trump*, 315 F. Supp. 3d 457, 468 (D.D.C. 2018) (concluding that the supplemental memo prepared by DHS reaffirmed that DACA rescission was based on a legal determination and thus did not change the court's conclusion that DACA rescission is subject to judicial review); *Regents*, 908 F.3d at 503-04 (concluding that DACA rescission is reviewable under the APA because "the Acting Secretary based the rescission of DACA solely on the belief that DACA was

beyond the authority of the DHS"); *Regents*, 279 F. Supp. 3d at 1030 (finding DACA rescission subject to judicial review because rescission "ended a program which has existed for five years" and is not a "day-to-day agency non-enforcement decision"); *Batalla Vidal*, 295 F. Supp. 3d at 148-49 (concluding that the DACA rescission is not exempt from APA review because there is "law to apply"); Pet. App. 78a-79a (finding that DACA rescission is reviewable under the APA).

Each of these courts also rejected the government's contention that the APA precludes judicial review of the validity of the rescission decision under *Heckler*. As the Ninth Circuit stated in *Regents*, 908 F.3d at 497-98: "*Chaney* does not encompass nonenforcement decisions based solely on the agency's belief that it lacked power to take a particular course." Because "the Acting Secretary [of DHS] based the rescission of DACA solely on a belief that DACA was beyond the authority of DHS, . . . the rescission [is] within the realm of agency actions reviewable under the APA." *Id.* at 503. Likewise, in *Batalla Vidal*, the District Court for the Eastern District of New York held that *Chaney* was inapposite because "[Petitioners] stated they were required to rescind the DACA program because it was unlawful, which suggests both that [Petitioners] did not believe that they were exercising discretion when rescinding the program and that their reasons for doing so are within the competence of this court to review." 295 F. Supp. 3d at 150. *See also NAACP*, 298 F. Supp. 3d at 234, 249 ("[L]ike every other court that has considered the question thus far, the Court concludes that DACA's rescission was not 'committed to agency discretion by law'" as the government "may escape political accountability or judicial review, but not both.") (citing *Regents*, *Batalla Vidal*, and the district court's decision in this case)).

In sum, each of the lower courts has applied settled precedent from this Court to properly conclude that this dispute is justiciable.

B. The Courts Have Agreed That the Rescission of DACA Was Arbitrary and Capricious and Thus Unlawful Under the APA.

Each of the courts to consider the question has agreed that the government's action was arbitrary and capricious in violation of the APA. Applying well-established principles of administrative law, the Fourth Circuit concluded that the government failed to provide an "adequate explanation" for the DACA rescission, upending the lives of almost 800,000 DACA recipients, their families, employers, and communities. Pet. App. 29a-33a (quoting *Motor Vehicle Mfrs. Ass'n*, 463 U.S. at 43). In so ruling, the Fourth Circuit concluded with other courts to have ruled on this issue that the government's decision was arbitrary and capricious.

Like the Fourth Circuit, the courts in the three other pending cases challenging DACA's rescission also held that the rescission decision was arbitrary and capricious and therefore unlawful under the APA. See *Regents*, 908 F.3d at 510; *Batalla Vidal*, 279 F. Supp. 3d at 423, 425, 427-33; *NAACP*, 298 F. Supp. 3d at 242-43.

Each court reached its conclusion through similar analyses. Each Court analyzed the Attorney General's September 4, 2017 letter opining that DACA was unlawful, which relied on two primary propositions: (1) that DACA was "'effectuated without proper statutory authority'" and (2) "that 'the DACA policy has the same legal and constitutional defects that the courts recognized as to DAPA' in the *Texas* litigation." *Regents*, 908 F.3d at 506 (quoting the

Attorney General's reference to *Texas v. United States*, 809 F.3d 134 (5th Cir. 2015)); see also *Batalla Vidal*, 279 F. Supp. 3d at 422-23; *NAACP*, 298 F. Supp. 3d at 239. After carefully examining the Attorney General's letter, the courts in *Regents*, *Batalla Vidal*, and *NAACP* all reached the same conclusion as the court of appeals in this case: that the Attorney General had provided no reasoned basis for determining that the Fifth Circuit's decision in the *Texas* case supported a finding that DACA was unlawful. *See Regents*, 908 F.3d at 510 ("because the Acting Secretary [of DHS] was therefore incorrect in her belief that DACA was illegal and had to be rescinded . . . [and DHS therefore] acted based on an erroneous view of what the law required -- the rescission was arbitrary and capricious under settled law."); see also *Batalla Vidal*, 279 F. Supp. 3d at 429, 431, 433 ("[Petitioners'] ended the DACA program because they believed it to be illegal. . . . [Their] 'litigation risk' rationale . . . appears to be intertwined with [their] erroneous legal conclusion that the DACA program was unlawful. . . . [T]hat rationale is so inscrutable and unexplained that reliance on it was arbitrary and capricious."); *NAACP*, 298 F. Supp. 3d at 242-43 ("[DHS]'s conclusory statements were insufficient to explain the change in its view of DACA's lawfulness. . . . [And] the agency's prediction regarding the outcome of threatened litigation over DACA's validity . . . was so implausible that it fails even under the deferential arbitrary and capricious standard").

There is thus no disagreement among the lower courts that would warrant granting a writ of certiorari in this case.

III.

CERTIORARI WILL NOT PERMIT THE COURT TO ADDRESS ALL OF THE RELEVANT CLAIMS

The Court should deny the petition because the Fourth Circuit Court of Appeals, having found that the rescission of DACA violated the Administrative Procedure Act, vacated the district court's ruling on Respondents' constitutional claims and did not otherwise address them. The District Court's dismissal of these claims by summary judgment without ruling on Respondents' request for or permitting discovery under Federal Rule of Civil Procedure 56(d) was improper. Even if this Court granted certiorari and reversed the Fourth Circuit's determination as to Respondents' APA claim, such a disposition would not resolve Respondents' constitutional claims. Rather, such claims should be remanded.

This Court is one of "review, not of first view." *Cutter v. Wilkinson*, 544 U.S. 709, 718, n.7 (2005); *F. Hoffmann-La Roche Ltd. v. Empagran S.A.*, 542 U.S. 155, 175 (2004). In order to avoid acting as a court "of first view," this Court routinely declines to review constitutional questions that have not been reviewed by an intermediate court of appeals. For example, when the district court rules on the constitutional questions but the court of appeals does not, the Supreme Court declines review until the constitutional issues are first reviewed by the court of appeals. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 851 (2018) (reversing the court of appeals' decision on the statutory claim and then remanding the

Constitutional claims to the court of appeals for first review, citing the doctrine in *Cutter*).

Should this Court grant certiorari and then reverse the Fourth Circuit's holding that the rescission of DACA was arbitrary and capricious, Respondents' constitutional claims, as well as Respondents' request for discovery on such claims, would not have been finally disposed of. Because the district court improperly granted summary judgment to the Government as to Respondents' constitutional claims, there is no record for this Court to evaluate. Such claims would then have to proceed through the lower courts, potentially requiring this Court to grant certiorari *again* to consider these claims. In other words, granting certiorari here could lead to "the inconvenience and costs of piecemeal review." *Gillespie v. United States Steel Corp.*, 379 U.S. 148, 152-53 (1964). *Cf. Virginia Military Inst. v. United States*, 508 U.S. 946 (1993) (indicating opposition to granting certiorari in cases where there is not a "final judgment in the lower courts").

Because certiorari would not allow this Court to resolve all claims pending in this litigation, this case is a poor vehicle for the Court's consideration of the issues therein.

CONCLUSION

This Court should deny the petition for a writ of certiorari.

Respectfully submitted,

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Counsel for Respondents

June 24, 2019.

APPENDIX

APPENDIX A

REDACTED COPY

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

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Case Number 17-02942

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FAIR IMMIGRATION MOVEMENT (FIRM)
1536 U Street NW
Washington, DC 20009

ONE AMERICA
1225 S. Weller Street, Suite 430
Seattle, WA 98144

PROMISE ARIZONA
701 S 1st Street,
Phoenix, Arizona 85004

MAKE THE ROAD PENNSYLVANIA
501 Washington St, 1st Floor
Reading, Pennsylvania 19601

MICHIGAN UNITED
4405 Wesson
Detroit, Michigan 48210

ARKANSAS UNITED COMMUNITY COALITION
PO Box 9296
Fayetteville, AR 72703

JUNTA FOR PROGRESSIVE ACTION, INC.
169 Grand Avenue
New Haven, Connecticut 06513,

ANGEL AGUILUZ, ESTEFANY RODRGIUEZ, HEYMI ELVIR MALDONADO, NATHALY URIBE ROBLEDO, ELISEO MAGES, JESUS EUSEBIO PEREZ, JOSUE AGUILUZ, MISSAEL GARCIA, JOSE AGUILUZ, MARICRUZ ABARCA, ANNABELLE MARTINES HERRA, MARIA JOSELINE CUELLAR BALDELOMAR, BRENDA MORENO MARTINEZ, LUIS AGUILAR,

J. M. O., a minor child,

ADRIANA GONZALES MAGOS, next of friend to J.M.O.

A.M., a minor child, and

ISABEL CRISTINA AGUILAR ARCE, next of friend to A. M.[1]

v.

U.S. DEPARTMENT OF HOMELAND SECURITY
3801 Nebraska Ave.
NW Washington, DC 20016

U.S. CITIZENSHIP AND IMMIGRATION SERVICES
20 Massachusetts Ave. NW
Washington, DC 20008

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[1] All of the individual plaintiffs concurrently move to waive their obligations under Local Rule 102.2(a) to provide addresses, on the basis of their objectively reasonable fear that publicizing their home addresses would subject Plaintiffs to harassment (potentially including violence) and threats.

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
500 12th St.
SW Washington, DC 20536

U.S. CUSTOMS AND BORDER PROTECTION
1300 Pennsylvania Ave.
NW Washington, DC 20004

DONALD J. TRUMP, in his official capacity as President of the United States
1600 Pennsylvania Ave. NW
Washington, DC 20500

JEFFERSON BEAUREGARD SESSIONS III, in his official capacity as Attorney General of the United States
950 Pennsylvania Ave. NW
Washington, DC 20530-0001

ELAINE C. DUKE, in her official capacity as Acting Secretary of Homeland Security
Washington, D.C. 20528

JAMES W. MCCAMENT, in his official capacity as Acting Director of U.S. Citizenship and Immigration Services
20 Massachusetts Ave. NW
Washington, DC 20008

THOMAS D. HOMAN, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement
500 12th St. SW
Washington, DC 20536

KEVIN K. MCALEENAN, in his official capacity as Acting Commissioner of Customs and Border Protection
1300 Pennsylvania Ave. NW
Washington, DC 20004

UNITED STATES OF AMERICA,

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

OVERVIEW

1. American democracy rests on fundamental principles of fairness and equality. Our system of justice does not punish people for things that they did not do or that they could not control. And we expect our government to abide by its commitments. In its rescission of the Deferred Action for Childhood Arrivals ("DACA") program, and its draconian immigration enforcement efforts, the federal government has abandoned these fundamental principles.

2. In the three decades leading up to 2012, hundreds of thousands of children immigrated to the United States. Many of them crossed the border of the United States without authorization, fleeing violence and desperate circumstances in their home countries, but with no route to lawful entry under our nation's immigration laws. Others came through lawful means, but, for a variety of reasons, later lost their authorization to remain in the United States and did not return to their countries of origin. For many of these children, it was not their choice to come to the United States. All of them have grown up in this country, gone to school, and contributed to the fundamental fabric of American society. Lacking legal status, these young people grew up in the shadows of American life, facing the fear of deportation, family separation, and hardship. They were stigmatized, through no fault of their own.

3. Many of these children dreamed of a better life – where they could live freely and study, work, and

defend their country – a life without fear of their government.

4. On June 15, 2012, at the direction of President Obama, Janet Napolitano, then-Secretary of the U.S. Department of Homeland Security, helped this dream come closer to reality. On that date, she established the Deferred Action for Childhood Arrivals (DACA) program.

5. Under DACA, individuals who came to the United States as children and meet specific criteria may request "deferred action" for two years, subject to renewal. "Deferred action" is a long-standing mechanism under immigration laws allowing the government to forbear from removal action against an individual for a designated period. In addition to DACA, federal law designates other classes as eligible for deferred action.[2] Individuals granted deferred action are eligible for certain rights and privileges associated with lawful presence status in the United States.

6. In establishing DACA, the federal government recognized that "certain young people . . . were brought to this country as children and know only this country as home" and that immigration laws are not "designed to remove productive young people to countries where they may not have lived or even speak the language." The government also recognized, among other things, that children brought to this country had no intent to violate the law and that, with limited resources, there

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[2] *See generally* U.S. Dep't of Justice Office of Legal Counsel, *The Department of Homeland Security's Authority to Prioritize Removal of Certain Aliens Unlawfully Present in the United States and to Defer Removal of Others*, Op. O.L.C. (November 19, 2014).

were more appropriate priorities for immigration enforcement.

7. DACA provides some sense of stability to individuals who came to the United States as children and have grown up to become productive members of American society. Collectively, this group of young people are often referred to as "Dreamers."

8. To apply for DACA, Dreamers had to (1) submit extensive documentation to the U.S. Citizenship and Immigration Services (USCIS) establishing that they meet the eligibility criteria; (2) pay a $495 fee; and (3) submit to a rigorous DHS background check, including submission of biometric data.

9. When DACA was first implemented, many eligible Dreamers were reluctant to apply because of concern that they would be required to disclose information that could help facilitate their removal from the United States and place their family members at risk. This concern was understandable – the average Dreamer entered the United States at the age of six, and many had lived their whole lives in fear of deportation.

10. In an effort to encourage reluctant people to apply for DACA, the government launched an aggressive outreach campaign urging Dreamers to apply. These efforts included well organized efforts to provide DACA application materials to organizations that serve the immigrant community,[3] enlisting the White House to promote the stories of individual DACA

[3] *See generally* A. Singer et al., *Local Insights from DACA for Implementing Future Programs for Unauthorized Immigrants*, Brookings Institution (June 2015).

recipient "Champions of Change,"[4] and targeted outreach to select populations whose participation in the program lagged.[5] DHS officials routinely engaged with immigration service providers and advocates, soliciting their assistance in expanding participation in DACA and dealing with issues in its implementation. USCIS officials attended DACA clinics hosted by nonprofits and immigration service providers across the country and held numerous engagement sessions in person, by phone and via webinar[6] to encourage participation in the program. In conjunction with this campaign, USCIS made five promises to Dreamers.

11. First, USCIS repeatedly promised Dreamers that information they provided about themselves as part of the DACA application process would be "protected" from use for immigration enforcement purposes.[7]

12. Second, USCIS promised Dreamers that "information related to your family members or guardians

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[4] Ginette Magaña, *DACAmented Teachers: Educating and Enriching Their Communities*, Obama White House Archives: Blog (Aug.4, 2015), https://obamawhitehouse.archives.gov/blog/2015/08/04/dacamented-teachers-educating-and-enriching-their-communities; Champions of Change: DACA Champions of Change, Obama White House Archives, https://obamawhitehouse.archives.gov/champions/daca-champions-of-change (last accessed Oct.4, 2017)

[5] White House Initiative on Asian Americans and Pacific Islanders, *Deferred Action for Childhood Arrivals (DACA)*, Department of Education, https://sites.ed.gov/aapi/files/2014/07/E3-TOOLKIT-DACA.pdf (last accessed 10/2/2017)

[6] *See* for example USCIS, National Stakeholder Engagement - DACA Renewal Process (June 2014), https://www.uscis.gov/outreach/notes-previous-engagements/national-stakeholder-engagement-daca-renewal-process

[7] These representations were extensive, and are detailed below in Section X.

that is contained in your request will not be referred to ICE [U.S. Immigration and Customs Enforcement] for purposes of immigration enforcement against family members or guardians."[8]

13. Third, USCIS promised employers of Dreamers that, except in limited circumstances, if they provided their employees "with information regarding [their] employment to support a request for consideration of DACA . . . . This information will not be shared with ICE for civil immigration enforcement purposes."[9]

14. Fourth, by establishing internal procedures, USCIS promised that once Dreamers received DACA, they would not be terminated from the program unless they posed an "Egregious Public Safety" issue. In addition, USCIS promised to provide them with a "Notice of Intent to Terminate" which "thoroughly explain[ed]" the grounds for the termination."[10]

15. Fifth, USCIS promised Dreamers that they could seek renewal of their status at the expiration of their two-year DACA term. USCIS represented that Dreamers "may be considered for renewal of DACA" if they meet the guidelines for consideration and other criteria which "must be met for consideration of DACA renewal."[11]

16. These repeated and unequivocal assurances were critical to the success of the DACA initiative. Relying on these representations, more than 800,000

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[8] *See* USCIS, Deferred Action for Childhood Arrivals Frequently Asked Questions ("DACA FAQs") (April 25, 2017) Q20

[9] DACA FAQs Q76.

[10] *See* DHS, National Standard Operating Procedures (SOP): Deferred Action for Childhood Arrivals (Apr. 4, 2013) ("SOP").

[11] DACA FAQs Q51

Dreamers brooked the potential risks of deportation and removal and applied for DACA. Employers, too, relied on these representations to assist their employees in applying for DACA, despite the potential risk of liability for the employers.

17. DACA has been a tremendous success, allowing the Dreamers – – such as Plaintiffs Angel Aguiluz, Luis Aguilar, Estefany Rodriguez, Annabelle Martinez Herra, Heymi Elvir Maldonado, Maricruz Abarca, Nathaly Uribe Robledo, Eliseo Mages, Jeus Eusebio Perez, Josue Aguiluz, Missael Garcia, Jose Aguiluz, and Brenda Moreno Martinez – to live, study, and work in the United States, and to become stable and even more productive members of their communities, without fear that they could be arrested and placed in deportation proceedings at any moment.

18. All of this changed on September 5, 2017, when Attorney General Jefferson Sessions ("Sessions") announced the rescission of DACA. Several hours after the announcement, Acting Secretary of DHS Elaine Duke ("Duke") issued a memorandum rescinding DACA (the "Rescission Memorandum").[12] At Acting Secretary Duke's direction, USCIS immediately stopped accepting new applications under DACA, ended DACA recipients' eligibility to apply for permission to leave the United States and reenter with advance parole, and declared that DHS will consider DACA renewal applications only for Dreamers whose DACA expires between September 5, 2017 and March 5, 2018 if, even

[12] Memorandum from Elaine C. Duke, Acting Sec'y of Homeland Security to James W. McCament, Acting Dir., USCIS, et al., Rescission of the June 15, 2012 Memorandum Entitled "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children" (Sept. 5, 2017).

then, only if these Dreamers apply for renewal by October 5, 2017.

19. The consequence of the administration's decision to rescind DACA is that approximately 800,000 Dreamers who have received benefits and received protection against deportation under the program in reliance on the government's assurances will ultimately lose their benefits and protection, and will be exposed to deportation when their DACA authorizations expire and they cannot seek renewal. In addition, hundreds of thousands of other potential beneficiaries, many of whom were preparing to submit their requests for DACA, are now unable to benefit from the program.

20. Specifically, as a direct result of the decision to eliminate DACA, among other things, Dreamers (i) will lose their work authorization, requiring their employers to terminate their employment, (ii) have lost the ability to travel internationally, and (iii) will lose their right to qualify under applicable state law for in-state admissions preferences and tuition. As a result, many Dreamers will leave college because their inability to work will make higher education unaffordable or because they no longer qualify for in-state tuition. Still others will leave college because they may no longer be able to achieve career objectives commensurate with their skills and qualifications.

21. Furthermore, all of the Dreamers are at risk of having their application information shared with immigration enforcement authorities. Welching on its prior assurances, on September 5, USCIS released guidance suggesting that it may share Dreamer applicant information with ICE and Customs and Border Protection (CBP). The guidance substantively changes USCIS's policy in a manner that places Dreamers at heightened risk of deportation based on

information previously disclosed to USCIS in good faith and in reliance on the promises outlined above. The Rescission Memorandum does not provide any assurances that immigration enforcement agents will not be provided such information to find and remove those who applied for and/or received benefits or protection under DACA.

22. Indeed, on September 27, 2017, Acting Secretary Duke shockingly testified before Congress that she had never seen any guidance telling Dreamers their information would not be used for immigration enforcement.

23. The Defendants' decision to terminate DACA is a double-cross. It is not only unjustified, but offensive to the basic values of this Nation. It is arbitrary, capricious, and contrary to law, and therefore it cannot stand.

24. The decision to rescind DACA is illegal because it is predicated on discriminatory animus against persons of Mexican or Central American origin. Of the 800,000 DACA recipients, more than 90 percent of DACA recipients are of Mexican or Central American origin.[13]

25. The evidence of discriminatory animus leading to the rescission is palpable. The rescission is the culmination of a series of well-publicized statements made by President Trump starting as early as February

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[13] See USCIS, Consideration of Deferred Action for Childhood Arrivals Fiscal Years 2012-2017 (data as of March 31) (June 8, 2017), https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/daca_performancedata_fy2017_qtr2.pdf.

2015 revealing an anti-Mexican or anti-Central American immigrant animus and threatening Dreamers.

- Starting on February 24, 2015, President Trump made a series of defamatory and incendiary claims about immigrants from Mexico and Central America. For example, on that date, then-candidate Trump characterized immigrants from Mexico as "criminals."
- During his announcement speech on June 16, 2015, Trump referred to immigrants from Mexico as "rapists."
- In October 2016, Trump referred to immigrants from Mexico and Latin America as "bad hombres."
- On August 22, 2017, President Trump described unauthorized immigrants as "animals' who bring "the drugs, the gangs, the cartels, [and] the crisis of smuggling and trafficking."

26. The Trump Administration's rescission of DACA is unlawful on a number of grounds. First, the decision to rescind DACA unconstitutionally violates the due process guarantee of the Fifth Amendment to the United States Constitution by reneging on DHS's prior assurances regarding DACA (including the pledges not to use of information contained in DACA applications). Second, the decision also violates the equal protection guarantee contained in the Fifth Amendment by treating Dreamers differently than other similarly situated recipients of deferred action, obstructing them, without justification, from earning a living and furthering their education. Third, the rescission violates the Administrative Procedure Act in numerous aspects. To begin with, the rescission is contrary to various provisions of law, including the Privacy Act

and the e-Government Act. It is also arbitrary and capricious because it (1) is unsupported by a reasoned analysis that addresses the prior conclusion of the government that the program was legal and constitutional or explains how the justification for the rescission can be reconciled with the six-month wind down period; (2) is based on discriminatory animus; and (3) contains deadlines that are arbitrary and treat similarly situated individuals differently based on caprice. Finally, the rescission was adopted without a legally sufficient justification and without notice or the opportunity to comment.

JURISDICTION AND VENUE

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

28. Venue is proper in this district pursuant to 28 U.S.C. §§ 139l(b)(2) and 1391(e)(I). A substantial part of the events or omissions giving rise to this action occurred in this district; Plaintiff CASA and many of the Individual Plaintiffs reside in this district. This is a civil action in which Defendants are agencies of the United States or officers of such an agency.

PARTIES

29. CASA de Maryland, Inc. (CASA) is a non-profit membership organization headquartered in Langley Park, Maryland, with offices in Maryland, Virginia and Pennsylvania. Founded in 1979, CASA is the largest membership-based immigrant rights organization in the mid-Atlantic region, with more than 90,000 members. CASA's mission is to create a more just society by building power and improving the quality of life in low-income immigrant communities. In furtherance of this mission, CASA offers a wide variety of social, health, job training, employment, and legal

services to immigrant communities in Maryland, as well as the greater Washington DC metropolitan area, Virginia, and Pennsylvania. CASA has provided assistance on nearly 4,000 DACA and DACA renewal applications since 2012, and counts more than 2,300 DACA beneficiaries as members. Since the September 5, 2017 DACA rescission, CASA has had to reallocate significant resources to counsel and assist Dreamers who are eligible to renew their DACA in the arbitrarily narrow window the administration announced. CASA's small legal team, composed of three attorneys and five support staff, have suspended the majority of their work to assist DACA renewal applicants, depriving community members of access to other vital legal services. In addition, members of CASA's community organizing department, as well as other CASA departments, have reprioritized their work to engage with the community and educate them about the rescission of DACA and connect eligible individuals to application assistance services. The rescission of DACA has had a significant negative impact on CASA's mission, as DACA members and their families who live in our communities face an uncertain future that may include loss of employment and potential permanent separation from their families.

30. The Coalition for Humane Immigrant Rights (CHIRLA) is a non-profit organization based in Los Angeles, CA. Founded in 1986, CHIRLA organizes and serves individuals, institutions and coalitions to transform public opinion and change policies on human, civil and labor rights. CHIRLA has been recognized by the Board of Immigration Appeals to provide immigration legal services at low cost to its members; its Legal Services Department has helped thousands of individuals to become citizens and apply to DACA.

31. FIRM is a coalition of 44 member organizations from across 32 states around the country. Founded in 2004, it is now the largest national network of immigrant-led grassroots organizations. FIRM fights for immigration rights including paths to citizenship and protection from low wages and poor conditions. When DACA went into effect, FIRM groups across the country helped 17,900 young people apply for work permits and relief for deportation.

32. Michigan United is located in Detroit, Michigan. It was founded in 2012 from the merger of the Michigan Organizing Project and the Alliance for Immigrant Rights to form a statewide coalition of churches, labor, and community groups fighting for the dignity and potential of every person. It conducts extensive community organizing of low-income Latino and Arab American families. It has fought for a stronger national policy against immigration enforcement at schools and churches and for the DREAM Act. It has also been engaged in community education and implementation of DACA.

33. OneAmerica is located in Seattle, Washington. It was formed directly after September 11, 2001 in response to the hate crimes and discrimination targeting Arabs, Muslims and South Asians. OneAmerica has grown into a leading force for immigrant, civil and human rights. Their mission is "OneAmerica advances the fundamental principles of democracy and justice at the local, state and national levels by building power within immigrant communities in collaboration with key allies." It advocates for immigration policies and practices to best address the needs of immigrant and refugee communities in partnership with immigrant and refugee community members. OneAmerica is advocating for a permanent legislative solution for

DACA recipients, many of whom are active OneAmerica volunteers and members.

34. Promise Arizona is located in Phoenix, Arizona. It was founded in 2010 as a reaction to the passage of the SB 1070 legislation targeting immigrants in the state. It's mission is to promote "diversity, opportunity, and progress . . . by building power in [their] community, championing family and cultural values, and connecting people to life-changing resources." PAZ advocates for the passage of the DREAM Act and a "humane and comprehensive immigration bill."

35. Make the Road Pennsylvania is located in Reading, PA. It was founded in 2014 to organize low-income and working class Latino immigrants in Lehigh and Berks Counties to fight for change in their communities. It has had several "Occupy" movements in various cities to defend DACA, and gives free legal help for DACA renewals.

36. Arkansas United is located in Fayetteville, AR. It was founded in 2010 to help raise awareness in the immigrant community about how immigrants could become full participants in the state's economic, political and social processes. It is raising money to assist Dreamers pay for their expedited renewals.

37. Junta for Progressive Action is located in New Haven, CT. Its mission is to "provide services, programs and advocacy that improve the social, political and economic conditions of the Latino community in greater New Haven while nurturing and promoting its cultural traditions as it builds bridges with other communities." It has been pairing applicants eligible for DACA renewal with lawyers for help with their applications. It also put on a joint press conference

with New Haven Mayor Toni Harp to advocate for a "clean Dream Act bill."

38. [redacted] (A.M.) is a 15 year old resident of Owings Mills, Maryland. In October 2003, at the age of 12 months, he was brought to the United States from Honduras following the murder of his cousin. He is currently a high school student with a 3.5 GPA and has been a Boy Scout for five years. After graduation, his dream is to go to college and become an engineer. He is frustrated that, due to the DACA rescission, he is no longer eligible to apply for DACA, and he fears he will lose his ability to apply for college or be employed after college, as well as is ability to visit family in Honduras. He is also concerned that, if he and his mother are deported, they will be separated from his younger siblings, who are U.S. citizens.

39. Isabel Cristina Aguilar Arce is the mother of A.M and his next of friend in this action.

40. [redacted] (J.M.O.) is a 17 year old resident of Capitol Heights, Maryland. In April 2005, at the age of 4, he was brought to the United States from Mexico to seek a better life. At the age of 8, he suffered a stroke, and has been under medical care since that time. Jose applied for and received DACA in March 2016. He is currently a high school junior in suburban Maryland. His dream is to go to college to study chemistry and become a chemical engineer. His DACA is due to expire on March 6, 2018, one day after the last date as to which DHS will allow renewals. Due to the DACA rescission, he is concerned that he will be unable to renew his DACA, and he fears he will lose his ability to apply for college.

41. Adriana Gonzales Magos is the mother of J.M.O. and his next of friend in this action.

42. Angel Aguiluz is a 20 year old resident of Silver Spring, Maryland. In June 2005, at the age of 8, he was brought to the United States from Honduras by his parents, who were seeking medical attention for his older brother. Angel applied for and received DACA. He is currently a student at Montgomery College, where he is studying math and physics, and he is also employed part-time by a restaurant. His dream is to become a physicist. His DACA and work permit are scheduled to expire in 2018. Due to the DACA rescission, he is concerned that he will lose his job and will be deported to Honduras.

43. Estefany Rodriguez is a 20 year old resident of Rockville, Maryland. In 2001, at the age of 3, she was brought to the United States from Bolivia. She applied for and received DACA in January 2015. At the age of 18, she was diagnosed with brain cancer, and has been under medical care since that time. She is currently a student at Montgomery College. Her DACA is due to expire in January 2018, but she submitted a renewal application on October 4, 2017. She is concerned that, due to the DACA rescission, she will be unable to renew her DACA once it expires.

44. Heymi Elvir Maldonado is a 20 year old resident of Baltimore, Maryland. In, 2008, at the age of 8, she was brought to the United States from Honduras by her mother, who was seeking a better life for her daughters. She applied for and received DACA. Since receiving DACA, she has worked as an office assistant for the school system, and has attended classes at Goucher College, where she intends to major in Business Management and Spanish. Her DACA recently expired. She is concerned that, due to the DACA rescission, she is unable to renew her status and will be unable to work or to be able to afford to complete her college

degree. She is also concerned that she will be deported to Honduras, where she has no connections.

45. Nathaly Uribe Robledo is a 22 year old resident of Glen Burnie, Maryland. In 1997, at the age of 2, she was brought to the United States from Chile to seek a better live. Nathaly applied for and received DACA in October 2012. For the last three years, she has worked as an insurance agent, and her dream is one day to have her own agency. She had planned to apply for permanent legal resident status, as well as for advance parole in 2018 to visit her great-grandmother in Chile. Her DACA is scheduled to expire on December 4, 2017; she submitted a renewal in July, but has not heard whether it has been approved. Due to the DACA rescission, she has cancelled her plans to travel to Chile, and her plan to apply for legal permanent status has been put on hold. She is concerned that she will lose her job once she loses work authorization.

46. Eliseo Mages is a 23 year old resident of Capital Heights, Maryland. In April 2004, at the age of 11, he was brought to the United States from Mexico so that he and his brother could have a better education and a better life. Eliseo applied for and received DACA. Following receipt of his work permit, he worked in a paint store (ultimately being promoted to manager) while he earned a college degree as a Veterinarian's Assistant. His DACA is due to expire in 2019. Due to the DACA rescission, he is concerned he will not be able to keep his job and will not be able to obtain employment with a veterinarian.

47. Jesus Eusebio Perez is a 25 year old resident of Baltimore, Maryland. In 1997, at the age of 5, he was brought to the United States from Mexico so that his parents could provide for his family. Jesus applied for

and received DACA in November 2012. For over the last four years, he has been employed by the Johns Hopkins School of Public Health, first as a Research Assistant and currently as a Mental Mentor, who works with middle school students. His DACA and work permit are due to expire in March 2019. Due to the DACA rescission, he is concerned that he will lose his employment when his work permit expires and that he will be deported to Mexico.

48. Josue Aguiluz is a 25 year old resident of Beltsville, Maryland. In June 2005, at the age of 12, he was brought to the United States from Honduras by his parents, who were seeking medical attention for his older brother. He applied for and received DACA and a work permit in November 2012. While maintaining a full time job, he earned an associates' degree in accounting. He is currently employed as a billing analyst for a Northern Virginia technology company and is working towards a bachelor's degree in accounting. His DACA and work permit are due to expire in November 2018. Due to the DACA rescission, he fears that he will be terminated once his work authorization expires, that he will not be able to complete his bachelor's degree, and that this will delay his ability to take the CPA exam.

49. Missael Garcia is a 27 year old resident of Dundalk, Maryland. In September 2002, at the age of 12, he was brought to the United States from Mexico by his parents, who were seeking a better life. He was valedictorian of his high school class. He applied for and received DACA and a work permit in August 2015. He has worked as a community organizer, as a mentor to middle school students, and in the restaurant business, and is expecting his first child to be born in the next few weeks. His DACA and work authorization

expired in August 2017. Due to the DACA rescission, he is unable to renew his status and will be unable to provide for his young family or to complete the purchase of a house. He is also concerned that he will be deported to Mexico, where he has no connections.

50. Jose Aguiluz is a 28 year old resident of Washington, D.C. In June 2005, at the age of 15, his parents brought him to the United States from Honduras to seek medical treatment (spinal surgery) following a car accident. He earned an associate's degree in nursing in December 2011, but was ineligible to take board examinations to become a Registered Nurse. He applied for and received DACA and a work permit in November 2012. He has subsequently passed the Nursing Boards and received his bachelor's degree in nursing in 2014. He is employed as a Registered Nurse in a Maryland hospital, and plans to seek a master's degree in nursing. His DACA and work permit are due to expire in November 2018. Due to the DACA rescission, he fears that he will not be able to pursue his master's degree, that he will be terminated once his work authorization expires, and that he will be deported to Honduras.

51. Brenda Moreno Martinez is a 28 year old resident of Baltimore, Maryland. In August 2001, at the age of 12, her parents brought her to the United States from Mexico because her father was threatened because of his political views. She applied for and received DACA and a work permit in August 2012. She was subsequently able to attend and graduate from college and has passed her certification to become a teacher. She is currently employed as a teacher in the Baltimore City school system, and plans to seek a master's degree in education. Her DACA and work permit are due to expire in June 2018. Due to the

DACA rescission, she is concerned that she will lose her job, and cannot pursue her master's degree. She has postponed her plans to visit her elderly grandmother in Mexico, and because she is scared of travelling even within the United States, has cancelled a family vacation to Hawaii.

52. Maricruz Abarca is a 29 year old resident of Baltimore, Maryland. In June 2002, at the age of 15, she was brought to the United States from Mexico by her mother, who was trying to reunite their family. She applied for and received DACA in October 2016. Since receiving DACA, she has started a small business and is in the process of acquiring a towing company. She is currently attending classes at Baltimore City Community College to become a legal assistant. Her dream is to attend law school and become a lawyer. Her DACA is scheduled to expire in October 2018. Due to the DACA rescission, she is concerned that she will not be able to continue her education, and that she will be deported to Mexico (where she has no connections) and separated from her three children, who are all U.S. citizens.

53. Luis Aguilar is a 29 year old resident of Alexandria, Virginia. In 1997, at the age of 9, he was brought to the United States from Mexico. He applied for and received DACA in 2012. He has taught himself how to code, and participated in the 2014 Facebook "hackathon" and won a national competition by designing a website platform that serves as a tool for users to search the voting record and stance of all members of Congress on immigration. Since receiving DACA, he has worked for a variety of organizations in the immigrant rights movement, and currently works as CASA's Advocacy Specialist in Virginia. His DACA and work permit are scheduled to expire in March

2019. He is concerned that, due to the DACA rescission, he will be unable to find work once he loses his work authorization.

54. Annabelle Martinez Herra is a 33 year old resident of Bowie, Maryland. In December 1995, at the age of 11, she was brought to the United States from Costa Rica by her parents, who were seeking a better life. She applied for and received DACA and work authorization in July 2015. After receiving DACA, she worked doing human resources and accounting at a painting company, and was able to buy her house. Her DACA expired in July 2017. Since the DACA rescission, she has been fired by her employer. She is concerned that, due to the DACA rescission, she will be unable to renew her status and she will be unable to find other employment. She is also concerned that she will lose her house, as well as her food stamps. She is also concerned she will be unable to care for her 14 year old son, who is a U.S. citizen.

55. María Joseline Cuellar Baldelomar is a 21 year old resident of Springfield, Virginia. In July 2001, at the age of 4, she was brought to the United States from Bolivia by her mother, who was seeking a better life for her children. She applied for and received DACA in January 2013. Since receiving DACA, she became employed by a child development center and later became the musical director at her church. She also has started a small business with her husband. Her DACA is scheduled to expire in January 2018; she did not renew because since December 2016, she has had an application pending to change her status to legal permanent resident and she is concerned her information will be shared with immigration enforcement authorities. Due to the DACA rescission, she is concerned that her application for legal permanent residence

will be denied and she will be deported, separating her from her family – her husband, son, and siblings are all U.S. citizens.

56. Defendant DHS is a federal cabinet agency responsible for implementing DACA. DHS is a Department of the Executive Branch of the United States Government, and is an agency within the meaning of 5 U.S.C. § 552(f)(l).

57. Defendant USCIS is an Operational and Support Component agency within DHS. USCIS is the sub-agency responsible for administering DACA.

58. Defendant U.S. Immigration and Customs Enforcement ("ICE") is an Operational and Support Component agency within DHS. ICE is responsible for enforcing federal immigration law, including identifying, apprehending, detaining, and removing non-citizens.

59. Defendant U.S. Customs and Border Protection ("CBP") is an Operational and Support Component agency within DHS. CBP is responsible for administering and enforcing immigration law at borders.

60. Defendant Donald J. Trump is the President of the United States, and authorized the issuance of the Rescission Memorandum that purports to rescind DACA. He is sued in his official capacity.

61. Defendant Jefferson Beauregard Sessions III is the Attorney General of the United States, and announced the rescission of DACA. He is sued in his official capacity.

62. Defendant Elaine C. Duke is the Acting Secretary of Homeland Security. She is responsible for implementing and enforcing immigration laws, and oversees DHS. She is the author of the September 5,

2017 Rescission Memorandum rescinding DACA. She is sued in her official capacity.

63. Defendant James W. McCament is the Acting Director of U.S. Citizenship and Immigration Services. He is sued in his official capacity.

64. Defendant Thomas D. Homan is the Acting Director of U.S. Immigration and Customs Enforcement. He is sued in his official capacity.

65. Defendant Kevin K. McAleenan is the Acting Commissioner of U.S. Customs and Border Protection. He is sued in his official capacity.

66. Defendant United States of America includes all government agencies and departments responsible for the implementation and rescission of DACA. BACKGROUND: ESTABLISHMENT OF DACA

67. On June 15, 2012, Secretary Napolitano issued a memorandum establishing the DACA program (the "2012 DACA Memorandum"). Under DACA, individuals who came to the United States as children and meet specific criteria may request deferred action for a period of two years, subject to renewal.

68. Deferred action is a long-standing mechanism under the immigration laws pursuant to which the government forbears from taking removal action (i.e., starting the process of expelling an immigrant from the United States) against an individual for a designated period. In addition to DACA, federal law and the federal government by executive action have declared various other classes of individuals as eligible for deferred action. For example:

- In 1990, the Immigration and Naturalization Service implemented a "Family Fairness" program to protect approximately 1.5 million spouses

and children of immigrants who had been granted legal status under the 1986 immigration law.[14]

- Certain aliens who have suffered abuse by U.S. Citizens or LPR spouses or parents may self-petition under the Violence Against Women Act for deferred action status. 8 U.S.C. § 1154(a)(1)(A)(iii)–(iv), (vii)).
- Certain aliens who are victims of human trafficking and their family members are eligible for deferred action status. 8 U.S.C. § 1101(a)(15)(T)(i).
- Certain aliens who are victims of certain crimes and their family members are eligible for deferred action status. 8 U.S.C. § 1101(a)(15)(U)(i).
- In 2009, DHS implemented a deferred action program for certain widows and widowers of U.S. Citizens.[15]
- The U.S. government has, in the wake of major natural disasters, allowed foreign students who can no longer satisfy the requirements to maintain their student visas to be eligible for deferred action.[16]

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[14] *See* Memorandum for Regional Commissioners, INS, from Gene McNary, Commissioner, INS, Re: Family Fairness: Guidelines for Voluntary Departure under 8 CFR 242.5 for the Ineligible Spouses and Children of Legalized Aliens (Feb. 2, 1990)

[15] Memorandum for Field Leadership, USCIS, from Donald Neufeld, Acting Associate Director, USCIS, Re: Guidance Regarding Surviving Spouses of Deceased U.S. Citizens and Their Children at 1 (Sept. 4, 2009)

[16] *See, e.g.,* USCIS, Interim Relief for Certain Foreign Academic Students Adversely Affected by Hurricane Katrina: Frequently Asked Questions (FAQ) at 1 (Nov. 25, 2005)

- The U.S. government has, from time to time, allowed aliens of particular nationalities to be eligible for deferred action.[17]

69. Under the 2012 DACA Memorandum, applicants had to demonstrate that they (i) came to the United States under the age of sixteen; (ii) had continuously resided in the United States since June 15, 2007; (iii) were currently in school, had graduated from high school, had obtained a general education development certificate, or were an honorably discharged veteran; (iv) had not been convicted of a felony, significant misdemeanor, three or more misdemeanor offenses, or otherwise posed a threat to national security or public safety; and (v) were not over thirty years old as of June 15, 2012.

70. USCIS promised Dreamers that their applications would be considered under a fair process. Specifically, USCIS assured Dreamers that "[a]ll individuals who believe they meet the guidelines . . . may affirmatively request consideration of DACA from USCIS through this process," and after USCIS receives the applicant's forms, evidence, supporting documents and application fee, "USCIS will review them for completeness." USCIS further affirmatively represented to Dreamers that if it determines that the request is complete, USCIS will send the applicant notices of receipt and for needed appointments, and then review the applications "on an individual, case-

[17] *See, e.g.,* Exec. Order No. 12,711, 3 C.F.R. 284(April 11, 1990) (Policy Implementation with Respect to Nationals of the People's Republic of China). *See generally* Congressional Research Service, *Analysis of June 15, 2012 DHS Memorandum* (July 13, 2012) Appendix A.

by-case basis" and notify applicants of its determination in writing.[18]

BACKGROUND: APPLICANTS WERE ADVISED THAT PARTICIPATION IN DACA ENTITLED THEM TO TANGIBLE BENEFITS

71. In publicizing DACA, the government emphasized that deferred action status made Dreamers eligible for numerous benefits and privileges.

72. For example, USCIS promised Dreamers if their DACA applications were granted, they "may obtain employment authorization" to work for up to two years.[19] This commitment was authorized under federal law; under 8 CFR 274a(a)(11) & (c)(14), deferred action recipients (including, but not limited to, Dreamers) may apply for work authorization to be legally employed. This representation was important to Plaintiffs Josue Aguilaz, Jose Eusebio Perez, and Missael Garcia who were working in low skill, minimum wage jobs; since receiving DACA, Augilaz has been able to obtain employment as an accountant, Garcia has been able to obtain employment as a school mentor, and Perez has been able to obtain employment as a Research Assistant at Johns Hopkins University.

73. USCIS promised Dreamers that if their DACA applications were granted, they would be eligible to travel outside the United States for educational, employment, or humanitarian purposes.[20] In particular, USCIS told Dreamers that they would be eligible to apply for "advance parole," parole," which permits

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[18] DACA FAQs Q7; USCIS, *FS General Information — How do I request consideration of DACA?* at 2 (June 2014).

[19] DACA FAQs Q4.

[20] DACA FAQs Q57.

recipients to leave the country temporarily without risk that they will be denied readmission. This commitment opened the door to allow international travel for Dreamers. For example, DACA recipients were allowed to briefly depart the U.S. and legally return under certain circumstances, such as to visit an ailing relative, attend funeral services for a family member, seek medical treatment, or further educational or employment purposes. This commitment was authorized under federal law; under 8 USC 212(d)(5)(A), deferred action recipients (including Dreamers) may apply for "parole" to travel internationally without risk that they will be barred from re-entering the United States.[21] Plaintiff Jose Aguilaz and Luis Aguilar successfully obtained advance parole to visit family members in Honduras and Mexico respectively.

74. USCIS promised Dreamers that if their DACA applications were granted, they could attend educational institutions.[22] In particular, USCIS told Dreamers they could attend "elementary school, junior high or middle school, high school, alternative program," "education, literacy, or career training program (including vocational training)" as well as an "education program assisting students in obtaining a regular high school diploma or its recognized equivalent under state law." This commitment was authorized under federal law; under 42 USC 2000c-6, educational institutions may not discriminate on the basis of national origin, and under 42 USC 2000d, 28 C.F.R. § 42.104(b)(2), and 34 C.F.R. § 100.3(b)(2), individuals may not be discriminated against in the receipt of federal financial educational assistance on the basis of their national

[21] DACA FAQs Q57.

[22] DACA FAQs 32-34.

origin. *See also Plyler v. Doe*, 457 U.S. 202 (1982). Plaintiff Josue Aguilaz credits DACA (which allowed him to take his certification to become a Registered Nurse) with his decision to return to school to obtain an advance nursing degree. Similarly, Plaintiffs Eliseo Mages, Brenda Moreno Martinez, Nathaly Uribe Robledo, and Angel Aguilaz all credit DACA with allowing them to attend college.

75. In publicizing DACA, the federal government emphasized that Dreamers would pay into and be eligible for certain public benefits such as Social Security and disability.[23] This commitment was authorized under federal law; unlike other undocumented immigrants, under 8 USC 1611(b)(2) & (b)(3) and 8 U.S.C. 1621(d), deferred action recipients are eligible for public benefits, such as Social Security, Medicare, and disability benefits.

76. USCIS promised Dreamers that if their DACA application was granted, they would be "authorized by DHS to be present in the United States," "considered by DHS to be lawfully present," and that their "period of stay is authorized by DHS."[24] This commitment was authorized under federal law; under 8 CFR 109.1, deferred action recipients are granted suspended accrual of unlawful presence for purposes of admission.

77. In addition to the benefits directly provided by the federal government, these benefits enabled Dreamers to secure equal access to other benefits and opportunities on which Americans depend, including opening

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[23] Karen Tumulty, *Illegal Immigrants could receive Social Security, Medicare under Obama Action*, Wash. Post., Nov, 25, 2014.

[24] DACA FAQs Q1, Q5.

bank accounts, obtaining credit cards, starting businesses, purchasing homes and cars, and conducting other aspects of daily life that are often unavailable for undocumented immigrants.

78. DHS recognized that DACA created rights that the government could not take away without affording due process. Under the DACA "National Standard Operating Procedures (SOP): Deferred Action for Childhood Arrivals ("SOP"), established by USCIS and DHS, individuals admitted into DACA are not to be terminated from the program absent an "Egregious Public Safety" issue.[25] In this event, the procedures require USCIS to provide a "Notice of Intent to Terminate" which "thoroughly explain[s]" the grounds for the termination." Other materials informed Dreamers that only " fraud or misrepresentation" in the application process or "[s]ubsequent criminal activity" would be grounds for revocation of DACA.[26] The SOP further directed that the recipients of such notice should receive 33 days to "file a brief or statement contesting the grounds cited in the Notice of Intent to Terminate" prior to termination of participation in DACA.[27]

BACKGROUND: THE PRIVACY COMMITMENT TO DREAMERS

79. The DACA application form required applicants to provide a wealth of personal, sensitive information, including the applicant's lack of lawful immigration status, address, Social Security number, and the name and location of his or her school. DACA appli-

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[25] SOP at 132-34.

[26] USCIS Approval Notice, Form 1-821D, Consideration of Deferred Action for Childhood Arrivals.

[27] SOP at 132.

cants were also required to provide DHS with a detailed history of their criminal arrests and convictions, including all misdemeanors, however minor, and to affirmatively declare whether they had ever been placed in removal proceedings in the past. The application process also required that all DACA applicants undergo biographic and biometric background checks, which included fingerprinting, before USCIS considered their DACA requests.

80. To induce participation in DACA, USCIS made numerous commitments to Dreamers regarding their rights under the program.

81. Foremost among these commitments was the promise that DACA applicants' information would not be shared with the DHS components responsible for immigration enforcement – ICE and CBP. In providing this information, DACA applicants relied on Defendants' promises about the terms of the program and the manner in which their information would be protected. These promises were documented, among other places:

- In the "Instructions" to Form I-821D – the DACA application which every DACA applicant had to complete – stated that "information provided in this request is protected from disclosure to ICE and CBP for the purpose of immigration enforcement proceedings unless the individual meets the guidelines for the issuance of a Notice to Appear (NTA) or a referral to ICE under the guidelines set forth in USCIS's Notice to Appear Guidance."[28]

[28] Instructions to Form I-821D.

- In the Frequently Asked Questions for DACA applicants, USCIS affirmatively represented to Dreamers that, except in limited circumstances (i.e., the individual meets the guidelines for a Notice to Appear), their information would not be shared with immigration enforcement authorities. *See, e.g.,* FAQ Q19 ("[i]nformation provided in [a DACA request] is protected from disclosure to ICE and CBP for the purpose of immigration enforcement proceedings").
- In the Frequently Asked Questions for DACA applicants, USCIS affirmatively represented to Dreamers that their information would not be shared with immigration enforcement authorities even if their request for DACA was denied. *See, e.g.,* FAQ Q26 ("[i]f you have submitted a request for consideration of DACA and USCIS decides not to defer your case . . . your case will not be referred to ICE for purposes of removal proceedings").
- In other materials as well, USCIS promised Dreamers that it would not share their information with immigration enforcement authorities. For example, one slide in a Powerpoint presentation staed: "Protecting Your Information: We *will not* share any information about you with ICE or U.S. Customs and Border Protection (CBP) for the purpose of immigration enforcement proceedings unless you meet the criteria for: the issuance of an NTA; or a referral to ICE under the criteria set forth in our NTA guidance."[29]

[29] June 2014 PPT at 30.

- The general guidance on the USCIS website reassured applicants that their applications would be submitted to a "lockbox" and would not be shared with immigration enforcement: "If your case does not involve a criminal offense, fraud, or a threat to national security or public safety, we will not refer your case to ICE for purposes of removal proceedings except where DHS determines there are exceptional circumstances."[30]
- Other guidance also stated "What protections are in place to protect the information I share in my request from being used for immigration enforcement practices? The information you provide in your request is protected from disclosure to U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP) for the purpose of immigration enforcement proceedings unless you meet the criteria for issuance of a Notice to Appear or a referral to ICE under the criteria explained in USCIS' Notice to Appear . . . Individuals whose cases are deferred under the consideration of deferred action for childhood arrivals process will not be referred to ICE."[31]
- USCIS also promised employers of Dreamers that any information they provided verifying employment would not be used for enforcement purposes against them or their company absent

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[30] Consideration of Deferred Action for Childhood Arrivals, "Filing Process" & "If USCIS does not grant DACA in your case."

[31] USCIS, *F5 General Information — How do I request consideration of DACA?* at 3 (June 2014).

"evidence of egregious violations of criminal statutes or widespread abuses."[32]

82. In their receipt, use, maintenance, and protection of personally identifiable information, DHS and USCIS, among other federal government agencies, are required to comply with the Privacy Act of 1974 ("Privacy Act"). 5 U.S.C. § 552a. Among other things, the Privacy Act prohibits an agency's disclosure of information about "individuals" to another agency or person unless a specific exemption applies.[33] The Privacy Act also provides that a government agency may not maintain information in its records that is not necessary to accomplish a purpose required to be accomplished by statute or by executive decree.[34]

83. Under the Privacy Act, USCIS and DHS stored DACA applicant information in one of four pre-existing systems of records – the "Alien File, Index, and National Tracking System of Records," the "Background Check Service," the "Biometric Storage System," and the "Benefits Information System."[35]

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[32] DACA FAQs 76.

[33] *See* 5 U.S.C. § 552a (b) ("No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains").

[34] *See* 5 U.S.C. § 552a (c)(1) (an agency "shall maintain in its records *only* such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President") (emphasis added).

[35] DHS/USCIS/PIA-045, Privacy Impact Assessment for the Deferred Action for Childhood Arrivals at 9 ((Aug. 15, 2012).

84. DHS and USCIS, like other federal government agencies, also are required to comply with the e-Government Act of 2002. Pub. L. 107-347 (2002). Among other things, the e-Government Act requires a government agency to prepare a Privacy Impact Assessment that addresses "with whom the information will be shared." *Id.* § 208(b).

- Under the e-Government Act, on August 15, 2012, USCIS and DHS conducted a Privacy Impact Assessment ("PIA-45") for DACA.[36]
- PIA-45 repeatedly refers to DACA applicants as "individuals" (a key statutory term under the Privacy Act) and states that "prior to the submission of any information, individuals are presented with a Privacy Act Statement, as required by Section (e)(3) of the Privacy Act." PIA-45 4.1.
- PIA-45 instructs that "any [personally identifiable information] that is collected, used, maintained, and/or disseminated . . . are to be treated as System of Records subject to the Privacy Act regardless of whether the information pertains to a U.S. citizen, Legal Permanent Resident, visitor, or alien." PIA-45 7.1.
- PIA-45 expressly declares that "[i]nformation provided in this request is protected from disclosure to ICE and CBP for the purpose of immigration enforcement proceedings unless the individual meets the guidelines for the issuance of a Notice to Appear (NTA) or a referral to ICE under the guidelines set forth in USCIS's Notice to Appear Guidance." PIA-45 3.3.

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[36] *Id.*

- When USCIS updated the DACA Application Form (I-821D) to request additional information, DHS issued an updated PIA to provide notice of the new information requested. That updated form similarly said that information provided is "protected from disclosure to ICE and CBP for the purpose of immigration enforcement proceedings."[37]

85. PIA-45's treatment of DACA applicant data as covered by the Privacy Act was consistent with DHS policy. Well before the establishment of DACA, DHS set forth its policy to treat all persons' personally identifiable information, regardless of citizenship, the same under the Privacy Act.[38]

86. Although the Privacy Act prohibition on disclosure includes exceptions that allow an agency to disclose information pursuant to a "routine use" or to "another agency . . . for a civil or criminal law enforcement activity," 5 USC 552a(b)(3&7), USCIS and DHS expressly waived those exceptions insofar as they relate to immigration enforcement activities regarding DACA applicants.

87. As detailed above in paragraph 84, USCIS and DHS waived the disclosure exceptions by repeatedly and consistently promising Dreamers in agency

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[37] DHS/USCIS/PIA-045(a), Privacy Impact Assessment Update for the Deferred Action for Childhood Arrivals at 2, 6 (April 2014) ("There is no change in the DHS external sharing and disclosure of information as described in the DHS/USCIS/PIA-045 DACA PIA.")

[38] Guidance Memorandum from Hugo Teufel III, Chief Privacy Officer, U.S. Department of Homeland Security, 2007-01: DHS Privacy Policy Regarding Collection, Use, Retention, and Dissemination of Information on Non-U.S. Persons (Jan. 7, 2009)

publications that their data would not be shared with immigration enforcement authorities.

88. The waiver of the exemptions from the Privacy Act's prohibition on disclosure of personally identifiable information in a system of records is further documented in the USCIS SOP for DACA, which sets forth the standards that DHS applies to DACA applications with nearly 150 pages of specific instructions for granting or denying deferred action. The SOP emphasizes that the "additional measures . . . necessary to ensure that enforcement resources are not expended on these low priority cases," and includes provisions regarding the "lockbox" to which applicants were directed to submit data, as well as "Revised Guidance for the Referral of Cases and Issuance of Notices to Appear" that restricted the referral of cases to ICE.[39]

89. In addition, USCIS and DHS senior leadership confirmed the waiver. For example, in December 2016, then-Secretary of Homeland Security Jeh Johnson sent a letter to members of Congress regarding the need to protect DACA-related information, acknowledging that there were, at the time, 750,000 DACA recipients who had "*relied* on the U.S. government's representations" about prohibitions on the use of such information for immigration enforcement purposes. Johnson unequivocally stated: "*We believe these representations made by the U.S. government, upon which DACA applicants most assuredly relied, must continue to be honored*." (emphasis added).

90. The government's representations that information provided by a DACA applicant would not be used against him or her for later immigration enforce-

[39] SOP at 18, 20, 23-24 & App. B.

ment proceedings are unequivocal and atypical. For example, the federal government does not make the same representations for individuals with similar statuses, such as Temporary Protected Status.[40]

91. Because every DACA applicant was advised that applicant information would not be shared with ICE or CBP, and because the government explicitly acknowledged, Dreamers relied on this commitment in submitting their data, the Due Process Clause and the doctrine of equitable estoppel preclude Defendants from taking actions breaching their commitments.

THE ROAD TO RESCISSION

92. DACA fundamentally changed the lives of Dreamers. By no longer having to hide in the shadows, they obtained employment, sought higher education, pursued career paths, and became fully contributing members of society who paid taxes and participated in civic life. As Secretary Johnson stated in December 2016, DACA has enabled hundreds of thousands of young people "to enroll in colleges and universities, complete their education, start businesses that help improve our economy, and give back to our communities as teachers, medical professionals, engineers, and entrepreneurs— all on the books."[41]

93. As the Secretary of Homeland Security recognized less than 10 months ago, the United States "continue[s] to benefit . . . from the contributions of

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[40] *See, e.g.*, USCIS, Temporary Protected Status, https://www.uscis.gov/humanitarian/temporary-protected-status (last updated May 24, 2017).

[41] Letter to Judy Chu, Representative, U.S. House of Representatives, from Jeh Johnson, Secretary, U.S. Department of Homeland Security ("Letter from Sec'y Johnson") (Dec. 30, 2016)

those young people who have come forward and want nothing more than to contribute to our country and our shared future ."[42]

94. Ending DACA, whose participants are mostly of Mexican and Central American origin, fulfills President's Trump, Attorney General Sessions, and their subordinates oft-stated desire to punish and disparage people with Mexican and/or Central American roots or Latinos generally, as a group, without acknowledging their individual personalities, attributes or circumstances, a failure to differentiate that is the essence of prejudice. For example:

- In announcing his presidential campaign, then-candidate Trump compared Mexican immigrants to rapists, stating: "When Mexico sends its people, they're not sending their best. . . . They're sending people that have lots of problems, and they're bringing those problems with us. They're bringing drugs. They're bringing crime. They're rapists. . . . It's coming from more than Mexico. It's coming from all over South and Latin America."[43]
- During the first Republican presidential debate, then-candidate Trump again restated his distaste for immigrants from Mexico: "The Mexican government . . . send the bad ones over because they don't want to pay for them. They don't want to take care of them."[44]

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[42] Letter from Sec'y Johnson

[43] Transcript of Donald Trump's Presidential Bid Announcement, Washington Post (June 16, 2015).

[44] Andrew O'Reilly, At GOP debate, Trump says 'stupid' U.S. leaders are being duped by Mexico, Fox News (Aug. 6, 2015).

- In May 2016, then-candidate Trump referred to anti-Trump protestors who carried the Mexican flag on Twitter as "criminals" and "thugs."[45]
- On August 21, 2015, two men urinated on a sleeping Latino man and then beat him with a metal pole. At the police station, they stated "Donald Trump was right; all these illegals need to be deported." When asked about the incident, then-candidate Trump failed to condemn the men, instead stating that they were "passionate." Specifically, Trump stated, "[i]t would be a shame . . . I will say that people who are following me are very passionate. They love this country and they want this country to be great again. They are passionate."[46]
- In June 2016, then-candidate Trump stated that Judge Gonzalo Curiel could not be fair in presiding over a lawsuit because he was Mexican-American and Trump was "very, very strong on the border" and Judge Curiel was "Hispanic" and "pro-Mexican."[47] . . . Now, he is

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[45]; Donald Trump (@realDonaldTrump), TWITTER (May 25, 2016 6:39AM), https://twitter.com/realdonaldtrump/status/735465352436408320?lang=en ("The protestors in New Mexico were thugs who were flying the Mexican Flag); Donald Trump (@realDonaldTrump), TWITTER (June 4, 2016 6:04AM), https://twitter.com/realdonaldtrump/status/739080401747120128?lang=en ("Many of the thugs that attacked peaceful Trump supporters in San Jose were illegals").

[46] Adrian Walker, 'Passionate' Trump fans behind homeless man's beating?, The Boston Globe (Aug. 21, 2015).

[47] Transcript of Face the Nation, CBS News, June 5, 2016; Jose A. DelReal and Katie Zezima, Trump's personal, racially tinged attacks on federal judge alarm legal experts, The Washington Post, June 1, 2016.

Hispanic, I believe. He is a very hostile judge to me." Ex.

- In August 2016, during a speech in Phoenix, then-candidate Trump said: "We agree on the importance of ending the illegal flow of drugs, cash, guns, and people across our border. . . most illegal immigrants are lower skilled workers with less education . . . these illegal workers draw much more out from the system than they can ever possibly pay back. And they're hurting a lot of our people that cannot get jobs under any circumstances. . . We will immediately terminate President Obama's two illegal executive amnesties in which he defied federal law and the Constitution to give amnesty to approximately five million illegal immigrants, five million. . . . [N]o one will be immune or exempt from enforcement. . . . Anyone who has entered the United States illegally is subject to deportation. That is what it means to have laws and to have a country. Otherwise we don't have a country."[48]
- In October 2016, during a presidential debate, then-candidate Trump responded to a question about immigration by stating: "We have some bad hombres here and we're going to get them out."[49]
- In December 2016, Trump referred to an article about a recent crime wave on Long Island and

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[48] Transcript: Donald Trump's Full Immigration Speech, Los Angeles Times (Aug. 31, 2016).

[49] Katie Zezima, Trump on immigration: There are 'bad hombres' in the United States, The Washington Post (Aug. 30, 2017).

said "They come from Central America. They're tougher than any people you've ever met. They're killing and raping everybody out there. They're illegal. And they are finished."[50]

- On January 26, 2017, referring to immigrants, President Trump said ""We are going to get the bad ones out . . . The criminals and the drug deals, and gangs and gang members and cartel leaders. The day is over when they can stay in our country and wreak havoc."[51]
- On January 27, 2017, newly-inaugurated President Trump and Mexico's President Peña Nieto discussed President Trump's proposal for a border wall over the phone. During that transcribed conversation, President Trump once again referred to Mexicans as "tough hombres."[52]
- In February 2017, President Trump said "What has been allowed to come into our country, when you see gang violence that you've read about like never before, and all of the things — much of that is people that are here illegally . . . They're rough and they're tough . . . So we're getting them out."[53]

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[50] Michael Scherer, Person of the Year 2016, TIME Magazine (Dec. 2016).

[51] Shannon Dooling, Mayor Walsh Vows to Keep Boston a Safe Place For Immigrants Following Trump's Orders , WBUR News (Jan. 26, 2017).

[52] Greg Miller et. al., Full Transcripts of Trump's Calls with Mexico and Australia, Wash. Post. (Aug. 3, 2017).

[53] Michael A. Memoli, One Comment from Trump shows his administration's message on immigration has been muddled, L.A. Times (Feb. 23, 2017).

- On June 21, 2017, President Trump – implied that thousands of immigrants are members of the Central American gang MS-13. He said "These are true animals. WE are moving them out of the country by the thousands, by the thousands."[54]
- Similarly, on June 28, 2017, President Trump said "They are bad people. And we've gotten many of them out already. . . We're actually liberating towns, if you can believe that we have to do that in the United States of America. But we're doing it, and we're doing it fast."[55] On August 16, 2017 at President Trump's direction, DHS terminated the Central American Minors Program, which allowed unaccompanied minors fleeing violence in El Salvador, Guatemala, and Honduras to settle in the United States.[56]
- On August 25, 2017, President Trump pardoned former Maricopa County Sheriff Joe Arpaio, who was to be sentenced for criminal contempt for failing to comply with a federal judge's order to stop racially profiling Latinos.[57] Before issuing the pardon, President Trump asked rhetorically, "Was Sheriff Joe convicted for doing his

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[54] Michelle Ye Hee Lee, President Trump's claim that MS-13 gang members are being deported 'by the thousands,' Wash. Post. (June 26, 2017).

[55] Press Release, The White House Office of the Press Secretary, Remarks by President Trump During Meeting with Immigration Crime Victims (June 28, 2017).

[56] Mica Rosenberg, U.S. ends program for Central American minors fleeing violence, Reuters (Aug.16, 2017).

[57] Julie Hirschfield Davis and Maggie Haberman, Trump Pardons Joe Arpaio, Who Became Face of Crackdown on Illegal Immigration, N.Y. Times (Aug. 25, 2017).

job?" After issuing the pardon, President Trump sent a tweet calling Mr. Arpaio "an American patriot."

95. President Trump's discriminatory statements about people with Mexican and Central American roots show the root motivation for the DACA rescission.

96. Other senior officials of the administration have echoed this animus. For example:

- On March 27, 2017, Attorney General Sessions cited two crimes committed by Latino immigrants and said "the American people are justifiably angry . . . DUIs, assaults, burglaries, drug crimes, rapes, crimes against children and murders. Countless Americans would be alive today–and countless loved ones would not be grieving today . . . The President has rightly said that this disregard for the law must end. . . ."[58]
- On July 28, 2017, White House Senior Policy Advisor Stephen Miller said: "a message of tolerance toward illegal immigration is the number-one boon to smugglers and traffickers. And we've seen the results of that over the last eight years in terms of massive human rights violations associated with the Central American migrant surge. . . that permissive approach, we've seen the results, and the results have been deadly and horrific. . . We also need to get

[58] Dep't of Justice, Attorney General Jeff Sessions Delivers Remarks on Sanctuary Jurisdictions, https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-sanctuary-jurisdictions (March 27, 2017).

expedited removal for illegal immigrants from Central America."[59]

THE DACA RESCISSION

97. On September 5, 2017– more than five years after first making numerous promises to induce individuals to participate in DACA– DHS abruptly rescinded DACA and breached those promises. Defendant Sessions announced the rescission of DACA. On the same day, Defendant Duke issued a memorandum formally rescinding DACA. The Rescission Memorandum created a new legal regime governing DACA recipients, which imposed rights and obligations and is legally binding.

98. Under the Rescission Memorandum, the government will immediately cease accepting applications under DACA. Dreamers who were too young to be eligible, such as Plaintiff A.M, can no longer apply for DACA.

99. Under the Rescission Memorandum, the federal government will issue renewals only for recipients whose DACA permits expire between September 5, 2017 and March 5, 2018, and only if they apply for renewal by October 5, 2017. DACA recipients who let their status lapse in the weeks leading up to September 5, 2017, such as Plaintiffs Heymi Elvir Maldonado, Maricruz Abarca, Annabelle Martinez Herra, and Missael Garcia, can no longer renew their DACA.

100. Under the Rescission Memorandum, the federal government will not issue renewals for recipients whose permits expire after March 5, 2018.

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[59] Press Release, The White House Office of the Press Secretary, *Press Gaggle by Senior Policy Advisor Stephen Miller*, July 27, 2017.

Individuals whose DACA expires after that date, such as Plaintiff J.M.O. (whose DACA expires on March 6, 2018), Angel Aguiluz, Luis Aguilar, Eliseo Mages, and Brenda Moreno Martinez, will not be allowed to renew their DACA.

101. Under the Rescission Memorandum, the government will not approve any new or pending applications for advanced parole for DACA recipients, meaning that Dreamers are prevented from traveling abroad and returning to the United States, even where there are compelling humanitarian or other reasons for such travel. Dreamers can no longer travel outside the United States during their benefit period, including for those who have already submitted requests for advance parole in reliance on DHS's assurances that advance parole was available to them. Those who have pending applications are therefore denied advance parole without any assessment under the criteria DHS has used for advance parole requests. Many Dreamers, such as Plaintiffs Brenda Moreno Martinez and Nathaly Uribe Robdelo have cancelled plans to visit elderly relatives abroad.

102. Under the Rescission Memorandum, thousands of Dreamers will lose their work authorization each day beginning March 6, 2018. Many Dreamers, such as Plaintiffs Angel Aguiluz, Heymi Elvir Maldonado, Nathaly Uribe Robledo, Eliseo Mages, Jesus Eusebio Perez, Josue Aguiluz, Jose Aguiluz, and Brenda Moreno Martinez are worried they will lose their jobs when their work authorization expires. Other Dreamers, including Annabelle Martinez Herra, have already lost their employment.

103. Under the Rescission Memorandum, thousands of Dreamers face the risk of losing their employment, as well as vital benefits, such as driver licenses,

financial aid, disability and health benefits, among others. They will also lose their protection from deportation, meaning that they risk permanent separation from their family and community.

104. Under the Rescission Memorandum, the federal government will break up hundreds of thousands of families. Many Dreamers, including Plaintiffs A.M, Annabelle Martinez Herra, and Maricruz Abarca live in households with American citizen family members. Deporting Dreamers will split these recipients from their citizen family members.

105. Under the Rescission Memorandum, Dreamers enrolled in colleges and universities, including Plaintiffs Angel Aguiluz, Estefany Rodriguez, Maricruz Abarca, and Josue Aguiluz, will be unable to plan for the future, apply for and obtain internships, study abroad, simultaneously work to pay costs and fees, and obtain certain financial aid and scholarships – forcing many to withdraw from their college or university.

106. Under the Rescission Memorandum, Dreamers who applied for and received advance parole from USCIS and have paid the required fees have no assurances that they will be readmitted into the United States if they travel abroad. Instead, the Rescission Memorandum states only that DHS will "generally' honor previously approved applications. Even individuals currently travelling abroad based on advance parole granted before September 5, 2017 are at risk of being denied re-admission.

107. Despite the federal government's repeated promises that it would not use the information submitted by DACA applicants to conduct enforcement measures, the Rescission Memorandum provides no assurance to Dreamers, or direction to USCIS, ICE,

and CBP that information contained in DACA applications or renewal requests cannot be used for the purpose of future immigration enforcement proceedings.

108. To the contrary, USCIS and other government agencies have released guidance suggesting an intention to welch on those promises and to share that information with ICE and CBP. While the FAQs to the DACA Memorandum unequivocally represented that, with limited and specified exceptions, information provided pursuant to a DACA application would be kept confidential and not used for immigration enforcement, the Rescission FAQs state: "*Generally*, information provided in DACA requests will not be *proactively* provided to other law enforcement entities (including ICE and CBP) for the purpose of immigration enforcement proceedings unless the requestor poses a risk to national security or public safety, or meets the criteria for the issuance of a Notice To Appear ["NTA"] or a referral to ICE under the [NTA] criteria."[60] The addition of the qualifiers "generally" and "proactively" makes the representation nearly meaningless, arrogating to USCIS the ability to make the sensitive information submitted by individual DACA applciants available to ICE for previously prohibited purposes, including immigration enforcement, so long as it does so "specifically" and not "proactively." For example, the language indicates that USCIS would provide DACA applicant data *in response* to a request from ICE; such action would be

[60] DHS, Frequently Asked Questions: Rescission of Deferred Action For Childhood Arrivals (DACA) ("Rescission FAQs") Q8 (emphasis added), https://www.dhs.gov/news/2017/09/05/frequently-asked-questions-rescission-deferred-action-childhood-arrivals-daca (last published Sept. 5, 2017).

directly contrary to the positions USCIS adopted in its Privacy Impact Assessment.

109. As noted earlier, the DACA application form required applicants to provide a wealth of personal, sensitive information. DACA applicants were also required to provide DHS with a detailed history of their criminal arrests and convictions, including all misdemeanors, however minor. In addition, applicants were required to affirmatively declare whether they had ever been placed in removal proceedings in the past.

110. Many DACA recipients have final orders of removal, generally issued *in absentia* when they were minors. If their information is shared with ICE or CBP, these individuals will be subject to an extreme risk of expedited deportation, which can occur within days or even hours, with minimal procedural safeguards.

111. Plaintiffs and other Dreamers cannot but be worried, as the Defendants have threatened them both directly and indirectly (by refusing to reaffirm the privacy of their applicant data, and by targeting immigrants for deportation who have not been convicted of criminal activity):

- President Trump has taken affirmative steps to reduce the privacy protections applicable to DACA data. In January 2017, President Trump issued Executive Order 13,768 directing all agencies, including DHS, to "ensure that their privacy policies exclude persons who are not United States citizens or lawful permanent resi-

dents from the protections of the Privacy Act regarding personally identifiable information."[61]

Pursuant to Executive Order 13,768, on April 25, 2017, DHS issued a new Privacy Policy Guidance Memorandum introducing new "legal and policy obligations." Among these obligations is a new "transparency" obligation that requires "all information sharing that relates to immigrants and non-immigrants must be described and justified in the appropriate PIA . . ." Another obligation listed is "purpose specification," which states that use of any information collected "must be compatible with the purpose for which DHS originally collected the information; the PIA must identify and explain this compatibility."[62] Notwithstanding these commitments, DHS also stated that its new privacy policy "permits the sharing of information about immigrants and non-immigrants with federal, state, and local law enforcement."[63]

- In February 2017, DHS announced a change in immigration enforcement priorities. Previously, DHS enforcement priorities were generally consistent with the DACA Memorandum, prioritizing people who had committed serious felonies,

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[61] Exec. Order No. 13,768, 82 Fed. Reg. 8793, (Jan. 25, 2017) ("Enhancing Public Safety in the Interior of the United States")

[62] Guidance Memorandum from Jonathan R. Cantor, Acting Chief Privacy Officer, U.S. Department of Homeland Security, 2017-01: DHS Privacy Policy Regarding Collection, Use, Retention, and Dissemination of Personally Identifiable Information (Apr. 25, 2017).

[63] DHS, Privacy Policy 2017-01 Questions & Answers (Apr. 27, 2017).

serious misdemeanors, or multiple less serious misdemeanors, and making Dreamers (and others similarly situated) the lowest enforcement priority. The February 2017 Enforcement Priorities Memorandum radically broadened the categories of people who are to be prioritized for removal, to include people "convicted of any criminal offense" (no matter how minor), "charged with any criminal offense" (even if unadjudicated or dismissed), or "committed acts which constitute a chargeable criminal offense" (an astoundingly vague proposition).[64]

- In February 2017, ICE reportedly implemented a new policy authorizing immigration arrests of collateral, nontargeted individuals (i.e., individual bystanders who are not otherwise enforcement priorities) found at the scene of enforcement operations.[65] Pursuant to this change, a number of Dreamers have been arrested and subjected to immigration enforcement proceedings.
- In June 2017, ICE announced a "surge" where other components of DHS provided information

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[64] Memorandum for Kevin McAleenan, Acting Commissioner, U.S. Customs and Border Protection, et al., from John Kelly, Secretary, U.S. Department of Homeland Security, Enforcement of the Immigration Laws to Serve the National Interest ("Enforcement Priorities Memorandum") at 2 (Feb. 20, 2017).

[65] *See* Hamed Aleaziz, Collateral immigration arrests threaten key crime alliances, S.F. Chronicle (Apr. 29, 2017).

to ICE about adults who agreed to take custody over unaccompanied minors.[66]

- In at least six instances since the administration has taken office, DHS has illegally commenced immigration enforcement proceedings against Dreamers. These include cases in active litigation, including claims brought by Jessica Cotoltl (where DHS has been enjoined from proceeding with enforcement proceedings), Francisco Rodriguez, Alberto Luciano Gonzales Torres (where DHS has been enjoined from proceeding with enforcement proceedings), Daniela Vargas, Daniel Ramirez-Medina, and Juan Manuel Montes-Bojorquez (who was illegally deported).
- On April 19, 2017, United States Attorney General Jefferson B. Sessions stated in an interview on Fox News' "Happening Now," program—in response to a question regarding the deportation of a Dreamer—that "[e]verybody in the country illegally is subject to being deported, so people come here and they stay here a few years and somehow they think they are not subject to being deported – well, they are. . . . we can't promise people who are here unlawfully that they aren't going to be deported."[67]
- On June 13, 2017, Acting ICE Director Thomas Homan testified in front of the House

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[66] *See* Jenny Jarvie, Immigrant rights groups denounce new ICE policy that targets parents of child migrants, L.A. Times (Jun. 30, 2017).

[67] Adam Shaw, Sessions defends immigration policies after reported 'DREAMer' deportation, Fox News (Apr. 19, 2017).

Appropriations Committee's Subcommittee on Homeland Security, stating as to "every immigrant in the country without papers," that they "should be uncomfortable. You should look over your shoulder. And you need to be worried. . . . No population is off the table. . . . If we wait for them to violate yet another law against a citizen of this country, then it's too late. We shouldn't wait for them to become a criminal."[68]

- On June 29, Homan stated: "people that enter this country illegally violate the laws of this country. You can't want to be a part of this great nation and not respect its laws.. . . they already committed one crime by entering the country illegally. . . . As far as fear in the immigrant community. . . My purpose is to dispel the notion that if you enter this country illegally and violate the laws of this nation, you should not be comfortable. . . if you enter this country illegally, you should be concerned that someone is looking for you. You should be concerned because you violated the laws of this country."[69]
- On August 22, 2017, Homan again stated: "the message is clear: If you're in the United States illegally, if you happen to get by the Border

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[68] Hearing on the ICE and CBP F.Y. 2018 Budget Before the Subcomm. on Homeland Security of the H. Comm. on Appropriations, 115th Cong. (2017) 2017 WLNR 18737622.

[69] Press Release, The White House Office of the Press Secretary, *Press Gaggle by Director of Immigration and Customs Enforcement Tom Homan et al.* (June 28, 2017).

Patrol, someone is looking for you. And that message is clear."[70]

- An internal White House memo reported on by CNN stated that DHS now is urging Dreamers "to prepare for and arrange their departure from the United States" when their DACA terms end.[71]

- A CBP memo reportedly issued on September 6 directed agents to detain individuals claiming DACA at CPB checkpoints until their DACA and work permit could be verified, and that if there is any derogatory information indicating ineligibility, CPB is to commence deportation proceedings immediately.[72]

- On September 27, 2017, Acting Secretary Duke testified that she had never seen DHS's guidance assuring Dreamers their information would not be used for immigration purposes.

112. These changes all signal Defendants' intent to renege on their promises and subject Dreamers to immigration enforcement. Dreamers immediately face increased risk that information they provided to the federal government, in reliance of promises not to use it against them, could be used against them, without notice, for purposes of immigration enforcement, including detention or deportation. At the very least, these

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[70] Press Release, The White House Office of the Press Secretary, *Press Gaggle by Press Secretary Sarah Huckabee Sanders et al.* (August 22, 2017).

[71] Tal Kopan & Jim Acosta, Admin Memo: DACA recipients should prepare for departure from the United States, CNN (Sept. 6, 2017).

[72] Valerie Gonzalez, *Border Patrol Memo States Procedures to Process All DACA Applicants*, KRGV-TV (Sep. 25, 2017).

changes create confusion about the new risk faced by current and former Dreamers and former applicants, particularly those whose DACA protection is ending under the Rescission Memorandum.

113. The Rescission Memorandum does not explain how DHS or USCIS could legally provide DACA applicant information to ICE or CBP. *See* 5 U.S.C. § 552a (b) ("No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains").

114. The Rescission Memorandum also does not explain how DHS or USCIS can justify continuing to maintain applicant data collected for DACA, from individuals relying on prior agency representations and policies, when the administration has rescinded DACA. *See* 5 USC § 552a (c)(1) (an agency "shall maintain in its records *only* such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President").

115. The Rescission Memorandum does not state how providing DACA applicant information to enforcement authorities would be consistent with DHS' self-adopted privacy policies or consistent with the agency's procedures and precedent.

116. The Rescission Memorandum does not state how providing DACA applicant information to enforcement authorities would not be a retroactive revision to an agency policy upon which Dreamers relied.

117. The Rescission Memorandum does not explain how the government will keep previously-provided

DACA applicant information secure, nor does it provide any reason to believe that immigration enforcement agents will not use such information to find and remove those who applied for DACA. This retreat from prior assurances of privacy protection is particularly alarming in light of Defendant Homan's threats that immigrants should be "uncomfortable," "should look over your shoulder," and "be worried.

DHS RESCINDS DACA WITHOUT NOTICE, COMMENT, OR ANY SUFFICIENT EXPLANATION FOR ITS CHANGE IN POSITION

118. The Rescission Memorandum is a final, substantive agency action that required DHS to comply with the notice and comment requirements set forth in 5 U.S.C. § 553(b). But the agency provided no opportunity for notice and comment before taking this action.

119. By failing to comply with these notice and comment requirements, DHS deprived Plaintiffs, and all other interested parties, of the opportunity to present important evidence to the agency about DACA.

120. In the Rescission Memorandum, DHS did not sufficiently explain its abrupt departure from prior agency statements regarding the necessity and legality of DACA.

a. In issuing the Rescission Memorandum, the federal government and Defendant Sessions misleadingly claimed that DACA was unconstitutional, although no court has so held.[73] The single paragraph in the Rescission Memorandum

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[73] Dep't of Justice, Attorney General Sessions Delivers Remarks on DACA, https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-daca (September 5, 2017).

explaining the rationale behind this sudden shift merely asserts that DACA "should be terminated" based on consideration of two factors: (I) the appellate rulings in a case regarding a 2014 memorandum from then-DHS Secretary Johnson that expanded DACA and created a new program, Deferred Action for Parents of Americans and Lawful Permanent Residents ("DAPA"), *Texas v. United States*, 809 F.3d 134 3 (5th Cir. 20 15), a*ff'd by an equally divided court sub nom. United States v. Texas*,_ U.S. _, 4 136 S. Ct. 2271 (2016); and (2) a September 4, 2017, letter from Attorney General Jefferson B. Sessions arguing that DACA was "unconstitutional" because it had been "effectuated . . . through executive action" and was invalid for the same reasons the Fifth Circuit struck down DAPA in the Texas case.[74]

b. DHS and DOJ ignored differences between DACA and DAPA when reaching this conclusion. Further, DHS ignored the fact that the legality of DACA was never directly at issue in the *Texas v. United States* case, and not ruled on by the Fifth Circuit.

c. In concluding that DACA was unconstitutional, Defendant Sessions failed to consider a November 19, 2014 opinion from the Department of Justice Office of Legal Counsel that concluded that DACA was constitutional. OLC opinions provide "controlling legal advice" for the execu-

[74] Letter from Jefferson B. Sessions, U.S. Att'y General, to Elaine C. Duke, Acting Secretary, U.S. Department of Homeland Security (Sept. 4, 2017) ("Sessions Letter").

tive branch.[75] In contrast to Defendant Session's conclusory assertion, the OLC opinion was thirty-three pages and analyzed the relevant constitutional precedents.

d. The Rescission Memorandum's conclusion that DACA is unconstitutional is impossible to reconcile with the Defendants decision to continue DACA for six additional months.

121. The rescission is inconsistent with promises the government made to Dreamers, on which they relied, that only "fraud or misrepresentation" in the application process or "[s]ubsequent criminal activity" are grounds for revocation of DACA.[76]

122. Beyond Defendant Sessions's conclusory assertions of DACA's legal infirmity, DHS failed to offer any explanation of its own why it believed that rescinding DACA was warranted. The Rescission Memorandum did not address the rationale that DHS expressed in 2012 in the DACA Memorandum regarding the use of prosecutorial discretion to focus resources and priorities on lowest priority individuals, much less offer any explanation as to why those factors had changed so radically as to justify rescinding DACA now.

123. Hours after DACA was rescinded, President Trump tweeted that, if Congress fails to provide similar protections through legislation, "I will revisit this issue!" This statement undermines DHS' faux constitutional rationale for rescission because it con-

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[75] *See, e.g.,* Memorandum to Att'ys of the Office of Legal Counsel, U.S. Dep't of Justice, from David Barron, Acting Assistant Att'y General, Best Practices for OLC Legal Advice and Written Opinions (July 16, 2010).

[76] USCIS Approval Notice, Form 1-821 D, Consideration of Deferred Action for Childhood Arrivals.

firms that the President has authority to reinstate some or all of DACA without Congressional authorization.

124. President Trump's September 5, 2017 statement is the latest in a series of admissions he has made that expressly or implicitly recognize the DACA program was legal, undermining the purported rationale for rescinding the program. For example:

- On December 8, 2016, then-President-elect Trump stated in an interview with TIME magazine that he would find an accommodation for Dreamers, stating, "We're going to work something out that's going to make people happy and proud."[77]
- On January 18, 2017, then President-elect Trump promised in an interview with Fox & Friends that he was "working on a plan right now. And that plan, over the next two to three months, is going to come out. And it's a plan that's going to be very firm, but it's going to have a lot of heart."[78]
- On March 29, 2017, Secretary Kelly reaffirmed that "DACA status" is a "commitment . . . by the government towards the DACA person, or the so-called Dreamer."[79]
- On April 21, 2017, President Trump confirmed that his Administration's policy is not to deport

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[77] Michael Scherer, Person of the Year 2016, TIME Magazine (Dec. 2016).

[78] Francesca Chambers, Trump signals he's softening on immigration as he says he's 'working on a plan' that will make DREAMers 'very happy,' Daily Mail (Jan. 18, 2017).

[79] Ted Hesson & Seung Min Kim, Wary Democrats Look to Kelly for Answers on Immigration, Politico (Mar. 29, 2017).

Dreamers, and suggested that they "should rest easy."[80]

125. These statements directly contravening Defendants' purported justification for rescinding DACA confirm that the rescission rests on racist animus against Mexican and Central American immigrants. Other false and misleading statements by the President and administration officials confirm that the legal justification offered for the rescission is pretextual:

- On September 5, 2017, President Trump issued a written statement on the rescission of DACA that stated: "The temporary implementation of DACA . . . helped spur a humanitarian crisis – the massive surge of unaccompanied minors from Central America including, in some cases, young people who would become members of violent gangs throughout our country, such as MS-13."[81]
- On the same day, just prior to Attorney General Sessions's announcement rescinding DACA, President Trump tweeted, "No longer will we incentivize illegal immigration. LAW AND ORDER! #MAGA," and "Make no mistake, we are going to put the interest of AMERICAN CITIZENS FIRST!"[82]

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[80] Transcript of interview with Trump, Associated Press (Apr. 21, 2017).

[81] Press Release, The White House Office of the Press Secretary, Statement from President Donald J. Trump (Sept. 5, 2017).

[82] Donald Trump (@realDonaldTrump), TWITTER (Sep.5, 2017 5:10am), https://twitter.com/the_trump_train/status/905040389610057728?lang=en

- During his announcement rescinding DACA, Attorney General Sessions justified the decision by stating that DACA "contributed to a surge of unaccompanied minors on the southern border" and "denied jobs to hundreds of thousands of Americans by allowing those same jobs to go to illegal aliens."[83]

- Attorney General Sessions, while a United States Senator from Alabama, made similar statements regarding undocumented individuals seeking employment ("I'm a minority in the U.S. Senate . . . in questioning whether we should reward people who came into the country illegally with jobs that Americans would like to do.").[84] That same year, then-senator Sessions praised the 1924 Johnson-Reed Act, whose namesake, Representative Albert Johnson, used racial theory as the basis for its severe immigration restrictions, which included barring Asian immigration entirely.[85]

126. The Rescission Memorandum makes no reference to unaccompanied minors, public safety concerns, or economic interests to explain the agency's action. These shifting, conflicting, and factually inaccurate statements by the Trump Administration – that DACA created a surge in illegal immigration, and that

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[83] Dep't of Justice, Attorney General Sessions Delivers Remarks on DACA (Sept. 5, 2017).

[84] Seung Min Kim, The Senate's Anti- Immigration Warrior, Politico (Mar. 5, 2015)

[85] *See* Interview by Stephen Bannon with Sen. Jefferson B. Sessions, Breitbart News (Oct. 5, 2015), audio available at https://tinyurl.co111/y8gbj6vk; see also Adam Serwer, Jeff Sessions 's Unqualified Praise for a 1924 immigration Law, The Atlantic (Jan. 10, 2017)

DACA recipients take jobs away from other American workers – expose the cursory legal rationale in the Rescission Memorandum's as a sham. The APA requires governmental agencies to publicly state a sufficient justification for their actions, particularly where, people have relied upon DHS's prior statements to their detriment.

127. Moreover, these statements are wholly controverted by available evidence demonstrating the contributions of Dreamers to the United States, as explained above. *See Motor Veh. Mfrs. Ass 'n of U.S. , Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (an agency rule is arbitrary and capricious when the explanation offered by the agency "runs counter to the evidence before the agency").

128. In making a decision contradicted by the available evidence, providing a false justification for the rescission and promoting the rescission because of discriminatory animus, Defendants abused their discretion and acted in an arbitrary and capricious manner in violation of the APA.

CAUSES OF ACTION

FIRST COUNT
FIFTH AMENDMENT – DUE PROCESS
(All Defendants)

129. Plaintiffs repeat and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

130. Immigrants who are physically present in the United States are guaranteed the protections of the Due Process Clause.

131. The Constitution imposes constraints on governmental decisions which deprive individuals of

'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment.

132. The property interests protected by the Due Process Clause extend beyond tangible property and include anything to which a plaintiff has a legitimate claim of entitlement. A legitimate claim of entitlement is created by rules or understandings that secure certain benefits and that support claims of entitlement to those benefits.

133. The term "liberty" also encompasses the ability to work, raise a family, and form the other enduring attachments of normal life.

134. Dreamers, including Plaintiffs, have constitutionally protected liberty and property interests in their DACA and the numerous benefits conferred thereunder, including the ability to renew their DACA every two years. These protected interests exist by virtue of the government's decision to grant Dreamers certain benefits and its repeated representations and promises regarding DACA.

135. In promoting DACA, USCIS affirmatively promised Dreamers that if their case was deferred, they would be eligible for benefits, including employment authorization, advance parole to travel internationally, and to attend educational institutions.

136. Dreamers, including certain of the plaintiffs, were granted employment authorization, advance parole to travel internationally, the right to attend educational institutions, public benefits (including Social Security, Medicare, and disability benefits). They were able to secure equal access to other benefits and opportunities on which Americans depend, including opening bank accounts, obtaining credit cards,

starting businesses, purchasing homes and cars, and conducting other aspects of daily life that are otherwise often unavailable for undocumented immigrants.

137. In establishing and continuously operating DACA under a well-defined framework of highly specific criteria—including nearly 150 pages of specific instructions for managing the program—the government created a reasonable expectation among Plaintiffs and other Dreamers that they are entitled to the benefits provided under the program, including the ability to seek renewal of their DACA, as long as they continue to play by the rules and meet the program's nondiscretionary criteria for renewal.

138. The government deprived Plaintiffs and other Dreamers of their property and liberty interests under this program, including their ability to seek renewal of their DACA, their right to work authorization, and their right to travel internationally without a right to be heard or other individualized procedural protections.

139. The government's arbitrary termination of DACA and deprivation of the opportunity to renew DACA violates the due process rights of Plaintiffs and other Dreamers.

140. The government's decision to terminate DACA after vigorously promoting the program and coaxing hundreds of thousands of highly vulnerable young people to step forward is an unconstitutional bait-and-switch. The government promised Plaintiffs and other young people that if they disclosed highly sensitive personal information, passed a background check, and played by the rules, they would be able to live and work in the United States.

141. The government did not follow its normal procedures in reversing course and terminating

DACA. In 2014, the OLC concluded, after conducting a detailed analysis, that DACA was a lawful exercise of the Executive Branch's discretion. By contrast, Attorney General Sessions's one-page letter to Acting Secretary Duke contains virtually no legal analysis, and Acting Secretary Duke's Rescission Memorandum relied largely on Attorney General Sessions's letter.

142. The Due Process Clause also requires that the federal government's immigration enforcement actions be fundamentally fair. Here, the government's arbitrary decisions to terminate DACA is fundamentally unfair.

143. Defendants' violations of the Due Process Clause have harmed Plaintiffs and will continue to cause ongoing harm to Plaintiffs and other Dreamers.

SECOND COUNT
FIFTH AMENDMENT – DUE PROCESS
(All Defendants)

144. Plaintiffs repeat and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

145. Immigrants who are physically present in the United States are guaranteed the protections of the Due Process Clause.

146. The Constitution imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment.

147. Dreamers, including Plaintiffs, have constitutionally protected liberty and property interests in the sensitive personal information they disclosed to the government in reliance on the government's explicit

and repeated assurances that it would not be used for immigration enforcement purposes and would in fact be "protected from disclosure" to ICE and CBP.

148. The protected interest in the nondisclosure of sensitive personal information exists by virtue of the government's decision to make repeated assurances to Dreamers that this information would not be used for enforcement purposes.

149. The government's decision to terminate DACA after vigorously promoting the program and coaxing hundreds of thousands of highly vulnerable young people to step forward is an unconstitutional bait-and-switch. The government promised Plaintiffs and other young people that if they disclosed highly sensitive personal information, passed a background check, and played by the rules, they would be able to live and work in the United States.

150. The government's retraction of its publicly declared and repeatedly reaffirmed policy not to share with ICE and CPB Dreamers' DACA application information violates due process. The government has already violated other assurances regarding DACA, and there is imminent danger that it will similarly breach its representations regarding information-sharing. Indeed, the government already has breached its prior commitments to affirmatively "protect[] [sensitive information] from disclosure," now asserting only that it will not "proactively provide[]" such information to ICE and CBP for the purpose of immigration enforcement proceedings.

151. The government deprived Plaintiffs and other Dreamers of their property and liberty interests as to their sensitive personal information without a right to be heard or other individualized procedural protections.

152. The Due Process Clause also requires that the federal government's immigration enforcement actions be fundamentally fair. Here, the government's arbitrary decisions to terminate DACA and change the policy regarding the use of information provided by Dreamers are fundamentally unfair.

153. Defendants' violations of the Due Process Clause have harmed Plaintiffs and will continue to cause ongoing harm to Plaintiffs and other Dreamers.

THIRD COUNT
FIFTH AMENDMENT – EQUAL PROTECTION
(All Defendants)

154. Plaintiffs repeat and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

155. The equal protection guarantee of the Fifth Amendment forbids federal officials from acting with a discriminatory intent or purpose.

156. To succeed on an equal protection claim, plaintiffs must show that the defendants discriminated against them as members of an identifiable class and that the discrimination was intentional. Determining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available.

157. As set forth above, the termination of DACA was motivated by improper discriminatory intent and bias against Mexican nationals, individuals of Mexican and Central American descent, and Latinos, who together account for 93 percent of approved DACA applications.

158. President Trump's history and that of other senior administration officials of alleging that Mexican, Central American, and Latino immigrants are rapists, criminals, and otherwise bad people demonstrate discriminatory animus. It is this animus that motivated the DACA rescission.

159. The government allows other classes of immigrants to remain eligible for deferred action, and remain eligible for benefit associated with deferred action. Because Mexican, Central American, and Latinos account for 93 percent of approved DACA applications, they will be disproportionately impacted by the termination of DACA.

160. The history, procedure, substance, context, and impact of the decision to terminate DACA demonstrate that the decision was motivated by discriminatory animus against Mexican, Central American, and Latino immigrants. Because it was motivated by a discriminatory purpose, the decision to terminate DACA violates the equal protection guarantee of the Due Process Clause of the Fifth Amendment.

161. Defendants' violations of the Equal Protection Clause have caused ongoing harm to Plaintiffs and other Dreamers.

FOURTH COUNT
ADMINISTRATIVE PROCEDURE ACT
(All Defendants Except Trump)

162. Plaintiffs repeat and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

163. Defendants are subject to the Administrative Procedure Act ("APA"). *See* 5 U.S.C. § 703.

164. The termination of DACA is final agency action subject to judicial review because it marks the consummation of the decisionmaking process and is one from which legal consequences will flow. The comprehensive scope of the APA provides a default remedy for all interactions between individuals and all federal agencies.

165. The APA requires that courts "shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law . . . [or] contrary to constitutional right, power, privilege, or immunity." 5 U.S.C. § 706(2)(A), (B).

a. As detailed in Counts I and II, the decision to terminate DACA is unconstitutional in numerous respects and therefore must be vacated.

b. The decision to terminate DACA is arbitrary and capricious and contrary to law because, among other reasons, the government failed to consider important aspects of the issue, offered explanations for its decision inconsistent with the evidence before it, and its explanations are so implausible that its decision cannot be due to a difference in opinion or the product of agency expertise. And because the government failed to provide a reasoned analysis sufficient to justify its change of policy in light of the serious reliance interests created by DACA.

    i. The purported rationales for rescission of the program contradict the available evidence. Among other things, the rescission does not provide a reasoned analysis for the rescission, nor does it address the prior

Department of Justice OLC analysis concluding the program was constitutional.

ii. The purported rationale for rescission of the program – that the Executive Branch purportedly lacked authority to conduct the program – is inconsistent with the ongoing continuation of the program and the admissions by the President and various administration officials that the President has the authority to continue the program.

iii. The government's decision not to accept any DACA renewal applications after October 5, 2017 is also arbitrary. The Rescission Memorandum does not provide a reasoned analysis to support this deadline, and the government has failed to provide sufficient time and notice to Dreamers.

iv. The government's decision not to accept new applications after September 5, 2017 is arbitrary. The Rescission Memorandum does not provide a reasoned analysis to support this deadline.

v. The government's decision not to accept renewal requests for Dreamers whose status expired before September 5, 2017 is arbitrary. The Rescission Memorandum does not provide a reasoned analysis to support this deadline.

vi. The government's decision not to accept renewal requests for DACA recipients whose status expires after March 5, 2018 is arbitrary. The Rescission Memorandum does not provide a reasoned analysis to support this decision.

vii. The government's decision to terminate DACA is also in violation of the APA because the stated rationale for ending the program is pretextual and incorrect as a matter of law.

c. The government's decision regarding potential sharing of personal information collected from DACA applicants is arbitrary and capricious and contrary to law.

i. The government's failure to abide by the specific and consistent promise that information obtained from DACA applicants would not be used for immigration enforcement purposes violates the Privacy Act's prohibition on agency sharing records with another agency. 5 U.S.C. § 552a(b).

ii. The government's failure to abide by the specific promise in the DACA Privacy Impact Assessment that information collected from DACA applicants would not be used for immigration enforcement purposes violates the e-Government Act provision requiring an agency abide by its Privacy Impact Assessment. 44 U.S.C. § 3501 *et seq*.

iii. The government's maintenance of records for Dreamers following rescission of DACA violates the Privacy Act prohibition on an agency maintaining records beyond those which are necessary to accomplish a purpose required to be accomplished by executive order of the President. 5 U.S.C. § 552a(c)(1).

iv. The stated change in the government's protection of DACA applicant data from use for immigration enforcement proceedings is

invalid under APA 5 U.S.C. § 551(4) because it carries an unreasonable retroactive effect, incurring new and harmful legal consequences where individuals submitted their data in detrimental reliance on prior DHS policies and representations.

v. The government's retention of applicants' personally identifiable information and declaration of the potential disclosure of this information for immigration enforcement purposes violates DHS' own policies and established practices without providing a reasoned justification for deviation from its own policies.

vi. The change in the government's policy regarding protection of DACA applicant data from use for immigration enforcement proceedings is not based on a reasoned analysis contained in the Rescission Memorandum.

vii. The change in the government's policy regarding protection of DACA applicant data from use for immigration enforcement proceedings is not adequately explained in the Rescission Memorandum, particularly in light of the DACA recipients' strong reliance on the government's commitment not to use this information for enforcement purposes.

166. Defendants' violations of the APA have caused ongoing harm to Plaintiffs and other Dreamers.

FIFTH COUNT
ADMINISTRATIVE PROCEDURE ACT
(All Defendants Except Trump)

167. The APA, 5 U.S.C. §§ 553 and 706(2)(D), requires that federal agencies conduct rulemaking before engaging in action that impacts substantive rights.

168. DHS and USCIS are each an "agency" under the APA, and the Rescission Memorandum and the actions that DHS and USCIS has taken to implement the Rescission Memorandum are "rules" under the APA. *See* 5 U.S.C. § 551(1), (4).

169. In implementing the Rescission Memorandum, federal agencies have changed the substantive criteria by which individual Dreamers work, live, attend school, obtain credit, and travel in the United States, thus imposing rights and obligations on Dreamers. The Rescission Memorandum modifies substantive rights and interests and so is subject to notice and comment rulemaking.

170. With exceptions that are not applicable here, agency efforts that change substantive rights and interests must go through notice-and-comment rulemaking. *See* 5 U.S.C. § 553.

171. Defendants promulgated and implemented these changes to Dreamer rights and interests without notice-and-comment rulemaking in violation of the APA.

172. Plaintiffs will be impacted because they have not had the opportunity to comment on the rescission of DACA.

173. Defendants' violation of the APA has caused ongoing harm to Plaintiffs and other Dreamers.

SIXTH COUNT
ESTOPPEL

174. Plaintiffs repeat and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

175. Through its conduct and statements, the government represented to Plaintiffs and other Dreamers that DACA was lawful and that information collected in connection with DACA would not be used for immigration enforcement purposes absent special circumstances.

176. In reliance on the government's repeated assurances, Plaintiffs and other Dreamers risked removal and deportation and came forward and identified themselves to the government, and provided sensitive personal information, including their fingerprints and personal history, in order to participate in DACA.

177. Throughout the life of DACA, the government has continued to make affirmative representations about the use of information as well as the validity and legality of DACA. Plaintiffs and other Dreamers relied on the government's continuing representations to their detriment.

178. DACA beneficiaries rearranged their lives to become fully visible and contributing members of society, including by seeking employment, pursuing higher education, and paying taxes, but are now at real risk of removal and deportation.

179. Accordingly, Defendants should be equitably estopped from terminating DACA or from using information provided pursuant to DACA for immigration

enforcement purposes, except as previously authorized under DACA.

180. An actual controversy between Plaintiffs and Defendants exists as to whether Defendants should be equitably estopped.

181. Plaintiffs are entitled to a declaration that Defendants are equitably estopped.

SEVENTH COUNT
DECLARATORY JUDGMENT THAT
DACA IS LAWFUL

182. Plaintiffs repeat and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

183. DACA was a lawful exercise of the Executive Branch's discretion to enforce the immigration laws. Indeed, after performing a thorough analysis, the government itself concluded that DACA was lawful. However, the government now claims, as the basis for its rescission of the program, that DACA is unlawful.

184. The Declaratory Judgment Act, 28 U.S.C. § 2201, allows the court, "[i]n a case of actual controversy within its jurisdiction," to "declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." 28 U.S.C. § 2201(a).

185. As DACA beneficiaries, Plaintiffs have an interest in the legality of DACA. The government's decision to terminate DACA on the purported basis that DACA was unlawful has harmed Plaintiffs and continues to cause ongoing harm to Plaintiffs.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Declare that the Rescission and actions taken by Defendants to rescind DACA are void and without legal force or effect;

B. Declare that the Rescission and actions taken by Defendants to rescind DACA are arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law, and without observance of procedure required by law in violation of 5 U.S.C. §§ 702-706;

C. Declare that the Rescission and actions taken by Defendants to rescind DACA are in violation of the Constitution and contrary to the laws of the United States;

D. Preliminarily and permanently enjoin and restrain Defendants, their agents, servants, employees, attorneys, and all persons in active concert or participation with any of them, from implementing or enforcing the Rescission and from taking any other action to rescind DACA that is not in compliance with applicable law;

E. Preliminarily and permanently enjoin and restrain Defendants, their agents, servants, employees, attorneys, and all persons in active concert or participation with any of them, from disclosing any DACA applicant information to immigration enforcement activities in a manner inconsistent with their prior commitments;

F. Grant such further relief as this Court deems just and proper.

Dated: October 5, 2017

Respectfully submitted,

/s/ Dennis A. Corkery
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Dennis A. Corkery (D. Md. 19076)
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APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

No. 17-cv-2942 (RWT)

CASA DE MARYLAND, *et al.*,

Plaintiffs,

v.

U.S. DEPARTMENT OF HOMELAND SECURITY, *et al.*,

Defendants.

NOTICE OF FILING OF ADMINISTRATIVE RECORD

Defendants in the above-captioned matter hereby file the Administrative Record,[1] which is attached to this filing as Exhibit 1 and includes the following documents:

Date	Document
June 15, 2012	Janet Napolitano, Secretary of Homeland Security, *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children*

[1] The filing of this Administrative Record is not a concession that the decision of the Acting Secretary is subject to judicial review.

November 19, 2014	Karl R. Thompson, Principal Deputy Assistant Attorney General, Office of Legal Counsel, Memorandum Opinion for the Secretary of Homeland Security and the Counsel to the President, *The Department of Homeland Security's Authority to Prioritize Removal of Certain Aliens Unlawfully Present in the United States and to Defer Removal of Others*
November 20, 2014	Jeh Charles Johnson, Secretary of Homeland Security, *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Residents*
February 16, 2015	*Texas v. United States*, 86 F. Supp. 3d 591 (S.D. Tex. 2015)
November 25, 2015	*Texas v. United State*s, 809 F.3d 134 (5th Cir. 2015)
June 23, 2016	*Texas v. United States*, 136 S. Ct. 2271 (2016)
February 20, 2017	John Kelly, Secretary of Homeland Security, *Enforcement of the Immigration Laws to Serve the National Interest*
June 15, 2017	John Kelly, Secretary of Homeland Security, *Rescission of*

	November 20, 2014 Memorandum Providing for Deferred Action for Parents of Americans and Lawful Permanent Residents ("DAPA")
June 29, 2017	Letter from the Attorney General of Texas, Ken Paxton, to the Attorney General of the United States, Jefferson B. Sessions III
August 1, 2017	Letter from Congressman John Lewis to the Acting Secretary of Homeland Security, Elaine C. Duke
August 1, 2017	Letter from Congressman Raul M. Grijalva, *et al.* to President of the United States Donald J. Trump
August 22, 2017	Letter from Congressman Daniel M. Donovan, Jr., *et al.* to President of the United States Donald J. Trump
September 4, 2017	Letter from the Attorney General of the United States, Jefferson B. Sessions III, to the Acting Secretary of Homeland Security, Elaine C. Duke
September 5, 2017	Elaine C. Duke, Acting Secretary of Homeland Security, *Rescission of the June 15, 2012 Memorandum Entitled "Exercising Prosecutorial Discretion with Respect to Individuals*

	Who Came to the United States as Children

CERTIFICATION OF ADMINISTRATIVE RECORD

I, David J. Palmer, Chief of Staff, Office of the General Counsel at the United States Department of Homeland Security, certify that, to the best of my knowledge, the Administrative Record attached to this filing as Exhibit 1 is a true, correct, and complete copy of the non-privileged documents that were actually considered by Elaine C. Duke, the Acting Secretary of Homeland Security, in connection with her September 5, 2017 decision to rescind the June 15, 2012 Memorandum Entitled "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children."

Dated: October 6, 2017

/s/ David J. Palmer
DAVID J. PALMER
Chief of Staff, Office of the General Counsel
United States Department of Homeland Security

Dated: November 15, 2017

Respectfully submitted,

CHAD A. READLER
Acting Assistant Attorney General

BRETT A. SHUMATE
Deputy Assistant Attorney General

JENNIFER D. RICKETTS
Director

JOHN R. TYLER
Assistant Branch Director

/s/ Kathryn C. Davis
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Counsel for Defendants

APPENDIX C

[Department of Justice Seal]

Office of the Attorney General
Washington, D.C. 20530

Dear Acting Secretary Duke,

I write to advise that the Department of Homeland Security (DHS) should rescind the June 15, 2012, DHS Memorandum entitled "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children," as well as any related memoranda or guidance. This policy, known as "Deferred Action for Childhood Arrivals" (DACA), allows certain individuals who are without lawful status in the United States to request and receive a renewable, two-year presumptive reprieve from removal, and other benefits such as work authorization and participation in the Social Security program.

DACA was effectuated by the previous administration through executive action, without proper statutory authority and with no established end-date, after Congress' repeated rejection of proposed legislation that would have accomplished a similar result. Such an open-ended circumvention of immigration laws was an unconstitutional exercise of authority by the Executive Branch. The related Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) policy was enjoined on a nationwide basis in a decision affirmed by the Fifth Circuit on the basis of multiple legal grounds and then by the Supreme Court by an equally divided vote. See Texas v. United States, 86 F. Supp. 3d 591, 669-70 (S.D. Tex.), aff'd, 809 F.3d 134, 171-86 (5th Cir. 2015), aff'd by equally divided Court, 136 S. Ct. 2271 (2016). Then-Secretary of Homeland Security John Kelly rescinded the DAPA

policy in June. Because the DACA policy has the same legal and constitutional defects that the courts recognized as to DAPA, it is likely that potentially imminent litigation would yield similar results with respect to DACA.

In light of the costs and burdens that will be imposed on DHS associated with rescinding this policy, DHS should consider an orderly and efficient wind-down process.

As Attorney General of the United States, I have a duty to defend the Constitution and to faithfully execute the laws passed by Congress. Proper enforcement of our immigration laws is, as President Trump consistently said, critical to the national interest and to the restoration of the rule of law in our country. The Department of Justice stands ready to assist and to continue to support DHS in these important efforts.

Sincerely,

/s/ Jefferson B. Sessions
Jefferson B. Sessions III

APPENDIX D

Secretary
U.S. Department of Homeland Security
Washington, DC 20528

[U.S. Department of Homeland Security Seal]

Homeland Security

September 5, 2017

MEMORANDUM FOR: James W. McCament
Acting Director
U.S. Citizenship and
Immigration Services

Thomas D. Homan
Acting Director
U.S. Immigration and
Customs Enforcement

Kevin K. McAleenan
Acting Commissioner
U.S. Customs and Border
Protection

Joseph B. Maher
Acting General Counsel

Ambassador James D.
Nealon
Assistant Secretary,
International Engagement

Julie M. Kirchner
Citizenship and
Immigration Services
Ombudsman

FROM: Elaine C. Duke
Acting Secretary
/s/ Elaine C. Duke

SUBJECT: Rescission of the June 15, 2012 Memorandum Entitled "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children"

This memorandum rescinds the June 15, 2012 memorandum entitled "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children," which established the program known as Deferred Action for Childhood Arrivals ("DACA"). For the reasons and in the manner outlined below, Department of Homeland Security personnel shall take all appropriate actions to execute a wind-down of the program, consistent with the parameters established in this memorandum.

Background

The Department of Homeland Security established DACA through the issuance of a memorandum on June 15, 2012. The program purported to use deferred action—an act of prosecutorial discretion meant to be applied only on an individualized case-by-case basis—to confer certain benefits to illegal aliens that Congress had not otherwise acted to provide by law.[1] Specifically, DACA provided certain illegal aliens who entered the United States before the age of sixteen a period of deferred action and eligibility to request employment authorization.

[1] Significantly, while the DACA denial notice indicates the decision to deny is made in the unreviewable discretion of USCIS, USCIS has not been able to identify specific denial cases where an applicant appeared to satisfy the programmatic categorical criteria as outlined in the June 15, 2012 memorandum, but still had his or her application denied based solely upon discretion.

On November 20, 2014, the Department issued a new memorandum, expanding the parameters of DACA and creating a new policy called Deferred Action for Parents of Americans and Lawful Permanent Residents ("DAPA"). Among other things—such as the expansion of the coverage criteria under the 2012 DACA policy to encompass aliens with a wider range of ages and arrival dates, and lengthening the period of deferred action and work authorization from two years to three—the November 20, 2014 memorandum directed USCIS "to establish a process, similar to DACA, for exercising prosecutorial discretion through the use of deferred action, on a case-by-case basis," to certain aliens who have "a son or daughter who is a U.S. citizen or lawful permanent resident."

Prior to the implementation of DAPA, twenty-six states—led by Texas—challenged the policies announced in the November 20, 2014 memorandum in the U.S. District Court for the Southern District of Texas. In an order issued on February 16, 2015, the district court preliminarily enjoined the policies nationwide.[2] The district court held that the plaintiff states were likely to succeed on their claim that the DAPA program did not comply with relevant authorities.

The United States Court of Appeals for the Fifth Circuit affirmed, holding that Texas and the other states had demonstrated a substantial likelihood of success on the merits and satisfied the other requirements for a preliminary injunction.[3] The Fifth Circuit concluded that the Department's DAPA policy conflicted with the discretion authorized by Congress. In

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[2] *Texas v. United States,* 86 F. Supp. 3d 591 (S.D. Tex. 2015).

[3] *Texas v. United States,* 809 F.3d 134 (5th Cir. 2015).

considering the DAPA program, the court noted that the Immigration and Nationality Act "flatly does not permit the reclassification of millions of illegal aliens as lawfully present and thereby make them newly eligible for a host of federal and state benefits, including work authorization." According to the court, "DAPA is foreclosed by Congress's careful plan: the program is 'manifestly contrary to the statute' and therefore was properly enjoined."

Although the original DACA policy was not challenged in the lawsuit, both the district and appellate court decisions relied on factual findings about the implementation of the 2012 DACA memorandum. The Fifth Circuit agreed with the lower court that DACA decisions were not truly discretionary,[4] and that DAPA and expanded DACA would be substantially similar in execution. Both the district court and the Fifth Circuit concluded that implementation of the program did not comply with the Administrative Procedure Act because the Department did not implement it through notice-and-comment rulemaking.

The Supreme Court affirmed the Fifth Circuit's ruling by equally divided vote (4-4).[5] The evenly divided ruling resulted in the Fifth Circuit order being affirmed. The preliminary injunction therefore remains in place today. In October 2016, the Supreme Court denied a request from DHS to rehear the case upon the appointment of a new Justice. After the 2016 election, both parties agreed to a stay in litigation to allow the new administration to review these issues.

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[4] *Id.*

[5] *United States v. Texas,* 136 S. Ct. 2271 (2016) (per curiam).

On January 25, 2017, President Trump issued Executive Order No. 13,768, "Enhancing Public Safety in the Interior of the United States." In that Order, the President directed federal agencies to "[e]nsure the faithful execution of the immigration laws . . against all removable aliens," and established new immigration enforcement priorities. On February 20, 2017, then Secretary of Homeland Security John F. Kelly issued an implementing memorandum, stating "the Department no longer will exempt classes or categories of removable aliens from potential enforcement." except as provided in the Department's June 15, 2012 memorandum establishing DACA,[6] and the November 20, 2014 memorandum establishing DAPA and expanding DACA.[7]

On June 15, 2017, after consulting with the Attorney General, and considering the likelihood of success on the merits of the ongoing litigation, then Secretary John F. Kelly issued a memorandum rescinding DAPA and the expansion of DACA—but temporarily left in place the June 15, 2012 memorandum that initially created the DACA program.

Then, on June 29, 2017, Texas, along with several other states, sent a letter to Attorney General Sessions asserting that the original 2012 DACA memorandum

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[6] Memorandum from Janet Napolitano, Secretary, OHS to David Aguilar, Acting Comm'r, CBP, et al.. "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children" (June 15, 2012).

[7] Memorandum from Jeh Johnson, Secretary. DHS. to Leon Rodriguez, Dir., USCIS, et al.. "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Whose Parents are U.S. Citizens or Permanent Residents" (Nov. 20, 2014).

is unlawful for the same reasons stated in the Fifth Circuit and district court opinions regarding DAPA and expanded DACA. The letter notes that if DHS does not rescind the DACA memo by September 5. 2017, the States will seek to amend the DAPA lawsuit to include a challenge to DACA.

The Attorney General sent a letter to the Department on September 4, 2017, articulating his legal determination that DACA "was effectuated by the previous administration through executive action, without proper statutory authority and with no established end-date, after Congress' repeated rejection of proposed legislation that would have accomplished a similar result. Such an open-ended circumvention of immigration laws was an unconstitutional exercise of authority by the Executive Branch." The letter further stated that because DACA "has the same legal and constitutional defects that the courts recognized as to DAPA, it is likely that potentially imminent litigation would yield similar results with respect to DACA." Nevertheless, in light of the administrative complexities associated with ending the program, he recommended that the Department wind it down in an efficient and orderly fashion, and his office has reviewed the terms on which our Department will do so.

Rescission of the June 15, 2012 DACA Memorandum

Taking into consideration the Supreme Court's and the Fifth Circuit's rulings in the ongoing litigation, and the September 4, 2017 letter from the Attorney General, it is clear that the June 15, 2012 DACA program should be terminated. In the exercise of my authority in establishing national immigration policies and priorities, except for the purposes explicitly identified below, I hereby rescind the June 15, 2012 memorandum.

Recognizing the complexities associated with winding down the program, the Department will provide a limited window in which it will adjudicate certain requests for DACA and associated applications meeting certain parameters specified below. Accordingly, effective immediately, the Department:

- Will adjudicate—on an individual, case-by-case basis—properly filed pending DACA initial requests and associated applications for Employment Authorization Documents that have been accepted by the Department as of the date of this memorandum.
- Will reject all DACA initial requests and associated applications for Employment Authorization Documents filed after the date of this memorandum.
- Will adjudicate—on an individual, case by case basis—properly filed pending DACA renewal requests and associated applications for Employment Authorization Documents from current beneficiaries that have been accepted by the Department as of the date of this memorandum, and from current beneficiaries whose benefits will expire between the date of this memorandum and March 5, 2018 that have been accepted by the Department as of October 5, 2017.
- Will reject all DACA renewal requests and associated applications for Employment Authorization Documents filed outside of the parameters specified above.
- Will not terminate the grants of previously issued deferred action or revoke Employment Authorization Documents solely based on the

directives in this memorandum for the remaining duration of their validity periods.

- Will not approve any new Form 1-131 applications for advance parole under standards associated with the DACA program, although it will generally honor the stated validity period for previously approved applications for advance parole. Notwithstanding the continued validity of advance parole approvals previously granted, CBP will—of course—retain the authority it has always had and exercised in determining the admissibility of any person presenting at the border and the eligibility of such persons for parole. Further, USCIS will—of course—retain the authority to revoke or terminate an advance parole document at any time.
- Will administratively close all pending Form I-131 applications for advance parole filed under standards associated with the DACA program, and will refund all associated fees.
- Will continue to exercise its discretionary authority to terminate or deny deferred action at any time when immigration officials determine termination or denial of deferred action is appropriate.

This document is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter. Likewise, no limitations are placed by this guidance on the otherwise lawful enforcement or litigation prerogatives of DHS.

APPENDIX E

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

No. 17-cv-2942 (RWT)

CASA DE MARYLAND, *et al.*,

Plaintiffs,

v.

U.S. DEPARTMENT OF HOMELAND SECURITY, *et al.*,

Defendants.

DEFENDANTS' MOTION TO DISMISS OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT

For the reasons set forth in the accompanying memorandum of law, Defendants respectfully move the Court to dismiss this action or, in the alternative, to grant summary judgment to Defendants. *See* Fed. R. Civ. P. 12(b)(1), (6), 56.

Dated: November 15, 2017

Respectfully submitted,

CHAD A. READLER
Acting Assistant Attorney General

BRETT A. SHUMATE
Deputy Assistant Attorney General

JENNIFER D. RICKETTS Director

JOHN R. TYLER
Assistant Branch Director

/s/ Kathryn C. Davis
KATHRYN C. DAVIS

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Counsel for Defendants

APPENDIX F

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Case No. 8:17-cv-02942 (RWT)

CASA DE MARYLAND, *et al.*,

Plaintiffs,

v.

U.S. DEPARTMENT OF HOMELAND SECURITY, *et al.*,

Defendants.

DECLARATION OF ELIAZABETH BOWER
PURSUANT TO FED. R. CIV. P. 56(d)

Pursuant to Title 28 U.S.C. § 1746, I, Elizabeth J. Bower, hereby declare as follows:

1. I am a partner at Willkie Farr & Gallagher LLP and counsel for Plaintiffs in this action. I submit this declaration pursuant to Rule 56(d) of the Federal Rules of Civil Procedure in connection with Plaintiffs Opposition to Defendants Motion to Dismiss, or in the Alternative, Motion for Summary Judgment. This declaration is based on personal knowledge and my review of documents and filings relevant to this action.

2. Defendants seek summary judgment on all of Plaintiffs' claims for relief, and although not stated explicitly, Defendants are apparently seeking judgment based on the factual averments made in the "Background" section of their brief. Gov. Br. at 5-11.

3. In making its factual averments, the Government has not met the procedural prerequisites for seeking summary judgment. Notably, Defendants have failed to file a statement of material facts as to which there is no genuine dispute, or any evidentiary support for such assertions, as required by FCRP 56(a) and 56(c).

4. Many of the Government's factual averments are based on facts uniquely in the Government's control; or are predicated on disputed factual assertions; or omit material facts relevant to Plaintiffs' claims. Because Plaintiffs have not yet had the opportunity to conduct discovery into these matters, Plaintiffs do not believe they yet know all essential facts and, therefore, presently are unable to present essential facts that Plaintiffs anticipate will support their claims. Accordingly, Plaintiffs require discovery to learn and to present additional facts essential to their opposition to the Government's motion.

5. For example, the Government's Memorandum acknowledges that there have been over 20 deferred action programs established by the Government covering different classes of individuals. Gov. Br. at 6. Plaintiffs' Equal Protection Claim (Count III) is predicated on the legal theory that the Defendants' decision to terminate DACA while allowing these other deferred action programs to continue is impermissibly based on the animus of key government officials against Mexicans, Central Americans and Latinos, who constitute the overwhelming majority of DACA recipients. *See* Complaint ¶¶ 24-25, 68, 94-96, 125-126, 154-161.

a. To oppose the request for summary judgment, Plaintiffs need discovery into the discriminatory impact of the rescission of DACA as opposed to other programs DHS is maintaining, as well as into the

Government's decision to maintain other deferred action programs. Such discovery has been sought in the Northern District of California cases. *See* Ex. 2A (ND. Cal. RFPs) No. 9. Assuming such discovery is produced in the California cases and is made available to the parties in this case, Plaintiffs intend to rely on the Government's responses to that discovery and do not intend to propound duplicative discovery in this case regarding these other programs.

b. In this case, focused discovery into motive is necessary in light of Plaintiffs' constitutional claims, in order to show whether discriminatory intent was a substantial or motivating factor behind the DACA rescission. *See, e.g., Hunter v. Underwood*, 471 U.S. 222, 228 (1985). Although the complaint contains a sampling of evidence of the public statements of Defendants exhibiting their animus against Mexicans, Central Americans and Latinos (e.g., Complaint ¶¶ 94-96), Plaintiffs require additional discovery to probe the underlying motivations for these statements and to confirm the evidence summarized in the Complaint. Courts "allow inquiry into motive where a bad one could transform an official's otherwise reasonable conduct" into a constitutional violation. *Crawford-El. v. Britton*, 951 F.2d 1314, 1317 (D.C. Cir. 1991). Among the relevant sources of evidence of discriminatory motive are: "The historical background of the decision[,] . . . [t]he specific sequence of events leading up to the challenged decision[,] . . . [and t]he legislative or administrative history[, which] may be highly relevant, especially where there are contemporary statements by members of the decisionmaking body, minutes of its meetings, or reports." *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 267-68 (1977). Plaintiffs have attached proposed discovery to inquire into

discriminatory intent as Exhibit 1 at RFP Nos. 8 & 10-15, Interrogatories Nos. 1 & 5.

6. Similarly, the Government's Memorandum acknowledges that deferred action recipients are granted the "ability to apply for work authorization." Gov. Br. at 6. But the Government's proffer fails to discuss or otherwise acknowledge that one of Plaintiffs' Due Process Claims (Count I) is predicated on, among other things, the Government's actions to strip DACA recipients of their protected interests in the right to work, the right to obtain an education, the right to travel internationally, and the right to family integrity. Complaint ¶¶ 20, 71-78, 101-106, 129-143. In this case, certain of the evidence necessary to evaluate whether the Government has deprived DACA recipients of a liberty or property interest without due process is only available to the Government; Plaintiffs need discovery into matters such as the value of additional procedural safeguards and the fiscal and administrative burdens that such additional procedures would entail. Such discovery has been sought in the Northern District of California and Eastern District of New York cases. *See* Exs. 2A Nos. 4, 5, 2B Nos.. 4, 9, 18, 3A No. 12, & 3B No. 43. Plaintiffs have attached proposed discovery to inquire into the Defendants' understanding of this deprivation as Exhibit 1 at Interrogatory No. 3. Among other things, discovery in those cases has shown that the Government did not send individualized notices to DACA recipients in conjunction with the September 5 announcement and arbitrarily stopped issuing renewal notices to DACA recipients on or about July 2017, prior to termination of the DACA program, ostensibly because the Government changed its notification system. Additional discovery is necessary to understand the motivations behind this decision to change the

notification system in place for DACA. Plaintiffs have attached proposed discovery to inquire into the change in notification policy as Exhibit 1 at RFP Nos. 8 & 9. In addition to this discovery, assuming such discovery is produced in the California and New York cases and is made available to the parties in this case, Plaintiffs intend to rely on the Government's responses to related discovery propounded in the Northern District of California and Eastern District of New York cases.

7. The Government's Memorandum also acknowledges that public guidance regarding the DACA program informed DACA applicants that their application information would be "protected from disclosure" for purposes of immigration enforcement proceedings, Gov. Br. at 7, but then asserts that prohibition could be "modified, suspended, or rescinded at any time without notice." Gov. Br. at 8. The Government's Memorandum fails to discuss or otherwise acknowledge that Plaintiffs' Due Process Claim directed toward that prohibition (Count II) is predicated on the government having made unequivocal commitments that application information would not be used for immigration enforcement proceedings; that the Government communicated this commitment on numerous occasions without the reservation of rights described in its Memorandum; that the Government expressly waived certain provisions of the Privacy Act (that are cited elsewhere in its brief); that the Government intended DACA recipients to rely on the commitment in participating in the program; and that the Defendants have stated they are no longer bound by the commitment. Complaint ¶¶ 9-16, 21-22, 79-91, 107-117, 144-153. Plaintiffs believe additional focused discovery into this topic is necessary because the Government's argument disputes certain of these allegations. Plaintiffs have attached proposed discovery to

inquire into these topics as Exhibit 1 at RFP Nos.2-7 & 16, Interrogatories 4, 6 & 7. In addition to this discovery, Plaintiffs intend to rely on the Government's responses to related discovery propounded in the Northern District of California and Eastern District of New York cases. *See* Exs. 2A No. 4, 2C Nos. 5, 6, 2C Nos. 7,12-13, & 3B Nos. 66-72, 74-75.

8. The Government's proffer asserts that the DACA rescission announcement "says nothing about (and makes no changes to) DHS's information-sharing policy regarding information provided to USCIS in a DACA request." Gov. Br. at 11. The Government's proffer, however, does not address the allegations in the Complaint about the repeated, unqualified representations made by the Government to DACA applicants that their personal information would not be used for enforcement purposes, Compl. ¶¶ 79-91, nor does it acknowledge or otherwise address the Government's statements that it was modifying the representation, including in the guidance materials released at the same time as the rescission announcement. Compl. ¶¶ 108, 111. Plaintiffs believe additional focused discovery is necessary on the Government's commitment not to use personal information for enforcement purposes, on the extent to which the Government encouraged DACA applicants to apply for this program based on these representations, on the extent of the Government's understanding that DACA applicants relied upon these representations, and on the change in the Government's policy on this issue, because the Government's argument disputes certain of these allegations. Plaintiffs have attached proposed discovery to inquire into these topics as Exhibit 1 at RFP Nos.2-7 & 16, Interrogatories Nos. 4, 6 & 7. In addition to this discovery, Plaintiffs intend to rely on the Government's responses to related discovery

propounded in the Northern District of California and Eastern District of New York cases. *See* Exs. 2A No. 4, 2B Nos. 5, 6, 2C Nos. 7,12-13, & 3B Nos. 66-72, 74-75.

9. With respect to the Administrative Procedure Act, the Government contends that its Administrative Record (ECF No. 26) is complete and provides a basis to grant summary judgment. Gov. Br. at 3, 32. Additional discovery concerning that topic is appropriate for four reasons.

a. First, as two other courts have found, and as explained below, the Administrative Record submitted by Defendants (ECF No. 26) is woefully deficient.

i. The Administrative Record submitted by Defendants (ECF No. 26) is fourteen documents comprising 256 pages, all of which are publicly available and consist primarily of court decisions, and 185 of which relate to a different deferred action program.

ii. In the certification of the Administrative Record, the Defendants state that the record is a "copy of the non-privileged documents that were actually considered by Elaine C. Duke . . . in connection with her September 5, 2017 decision to rescind" DACA.

iii. The Administrative Record does not contain materials from other agency officials at DHS involved in the decision to rescind DACA. From discovery produced in the other cases, the other agency officials involved include: Chad Wolf, Elizabeth Neuman, Eugene Hamilton, Dimple Shah, Joe Maher, Nader Baroukh, Thomas Homan, Tracy Short, John Feere, Kevin McAleenan, Julie Koller, James Nealon, James McCament, Kathy Neubel-Kovarik, Craig Symons, Francis Cisnna, Ben Cassidy, and Jonathan Hoffman . There are no materials in the Administrative Record from these officials. The case law is clear that "[I]f the

agency decisionmaker based his decision on the work and recommendations of subordinates, those materials should be included as well." *Otsuka Pharm. Co. v. Burwell*, No. GJH-15-852, 2015 WL 1579127, at *2 (D. Md. Apr. 8, 2015) (citing *Amfac Resorts, LLC v. U.S. Dep't of Interior*, 143 F.Supp.2d 7, 12 (D.D.C. 2001) (collecting cases)) (brackets in original).

iv. The Administrative Record does not contain materials from other government agencies that were involved in the decision to rescind DACA, such as the Department of Justice. From discovery produced in the other cases, DOJ officials involved in the decision to rescind DACA include: Attorney General Sessions, Jody Hunt, Rachel Brand, Danielle Cutrona, Chad Readler, and Jesse Panuccio. The case law is clear that the administrative record must include materials "from other agencies." *See, e.g.*, *In re United States*, No. 17-72917, 2017 WL 5505730, at *4 (9th Cir. Nov. 16, 2017) (citing DOJ guidance).

v. The Administrative Record lacks materials that do not support or challenge the agency decision. For example, the Administrative Record does not include DHS or DOJ materials where those agencies took the position that DACA was legal. The Administrative Record similarly does not include materials from former DHS Secretary John Kelly's decisions on February 20, 2017 or June 15, 2017 to keep DACA in place. The Administrative Record does not include any materials or analysis explaining why DHS or DOJ departed from the prior agency analysis and determinations that DACA was legal. And the Administrative Record does not include any materials explaining why DHS is keeping a program it claims is illegal in operation for six additional months. The case law is clear that the administrative record must include

"pertinent but unfavorable information, and an agency may not exclude information on the ground that it did not 'rely' on that information in its final decision. . . . [T]he administrative record consists of all documents and materials directly or indirectly considered by the agency. . . . The agency may not . . . skew the 'record' for review in its favor by excluding from that 'record' information in its own files which has great pertinence to the proceeding in question." *Outdoor Amusement Bus. Ass'n, Inc. v. Dep't Homeland Sec.*, No. CV ELH-16-1015, 2017 WL 3189446, at *7 (D. Md. July 27, 2017) (collecting cases).

vi. Discovery regarding the completeness of the Administrative Record has been sought in the Northern District of California and Eastern District of New York cases. *See* Exs. 2A No. 1, 2B Nos. 19-52, 3B Nos. 27-31, 3C Nos. 1, 4 & 3D No. 1 . Assuming such discovery is produced in the California and New York cases and is made available to the parties in this case, Plaintiffs intend to rely on the Government's responses to that discovery and do not intend to propound duplicative discovery in this case regarding these topics.

b. Second, the Defendants have misconstrued the allegations of the Complaint to focus solely on Defendants' September 5 decision. The Defendants have not produced an administrative record for any of the following discrete administrative decisions:

i. the decision by DHS on February 20, 2017 to maintain the DACA program;

ii. the decision by DHS on June 15, 2017 to maintain the DACA program;

iii. the decision by DHS on or about July 15, 2017 to stop sending renewal notices to DACA recipients;

iv. the decision on September 5, 2017 to not send notices to DACA recipients alerting them of the October 5 renewal deadline;

v. the decision to change DHS policy regarding the applicability of the Privacy Act to DACA recipients; and

vi. the decision to change DHS policy regarding the prohibition on sharing DACA applicant information with immigration enforcement authorities.

Plaintiffs believe additional focused discovery into this topic is necessary to ensure there is a full and complete Administrative Record concerning each of these challenged administrative actions. Plaintiffs have attached proposed discovery to inquire into these topics as Exhibit 1 at RFP No. 8 & Interrogatory No. 2.

c. Third, because the Defendants have argued that their current positions are consistent with their historical position regarding the prohibition on sharing DACA applicant information with immigration enforcement authorities and the extension of the Privacy Act to DACA applicants, Gov. Br. 7, 37-39, discovery is appropriate into the full range of agency materials regarding the prohibition (including its history and development) and how it was communicated to DACA recipients. Plaintiffs believe additional focused discovery into this topic is necessary because the Government's argument disputes certain of these allegations. Plaintiffs have attached proposed discovery to inquire into these topics as Exhibits 1 at RFP Nos. 2-7 & 16, Interrogatories Nos. 4, 6 & 7. In addition to this discovery, Plaintiffs intend to rely on the

Government's responses to related discovery propounded in the Northern District of California and Eastern District of New York cases, assuming the Government provides substantive responses to that discovery and they are made available to Plaintiffs. *See* Exs. 2A No. 4, 2B No. 5, 6, 2C Nos. 7,12-13; & 3B No. 66-72, 74-75.

d. Fourth, the Defendants have averred that questions about the legality of DACA required rescission of the program, notwithstanding Plaintiffs' allegations these arguments are pretextual and motivated by the animus of key government officials against Mexicans, Central Americans and Latinos, who constitute the overwhelming majority of DACA recipients. *See* Complaint ¶¶ 24-25, 68, 94-96, 125-126, 154-161. Gov. Br. 10. Because it would be arbitrary and capricious for the Government to undertake administrative action for a discriminatory motive (or for any reason not documented in the Administrative Record), additional discovery is appropriate to understand he motivations behind the decision to rescind DACA. Plaintiffs have attached proposed discovery to inquire into these topics as Exhibit 1 at RFP Nos. 10-13, Interrogatories Nos. 1 & 5.

10. Unlike the Northern District of California and the Eastern District of New York Cases, the Individual Plaintiffs also propose discovery specifically related to them. Plaintiffs intend to seek discovery into whether or not the Government has shared or is not safeguarding their own private information. The Government complaints that Plaintiffs have not alleged that "personal information contained in the DACA application has in fact been impermissibly shared." Gov. Br. at 51. Yet, the extent of any sharing of that information is completely within the Government's custody and

control and can all be accessed through discovery mechanisms. Such discovery is also necessary to understand the extent of what relief is necessary should Plaintiffs prevail. Plaintiffs have attached proposed discovery to inquire into the use of their individual information as Exhibit 1 at RFP Nos. 15 & 16, Interrogatory No. 4.

11. The Government contends that the decision to rescind DACA is exempt from APA requirements and a proper exercise of agency discretion under constitutional powers, and therefore a legal action to undertake. Gov. Br. at 15-21, 41-44. Plaintiffs' Equal Protection Claim (Count III) is predicated on the legal theory that the Defendants' decision to terminate DACA is impermissibly based on the animus of key government officials against Mexicans, Central Americans and Latinos, who constitute the overwhelming majority of DACA recipients. *See* Complaint ¶¶ 24-25, 68, 94-96, 125-126, 154-161. The Government's proffer fails to discuss or otherwise acknowledge that one of Plaintiffs' Due Process Claims (Count I) is predicated on, among other things, the Government's actions to strip DACA recipients of their protected interests in the right to work, the right to obtain an education, the right to travel internationally, and the right to family integrity without fair notice. Complaint ¶¶ 20, 71-78, 101-106, 129-143. Additional discovery is necessary to understand the shift in the Government's position on the legality of the DACA program to support the APA, equal protection, and due process claims. Defendants assert that the illegality of DACA required the Secretary of DHS to rescind the program. Gov. Br. 32-36. Plaintiffs have attached proposed discovery to inquire into the change in the legality of DACA as Exhibit 1 at RFP No. 8 & 10-14, Interrogatories 1 & 2.

12. In addition to the written discovery attached hereto as Exhibit 1, Plaintiffs also request limited testimonial discovery. To date, there have been five depositions conducted by the Plaintiffs in the Northern District of California and Eastern District of New York cases. In addition to relying on this discovery, Plaintiffs request the right (i) to participate in future depositions conducted in these cases, and (ii) to conduct focused depositions pursuant to FCRP 30(b)(6).

13. At a minimum, the information Plaintiffs seek to discover is essential to opposing the Defendants' motion. Plaintiffs cannot learn all of the relevant details about this matter, or obtain evidence about them in admissible form, without discovery.

14. As referenced above, the proposed discovery requests are attached hereto as Exhibit 1. Should the Court allow discovery to proceed, Plaintiffs request that Defendants' time to respond be shortened to 14 days as reflected in the proposed discovery.

I declare under penalty of perjury, as required by 28 U.S.C. § 1746, that the foregoing is true and correct.

Dated: November 28, 2017

/s/ Elizabeth J. Bower
Elizabeth J. Bower (pro hac vice)
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APPENDIX G

[U.S. Department of Homeland Security Seal]
U.S. Department of Homeland Security

Frequently Asked Questions: Rescission Of Deferred Action For Childhood Arrivals (DACA)

Release Date: September 5, 2017

En español (https://www.dhs.gov/news/2017/09/05/preguntas-frecuentes-anulaci-n-de-la-acci-n-diferida-para-los-llegados-en-la)

The following are frequently asked questions on the September 5, 2017 Rescission of the Deferred Action for Childhood Arrivals (DACA) Program.

Q1: Why is DHS phasing out the DACA program?

A1: Taking into consideration the federal court rulings in ongoing litigation, and the September 4, 2017 letter from the Attorney General, it is clear that program should be terminated. As such, the Acting Secretary of Homeland Security rescinded the June 15, 2012 memorandum establishing the DACA program. Please see the Attorney General's letter and the Acting Secretary of Homeland Security's memorandum for further information on how this decision was reached.

Q2: What is going to happen to current DACA holders?

A2: Current DACA recipients will be permitted to retain both the period of deferred action and their employment authorization documents (EADs) until they expire, unless terminated or revoked. DACA benefits are generally valid for two years from the date of issuance.

Q3: What happens to individuals who currently have an initial DACA request pending?

A3: Due to the anticipated costs and administrative burdens associated with rejecting all pending initial requests, USCIS will adjudicate—on an individual, case-by-case basis—all properly filed DACA initial requests and associated applications for EADs that have been accepted as of September 5, 2017.

Q4: What happens to individuals who currently have a request for renewal of DACA pending?

A4: Due to the anticipated costs and administrative burdens associated with rejecting all pending renewal requests, USCIS adjudicate—on an individual, case-by-case basis—properly filed pending DACA renewal requests and associated applications for Employment Authorization Documents from current beneficiaries that have been accepted as of September 5, 2017, and from current beneficiaries whose benefits will expire between September 5, 2017 and March 5, 2018 that have been accepted as of October 5, 2017. USCIS will reject all requests to renew DACA and associated applications for EADs filed after October 5, 2017.

Q5: Is there still time for current DACA recipients to file a request to renew their DACA?

A5: USCIS will only accept renewal requests and associated applications for EADs for the class of individuals described above in the time period described above.

Q6: What happens when an individual's DACA benefits expire over the course of the next two years? Will individuals with expired DACA be considered illegally present in the country?

A6: Current law does not grant any legal status for the class of individuals who are current recipients of DACA. Recipients of DACA are currently unlawfully present in the U.S. with their removal deferred. When their period of deferred action expires or is terminated, their removal will no longer be deferred and they will no longer be eligible for lawful employment.

Only Congress has the authority to amend the existing immigration laws.

Q7: Once an individual's DACA expires, will their case be referred to ICE for enforcement purposes?

A7: Information provided to USCIS in DACA requests will not be proactively provided to ICE and CBP for the purpose of immigration enforcement proceedings, unless the requestor meets the criteria for the issuance of a Notice To Appear or a referral to ICE under the criteria set forth in USCIS' Notice to Appear guidance (www.uscis.gov/NTA (http://www.uscis.gov/NTA)). This policy, which may be modified, superseded, or rescinded at any time without notice, is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable by law by any party in any administrative, civil, or criminal matter.

Q8: Will USCIS share the personal information of individuals whose pending requests are denied proactively with ICE for enforcement purposes?

A8: Generally, information provided in DACA requests will not be proactively provided to other law

enforcement entities (including ICE and CBP) for the purpose of immigration enforcement proceedings unless the requestor poses a risk to national security or public safety, or meets the criteria for the issuance of a Notice To Appear or a referral to ICE under the criteria. This policy, which may be modified, superseded, or rescinded at any time without notice, is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable by law by any party in any administrative, civil, or criminal matter.

Q9: Can deferred action received pursuant to DACA be terminated before it expires?

A9: Yes. DACA is an exercise of deferred action which is a form of prosecutorial discretion. Hence, DHS will continue to exercise its discretionary authority to terminate or deny deferred action at any time when immigration officials determine termination or denial of deferred action is appropriate.

Q10: Can DACA recipients whose valid EAD is lost, stolen or destroyed request a new EAD during the phase out?

A10: If an individual's still-valid EAD is lost, stolen, or destroyed, they may request a replacement EAD by filing a new Form I-765.

Q11: Will DACA recipients still be able to travel outside of the United States while their DACA is valid?

A11: Effective September 5, 2017, USCIS will no longer approve any new Form I-131 applications for advance parole under standards associated with the DACA program. Those with a current advance parole validity period from a previously-approved advance

parole application will generally retain the benefit until it expires. However, CBP will retain the authority it has always exercised in determining the admissibility of any person presenting at the border. Further, USCIS retains the authority to revoke or terminate an advance parole document at any time.

Q12: What happens to individuals who have pending requests for advance parole to travel outside of the United States?

A12: USCIS will administratively close all pending Form I-131 applications for advance parole under standards associated with the DACA program, and will refund all associated fees.

Q13: How many DACA requests are currently pending that will be impacted by this change? Do you have a breakdown of these numbers by state?

A13: There were 106,341 requests pending as of August 20, 2017 – 34,487 initial requests and 71,854 renewals. We do not currently have the state-specific breakouts.

Q14: Is there a grace period for DACA recipients with EADs that will soon expire to make appropriate plans to leave the country?

A14: As noted above, once an individual's DACA and EAD expire—unless in the limited class of beneficiaries above who are found eligible to renew their benefits—the individual is no longer considered lawfully present in the United States and is not authorized to work. Persons whose DACA permits will expire between September 5, 2017 and March 5, 2018 are eligible to renew their permits. No person should lose benefits under this memorandum prior to March

5, 2018 if they properly file a renewal request and associated application for employment authorization.

Q15: Can you provide a breakdown of how many DACA EADs expire in 2017, 2018, and 2019?

A15: From August through December 2017, 201,678 individuals are set to have their DACA/EADs expire. Of these individuals, 55,258 already have submitted requests for renewal of DACA to USCIS.

In calendar year 2018, 275,344 individuals are set to have their DACA/EADs expire. Of these 275,344 individuals, 7,271 have submitted requests for renewal to USCIS.

From January through August 2019, 321,920 individuals are set to have their DACA/EADs expire. Of these 321,920 individuals, eight have submitted requests for renewal of DACA to USCIS.

Q16: What were the previous guidelines for USCIS to grant DACA?

A16: Individuals meeting the following categorical criteria could apply for DACA if they:

- Were under the age of 31 as of June 15, 2012;
- Came to the United States before reaching their 16th birthday;
- Have continuously resided in the United States since June 15, 2007, up to the present time;
- Were physically present in the United States on June 15, 2012, and at the time of making their request for consideration of deferred action with USCIS;
- Had no lawful status on June 15, 2012;

- Are currently in school, have graduated, or obtained a certificate of completion from high school, have obtained a General Educational Development (GED) certificate, or are an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; and
- Have not been convicted of a felony, significant misdemeanor, three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety.

Topics: Border Security (/topics/border-security), Deferred Action (/topics/deferred-action)

Keywords: DACA (/keywords/daca), Deferred Action for Childhood Arrivals (/keywords/deferred-action-childhood-arrivals)

Last Published Date: September 5, 2017

APPENDIX H

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil No. RWT-17-2942

Casa de Maryland, *et al.*

Plaintiffs,

v.

U.S. DEPARTMENT OF HOMELAND SECURITY, *et al.*

Defendants.

ORDER

It is, for the reasons stated in the accompanying Memorandum Opinion, this 5th day of March, 2018, by the United States District Court for the District of Maryland,

ORDERED, that Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment [ECF No. 27] is hereby GRANTED-IN-PART and DENIED-IN-PART; and it is further

ORDERED, that Summary Judgment is hereby GRANTED in favor of Plaintiffs only with regard to their estoppel claim as it pertains to DACA's information-sharing policy; and it is further

ORDERED, that Defendants are hereby ENJOINED from using or sharing Dreamer-provided information obtained through the DACA program for enforcement or deportation purposes; any requests for deviations from this Order SHALL BE SUBMITTED on a case-

by-case basis to this Court for IN-CAMERA REVIEW; and it is further

ORDERED, that Summary Judgment is hereby GRANTED in favor of Defendants with regard to all other claims; and it is further

ORDERED, that the Court ADJUDGES AND DECLARES that the DACA Rescission Memo is valid and constitutional in all respects; and it is further

ORDERED, that the Clerk of this Court is hereby directed to CLOSE this case.

/s/
ROGER W. TITUS
UNITED STATES DISTRICT JUDGE

APPENDIX I

Secretary
U.S. Department of Homeland Security
Washington, DC 20528

[U.S. Department of Homeland Security Seal]
Homeland Security

June 15, 2017

MEMORANDUM FOR: Kevin K. McAleenan
Acting Commissioner
U.S. Customs and
Border Protection

James W. MeCament
Acting Director
U.S. Citizenship and
Immigration Services

Thomas D. Homan
Acting Director
U.S. Immigration and
Customs Enforcement

Joseph B. Maher
Acting General Counsel

Michael T. Dougherty
Assistant Secretary for
Border, Immigration, and
Trade Policy

FROM: John F. Kelly
/s/ John F. Kelly

SUBJECT: Rescission of November 20, 2014 Memorandum Providing for Deferred Action for Parents of Americans and Lawful Permanent Residents ("DAPA")

On January 25, 2017, President Trump issued Executive Order No. 13768, "Enhancing Public Safety in the Interior of the United States." In that Order, the President directed federal agencies to "[e]nsure the faithful execution of the immigration laws . . . against all removable aliens," and established new immigration enforcement priorities. On February 20, 2017, I issued an implementing memorandum, stating that "the Department no longer will exempt classes or categories of removable aliens from potential enforcement," except as provided in the Department's June 15, 2012 memorandum establishing the Deferred Action for Childhood Arrivals ("DACA") policy[1] and November 20, 2014 memorandum providing for Deferred Action for Parents of Americans and Lawful Permanent Residents ("DAPA") and for the expansion of DACA[2]. After consulting with the Attorney General, I have decided to rescind the November 20, 2014 DAPA memorandum and the policies announced therein.[3]

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[1] Memorandum from Janet Napolitano, Sec'y, DHS to David Aguilar, Acting Comm'r, CBP, et al., "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children" (June 15, 2012).

[2] Memorandum from Jeh Johnson. Sec'y, DIES, to Leon Rodriguez, Dir., USCIS, et al., "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Whose Parents are U.S. Citizens or Permanent Residents" (Nov. 20. 2014).

[3] This Memorandum does not alter the remaining periods of deferred action under the Expanded DACA policy granted between issuance or the November 20, 2014 Memorandum and the February 16, 2015 preliminary injunction order in the Texas litigation, nor does it affect the validity of related Employment Authorization Documents (EADs) granted during the same span of time. I remind our officers that (1) deferred action, as an act of prosecutorial discretion, may only be granted on a case-by-case

The June 15, 2012 DACA memorandum, however, will remain in effect.

Background

The November 20, 2014 memorandum directed U.S. Citizenship and Immigration Services ("USCIS") "to establish a process, similar to DACA, for exercising prosecutorial discretion through the use of deferred action, on a case-by-case basis," to certain aliens who have "a son or daughter who is a U.S. citizen or lawful permanent resident." This process was to be known as Deferred Action for Parents of Americans and Lawful Permanent Residents, or "DAPA."

To request consideration for deferred action under DAPA, the alien must have satisfied the following criteria: (1) as of November 20, 2014, be the parent of a U.S. citizen or lawful permanent resident; (2) have continuously resided here since before January 1, 2010; (3) have been physically present here on November 20, 2014, and when applying for relief; (4) have no lawful immigration status on that date; (5) not fall within the Secretary's enforcement priorities; and (6) "present no other factors that, in the exercise of discretion, make[ ] the grant of deferred action inappropriate." The Memorandum also directed USCIS to expand the coverage criteria under the 2012 DACA policy to encompass aliens with a wider range of ages and arrival dates, and to lengthen the period of deferred action and work authorization from two years to three ("Expanded DACA").

Prior to implementation of DAPA, twenty-six states—led by Texas challenged the policies announced in the

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basis, and (2) such a grant may be terminated at any time at the agency's discretion.

November 20, 2014 memorandum in the U.S. District Court for the Southern District of Texas. In an order issued on February 16, 2015, the district court preliminarily enjoined the policies nationwide on the ground that the plaintiff states were likely to succeed on their claim that DI-IS violated the Administrative Procedure Act ("APA") by failing to comply with notice-and-comment rulemaking requirements. *Texas v. United States,* 86 F. Supp. 3d 591 (S.D. Tex. 2015). The Fifth Circuit Court of Appeals affirmed, holding that Texas had standing, demonstrated a substantial likelihood of success on the merits of its APA claims, and satisfied the other requirements for a preliminary injunction. *Texas v. United States,* 809 F.3d 134 (5th Cir. 2015). The Supreme Court affirmed the Fifth Circuit's ruling by equally divided vote (4-4) and did not issue a substantive opinion. *United States v. Texas,* 136 S. Ct. 2271 (2016) (per curiam).

The litigation remains pending before the district court.

Rescission of November 20, 2014 DAPA Memorandum

I have considered a number of factors, including the preliminary injunction in this matter, the ongoing litigation, the fact that DAPA never took effect, and our new immigration enforcement priorities. After consulting with the Attorney General, and in the exercise of my discretion in establishing national immigration enforcement policies and priorities, 1 hereby rescind the November 20, 2014 memorandum.

Consideration of Deferred Action for Childhood Arrivals

Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS Form I-821D
OMB No. 1615-0124
Expires 01/31/2019

For USCIS Use Only	A-	Receipt	Action Block
	Case ID:		
	☐ Requestor interviewed on _____		
Returned: ___/___/___	Relocated: Received: ___/___/___	Remarks	
Resubmitted: ___/___/___	Sent: ___/___/___		
To Be Completed by an Attorney or Accredited Representative, if any.	☐ Select this box if Form G-28 is attached to represent the requestor.	Attorney State Bar Number *(if any)*:	

► **START HERE - Type or print in black ink. Read Form I-821D Instructions for information on how to complete this form.**

Part 1. Information About You *(For Initial and Renewal Requests)*

I am not in immigration detention ***and*** I have included Form I-765, Application for Employment Authorization, and Form I-765WS, Form I-765 Worksheet; and

I am requesting:

1. ☐ **Initial Request** - Consideration of Deferred Action for Childhood Arrivals

OR

2. ☐ **Renewal Request** - Consideration of Deferred Action for Childhood Arrivals

AND

For this Renewal request, my most recent period of Deferred Action for Childhood Arrivals expires on

(mm/dd/yyyy) ►

Full Legal Name

3.a. Family Name *(Last Name)*

3.b. Given Name *(First Name)*

3.c. Middle Name

U.S. Mailing Address (Enter the same address on Form I-765)

4.a. In Care Of Name *(if applicable)*

4.b. Street Number and Name

4.c. Apt. ☐ Ste. ☐ Flr. ☐

4.d. City or Town

4.e. State **4.f.** ZIP Code

Removal Proceedings Information

5. Are you **NOW** or have you **EVER** been in removal proceedings, or do you have a removal order issued in any other context *(for example, at the border or within the United States by an immigration agent)*?

☐ Yes ☐ No

NOTE: The term "removal proceedings" includes exclusion or deportation proceedings initiated before April 1, 1997; an Immigration and Nationality Act (INA) section 240 removal proceeding; expedited removal; reinstatement of a final order of exclusion, deportation, or removal; an INA section 217 removal after admission under the Visa Waiver Program; or removal as a criminal alien under INA section 238.

If you answered "Yes" to **Item Number 5.**, you must select a box below indicating your current status or outcome of your removal proceedings.

Status or outcome:

5.a. ☐ Currently in Proceedings *(Active)*

5.b. ☐ Currently in Proceedings *(Administratively Closed)*

5.c. ☐ Terminated

5.d. ☐ Subject to a Final Order

5.e. ☐ Other. Explain in **Part 8. Additional Information**.

5.f. Most Recent Date of Proceedings

(mm/dd/yyyy) ►

5.g. Location of Proceedings

Part 1. Information About You *(For Initial and Renewal Requests) (continued)*

Other Information

6. Alien Registration Number (A-Number) *(if any)*
► **A-**

7. U.S. Social Security Number *(if any)*
►

8. Date of Birth *(mm/dd/yyyy)* ►

9. Gender ☐ Male ☐ Female

10.a. City/Town/Village of Birth

10.b. Country of Birth

11. Current Country of Residence

12. Country of Citizenship or Nationality

13. Marital Status
☐ Married ☐ Widowed ☐ Single ☐ Divorced

Other Names Used (If Applicable)

If you need additional space, use **Part 8. Additional Information**.

14.a. Family Name *(Last Name)*

14.b. Given Name *(First Name)*

14.c. Middle Name

Processing Information

15. Ethnicity *(Select **only one** box)*
☐ Hispanic or Latino
☐ Not Hispanic or Latino

16. Race *(Select **all applicable** boxes)*
☐ White
☐ Asian
☐ Black or African American
☐ American Indian or Alaska Native
☐ Native Hawaiian or Other Pacific Islander

17. Height Feet ☐ Inches ☐

18. Weight Pounds ☐☐☐

19. Eye Color *(Select **only one** box)*
☐ Black ☐ Blue ☐ Brown
☐ Gray ☐ Green ☐ Hazel
☐ Maroon ☐ Pink ☐ Unknown/Other

20. Hair Color *(Select **only one** box)*
☐ Bald (No hair) ☐ Black ☐ Blond
☐ Brown ☐ Gray ☐ Red
☐ Sandy ☐ White ☐ Unknown/ Other

Part 2. Residence and Travel Information *(For Initial and Renewal Requests)*

1. I have been continuously residing in the U.S. since at least June 15, 2007, up to the present time. ☐ Yes ☐ No

NOTE: If you departed the United States for some period of time before your 16th birthday and returned to the United States on or after your 16th birthday to begin your current period of continuous residence, and if this is an initial request, submit evidence that you established residence in the United States prior to 16 years of age as set forth in the instructions to this form.

For Initial Requests: List your current address and, to the best of your knowledge, the addresses where you resided since the date of your initial entry into the United States to present.

For Renewal Requests: List only the addresses where you resided since you submitted your last Form I-821D that was approved.

If you require additional space, use **Part 8. Additional Information.**

Part 2. Residence and Travel Information *(For Initial and Renewal Requests) (continued)*

Present Address

2.a. Dates at this residence *(mm/dd/yyyy)*
From ▶ [ ] To ▶ [Present]

2.b. Street Number and Name [ ]

2.c. Apt. ☐ Ste. ☐ Flr. ☐ [ ]

2.d. City or Town [ ]

2.e. State [ ] **2.f.** ZIP Code [ ]

Address 1

3.a. Dates at this residence *(mm/dd/yyyy)*
From ▶ [ ] To ▶ [ ]

3.b. Street Number and Name [ ]

3.c. Apt. ☐ Ste. ☐ Flr. ☐ [ ]

3.d. City or Town [ ]

3.e. State [ ] **3.f.** ZIP Code [ ]

Address 2

4.a. Dates at this residence *(mm/dd/yyyy)*
From ▶ [ ] To ▶ [ ]

4.b. Street Number and Name [ ]

4.c. Apt. ☐ Ste. ☐ Flr. ☐ [ ]

4.d. City or Town [ ]

4.e. State [ ] **4.f.** ZIP Code [ ]

Address 3

5.a. Dates at this residence *(mm/dd/yyyy)*
From ▶ [ ] To ▶ [ ]

5.b. Street Number and Name [ ]

5.c. Apt. ☐ Ste. ☐ Flr. ☐ [ ]

5.d. City or Town [ ]

5.e. State [ ] **5.f.** ZIP Code [ ]

Travel Information

For Initial Requests: List all of your absences from the United States since June 15, 2007.

For Renewal Requests: List only your absences from the United States since you submitted your last Form I-821D that was approved.

If you require additional space, use **Part 8. Additional Information.**

Departure 1

6.a. Departure Date *(mm/dd/yyyy)* ▶ [ ]

6.b. Return Date *(mm/dd/yyyy)* ▶ [ ]

6.c. Reason for Departure [ ]

Departure 2

7.a. Departure Date *(mm/dd/yyyy)* ▶ [ ]

7.b. Return Date *(mm/dd/yyyy)* ▶ [ ]

7.c. Reason for Departure [ ]

8. Have you left the United States without advance parole on or after August 15, 2012? ☐ Yes ☐ No

9.a. What country issued your last passport? [ ]

9.b. Passport Number [ ]

9.c. Passport Expiration Date *(mm/dd/yyyy)* ▶ [ ]

10. Border Crossing Card Number (*if any*) [ ]

Part 3. For Initial Requests Only

1. I initially arrived and established residence in the U.S. prior to 16 years of age. ☐ Yes ☐ No

2. Date of ***Initial*** Entry into the United States *(on or about)* *(mm/dd/yyyy)* ▶ [ ]

3. Place of ***Initial*** Entry into the United States [ ]

Part 3. For Initial Requests Only *(continued)*

4. Immigration Status on June 15, 2012 *(e.g., No Lawful Status, Status Expired, Parole Expired)*

5.a. Were you **EVER** issued an Arrival-Departure Record (Form I-94, I-94W, or I-95)? ☐ Yes ☐ No

5.b. If you answered "Yes" to **Item Number 5.a.**, provide your Form I-94, I-94W, or I-95 number *(if available)*.

▶

5.c. If you answered "Yes" to **Item Number 5.a.**, provide the date your authorized stay expired, as shown on Form I-94, I-94W, or I-95 *(if available)*.

(mm/dd/yyyy) ▶

Education Information

6. Indicate how you meet the education guideline (*e.g., Graduated from high school, Received a general educational development (GED) certificate or equivalent state-authorized exam, Currently in school*)

7. Name, City, and State of School Currently Attending or Where Education Received

8. Date of Graduation (*e.g., Receipt of a Certificate of Completion, GED certificate, other equivalent state-authorized exam*) or, if currently in school, date of last attendance. *(mm/dd/yyyy)* ▶

Military Service Information

9. Were you a member of the U.S. Armed Forces or U.S. Coast Guard? ☐ Yes ☐ No

If you answered "Yes" to **Item Number 9.**, you must provide responses to **Item Numbers 9.a. - 9.d.**

9.a. Military Branch

9.b. Service Start Date *(mm/dd/yyyy)* ▶

9.c. Discharge Date *(mm/dd/yyyy)* ▶

9.d. Type of Discharge

Part 4. Criminal, National Security, and Public Safety Information *(For Initial and Renewal Requests)*

If any of the following questions apply to you, use **Part 8. Additional Information** to describe the circumstances and include a full explanation.

1. Have you **EVER** been arrested for, charged with, or convicted of a felony or misdemeanor, *including incidents handled in juvenile court*, in the United States? *Do not include minor traffic violations unless they were alcohol- or drug-related.* ☐ Yes ☐ No

If you answered "Yes," you must include a certified court disposition, arrest record, charging document, sentencing record, etc., for each arrest, unless disclosure is prohibited under state law.

2. Have you **EVER** been arrested for, charged with, or convicted of a crime in any country other than the United States? ☐ Yes ☐ No

If you answered "Yes," you must include a certified court disposition, arrest record, charging document, sentencing record, etc., for each arrest.

3. Have you **EVER** engaged in, do you continue to engage in, or plan to engage in terrorist activities? ☐ Yes ☐ No

4. Are you **NOW** or have you **EVER** been a member of a gang? ☐ Yes ☐ No

5. Have you **EVER** engaged in, ordered, incited, assisted, or otherwise participated in any of the following:

5.a. Acts involving torture, genocide, or human trafficking? ☐ Yes ☐ No

5.b. Killing any person? ☐ Yes ☐ No

5.c. Severely injuring any person? ☐ Yes ☐ No

5.d. Any kind of sexual contact or relations with any person who was being forced or threatened? ☐ Yes ☐ No

6. Have you EVER recruited, enlisted, conscripted, or used any person to serve in or help an armed force or group while such person was under age 15? ☐ Yes ☐ No

7. Have you EVER used any person under age 15 to take part in hostilities, or to help or provide services to people in combat? ☐ Yes ☐ No

Part 5. Statement, Certification, Signature, and Contact Information of the Requestor *(For Initial and Renewal Requests)*

NOTE: Select the box for either **Item Number 1.a.** or **1.b.**

1.a. ☐ I can read and understand English, and have read and understand each and every question and instruction on this form, as well as my answer to each question.

1.b. ☐ The interpreter named in **Part 6.** has read to me each and every question and instruction on this form, as well as my answer to each question, in _____, a language in which I am fluent. I understand each and every question and instruction on this form as translated to me by my interpreter, and have provided true and correct responses in the language indicated above.

Requestor's Certification

I certify, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct and that copies of documents submitted are exact photocopies of unaltered original documents. I understand that I may be required to submit original documents to U.S. Citizenship and Immigration Services (USCIS) at a later date. I also understand that knowingly and willfully providing materially false information on this form is a federal felony punishable by a fine, imprisonment up to 5 years, or both, under 18 U.S.C. section 1001. Furthermore, I authorize the release of any information from my records that USCIS may need to reach a determination on my deferred action request.

2.a. Requestor's Signature

2.b. Date of Signature *(mm/dd/yyyy)* ▶

Requestor's Contact Information

3. Requestor's Daytime Telephone Number

4. Requestor's Mobile Telephone Number

5. Requestor's Email Address

Part 6. Contact Information, Certification, and Signature of the Interpreter *(For Initial and Renewal Requests)*

Interpreter's Full Name

Provide the following information concerning the interpreter:

1.a. Interpreter's Family Name *(Last Name)*

1.b. Interpreter's Given Name *(First Name)*

2. Interpreter's Business or Organization Name *(if any)*

Interpreter's Mailing Address

3.a. Street Number and Name

3.b. Apt. ☐ Ste. ☐ Flr. ☐

3.c. City or Town

3.d. State **3.e.** ZIP Code

3.f. Province

3.g. Postal Code

3.h. Country

Interpreter's Contact Information

4. Interpreter's Daytime Telephone Number

5. Interpreter's Email Address

Part 6. Contact Information, Certification, and Signature of the Interpreter *(For Initial and Renewal Requests) (continued)*

Interpreter's Certification

I certify that:

I am fluent in English and [ ] which is the same language provided in **Part 5.**, **Item Number 1.b.**;

I have read to this requestor each and every question and instruction on this form, as well as the answer to each question, in the language provided in **Part 5.**, **Item Number 1.b.**; and

The requestor has informed me that he or she understands each and every instruction and question on the form, as well as the answer to each question.

6.a. Interpreter's Signature

6.b. Date of Signature *(mm/dd/yyyy)* ▶

Part 7. Contact Information, Declaration, and Signature of the Person Preparing this Request, If Other than the Requestor *(For Initial and Renewal Requests)*

Preparer's Full Name

Provide the following information concerning the preparer:

1.a. Preparer's Family Name *(Last Name)*

1.b. Preparer's Given Name *(First Name)*

2. Preparer's Business or Organization Name

Preparer's Mailing Address

3.a. Street Number and Name

3.b. Apt. ☐ Ste. ☐ Flr. ☐

3.c. City or Town

3.d. State **3.e.** ZIP Code

3.f. Province

3.g. Postal Code

3.h. Country

Preparer's Contact Information

4. Preparer's Daytime Telephone Number

5. Preparer's Fax Number

6. Preparer's Email Address

Preparer's Declaration

I declare that I prepared this Form I-821D at the requestor's behest, and it is based on all the information of which I have knowledge.

7.a. Preparer's Signature

7.b. Date of Signature *(mm/dd/yyyy)* ▶

NOTE: If you need extra space to complete any item within this request, see the next page for **Part 8. Additional Information.**

Part 8. Additional Information *(For Initial and Renewal Requests)*

If you need extra space to complete any item within this request, use the space below. You may also make copies of this page to complete and file with this request. Include your name and A-Number (*if any*) at the top of each sheet of paper; indicate the **Page Number**, **Part Number**, and **Item Number** to which your answer refers; and sign and date each sheet.

Full Legal Name

1.a. Family Name *(Last Name)*

1.b. Given Name *(First Name)*

1.c. Middle Name

2. A-Number *(if any)*

► **A-**

3.a. Page Number **3.b.** Part Number **3.c.** Item Number

3.d.

4.a. Page Number **4.b.** Part Number **4.c.** Item Number

4.d.

5.a. Page Number **5.b.** Part Number **5.c.** Item Number

5.d.

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APPENDIX K

Instructions for Consideration of Deferred Action for Childhood Arrivals

Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-821D
OMB No. 1615-0124
Expires 01/31/2019

What is the Purpose of this Form?

An individual may file Form I-821D, Consideration of Deferred Action for Childhood Arrivals, to request that U.S. Citizenship and Immigration Services (USCIS) exercise prosecutorial discretion in his or her favor under the Deferred Action for Childhood Arrivals (DACA) process, including consideration for Renewal of deferred action. USCIS considers deferring action (including Renewal of deferred action) on a case-by-case basis, based on the guidelines in the What is a Childhood Arrival for Purposes of This Form section of these instructions. Deferred action is a discretionary determination to defer removal of an individual as an act of prosecutorial discretion. Individuals who receive deferred action will not be placed into removal proceedings or removed from the United States for a specified period of time, unless the Department of Homeland Security (DHS) chooses to terminate the deferral. See the Secretary of Homeland Security's memorandum issued on June 15, 2012 (Secretary's memorandum), upon which the DACA process is based, at www.uscis.gov/childhoodarrivals.

When Should I Use Form I-821D?

Use this form to request consideration of Initial DACA or Renewal of DACA. Deferred action is a discretionary determination to defer removal action of an individual as an act of prosecutorial discretion. All individuals filing Form I-821D, whether for an Initial or a Renewal of deferred action, must also file Form I-765, Application for Employment Authorization, and Form I-765 Worksheet, Form I-765WS. See the Evidence for Initial Requests Only and Evidence for Renewal Requests Only sections of these instructions for more information.

CAUTION: If you file this request more than 150 days prior to the expiration of your current period of deferred action, USCIS may reject your submission and return it to you with instructions to resubmit your request closer to the expiration date. USCIS encourages renewal requestors to file as early in the 150-day period as possible - ideally, at least 120 days prior to the DACA expiration date.

NOTE: If you have received DACA and you are filing within one year after your last period of deferred action expired, please follow the instructions provided below for renewal requestors.

NOTE: If U.S. Immigration and Customs Enforcement (ICE) initially deferred action in your case and you are seeking Renewal, you must file Form I-821D and select and complete Item Number 2. in Part 1. of Form I-821D. You must also respond to ALL subsequent questions on the form. You must also submit documentation to establish how you satisfy the guidelines as if you were filing an Initial request for consideration of deferred action

If you are currently in immigration detention, you may not request consideration of DACA or Renewal of DACA from USCIS. If you think you meet the guidelines of this process, you should identify yourself to your deportation office.

What is a Childhood Arrival for Purposes of This Form?

An individual may be considered for Initial DACA if he or she:

1. Was under 31 years of age as of June 15, 2012;

2. Came to the United States before reaching his or her 16th birthday;

3. Has continuously resided in the United States since June 15, 2007, up to the present time;

4. Was present in the United States on June 15, 2012 and at the time of making his or her request for consideration of deferred action with USCIS;

5. Had no lawful status on June 15, 2012;

NOTE: No lawful status on June 15, 2012 means that:

A. You never had a lawful immigration status on or before June 15, 2012; or

B. Any lawful immigration status or parole that you obtained prior to June 15, 2012 had expired as of June 15, 2012.

6. Is currently in school, has graduated or obtained a certificate of completion from high school, has obtained a general educational development (GED) certificate, or is an honorably discha ged veteran of the U.S. Armed Forces or U.S. Coast Guard; and

7. Has not been convicted of a felony, a significant misdemeano , or three or more misdemeanors, and does not otherwise pose a threat to national security or public safety.

An individual may be considered for Renewal of DACA if he or she met the guidelines for consideration of Initial DACA (see above) AND he or she:

1. Did not depart the United States on or after August 15, 2012 without advance parole;

2. Has continuously resided in the United States since he or she submitted his or her most recent request for DACA that was approved up to the present time; and

3. Has not been convicted of a felony, a significant misdemeano , or three or more misdemeanors, and does not otherwise pose a threat to national security or public safety.

Who May File Form I-821D?

1. Childhood Arrivals Who Have Never Been in Removal Proceedings. If you have never been in removal proceedings, submit this form to request that USCIS consider deferring action in your case. You must be 15 years of age or older at the time of filing and meet the guidelines described in the Secretary s memorandum to be considered for deferred action.

2. Childhood Arrivals Whose Removal Proceedings Were Terminated. If you were in removal proceedings which have been terminated by the immigration judge prior to this request, you may use this form to request that USCIS consider deferring action in your case. You must be 15 years of age or older at the time of filing and meet the guidelines described in the Secretary's memorandum to be considered for deferred action.

3. Childhood Arrivals In Removal Proceedings, With a Final Removal Order, or With Voluntary Departure. If you are in removal proceedings, have a final order of removal, exclusion, or deportation issued in any other context, have a voluntary departure order, or if your proceedings have been administratively closed, you may use this form to request that USCIS consider deferring action in your case, even if you are under 15 years of age at the time of filing. For the purpose of this form, "removal proceedings" includes exclusion or deportation proceedings initiated before April 1, 1997, an Immigration and Nationality Act (INA) section 240 removal proceeding, expedited removal, reinstatement of a final order of exclusion, deportation, or removal, an IN section 217 removal after admission under the Visa Waiver Program, removal as a criminal alien under INA section 238, or any other kind of removal proceeding under U.S. immigration law in any other context (e.g., at the border or within the United States by an immigration agent).

4. Childhood Arrivals Whose Case Was Deferred and Who Are Seeking Renewal of DACA. If USCIS or ICE deferred action in your case under DACA, you may use this form to request consideration of Renewal of DACA from USCIS.

General Instructions

USCIS provides forms free of charge through the USCIS website. In order to view, print, or fill out our forms, you should use the latest version of Adobe Reader, which can be downloaded for free at http://get.adobe.com/reader/.

Each request must be properly signed and accompanied by Form I-765 with fees and Form I-765WS. If

you are under 14 years of age, your parent or legal guardian may sign the request on your behalf. A designated representative may sign if the requestor is unable to sign due to a physical or developmental disability or mental impairment. A photocopy of a signed request or typewritten name in place of a signature is not acceptable. This request is not considered properly filed until accepted by USCIS.

Evidence. You must submit all required evidence and supporting documentation with your request at the time of filing. See the Evidence for Initial Requests Only and Evidence for Renewal Requests Only sections of these instructions for more details.

You should keep all documents that support how you meet the DACA guidelines so you can provide them if they are requested by USCIS.

NOTE: If you are submitting a Renewal Request for consideration of DACA to USCIS, you do not need to re-submit documents you already submitted with your previous DACA requests.

Biometric Services Appointment. Individuals requesting DACA must provide fingerprints, photographs, and signatures (biometrics). You may receive a notice scheduling you to appear at an Application Support Center (ASC) for biometrics collection. Failure to comply with the notice may result in the denial of your deferred action request. USCIS may, in its discretion, waive the collection of certain biometrics.

Copies. You may submit a legible photocopy of any document, unless you are specifically required to file an origina document with this request. Original documents submitted when not required may remain a part of the record, and USCIS will not automatically return them to you.

Translations. Any document you submit to USCIS that contains a foreign language must have a full English translation. The translator must certify that the English translation is complete and accurate, and that he or she is competent to translate from the foreign language into English.

An example of a certification would read, "I [typed name], certify that I am fluent (conversant) in the English and [inser other language] languages, and that the above/attached document is an accurate translation of the document attached entitled [name of document]." The certification should also include the date, the translato 's signature and typed name, and the translator's address.

Advance Parole. If you wish to file a request for Advance Parole, please follow the instructions for filing Form I-131, Application for Travel Document. You can get the most current information on how to apply for advance parole by visiting the USCIS website at www.uscis.gov/i-131 or calling the National Customer Service Line at 1-800-375-5283 or 1-800-767-1833 (TTY for the hearing impaired). Customer service officers are available Monday - Friday from 8 a.m. - 6 p.m. in each U.S. time zone.

Travel Warning. On or after August 15, 2012, if you travel outside of the United States before USCIS has determined whether to defer action in your case, you will not be considered for deferred action. Even after USCIS has deferred action in your case under DACA, you should not travel outside the United States unless you have been issued an Advance Parole Document by USCIS. Deferred action will terminate automatically if you travel outside the United States without obtaining an Advance Parole Document from USCIS. In addition, leaving the United States, even with an

Advance Parole Document, may impact your ability to return to the United States.

How To Fill Out Form I-821D

1. This form consists of eight parts. Requestors for Initial DACA and those requestors seeking Renewal of DACA should fill out most parts. Howeve , only requestors for Initial DACA should complete Part 3. See below for greater detail.

Part 1. Information About You. All requestors must complete this part.

Part 2. Residence and Travel Information. All requestors must complete this part. Please be aware that Initial requestors must provide more extensive information than Renewal requestors.

Part 3. For Initial Requests Only. Renewal requestors should skip this part.

Part 4. Criminal, National Security, and Public Safety Information. All requestors must complete this part.

Part 5. Statement, Certification, Signature, and Contact Information of the Requestor. All requestors must complete this part.

Part 6. Contact Information, Certification, and Signature of the Interpreter. Any requestor using an interpreter must complete this part.

Part 7. Contact Information, Declaration, and Signature of the Person Preparing this Request, If Other than the Requestor. If you had someone else prepare your request, he or she must complete this part.

Part 8. Additional Information. Any requestor may complete this part if additional space is needed.

2. Further Information on filling out Form I-821D

A. Type or print legibly in black ink.

B. If you need extra space to complete any item within this request, use Part 8. Additional Information and make additional copies of this sheet as needed. Type or print your name and Alien Registration Number (A-Number) (if any) at the top of each sheet; indicate the Page Number, Part Number, and Item Number to which your answer refers; and sign and date each sheet.

C. Answer all questions fully and accurately. If an item is not applicable or the answer is "none," type or print "N/ A," unless otherwise directed.

D. All dates must be entered as mm/dd/yyyy. You may provide approximate dates if you do not know the exact date. Do not leave a date response blank.

E. Processing Information. You must provide the biometrics information requested in Part 1., Item Numbers 15. - 20. Providing this information as part of your request may reduce the time you spend at your USCIS ASC appointment.

F. Part 5. Statement, Certification, Signature, and Contact Information of the Requestor. Select the box that indicates whether someone interpreted this form for you. If applicable, the attorney, accredited representative, or other individual who helped prepare this form for you must complete Part 7. and sign and date the form. Every request must contain the requestor's original signature. A photocopy of a signed request or a typewritten name in place of a signature is not acceptable. Sign and date the form and provide your daytime telephone number, mobile telephone number, and email address. If you are

under 14 years of age, your parent or legal guardian may sign the request on your behalf. A designated representative may sign if the requestor is unable to sign due to a physical or developmental disability or mental impairment.

G. Part 6. Contact Information, Certification, and Signature of the Interpreter. If you used an interpreter to read the instructions and complete the questions on this form, the interpreter must fill out Part 6. The interpreter must provide his or her full name, the name of his or her business or organization, an address, a daytime telephone number, and an email address. He or she must also sign and date the form.

H. Part 7. Contact Information, Declaration, and Signature of the Person Preparing this Request, If Other Than the Requestor. If the person who completed this request, is someone other than the person named in Part 1., he or she must complete this section of the request, provide his or her name, the address of his or her business or organization (if any), and his or her contact information. If the person completing this request is an attorney or accredited representative, he or she must submit a completed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, along with this request. Further, the attorney or accredited representative, and anyone who assisted in preparing your request, must sign and date the request. This section of the request MUST contain the original signature of the attorney or accredited representative, and anyone who assisted in preparing your request. A typewritten name in place of a signature is not acceptable.

Evidence for Initial Requests Only

NOTE: If you are submitting an Initial Request for consideration of DACA to USCIS, you will need to submit documents showing how you believe you have satisfied each DAC guideline.

1. What documents should you submit with your Form I-821D?

A. You do not need to submit original documents unless USCIS requests them.

B. Evidence and supporting documents that you file with your Form I-821D should show that you are at least 15 years of age at the time of filing, if required (see the Who May File Form I-821D section of these instructions for more information), and that you meet all of the following:

(1) Were born after June 15, 1981 (i.e., You were not age 31 or older on June 15, 2012);

(2) Arrived in the United States before 16 years of age;

(3) Have continuously resided in the United States since June 15, 2007, up to the present time;

(4) Were present in the United States on June 15, 2012, and at the time of making your request for consideration of deferred action with USCIS;

(5) Had no lawful status on June 15, 2012; and

(6) Are currently in school, graduated or received a certificate of completion from high school, obtained a GED certificate or other equivalent state-authorized exam in the United States, or that you are an honorably discharged veteran of the U.S. Armed Forces or U.S. Coast Guard.

2. What documents do you need to provide to prove identity?

Submit copies of any of the following:

A. Passport;

B. Birth certificate accompanied by photo identificatio

C. Any national identity document from your country of origin bearing your photo and/or fingerprint

D. Any U.S. government immigration or other document bearing your name and photograph (e.g., EADs, visas, driver's licenses, non-driver cards);

E. Any school-issued form of identification with photo

F. Military identification document with photo

G. State-issued photo ID showing date of birth; or

H. Any other document with photo that you believe is relevant.

NOTE: Expired documents are acceptable.

3. What documents may show that you came to the United States before your 16th birthday?

Submit copies of any of the following documents:

A. Passport with an admission stamp indicating when you entered the United States;

B. Form I-94, I-94W, or I-95 Arrival-Departure Record;

C. Any Immigration and Naturalization Service (INS) or DHS document stating your date of entry (e.g., Form I-862, Notice to Appear);

D. Travel records, such as transportation tickets showing your dates of travel to the United States;

E. School records (e.g., transcripts, report cards) from the schools that you have attended in the United States, showing the names of the schools and periods of school attendance;

F. Hospital or medical records concerning treatment or hospitalization, showing the names of the medical facilities or physicians and the dates of the treatment or hospitalization;

G. Official records from a religious entity in the United States confirming your participation in a religious ceremo , rite, or passage (e.g., baptism, first communion, wedding); o

H. Any other document that you believe is relevant.

4. If you left the United States for some period of time before your 16th birthday and returned on or after your 16th birthday to begin your current period of continuous residence, what documents may show that you established residence before your 16th birthday?

Submit copies of any of the following documents:

A. School records (e.g., transcripts, report cards) from the schools that you have attended in the United States, showing the names of the schools and periods of school attendance;

B. Employment records (e.g., pay stubs, W-2 Forms, certification of the filing of Federal income tax returns, stat verification of the filing of state income tax returns, letters from employers, , if you are self employed, letters from banks and other firms with whom you have done business)

C. Documents evidencing that you were physically present in the United States for multiple years prior to your 16th birthday; or

D. Any other relevant document.

5. What documents may show that you continuously resided in the United States since June 15, 2007, up to the present date?

Submit copies of any relevant documents such as:

A. Rent receipts, utility bills (e.g., gas, electric, phone), or receipts or letters from companies showing the dates during which you received service. You may submit this documentation even if it only has the name of your parents or legal guardians, as long as you also submit other evidence (e.g., third party documentation) that connects you to your residence at that address;

B. Employment records (e.g., pay stubs, W-2 Forms, certification of the filing of Federal income tax returns, stat verification of the filing of state income tax returns, letters from employers, , if you are self employed, letters from banks and other firms with whom you have done business)

NOTE: In all of these documents, your name and the name of the employer or other interested organization must appear on the form or letter, as well as relevant dates. Letters must include: your address at the time of employment, exact periods of employment, periods of layoff, and duties with the employer. Letters must also be signed by the employer and include the employer's contact information.

C. School records (e.g., transcripts, report cards) from the schools that you have attended in the

United States, showing the names of the schools and periods of school attendance;

D. Military records (e.g., Form DD-214, Certificate of Release or ischarge from Active Duty; NGB Form 22, National Guard Report of Separation and Record of Service; military personnel records; or military health records);

E. Hospital or medical records concerning treatment or hospitalization, showing the names of the medical facilities or physicians and the dates of the treatment or hospitalization;

F. Official records from a religious entity in the United States confirming your participation in a religious ceremo , rite, or passage (e.g., baptism, first communion, wedding)

G. Money order receipts for money sent in or out of the country; passport entries; birth certificates of children born in the United States; dated records of bank transactions; correspondence between you and another person or organization; automobile license receipts, title, vehicle registration, etc.; deeds, mortgages, rental agreements, contracts to which you have been a party; tax receipts; insurance policies; receipts; postmarked letters; or

H. Any other relevant document.

6. Do brief departures interrupt continuous residence?

A brief, casual, and innocent absence from the United States will not interrupt your continuous residence. If you were absent from the United States for any period of time, your absence will be considered brief, casual, and innocent, if it was on or after June 15, 2007, and before August 15, 2012, and:

A. The absence was short and reasonably calculated to accomplish the purpose for the absence;

B. The absence was not because of an order of exclusion, deportation, or removal;

C. The absence was not because of an order of voluntary departure or an administrative grant of voluntary departure before you were placed in exclusion, deportation, or removal proceedings; and

D. The purpose of the absence and/or your actions while outside of the United States were not contrary to law.

In Part 3. Arrival/Residence Information, list all your absences from the United States since June 15, 2007. Include information about all your departure and return dates, and the reason for your departures. Documents you can submit that may show your absence was brief, casual, and innocent include, but are not limited to:

A. Plane or other transportation tickets or itinerary showing the travel dates;

B. Passport entries;

C. Hotel receipts showing the dates you were abroad;

D. Evidence of the purpose of the travel (e.g., you attended a wedding or funeral);

E. Copy of Advance Parole Document issued by USCIS; and

F. Any other evidence that could support a brief, casual, and innocent absence.

7. What documents may demonstrate that you were present in the United States on June 15, 2012?

Submit copies of any relevant documents such as:

A. Rent receipts, utility bills (e.g., gas, electric, phone), or receipts or letters from companies showing the dates during which you received service You may submit this documentation even if it only has the name of your parents or legal guardians, as long as you also submit other evidence (e.g., third party documentation) that connects you to your residence at that address;

B. Employment records (e.g., pay stubs, W-2 Forms, certification of the filing of Federal income tax returns, stat verification of the filing of state income tax returns, letters from employers, , if you are self employed, letters from banks and other firms with whom you have done business)

NOTE: In all of these documents, your name and the name of the employer or other interested organization must appear on the form or letter, as well as relevant dates. Letters must include: your address at the time of employment, exact periods of employment, periods of layoff, and duties with the employer. Letters must also be signed by the employer and include the employer's contact information.

C. School records (e.g., transcripts, report cards) from the schools that you have attended in the United States, showing the names of the schools and periods of school attendance;

D. Military records (e.g., Form DD-214, Certificate of Release or Discha ge from Active Duty; NGB Form 22, National Guard Report of Separation and Record of Service; military personnel records; or military health records);

E. Hospital or medical records concerning treatment or hospitalization, showing the names of the medical facilities or physicians and the dates of the treatment or hospitalization;

F. Official records from a religious entity in the United States confirming your participation in a religious ceremo , rite, or passage (e.g., baptism, first communion, wedding)

G. Money order receipts for money sent in or out of the country; passport entries; birth certificates of children born in the United States; dated records of bank transactions; correspondence between you and another person or organization; automobile license receipts, title, vehicle registration, etc.; deeds, mortgages, rental agreements, contracts to which you have been a party; tax receipts; insurance policies; receipts; postmarked letters; or

H. Any other relevant document.

8. What documents may show you had no lawful status on June 15, 2012? (Submit documents if you were admitted or paroled, or otherwise obtained a lawful immigration status, on or before June 15, 2012, or you were or are in removal proceedings.)

Submit copies of any of the following documents:

A. Form I-94, I-94W, or I-95 Arrival/Departure Record showing the date your authorized stay expired;

B. If you have a final order of exclusion, deportation, or removal issued as of June 15, 2012, submit a copy of that order and related charging documents, if available;

C. An INS or DHS charging document placing you into removal proceedings, if available; or

D. Any other document that you believe is relevant to show that on June 15, 2012, you had no lawful status.

9. What documents may demonstrate that you: a) are currently in school in the United States at the time of filing; b) have graduated or received a certificate of completion or a certificate of attendance from a U.S. high school, a U.S. public or private college or university, including community college; or c) have obtained a GED certificate or other equivalent state-authorized exam in the United States? (If applicable)

USCIS recognizes that schools, educational programs, school districts, and state education agencies around the country issue educational records in a variety of formats. USCIS does not require educational records to be presented in any particular format.

A. To be considered "currently in school," you are to demonstrate that you are currently enrolled in one of the following:

(1) A U.S. public, private, or charter elementary school, junior high or middle school, high school, secondary school, alternative program, or home school program meeting state requirements;

(2) An education, literacy, or career training program (including vocational training) that has a purpose of improving literacy, mathematics, or English or is designed to lead to placement in post-secondary education, job training, or employment, and where you are working toward such placement, and that the program:

(a) Is administered by a non-profit entity; o

(b) Is funded in whole or in part by Federal, state, local, or municipal funds; or

(c) Is of demonstrated effectiveness;

(3) An education program in the U.S. assisting students in obtaining a regular high school diploma or its recognized equivalent under state law (including a certificate of completion, certificate of attendance, o alternate award), or in passing a GED exam or other equivalent state-authorized exam, and that the program:

(a) Is administered by a non-profit entity; o

(b) Is funded in whole or in part by Federal, state, local, or municipal funds; or

(c) Is of demonstrated effectiveness;

(4) A U.S. public or private college or university including community college.

Evidence of enrollment may include, but is not limited to: school registration cards, acceptance or other letters demonstrating enrollment or attendance, current transcripts, report cards, progress reports, or other documents issued by a school district, state education agency, school, or program. These documents should show your name; the name of the school district, or state educational agency, school, or program issuing the record; the dates or time periods of enrollment you are seeking to establish; and your current educational or grade level.

If you have been accepted for enrollment and your classes have not yet begun, you may submit an acceptance letter with evidence that you have registered for classes or any other relevant evidence showing you have committed to starting classes on a certain date, including, for example,

a copy of your tuition bill, your class schedule, or your Individualized Educational Program.

If you are enrolled in an educational, literacy, or career training program (including vocational training or an ESL course), evidence that the program is funded in whole or in part by Federal, state, local, or municipal funds includes a letter or other documentation from an authorized representative of the program that includes information such as: your name and date of enrollment, the duration of the program and expected completion date, the program's source of public funding, and the program's authorized representative's contact information.

If you are enrolled in an education, literacy, or career training program that is not publicly funded, evidence that the program is of demonstrated effectiveness may include information from an authorized school representative relating to: the duration of the program's existence; the program's track record in placing students in employment, job training, or post-secondary education; receipt of awards or special achievement or recognition that indicate the program's overall quality; and/or any other information indicating the program's overall quality.

B. Evidence to show that you meet the educational guideline because you have "graduated from school" or "obtained a GED certificate" or other equivalent state-authorized exam in the United States includes, but is not limited to

(1) A high school diploma from a U.S. public or private high school or secondary school;

(2) A recognized equivalent of a U.S. high school diploma under state law, including a GED certificate or other equivalent state-authorized exam, a certificate of completion, or a certificate of attendanc

(3) A transcript that identifies the date of graduation or program completion

(4) An enrollment history that shows the date of graduation or program completion;

(5) A degree from a public or private college or university or a community college; or

(6) An alternate award from a U.S. public or private high school or secondary school.

These documents should show your name; the name of the U.S. school district, educational agency, school, or program issuing the record; the dates or time periods of enrollment you are seeking to establish; and your date of graduation or completion.

10. What documents may demonstrate that you are an honorably discharged veteran of the U.S. Armed Forces or U.S. Coast Guard? (If applicable)

Submit copies of the following documents:

A. Form DD-214, Certificate of Release or Discha ge from Active Duty;

B. NGB Form 22, National Guard Report of Separation and Record of Service;

C. Military personnel records;

D. Military health records; or

E. Any other relevant document.

11. What additional documents should you submit if you are currently or have been in removal proceedings? Submit a copy of the removal order, any document issued by the immigration judge, or the final decision of the Board of Immigration Appeals (BIA), if available. If you have not been in removal proceedings, this question does not apply to you.

12. What evidence should I submit to demonstrate my criminal history?

If you have been arrested for or charged with any felony (i.e., a Federal, state, or local criminal offense punishable by imprisonment for a term exceeding one year) or misdemeanor (i.e., a Federal, state, or local criminal offense for which the maximum term of imprisonment authorized is one year or less but greater than five days) in the United States, or a crime in any country other than the United States, you must submit evidence demonstrating the results of the arrest or charges brought against you. If the charges against you were handled in juvenile court, and the records are from a state with laws prohibiting their disclosure, this evidence is not required.

A. If you have ever been arrested for any felony or misdemeanor in the United States, or a crime in any country other than the United States, and no charges were filed, submit an original official statement by the arresting agenc or applicable court order confirming that no cha ges were filed for each arrest. If you are unable to provide such documentation or if it is not available, you must provide an explanation, including a description of your efforts to obtain such evidence, in Part 8. Additional Information.

B. If you have ever been charged with or convicted of a felony or misdemeanor in the United States, or a crime in any country other than the United States, submit an original or court-certified copy of the complete arrest record and disposition for each incident (e.g., dismissal order, conviction and sentencing record, acquittal order). If you are unable to provide such documentation or if it is not available, you must provide an explanation, including a description of your efforts to obtain such evidence, in Part 8. Additional Information.

C. If you have ever had any arrest or conviction vacated, set aside, sealed, expunged, or otherwise removed from your record, submit:

(1) An original or court-certified copy of the court order vacating, setting aside, sealing, expunging, or otherwise removing the arrest or conviction; or

(2) An original statement from the court that no record exists of your arrest or conviction.

If you are unable to provide such documentation or if it is not available, you must provide an explanation, including a description of your efforts to obtain such evidence, in Part 8. Additional Information.

NOTE: You do not need to submit documentation concerning minor traffic violations such as driving without a license unless they were alcohol - or drug-related.

Evidence for Renewal Requests Only

NOTE: If you are submitting a Renewal Request for consideration of DACA to USCIS, you do not need to re-submit documents you already submitted with your previous DACA requests.

If you are seeking a Renewal of DACA, respond to all questions, except where the section or question indicates "For Initial Requests Only."

If you are currently in exclusion, deportation, or removal proceedings, see Item Number 11. (above) for additional guidance.

If you have any criminal history, see Item Number 12. (above) for additional guidance.

With your Renewal request, you only need to submit any new documents pertaining to removal proceedings or criminal history that you have not already submitted to USCIS. If USCIS needs more documentation from you, USCIS will send a Request for Evidence to you explaining the needed information. However, you should submit new documents if any of the following situations apply to you:

1. You are currently in exclusion, deportation, or removal proceedings (please note, you do not need to submit these documents if your case was administratively closed); or

2. You have been charged with, or convicted of, a felony or misdemeanor (please note, you do not need to submit these documents if you already submitted them with a previous DACA request).

NOTE: You should keep all documents that support how you meet the DACA guidelines so you can provide them if they are requested by USCIS.

If ICE initially deferred action in your case and you are seeking a Renewal, you must select and complete Item Number 2. in Part 1. of Form I-821D. You must also respond to ALL subsequent questions on the form. You must also submit documentation to establish how

you satisfy the guidelines as if you were filing an Initial request for consideration of deferred action.

NOTE: You do not need to submit documentation concerning minor traffic violations such as driving without a license unless they were alcohol-or drug-related.

Additional Information Relevant to ALL Requests for DACA

1. What other factors will USCIS consider when making a determination on deferred action?

USCIS will also conduct a background check. USCIS may consider deferring action in your case even if you have been arrested or detained by any law enforcement officer and cha ges were filed, or if cha ges were filed against you without an arrest. USCIS will evaluate the totality of the circumstances in reaching a decision on deferred action.

In accordance with the Secretary's memorandum, if USCIS determines that you have been convicted of a felony, a significant misdemeano , or three or more misdemeanors not occurring on the same date and not arising out of the same act, omission, or scheme of misconduct, or that you otherwise pose a threat to national security or public safety, USCIS is unlikely to defer action in your case. See the Frequently Asked Questions at www.uscis.gov/childhoodarrivals.

Even if you satisfy the threshold criteria for consideration of DACA, USCIS may deny your request if it determines, in its unreviewable discretion, that an exercise of prosecutorial discretion is not warranted in your case.

2. What else should you submit with Form I-821D?

USCIS will not consider deferring action in your case unless your Form I-821D is accompanied by Form I-765, with fees, and Form I-765WS. If you do not include Form I-765 with all applicable fees with your Form I-821D, your entire submission will be rejected.

Optional E-Notification of Request Acceptance. You may submit Form G-1145, Notification of Application/ Petition Acceptance, an optional form, which will notify you electronically when USCIS accepts your request for DACA.

What is the Filing Fee?

There is no filing fee for Form I-821D. Howeve , you must submit both filing and biometric services fees with Form I-765. Read Form I-765 filing instructions for complete information at www.uscis.gov/I-765.

Where to File?

Please see our USCIS website at www.uscis.gov/ I-821D or call the USCIS National Customer Service Center at 1-800-375-5283 for the most current information about where to file this form. For TTY (deaf or hard of hearing) call: 1-800-767-1833.

Address Changes

You must inform USCIS if you change your address. For information on filing a change of address, go to the USCI website at www.uscis.gov/addresschange or contact the USCIS National Customer Service Center at 1-800-375-5283. For TTY (deaf or hard of hearing) call: 1-800-767-1833.

NOTE: Do not submit a change of address request to USCIS Lockbox facilities because these facilities do not process change of address requests.

Processing Information

Initial Processing. Once your request has been received by USCIS, USCIS will check the request for completeness. If you do not completely fill out the form, USCIS may deny or reject your request

Requests for More Information, Including Biometrics or Interview. We may request more information or evidence,or we may request that you appear at a USCIS office for an intervie . We may also request that you provide the originals of any copies you submit. We will return these originals when they are no longer needed.

If the same documents are required for both Form I-821D and Form I-765 that are filed togethe , the documents only have to be submitted once.

At the time of any interview or other appearance at a USCIS office, USCIS may require that you provide biometric information (e.g., photograph, fingerprints, signature) to verify your identity and update your background information

Decision. USCIS will review your request to determine whether the exercise of prosecutorial discretion is appropriate in your case. Each case will be considered on an individual, case-by-case basis. Even if you satisfy the threshold criteria for consideration of DACA, USCIS may determine, in its unreviewable discretion, that deferred action is not warranted in your case. You will be notified of the decision in writing. There is no motion to reopen/reconsider the decision and there is no right to appeal.

USCIS Forms and Information

To ensure you are using the latest version of this form, visit the USCIS website at www.uscis.gov where

you can obtain the latest USCIS forms and immigration-related information. If you do not have Internet access, you may order USCIS forms by calling our toll-free number at 1-800-870-3676. You may also obtain forms and information by calling the USCIS National Customer Service Center at 1-800-375-5283. For TTY (deaf or hard of hearing) call: 1-800-767-1833.

As an alternative to waiting in line for assistance at your local USCIS office, you can now schedule an appointment through our Internet-based system, InfoPass. To access the system, visit our website at infopass.uscis.gov. Use the InfoPass appointment scheduler and follow the screen prompts to set up your appointment. InfoPass generates an electronic appointment notice that appears on the screen.

Penalties

If you knowingly and willfully provide materially false information on Form I-821D, you will be committing a Federal felony punishable by a fine, or imprisonment up to five years, or both, under 18 U.S.C. Section 1001. In addition individuals may be placed into removal proceedings, face severe penalties provided by law, and be subject to criminal prosecution.

USCIS Privacy Act Statement

AUTHORITIES: The information requested on this form, and the associated evidence, is collected under the Immigration and Nationality Act, section 101, et seq.

PURPOSE: The primary purpose for providing the requested information on this form is to determine if you should be considered for deferred action as a childhood arrival. The information you provide will be

used in making a decision whether to defer removal action in your case as an exercise of prosecutorial discretion.

DISCLOSURE: The information you provide is voluntary. However, failure to provide the requested information, and any requested evidence, may delay a final decision in your case or result in denial of your request

ROUTINE USES: The information you provide on this form may be shared with other Federal, state, local, and foreign government agencies and authorized organizations following approved routine uses described in the associated published system of records notices [DHS/USCIS-007 - Benefits Information System and DHS/USCIS-001 -Alien File, Index, and National File Tracking System of Records which can be found at www.dhs.gov/privacy].

Other Disclosure Information

Information provided in this request is protected from disclosure to ICE and U.S. Customs and Border Protection (CBP) for the purpose of immigration enforcement proceedings unless the requestor meets the criteria for the issuance of a Notice To Appear or a referral to ICE under the criteria set forth in USCIS' Notice to Appear guidance (www.uscis.gov/NTA). The information may be shared with national security and law enforcement agencies, including ICE and CBP, for purposes other than removal, including for assistance in the consideration of deferred action for childhood arrivals request itself, to identify or prevent fraudulent claims, for national security purposes, or for the investigation or prosecution of a criminal offense. The above information sharing clause covers family members and guardians, in addition to the requestor.

This policy, which may be modified, superseded, or rescinded at any time without notice, is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

Paperwork Reduction Act

An agency may not conduct or sponsor an information collection, and a person is not required to respond to a collection of information, unless it displays a currently valid OMB control number. The public reporting burden for this collection of information is estimated at 3 hours per response, including the time for reviewing instructions and completing and submitting the form. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: U.S. Citizenship and Immigration Services, Regulatory Coordination Division, Office of Policy and Strateg , 20 Massachusetts Ave NW, Washington, DC 20529-2140; OMB No. 1615-0124. Do not mail your completed Form I-821D to this address.

Reminder

For Initial and Renewal Request

Did you submit Form I-765 along with the filing and biometric services fees ($495) required for the application or employment authorization, and did you also submit a completed Form I-765WS?

Did you answer every relevant Item Number?

Did you provide an original, handwritten signature and date your request?

Did you submit the necessary documents? For Initial requests, did you submit documents to meet

each guideline? For Renewal requests, see the section titled Evidence for Renewal Requests Only.

If you were issued a final order of exclusion, deportation, or removal, did you include a copy of that final order (i available and if you had not already submitted it to USCIS)?

If your exclusion, deportation, or removal proceedings were terminated by an immigration judge, did you include a copy of the immigration judge's termination order (if available and if you had not already submitted it to USCIS)?

If you have ever been arrested for, charged with, or convicted of any felony or misdemeanor in the United States or any crime in any country other than the United States, did you submit an original, official, or court-certifie document that shows your complete arrest record and final disposition for each incident (if available and if you had not already submitted it to USCIS)?

For Initial Requests Only

Did you submit evidence to show that you came to the United States while under 16 years of age?

Did you submit evidence to prove your identity, date of initial entry, and continuous residence from June 15, 2007 (or earlier) up to the present time?

Did you submit evidence that you are currently in school, have a GED certificate, have graduated or received a certificate of completion from high school, or are an honorably discha ged veteran of the U.S. Armed Forces or U.S. Coast Guard?

Did you provide evidence showing that you had no lawful status as of June 15, 2012?

APPENDIX L

POLITICO

Homeland Security Secretary John Kelly sought to mollify senators who have for weeks been outraged by the Trump administration's hard-edged immigration policies. | AP Photo

Wary Democrats look to Kelly for answers on immigration

Senate Democrats wanted reassurances from Homeland Security Secretary John Kelly

By TED HESSON and SEUNG MIN KIM | 03/29/2017 09:13 PM EDT

Senate Democrats met with Homeland Security Secretary John Kelly on Wednesday to seek reassurances that there would be boundaries to President Donald Trump's plan to intensify immigration enforcement.

In some cases, Kelly delivered. The former Marine general told senators that border agents would not separate mothers and children at the border, unless a mother was sick or injured. He also said his

department would not target enrollees in the Deferred Action for Childhood Arrivals Program, which grants deportation relief to undocumented immigrants brought to the U.S. at a young age.

But an undercurrent of frustration ran through the meeting, according to interviews with roughly half the more than zo senators in attendance.

Privately, Kelly sought to mollify senators who have for weeks been outraged by the Trump administration's hard-edged immigration policies. During the meeting at the Capitol, which lasted nearly two hours, the DHS secretary told Democrats that the administration was still mainly targeting for deportation those who had committed crimes, and that they didn't even have the manpower to deport all undocumented immigrants in the country, according to one senator.

Several Democrats weren't convinced, including Sen. Bob Menendez of New Jersey. "Basically, even though the secretary portrays that we're only going after the bad apples, and criminals and this and that, the reality is — I pointed out to him — that his new memo on priorities makes everybody technically eligible for deportation," Menendez said in an interview after the meeting. "He didn't deny that."

Several other senators echoed that sentiment.

"Frustration would be a good word," said Sen. Patty Murray (D-Wash.). "He stated that he was not separating children from their parents, but that's not been our experience." On the topic of keeping families together, Sen. Kamala Harris (D-Calif.) said, "He didn't guarantee it."

Speaking with reporters after the meeting, Kelly generally affirmed his positions on families at the

border and DACA enrollees. He also called on members of Congress to change laws if they don't agree with them. "They may not like what I have to say, in terms of how we're doing business, but they deserve as elected representatives of the people to hear what I have to say," he said. "Honest men and women should be able to disagree on a lot of things and we do."

Of the DACA program, Kelly said both the government and individuals have an obligation to honor the terms of the policy. "The DACA status is a commitment, not only by the government towards the DACA person, or the so-called Dreamer, but by that person to obey the law," Kelly said. "I don't care what you read, or what people say, we have not, in my time picked up someone who was covered by DACA. We have not done that."

Since Trump took office, though, several current or former DACA recipients have been arrested by federal immigration authorities, including a 24-year-old man in the Seattle area who was released on bail by an immigration judge Wednesday. Federal immigration officers contend he admitted to membership in a gang once they encountered him.

The news from Kelly seemed to placate some Democrats, if not win them over entirely. Sen. Dick Durbin (D-Ill.) said he "breathed a little sigh of relief" at Kelly's DACA stance, which he said "was the policy of the Obama administration, too." Durbin said the program "is still very much alive" — and credited Kelly for it.

"Many people would have doubted that that ever would be the case, and I think he is one of the major reasons for it," Durbin said.

At the meeting, Kelly spoke of the importance of addressing the factors that drive migrants north from Central American countries, such as Honduras, Guatemala and El Salvador. He said the administration plans to organize a conference in Miami before the summer with presidents and business leaders from those countries to discuss ways to improve social and economic conditions in the region.

Kelly said Mexico wants to co-host the event and that Canada and Colombia would attend as observers. "We're trying to improve the state of life in the Central American republics so those people don't have to come up here," he said.

Elana Schor contributed to this report.

https://www.politico.com/story/2017/03/wary-dems-look-to-kelly-for-answers-on-immigration-236873