ARNOLD & PORTER KAYE SCHOLER LLP
JOHN C. ULIN (SBN 165524)
john.ulin@apks.com
JABA TSITSUASHVILI (SBN 309012)
jaba.tsitsuashvili@apks.com
777 South Figueroa Street, 44th Floor
Los Angeles, CA 90017-5844
T: (213) 243-4000
F: (213) 243-4199

Attorneys for Plaintiff
ALBERTO LUCIANO GONZALEZ TORRES

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ALBERTO LUCIANO GONZALEZ TORRES,

Plaintiff,

vs.

U.S. DEPARTMENT OF HOMELAND SECURITY; U.S. CITIZENSHIP AND IMMIGRATION SERVICES; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; U.S. CUSTOMS AND BORDER PROTECTION; Does 1-10, inclusive,

Defendants.

Case No. 3:17-CV-01840 JM (NLS)

PLAINTIFF'S REPLY IN SUPPORT OF EX PARTE EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION [Docket No. 2]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. DEFENDANTS' JURISDICTIONAL ARGUMENTS RELY ON MISCHARACTERIZATIONS OF MR. GONZALEZ'S CLAIMS AND OF DACA, AND ON MISUNDERSTANDINGS OF LAW 1

III. DEFENDANTS REAFFIRM THE MERITS OF MR. GONZALEZ'S APA CLAIMS 6

IV. THE HARM IMPOSED BY DEFENDANTS IS IRREPARABLE 10

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

Page(s)

Cases

A. Singh v. Gonzales,
499 F.3d 969 (9th Cir. 2007) 4

Aguilar v. ICE,
510 F.3d 1 (1st Cir. 2007) 5

Alcaraz v. INS,
384 F.3d 1150 (9th Cir. 2004) 9

Bell v. Burson,
402 U.S. 535 (1971) 10

Chavez-Navarro v. Ashcroft,
57 F. App'x 349 (9th Cir. 2003) 3, 9

Church of Scientology v. U.S.,
920 F.2d 1481 (9th Cir. 1990) 6

Coyotl v. Kelly,
2017 WL 2889681 (N.D. Ga. June 12, 2017) 3, 6, 10

Flores-Torres v. Mukasey,
548 F.3d 708 (9th Cir. 2008) 5

Gallo v. U.S. Dist. Ct.,
349 F.3d 1169 (9th Cir. 2003) 10

Gete v. INS,
121 F.3d 1285 (9th Cir. 1997) 2

In re Javier Luis Medrano-Inocence,
2017 WL 1508874 (BIA Mar. 27, 2017) 5

INS v. St. Cyr,
533 U.S. 289 (2001) 5

INS v. Yang,
519 U.S. 26 (1996) 9

JEFM v. Lynch,
837 F.3d 1026 (9th Cir. 2016) 4, 5

Judulang v. Holder,
565 U.S. 42 (2011) 9

McDonald v. Gonzales,
400 F.3d 684 (9th Cir. 2005) 9

Medina v. DHS,
2017 WL 2954719 (W.D. Wash. Mar. 14, 2017) 5

Nozzi v. Housing Auth. of Los Angeles,
806 F.3d 1178 (9th Cir. 2015) 9

Ramirez-Perez v. Ashcroft,
336 F.3d 1001 (9th Cir. 2003) 3

Reno v. AADC,
525 U.S. 471 (1999) 4

Sameena Inc. v. U.S. Air Force,
147 F.3d 1148 (9th Cir. 1998) 9

San Luis & Delta-Mendoza Water Auth. v. Jewell,
747 F.3d 581 (9th Cir. 2014) 8

Shirrod v. Director,
809 F.3d 1082 (9th Cir. 2015) 7

Sissoko v. Rocha,
509 F.3d 947 (9th Cir. 2007) 3

Sulit v. Schiltgen,
213 F.3d 449 (9th Cir. 2000) 3

Texas v. U.S.,
809 F.3d 134 (5th Cir. 2015) 6, 10

Toor v. Lynch,
789 F.3d 1055 (9th Cir. 2015) 7

U.S. ex rel Accardi v. Shaughnessy,
347 U.S. 260 (1954) 6, 7, 8, 9

U.S. v. Hovsepian,
359 F.3d 1144 (9th Cir. 2004) (*en banc*)....................2

Webster v. Doe,
486 U.S. 592 (1988)....................5

Statutes

8 U.S.C. § 1252(b)(9)....................1, 4, 5

8 U.S.C. § 1252(g)....................1, 2, 3, 4

I. INTRODUCTION

Defendants' opposition to Mr. Gonzalez's motion for temporary restraining order and preliminary injunction rests entirely on mischaracterizations of Mr. Gonzalez's claims, the DACA program, and Defendants' own mandatory DACA Standard Operating Procedures ("DACA SOP"). Defendants have only reaffirmed the merits of Mr. Gonzalez's APA claims, and their jurisdictional arguments misconstrue the law.

II. DEFENDANTS' JURISDICTIONAL ARGUMENTS RELY ON MISCHARACTERIZATIONS OF MR. GONZALEZ'S CLAIMS AND OF DACA, AND ON MISUNDERSTANDINGS OF LAW

Defendants' jurisdictional arguments rest entirely on their repeated misstatement that Mr. Gonzalez is challenging CBP's "decision to issue an NTA" and therefore cannot bring his claims in federal court. *See, e.g.*, Dkt. No. 9 at 21, 25, 33 (docket pagination). Mr. Gonzalez is ***not*** challenging CBP's issuance of an NTA. Nor is he challenging any action that is bound up in his removal proceedings. He is challenging the separate termination of his DACA status and employment authorization without an NOIT or opportunity to respond—in violation of the DACA SOP's mandatory procedures and due process. Conceding the failure to follow those procedures, Defendants advance the unsupported assertion that CBP issuing an unlawful presence NTA ***is synonymous with*** DACA termination, so that 8 U.S.C. §§ 1252(g) and (b)(9) preclude judicial review. But this alleged policy—the sole basis for Defendants' jurisdictional arguments—has no basis in the DACA SOP. *See* Dkt. Nos. 1-11; 1-3 at 11-12, 18-20.

Since DACA's inception, Defendants have made clear that an NTA and DACA status are distinct. Their attempt to rewrite the DACA program for this case ignores DHS's original 2012 DACA Memorandum; USCIS's DACA FAQ; DHS/USCIS's DACA approval notices; and DHS's nondiscretionary DACA SOP termination policies. Specifically:

- The DACA Memo and DACA FAQ make clear that being in removal proceedings (or having a removal order) is not mutually exclusive of DACA status. *See* Dkt. Nos. 1-7 at 3 (eligibility for "individuals who are **in** removal proceedings") (emphasis in original); 1-13 at 5-6 ("open to . . . those in removal proceedings, with a final order, or with a voluntary departure order").
- Mr. Gonzalez's DACA approval notices distinguish initiation of removal proceedings from termination of DACA status. *See* Dkt. Nos. 1-14 at 2; 1-15 at 2 ("Information obtained . . . will be used to determine whether termination of deferred action ***and/or*** removal proceedings are appropriate.") (emphasis added).

The DACA SOP establishes nondiscretionary termination procedures that are independent of removal proceedings. To obscure the fact that CBP's issuance of an NTA for unlawful presence is a matter separate from USCIS's termination of DACA status, Defendants once again attach DACA SOP Appendix I (also attached as part of Exhibit F to Mr. Gonzalez's motion)—in which form 602 provides for "automatic" termination upon the issuance of an NTA (by USCIS or ICE, but notably ***not*** by CBP), *see* Dkt. Nos. 1-11 at 13-16; 9-3 at 4—but conveniently leave out the policies that dictate when form 602 is to be used. Those policies (included in Mr. Gonzalez's Exhibit F, Dkt. No. 1-11) require USCIS to adhere to detailed procedures for Egregious Public Safety ("EPS") cases before issuing an "automatic" termination using form 602. *See* Dkt. Nos. 1-11 at 13-15 ("Chapter 14: DACA Termination"); 1-3 at 11-12, 18-20. Even then, the NTA and the termination of DACA status are distinct events in separate proceedings before different agencies of DHS.

Because Mr. Gonzalez challenges USCIS's failure to honor his procedural rights in DACA termination proceedings that are not part of the removal proceedings against him—and does not challenge CBP's issuance of an NTA; the merits of any discretionary determination in immigration court; or rights that flow from his removal proceedings—neither § 1252(g) nor (b)(9) bars any of his claims.

The Ninth Circuit has consistently held that § 1252(g) does not preclude judicial review of (1) factual and legal determinations made prior to discretionary decisions, or (2) compliance with, or the validity of, procedures that form the backdrop of ultimate discretionary decisions. *See Gete v. INS*, 121 F.3d 1285,

1291-92 (9th Cir. 1997); *U.S. v. Hovsepian*, 359 F.3d 1144, 1155 (9th Cir. 2004) (*en banc*) ("district court may consider a purely legal question that does not challenge the Attorney General's discretionary authority, even if the answer . . . forms the backdrop against which the Attorney General later will exercise discretionary authority"). Moreover, courts "retain jurisdiction to review constitutional claims, even when those claims address [agency] discretionary decision[s]." *Ramirez-Perez v. Ashcroft*, 336 F.3d 1001, 1004 (9th Cir. 2003); *see Sulit v. Schiltgen*, 213 F.3d 449, 452-53 & n.1 (9th Cir. 2000) (§ 1252(g) did not bar due process claim that green cards were seized without hearing).

In short, Ninth Circuit precedent supports the *Coyotl* court's holding that § 1252(g) does not strip the courts of jurisdiction over claims like Mr. Gonzalez's, that challenge USCIS's failure to follow nondiscretionary procedures in DACA termination proceedings, which do not arise from the Attorney General "commenc[ing] proceedings, adjudicat[ing] cases, or execut[ing] removal orders" against an immigrant. That is doubtless why Defendants attempt to re-characterize Mr. Gonzalez's claims as "directly challenging the decision to issue an NTA." Dkt. No. 9 at 23 n.4. Defendants cite two Ninth Circuit cases in support of that argument,[1] but those cases merely affirm the unremarkable propositions that Mr. Gonzalez may not challenge CBP's issuance of an NTA before this Court (he is not) or ask the Court to review the result of a DACA termination decision reached in compliance with proper procedures (he is not). The *Sissoko* court clarified that § 1252(g) barred jurisdiction in the "limited context" of that case because the plaintiff was challenging *statutorily* "mandatory" detention resulting from the commencement of expedited removal proceedings. 509 F.3d at 949-50. For all of the reasons discussed above and in Mr. Gonzalez's opening brief, no statute, regulation, or policy mandates termination of his DACA status and benefits

[1] *I.e.*, *Chavez-Navarro v. Ashcroft*, 57 F. App'x 349 (9th Cir. 2003); *Sissoko v. Rocha*, 509 F.3d 947 (9th Cir. 2007).

1 because CBP issued him an NTA for unlawful presence. Section 1252(g) does not
2 strip this Court of jurisdiction.
3 Defendants' § 1252(b)(9) argument fares no better. At its essence, the
4 argument relies on an overly broad—and unsupportable—reading of the Ninth
5 Circuit's decision in *JEFM v. Lynch*, 837 F.3d 1026 (9th Cir. 2016), *pet. for reh'g*
6 *en banc filed*. In fact, *JEFM* supports Mr. Gonzalez in this case.
7 The *JEFM* decision broke with Ninth Circuit and Supreme Court precedent
8 making clear that by its "explicit language," § 1252(b)(9) "appl[ies] only to those
9 claims seeking judicial review of orders of removal." *A. Singh v. Gonzales*, 499
10 F.3d 969, 978-79 (9th Cir. 2007); *see Reno v. AADC*, 525 U.S. 471, 487 (1999).
11 While the validity of its holding that the statute applies before a removal order is
12 entered may thus be questioned, *JEFM* reaffirmed that § 1252(b)(9) has "built-in
13 limits." 837 F.3d at 1032. The statute applies to claims that "arise from" removal
14 proceedings, but does not strip courts of jurisdiction to hear immigrants' "claims
15 that are collateral to, or independent of, the removal process." *Id.*
16 In *JEFM*, the plaintiff children challenged laws and regulations governing
17 the immigration courts that denied government-appointed counsel to children in
18 removal proceedings. Because the children's right-to-counsel claims arose from
19 their removal proceedings, *id.* at 1033 ("bound up in and an inextricable part of the
20 administrative process"), the Ninth Circuit held that § 1252(b)(9) prevented them
21 from bringing those claims in federal court in the first instance. *Id.* at 1035.
22 Here, by contrast, Mr. Gonzalez's procedural challenge to his DACA
23 termination is entirely independent from his removal proceedings. He is
24 challenging USCIS's failure to follow mandatory procedures promulgated separate
25 and apart from the laws and regulations governing immigration court and the
26 removal process. His claims do ***not*** exist only by virtue of his removal
27 proceedings. The APA claims he raises in this Court would exist even if
28 Defendants had terminated his DACA status without following their procedures,

but never issued an NTA. In other words—unlike in *JEFM*—these are procedural protections that Mr. Gonzalez has a right to vindicate even in the absence of removal proceedings.[2] *See* Dkt. No. 1-3 at 10-11, 26-29. Accordingly, § 1252(b)(9) does not prevent him from pursuing his claims in this Court. *See, e.g.*, *Flores-Torres v. Mukasey*, 548 F.3d 708, 711 (9th Cir. 2008) (upholding jurisdiction over challenge to detention during removal proceedings that was deemed collateral to the removal process); *see id.* at 711-13 & n.6 (claim may be considered independent of removal proceedings even when its resolution might invalidate the proceedings).

Defendants seek nothing less than to circumvent the "strong presumption in favor of judicial review of administrative action." *INS v. St. Cyr*, 533 U.S. 289, 298 (2001). But their own argument that the INA precludes judicial review of "issues that can be raised in removal proceedings," Dkt. No. 9 at 25, is fatal to that effort. By the Government's admission, an Immigration Judge and the BIA cannot reinstate DACA status or compel Defendants to abide by the DACA SOP's termination procedures. *See Medina v. DHS*, 2:17-CV-00218, Mar. 18, 2017 Hr'g Tr. at 6-8 (COURT: "[D]oes the immigration judge have the power to reinstate DACA status?" MR. ROBINS: "No, Your Honor."); *In re Javier Luis Medrano-Inocence*, 2017 WL 1508874, at *2 (BIA Mar. 27, 2017) ("[W]e have no jurisdiction to grant relief under the [DACA] program."). Defendants would thus have this Court construe the INA "to deny any judicial forum for a colorable constitutional claim," *Webster v. Doe*, 486 U.S. 592, 603 (1988). That cannot be the law because it would raise obvious and "serious constitutional concerns." *Id.*; *see Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007) ("§1252(b)(9) is a judicial channeling provision, not a claim-barring one").

[2] At least one court has recognized that *JEFM* did not purport to overturn Ninth Circuit precedent governing claims that are not "wholly intertwined with the removal proceedings." *See Medina v. DHS*, 2017 WL 2954719, at *13-16 (W.D. Wash. Mar. 14, 2017) (Report and Recommendation).

III. DEFENDANTS REAFFIRM THE MERITS OF MR. GONZALEZ'S APA CLAIMS

Defendants' arguments in opposition to the merits of Mr. Gonzalez's APA claims are equally unavailing. "Pursuant to the *Accardi* doctrine, an administrative agency is required to adhere to its own internal operating procedures." *Church of Scientology v. U.S.*, 920 F.2d 1481, 1487 (9th Cir. 1990) (citing *U.S. ex rel Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954)). Defendants failed to do so here and thus violated Mr. Gonzalez's rights under the APA. Defendants attempt to distract from their indisputable misconduct by making bold and incorrect assertions of law, mischaracterizing Mr. Gonzalez's claims, and raising *post hoc* justifications for their conduct and factual disputes that are not properly raised before this Court, which only underscore the need for a fair hearing at USCIS. But no amount of obfuscation hides the fact that Defendants acted unlawfully and violated their own mandatory DACA termination procedures by failing to provide Mr. Gonzalez with either an NOIT or any opportunity (let alone 33 days) to respond to the allegations against him before terminating his DACA status and employment authorization.

Defendants contend that Mr. Gonzalez was not entitled "to receive any process regarding the termination . . . of DACA because deferred action is necessarily an exercise of . . . prosecutorial discretion." Dkt. No. 9 at 27. This brash argument flies in the face of established caselaw holding that discretion with respect to DACA applications and terminations is circumscribed by mandatory procedures in DHS's DACA SOP and the 2011 USCIS Memo it incorporates. *See Texas v. U.S.*, 809 F.3d 134, 173 (5th Cir. 2015); *Coyotl v. Kelly*, 2017 WL 2889681, at *4 (N.D. Ga. June 12, 2017) (DACA SOP is nondiscretionary). Indeed, the Government conceded in *Coyotl* that these documents "are the guidelines that adjudicators are to apply." *Id.* at *4. And they entitle Mr. Gonzalez to an NOIT and opportunity to respond. Dkt. No. 1-3 at 18-29.

Defendants cannot avoid the mandates of the DACA SOP's and 2011 USCIS Memo's detailed procedures for DACA termination by cherry-picking and

mischaracterizing a broadly worded response to a DACA FAQ, *see* Dkt. No. 9 at 32, asking "Can my deferred action under the DACA process be terminated before it expires?" The answer—"DACA is an exercise of prosecutorial discretion and deferred action may be terminated at any time, with or without a Notice of Intent to Terminate, at DHS's discretion."—does not suggest that the FAQ supersedes the DACA SOP's detailed procedures. On the contrary, "at DHS's discretion" must be understood in the context of those mandatory procedures, which allow for termination without an NOIT only after USCIS and ICE follow a specified procedure that Defendants concede went ignored in Mr. Gonzalez's case.

To defeat Mr. Gonzalez's APA and *Accardi* claims, Defendants improperly rely on a mischaracterization of the DACA SOP and *post hoc* justifications for USCIS's termination of Mr. Gonzalez's DACA status without notice. *See Shirrod v. Director*, 809 F.3d 1082, 1087 n.4 (9th Cir. 2015) (court must "review only what the agency did, not what [it] could have done"); *Toor v. Lynch*, 789 F.3d 1055, 1064 (9th Cir. 2015) (agency action may only be affirmed based on "explanations offered by the agency"). They argue that "where CBP or ICE issues a Notice to Appear, the DACA guidance provides that DACA terminates automatically . . . [p]er Appendix I." Dkt. No. 9 at 32. But neither Chapter 14 of the DACA SOP—which governs termination—nor Appendix I, on which Defendants purport to rely, says USCIS may terminate DACA status without issuing an NOIT when CBP issues an NTA based solely on unlawful presence. On the contrary, the DACA SOP requires USCIS and ICE to comply with procedures for determining that a particular case raises EPS concerns before termination without notice is permitted. *See* Dkt. No. 1-11 at 13-16.

Defendants concede that they failed to follow those procedures. Nothing in the record indicates that anyone at USCIS ever determined Mr. Gonzalez was an EPS concern or referred his case to ICE, or that ICE ever reviewed his case or issued an NTA based on a determination that it was an EPS case. On the contrary,

CBP (not ICE) issued Mr. Gonzalez's NTA based solely on unlawful presence without reference to any criminal violation. Under those circumstances, the DACA SOP required that USCIS provide Mr. Gonzalez notice and an opportunity to respond before his DACA status was terminated. *See* Dkt. No. 1-11 at 13-16.

Defendants attempt to justify USCIS's termination without notice by pointing to notes of interviews with three of the undocumented immigrants allegedly found at the house where Mr. Gonzalez was arrested, who supposedly identified him in a photographic array as having had a role in their concealment. Dkt. No. 9 at 16. Of course, the same interview notes suggest that the other nine individuals—whom CBP also interviewed—did not identify Mr. Gonzalez. For their part, Defendants interviewed Mr. Gonzalez for two days before losing interest in him—allowing him to be released for just $5,000 after a hearing in which an Immigration Judge determined that he was not a public safety concern—and never charged him with a crime or investigated him again for the past 16 months. Ultimately, the factual dispute over Mr. Gonzalez's involvement with the immigrants found at the house is not part of the procedural claims before this Court; it must be considered by USCIS in a proper termination proceeding in which Mr. Gonzalez—who vigorously contests Defendants' allegations—has an opportunity to tell his side of the story.

In sum: (1) USCIS did not base its termination of DACA on any finding that Mr. Gonzalez was an EPS concern and cannot now rely on that reasoning to justify its unlawful decision not to issue an NOIT, *see San Luis & Delta-Mendoza Water Auth. v. Jewell*, 747 F.3d 581, 603 (9th Cir. 2014); and (2) the parties' factual dispute only underscores the wisdom of the DACA SOP's procedural safeguards.

Defendants' assertion that courts "decline[] to apply the *Accardi* doctrine in matters of prosecutorial discretion" is simply wrong. *Accardi* itself was a case about the exercise of discretion in immigration removal proceedings. And courts have applied the *Accardi* doctrine in a wide variety of enforcement contexts. *See*,

1 *e.g.*, *INS v. Yang*, 519 U.S. 26, 32 (1996); *McDonald v. Gonzales*, 400 F.3d 684,
2 686 & n.5 (9th Cir. 2005); *Sameena Inc. v. U.S. Air Force*, 147 F.3d 1148, 1153
3 (9th Cir. 1998). Nor is the *Accardi* doctrine "inapplicable in the context of internal
4 operating guidelines that preserve the exercise of agency discretion." Dkt. No. 9 at
5 34. In the Ninth Circuit, the *Accardi* doctrine extends beyond formal "regulations"
6 to include, *e.g.*, "internal operating procedures," "handbook[s]," "policy
7 statements," and other materials that document an agency's "usual practice."
8 *Alcaraz v. INS*, 384 F.3d 1150, 1162 (9th Cir. 2004) (citing cases).[3]
9 Finally, while the Court should be able to grant this motion based on Mr.
10 Gonzalez's non-constitutional APA claims, Defendants' arguments in opposition
11 to his due process claim also miss the mark. While arguing that Mr. Gonzalez
12 lacks a protected property interest in his DACA status and associated benefits,
13 Defendants acknowledge that an individual has a protected property interest in a
14 government benefit where he or she has a "legitimate claim of entitlement" to that
15 benefit. *See Nozzi v. Housing Auth. of Los Angeles*, 806 F.3d 1178, 1191 (9th Cir.
16 2015). The Ninth Circuit has explained that a person has a protected property right
17 in government benefits where regulations "greatly restrict the discretion of the
18 people who administer those benefits." *Id.* There is no question that DACA
19 recipients have a legitimate claim of entitlement to benefits conferred by the
20 program because it is operated under a well-defined framework and governed by
21 specific criteria that greatly restrict the discretion of those who administer it.
22 Indeed, the DACA SOP provides "nearly 150 pages of specific instructions" for
23 managing the program, *Texas*, 809 F.3d at 173, which are not discretionary and
24
25
26 [3] Defendants ignore Mr. Gonzalez's remaining arbitrary and capricious arguments,
27 *see* Dkt. No. 1-3 at 20-25, because permitting a CBP official's issuance of an
28 unlawful presence NTA to simultaneously terminate DACA status (*i.e.*, lawful
presence) would so clearly fly in the face of the DACA program's raison d'être
and eliminate its "rational operation." *Judulang v. Holder*, 565 U.S. 42, 58 (2011).

1 apply "to all personnel performing adjudicative functions." *Coyotyl*, 2017 WL
2 2889861, at *4.
3 Defendants' remaining constitutional arguments simply mischaracterize Mr.
4 Gonzalez's due process claim. He does not premise his claim, for example, on a
5 substantive right "to work in the United States without authorization." Dkt. No. 9
6 at 28. Rather, his claim is that once certain benefits, like employment
7 authorization, are conferred, they cannot be terminated without due process. *Bell*
8 *v. Burson*, 402 U.S. 535, 539 (1971); *Gallo v. U.S. Dist. Ct.*, 349 F.3d 1169, 1179
9 (9th Cir. 2003). And for obvious reasons, Defendants do not even attempt to argue
10 that they afforded Mr. Gonzalez due process in his DACA termination decision.
11 **IV. THE HARM IMPOSED BY DEFENDANTS IS IRREPARABLE**
12 Defendants argue that this Court should ignore the urgency underlying Mr.
13 Gonzalez's TRO application as of his own making. Nonsense. Mr. Gonzalez's
14 urgent need to have his DACA status restored before the October 5 final deadline
15 for DACA renewal applications is solely the result of the current administration's
16 decision to wind down the DACA program and impose that deadline, which was
17 announced for the first time on September 5. Mr. Gonzalez filed this case and his
18 TRO application just six days later. Defendants also contend that Mr. Gonzalez's
19 not filing for DACA reinstatement for 16 months "casts doubt on his claim of
20 harm." Dkt. No. 9 at 19. The Court should reject this cruel argument out of hand.
21 When USCIS terminated Mr. Gonzalez's DACA status "automatically" and
22 without prior notice, it told him that the decision was final and "[a]n appeal or
23 motion to reopen/reconsider this notice of action may not be filed." Dkt. No. 1-19
24 at 2. It is the ultimate "Catch-22" for Defendants now to argue that a layperson
25 with a high school education, who was not represented by counsel for most of the
26 time, should be penalized for taking USCIS at its word and not filing suit to
27 challenge the termination at an earlier date. Of course, that is not the law.
28

Dated: September 25, 2017

Respectfully submitted,

/s/ John C. Ulin
John C. Ulin (SBN 165524)
john.ulin@apks.com
Jaba Tsitsuashvili (SBN 309012)
jaba.tsitsuashvili@apks.com
ARNOLD & PORTER KAYE SCHOLER LLP
777 South Figueroa Street, 44th Floor
Los Angeles, CA 90017-5844
T: (213) 243-4000
F: (213) 243-4199

Attorneys for Plaintiff
ALBERTO LUCIANO GONZALEZ TORRES