

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

MARTÍN JONATHAN BATALLA VIDAL, *et al.*,

Plaintiffs,

v.

KIRSTJEN NIELSEN, Secretary, Department of Homeland Security, *et al.*,

Defendants.

No. 1:16-cv-04756 (NGG) (JO)

December 15, 2017

**MEMORANDUM IN SUPPORT OF PLAINTIFFS’
MOTION FOR CLASS CERTIFICATION**

From its creation in 2012, the Deferred Action for Childhood Arrivals (“DACA”) program has transformed the lives of undocumented residents who came to the United States as children. Hundreds of thousands of individuals have relied on the deferred action available through the program to create futures for themselves here, investing in educational and professional opportunities and building families and homes. On September 5, 2017, Defendants abruptly terminated the DACA program (“DACA Termination”), summarily foreclosing the futures of countless individuals. Plaintiffs challenge the DACA Termination as unlawful under federal statutes and the U.S. Constitution.

On this motion, Plaintiffs ask the Court to certify a class of:

- (1) all persons with deferred action through DACA as of September 5, 2017; and
- (2) all persons who are or will be eligible for deferred action under the terms of the original DACA guidance issued by the Department of Homeland Security (“DHS”) in 2012;

(3) *except* the individual recipients of, or applicants for, deferred action through DACA who are Plaintiffs in other actions challenging the DACA Termination pending in a U.S. District Court as of December 11, 2017.

See Third Am. Compl., ECF No. 113 (“TAC”) ¶ 160.¹ Plaintiffs seek to certify this class as to their claims under the Administrative Procedure Act (“APA”), on which they separately move for a preliminary injunction.

The proposed class satisfies all class action prerequisites under Federal Rules of Civil Procedure 23(a) and 23(b)(2). First, the class is sufficiently numerous that joinder is impracticable. Second, the putative class presents common questions of law and fact, including whether Defendants’ decision to terminate DACA violated the APA. Third, like all class members, the six individual Plaintiffs and the members and clients of the organizational Plaintiff Make the Road New York have been deprived of the opportunity to apply for, renew, or receive deferred action through DACA. Their claims for relief are thus typical of those of the class they seek to represent. Fourth, Plaintiffs are able to fairly and adequately protect the interests of the class. Finally, Defendants have acted or refused to act on grounds that apply generally to the class, making certification of a Rule 23(b)(2) class appropriate.

¹ On September 5, 2017, when Plaintiffs requested leave to amend their complaint to, *inter alia*, add class allegations, ECF No. 46 at 5-6, no other individual had brought suit to challenge the termination of DACA. At a status conference on September 14, 2017, the Court granted leave to amend on consent of Defendants and set a schedule for briefing the class certification motion. Minute Entry (Sept. 15, 2017). Since then, at least nine other lawsuits challenging the DACA Termination have been filed, and the plaintiffs in these other actions include twenty-six individual DACA recipients or applicants. So as not to interfere with the claims of these twenty-six individuals and the district court adjudication of their claims, as discussed *infra*, Plaintiffs propose to exclude these twenty-six individuals from their class definition, or in the alternative, to allow these twenty-six persons to opt-out of any class certified by this Court.

Plaintiffs do not lightly request that this Court certify a class, especially one of this size and scope. Class certification is necessary here to ensure any relief ordered by the Court applies to all DACA recipients and potential future applicants (i.e., to return to the *status quo ante*) without the need for repeated litigation. In addition, at this time, no other plaintiff in any other challenge to the DACA Termination has moved to certify a class, nor do any of the other complaints include class allegations. Moreover, in this case and the pending California cases, Defendants have argued that nationwide injunctive relief is improper. *See* Defs.’ Mot. to Dismiss, ECF No. 95-1 at 40 (relying on authority that Defendants characterize as “narrowing [an] injunction in part because the plaintiffs do not represent a class”) (internal citation omitted); Defs.’ Mot. to Dismiss at 58-59, *Regents of Univ. of California v. DHS*, No. 17-5211 (N.D. Cal. Nov. 1 2017), ECF No. 114 (arguing that “nationwide declaratory and injunctive relief is impermissible” and that any remedy ordered by Court “should be limited to particular individual Plaintiffs found to have cognizable claims”); Defs.’ Reply in Supp. of Mot. to Dismiss at 20, *Regents of Univ. of California v. DHS*, No. 17-5211, (N.D. Cal. Dec 8, 2017), ECF No. 218 (same). For these reasons, Plaintiffs respectfully request that this Court certify the class proposed.

I. FACTS AND PROCEEDINGS

Plaintiffs hereby incorporate by reference a summary of the facts and proceedings as set out in their motion for preliminary injunction. In this section, Plaintiffs highlight only matters relevant to the instant motion and not addressed there. The facts set forth here are, except where noted, those alleged in the Third Amended Complaint.²

² It is well-settled that “[w]hen considering a motion for class certification, the Court accepts the allegations in the complaint as true.” *Cortigiano v. Oceanview Manor Home for Adults*, 227

A. The DACA Memorandum and Defendants' DACA Termination

On June 15, 2012, then-Secretary of Homeland Security Janet Napolitano (“the Secretary”) issued a memorandum announcing the creation of the nationwide DACA program, which set out guidelines through which agency officials could consider, as an exercise of prosecutorial discretion, requests by “certain undocumented immigrants who entered the United States as children” for grants of deferred action. *Batalla Vidal v. Duke*, 2017 WL 5201116, at *2 (E.D.N.Y. Nov. 9, 2017); ECF No. 60-1, Ex. A (“2012 DACA Memo”). Per the terms of that guidance, DHS considered requests for deferred action “on a case by case basis.” *Id.* Since the Secretary issued that guidance in 2012, nearly 800,000 individuals have received deferred action and employment authorization through the U.S. Citizenship and Immigration Services (“USCIS”) as a result of DACA. *Batalla*, 2017 WL 5201116, at *2; Decl. of Michael J. Wishnie dated Dec. 15, 2017 (“Wishnie Decl.”), Attach. 1 (USCIS, *Deferred Action for Childhood Arrival Process – Through Fiscal Year 2017, 3rd Qtr.* (Sept. 20, 2017)) (attached hereto as Exhibit A). Additionally, Defendants have approved nearly one million deferred action renewal requests. DACA has enabled these individuals to enroll in colleges and universities and obtain jobs, driver’s licenses, bank accounts, homes, mortgages, and health insurance (through employment, school, or state-run programs). TAC ¶ 82. DACA recipients have come to rely on the program to support themselves and their families and to live without the constant fear of deportation and separation from their homes and families. *Id.*

F.R.D. 194, 203 (E.D.N.Y. 2005). When necessary, a court may consider material outside the pleadings in determining the appropriateness of class certification. *See Sirota v. Solitron Devices, Inc.*, 673 F.2d 566, 571 (2d Cir. 1982) (“[The District Court must] develop a sufficient evidentiary record from which to conclude the requirements of numerosity, typicality, commonality of question, and adequacy of representation have been met.”); *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 160 (“[S]ometimes it may be necessary for the court to probe behind the pleadings before coming to rest on the certification question.”).

On September 5, 2017, Defendant Attorney General Sessions announced the termination of the DACA program. TAC, Ex. F. That same day, former Acting Secretary Duke issued a memorandum outlining procedures whereby DHS would effectuate the termination of the DACA deferred action program. TAC, Ex. E (“DACA Termination Memo”). The DACA Termination Memo directs DHS agents to categorically reject all initial applications for deferred action received from the affected population after September 5, 2017. *Id.* It also directs DHS to consider renewal applications from those who had deferred action through DACA that expires on or before March 5, 2018, but only if USCIS receives those renewal applications by October 5, 2017. *Id.* The DACA Termination Memo instructs DHS to reject renewal applications from those whose deferred action through DACA expires after March 5, 2018, or that are received after October 5, 2017. *Id.*

B. Procedural History

On September 5, 2017, shortly after Defendant Sessions announced the termination of DACA, Plaintiffs sought leave to amend their complaint so as to include class allegations, Pre-Mot. Conference Letter, ECF No. 46, at 5, which they elaborated by order of the Court. Pls.’ Letter dated Sept. 11, 2017, ECF No. 52. At a status conference on September 14, 2017, the Court granted leave to amend on consent of Defendants and set a schedule for briefing the class certification motion. Minute Entry (Sept. 15, 2017). Plaintiffs thus filed a Second Amended Complaint (“SAC”) on September 19, 2017, adding class allegations. SAC ¶¶ 132-43.

On September 26, 2017, the Court re-set the briefing schedule on dispositive motions, but declined at that time to set a schedule for the motion for class certification. Order, ECF No. 67. At a pre-motion conference on November 16, 2017, the Court granted the Plaintiffs leave to amend their procedural due process claim “no later than January 5, 2018” and approved a new

schedule on the motion for class certification. Minute Entry (Nov. 17, 2017). On December 11, 2017, Plaintiffs filed their Third Amended Complaint. Today, they move for a preliminary injunction and for class certification.

II. ARGUMENT

The Court should certify the class proposed by Plaintiffs pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2). Plaintiffs seek a nationwide injunction from this Court in order to provide relief to the millions of individuals who have relied on deferred action through DACA. Defendants have already challenged the scope of this Court’s remedial power. *See* Defs.’ Mot. To Dismiss, ECF No. 95-1 at 40 (contending that nationwide injunctive relief is impermissible absent class certification); *see also* Defs.’ Mot. to Dismiss at 58-59, *Regents of Univ. of California v. DHS*, No. 17-5211 (N.D. Cal. Nov. 1 2017), ECF No. 114 (same, and arguing that any remedy ordered by Court “should be limited to particular individual Plaintiffs found to have cognizable claims”); Defs.’ Reply in Supp. of Mot. to Dismiss at 20, *Regents of Univ. of California v. DHS*, No. 17-5211, (N.D. Cal. Dec 8, 2017), ECF No. 218 (same).

Plaintiffs disagree that this Court lacks the power to order nationwide relief absent certification of a class. Nevertheless, because the requirements of Rule 23(a) and 23(b)(2) are satisfied in this case and the class action mechanism was designed for issues, such as this one, that affect millions of people, Plaintiffs seek certification of a class to remove the issue from dispute. The class that Plaintiffs seek to certify comprises:

- (1) all persons with deferred action through DACA as of September 5, 2017 and
- (2) all persons who are or will be eligible for deferred action under the terms of the 2012 Guidance,

(3) *except* the individual recipients of, or applicants for, deferred action through DACA who are Plaintiffs in other actions challenging the DACA Termination in a U.S. District Court as of December 11, 2017.³

See TAC ¶ 160.⁴ Plaintiffs seek to certify this class on their APA claims.

A. Applicable Standards

This decision to certify a class must occur “[a]t an early practicable time after a person sues or is sued as a class representative.” Fed. R. Civ. P. 23(c)(1)(A). To be certified as a class, Plaintiffs must demonstrate numerosity, commonality, typicality, and adequacy. Fed. R. Civ. P. 23(a)(1)-(4); *see, e.g., Brown v. Kelly*, 609 F.3d 467, 475 (2d Cir. 2010) (setting forth prerequisites of Rule 23(a)); *Marisol A. v. Giuliani*, 126 F.3d 372, 375-76 (2d Cir. 1997) (same).

Plaintiffs must also satisfy the requirements of one of the three types of class actions under Rule 23(b). *Brown*, 609 F.3d at 476. Plaintiffs are proceeding under (b)(2), pursuant to which certification is proper when “the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding

³ The other cases challenging the DACA Termination pending before a U.S. district court as of December 11, 2017 are: *New York v. Trump*, No. 17-5228 (E.D.N.Y. filed Sept. 6, 2017); *Regents of Univ. of California v. DHS*, No. 17-5211 (N.D. Cal. filed Sept. 8, 2017); *State of California v. DHS*, No. 17-5235 (N.D. Cal. filed Sept. 11, 2017); *City of San Jose v. Trump*, No. 17-5329 (N.D. Cal. filed Sept. 14, 2017); *Garcia v. U.S.*, No. 17-5380 (N.D. Cal. filed Sept. 18, 2017); *City of Santa Clara v. Trump*, No. 17-5813 (N.D. Cal. filed Oct. 10, 2017); *CASA de Maryland v. DHS*, No. 17-2942 (D. Md. filed Oct. 5, 2017); *NAACP v. Trump*, No. 17-1907 (D.D.C. filed Sept. 18, 2017); and *Park v. Sessions*, No. 17-1332 (E.D. Va. filed Nov. 21, 2017).

⁴ In the alternative, the Court may certify a class of all persons (1) with deferred action through DACA as of September 5, 2017; and (2) who are or will be eligible for deferred action under the terms of the 2012 DACA Guidance (the class proposed by Plaintiffs in their Second Amended Complaint), so long as the Court in its discretion permits individual plaintiffs in actions challenging the DACA Termination in other U.S. district courts to opt out. This Court may permit opt-outs even in a (b)(2) class. *See Messier v. Southbury Training Sch.*, 183 F.R.D. 350, 353 (D. Conn. 1998) (“[C]ourts may allow opt-outs in (b)(1) and (b)(2) actions using sound discretion.”); *see also* 2 Newberg on Class Actions § 4:36 (“[N]otice and opt out rights are not required in (b)(2) class actions, but they are discretionary, may be permitted, and have been employed.”); *see generally Gulf Oil Co. v. Bernard*, 452 U.S. 89, 100 (1981) (“Because of the potential for abuse, a district court has both the duty and broad authority to exercise control over a class action and to enter appropriate orders governing the conduct of counsel and parties.”); *City of Suffolk v. Long Island Lighting Co.*, 907 F.2d 1295, 1304 (2d Cir. 1990) (interpreting Rule 23(d) “liberally” to enable district courts to make procedural decisions, which ensure “the fair and efficient conduct of the action”).

declaratory relief is appropriate respecting the class as a whole.” Fed. R. Civ. P. 23(b)(2); *see e.g., Brown*, 609 F.3d at 476 (summarizing requirements of Rule 23(b)(2)); *Parker v. Time Warner Entertainment Co.*, 331 F.3d 13, 18-19 (2d Cir. 2003) (same).

The Second Circuit has instructed district courts to interpret Rule 23 liberally. *Marisol A.*, 126 F.3d at 377; *see also In re Cablevision Consumer Litig.*, No. 10–CV–4992 (JS)(AKT), 2014 WL 1330546, at *5 (E.D.N.Y. Mar. 31, 2014) (“[Rule 23 requirements] should be given a liberal rather than a restrictive interpretation”) (internal quotations omitted); *In re Vitamin C Antitrust Litig.*, 279 F.R.D. 90, 98 (E.D.N.Y. 2012) (same).

Courts have not hesitated to certify Rule 23 classes in suits challenging unlawful agency actions, including arbitrary changes in policy by DHS. *See, e.g., Mendez-Rojas v. Johnson*, No. 16-1024, 2017 WL 1397749, at *7 (W.D. Wash. June 30, 2016) (certifying a nationwide class of current and future asylum seekers who would be subjected to a DHS vetting policy); *R.I.L.-R v. Johnson*, 80 F. Supp. 3d 164, 183 (D.D.C. 2015) (granting provisional certification of nationwide class of Central American asylum seekers who were or will have been denied release from detention due to a newly adopted DHS policy); *Santillan v. Ashcroft*, No. 04-2686, 2004 WL 2297990, at *12 (N.D. Cal. Oct. 12, 2004) (certifying nationwide class of persons who have been or will be granted lawful permanent resident status and to whom USCIS has failed to issue evidence of status as a lawful permanent resident); *see also Kirwa v. U.S. Dep’t of Defense*, No. 17–1793, 2017 WL 4862763, at * 16 (D.D.C. Oct. 25, 2017) (certifying nationwide class of noncitizen members of the Army reserve arbitrarily denied access to naturalization forms by the military); *Kaplan v. Chertoff*, No. 06-5304, 2008 WL 200108, at *1 (E.D. Pa. Jan. 24, 2008) (conditionally certifying for settlement a nationwide class of individuals who had lost or will have lost their social security benefits because of unreasonable USCIS delays in processing

naturalization or adjustment of status applications).

B. Plaintiffs Satisfy the Requirements of Rule 23(a)

The proposed class satisfies numerosity, commonality, typicality, and adequacy, the four requirements of Rule 23(a). Accordingly, Plaintiffs' motion should be granted.

1. Numerosity

The proposed class satisfies the numerosity requirement of Rule 23(a)(1). To be maintained as a class action, the class must be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). Typically, courts in the Second Circuit will find that a class is sufficiently numerous where there are at least forty members. *See Consol. Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 483 (2d Cir. 1995); *Assif v. Titleserv, Inc.*, 288 F.R.D. 18, 23 (E.D.N.Y. 2012). Moreover, courts in this circuit "relax[] the numerosity requirement where, as here, the putative class seeks injunctive and declaratory relief pursuant to Rule 23(b)(2)." *Hill v. City of New York*, 136 F. Supp. 3d 304, 353 (E.D.N.Y. 2015) (internal quotations omitted); *Nicholson v. Williams*, 205 F.R.D. 92, 98 (E.D.N.Y. 2001) (same).

As of June 30, 2017, nearly 800,000 individuals had received deferred action through DACA since it was first announced in June 2012. Wishnie Decl., Attach. 1. As of September 4, 2017, there were 689,800 individuals with active grants of deferred action through DACA. *Id.*, Attach. 2 (USCIS, Approximate Active DACA recipients: Country of Birth, As of September 4, 2017). Moreover, the Migration Policy Institute estimates that 1.9 million undocumented immigrants were potentially eligible for deferred action under the DACA guidelines. *Id.*, Attach. 3 (Randy Capps, et al., Migration Policy Institute, "The Education and Work Profile of the DACA Population," (Aug. 2017)), at 3. This latter figure represents: (a) 1.3 million individuals who already meet eligibility criteria for deferred action under the DACA guidelines; (b) 398,000

undocumented immigrants who meet eligibility criteria except for the education requirement and who could become eligible by enrolling in an adult education program; and (c) 228,000 young individuals who will “age in” to the eligibility criteria, provided they continue their education.

Id.

Based on the data provided by USCIS, at least 680,000 individuals would qualify as class members based on their currently active period of deferred action; an additional 500,000 or more were eligible but had not applied, based on the Migration Policy Institute estimates from 2016; and an additional 200,000 persons or more would become eligible in the future when they age into the eligibility criteria. These estimates easily satisfy the numerosity requirement for class certification. *See Consol. Rail Corp.*, 47 F.3d at 483; *Hill*, 136 F. Supp. 3d at 353.⁵

2. Commonality

Plaintiffs also satisfy the requirement that “there are questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). For “purposes of Rule 23(a)(2), [e]ven a single [common] question will do.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 359 (2011) (internal quotation marks omitted). The commonality requirement is satisfied if the question “is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Id.* at 2551; *see, e.g., Sykes v. Mel S. Harris & Assocs. LLC*, 780 F.3d 70, 80 (2d Cir. 2015) (affirming finding of commonality for class of debtors who have been or will be sued by defendants, where plaintiffs identified “a common contention . . . capable of classwide resolution . . . central to the validity of [their] claims”); *see also DL v. Dist. of Columbia*, 713 F.3d 120, 128 (D.C. Cir. 2013)

⁵ Plaintiffs seeking class certification are not required to produce evidence of the exact size or identity of class members. *See Assif*, 288 F.R.D. at 23; *see also Edge v. C. Tech Collections, Inc.*, 203 F.R.D. 85, 89 (E.D.N.Y. 2001) (“A plaintiff need not provide ‘a precise quantification of their class,’ and courts may ‘make common sense assumptions’ to support a finding of numerosity.”).

(explaining that commonality is satisfied where there is “a policy or practice that affects all class members”).

The proposed class presents common questions of law and fact, resolution of which will not require individualized determinations based on any class member’s particular circumstances. On the motion for preliminary injunction filed simultaneously herewith, the common questions include: (a) whether Defendants’ DACA Termination and change in the policy regarding the permissible uses of the sensitive information DACA applicants provided was arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with the law, in violation of 5 U.S.C. § 706(2)(A); and (b) whether Defendants’ DACA Termination constituted a substantive rule, such that notice-and-comment rulemaking was required under 5 U.S.C. § 706(2)(D).⁶ The answers to those questions, moreover, will be the same for all members of the proposed class, and they will “drive the resolution of the litigation.” *Ruiz v. Citibank, N.A.*, 93 F. Supp. 3d 279, 289 (S.D.N.Y. 2015). Because all proposed class members are aggrieved by Defendants’ arbitrary and procedurally deficient termination of deferred action under DACA and seek identical declaratory and injunctive relief, the commonality requirement is satisfied.⁷

⁶ Plaintiffs now move to certify a class only on their APA claims. The proposed class also shares common questions of law and fact related to their equal protection claims, *see, e.g.*, TAC ¶ 165, and a sub-class may be appropriate on Plaintiffs’ amended procedural due process claims. *Id.* Because Plaintiffs have not sought a preliminary injunction on their constitutional claims—as they await resolution of Defendants’ mandamus petition before the Second Circuit and the remaining discovery disputes—the Court need not yet consider commonality or typicality as to those claims. Plaintiffs do not move to certify a class on their Regulatory Flexibility Act claim. *See* ECF No. 52, at 1 (“Plaintiffs intend . . . to seek class treatment for all claims except those arising under the Regulatory Flexibility Act”).

⁷ Defendants may object that because DACA involves case-by-case adjudications, there can be no commonality. Yet Plaintiffs do not here challenge the individual adjudication of any deferred action application or renewal. *See Batalla*, 2017 WL 5201116 at * 13 (E.D.N.Y. Nov. 9, 2017) (distinguishing challenges to individual adjudications and the “broad, programmatic challenges” in this case). Instead, whether Plaintiffs are entitled to relief depends on common, programmatic questions—whether the DACA Termination was carried out in accordance with APA requirements. Plaintiffs seek an order returning deferred action under DACA to the *status quo ante*, rather than an order on the merits of individual applications for deferred action. *See, e.g., R.I.L.-R*, 80 F. Supp. 3d at 183 (granting provisional class certification to Central American refugees seeking individualized consideration for release from detention); *Reid v. Donelan*, 297 F.R.D. 185, 194 (D. Mass 2014) (certifying a class of immigration detainees seeking consideration for release on bond, where individual hearings might result in grant or denial of bond); Order

3. Typicality

The third requirement of Rule 23(a) is that “the claims or defenses of the representative parties are typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). For the same reasons that Plaintiffs satisfy the commonality requirement, they also meet the typicality requirement. Indeed, the Supreme Court has observed that the typicality, adequacy, and commonality requirements “tend[] to merge.” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 626 n.20 (1997) (quoting *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 157 n.13 (1982)).

“Typicality requires that the claims of the class representatives be typical of those of the class, and is satisfied when each class member’s claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendant’s liability.” *Cent. States Se. & Sw. Areas Health & Welfare Fund v. Merck-Medco Managed Care, L.L.C.*, 504 F.3d 229, 245 (2d Cir. 2007) (internal quotation marks omitted). Typicality, however, “does not require that the situations of the named representatives and the class members be identical,” *In re Oxford Health Plans, Inc. Sec. Litig.*, 199 F.R.D. 119, 123 (S.D.N.Y. 2001), and minor factual differences are no bar to typicality. *See Robidoux v. Celani*, 987 F.2d 931, 936–37 (2d Cir. 1993) (“[T]he typicality requirement is usually met irrespective of minor variations in the fact patterns underlying individual claims.”); *see also N.J. Carpenters Health Fund v. Residential Capital, LLC*, 272 F.R.D. 160, 165 (S.D.N.Y. 2011) (“Courts in [the Second Circuit] have held that the typicality requirement is not demanding.”) (internal quotation marks omitted); 5 Moore’s Federal Practice § 23.24 (3d ed. 2017).

granting motion to certify class, *Valenzuela v. Ducey*, No. 16-3072, ECF No. 153 (D. Ariz. Dec. 6, 2017) (certifying class of noncitizens who possess certain categories of federally-issued Employment Authorization Documents, but nonetheless are denied Arizona driver’s licenses or required to present additional documents to obtain them); *see also Massachusetts v. EPA*, 549 U.S. 497, 518 (2007) (holding that plaintiffs may challenge unlawful procedures without having to demonstrate that the result of those procedures would be different).

Rather, the central inquiry is whether the class representative's claims generally share the "essential characteristics" of the putative class as a whole. *Marcus v. AXA Advisors, LLC*, 307 F.R.D. 83, 100 (E.D.N.Y. 2015); *see also In re Methyl Tertiary Butyl Ether (MTBE) Prod. Liab. Litig.*, 241 F.R.D. 185, 197–98 (S.D.N.Y. 2007) ("The premise of the typicality requirement is simply stated: as goes the claim of the named plaintiff, so go the claims of the class.") (internal quotation omitted). "The typicality prerequisite 'emphasizes that the representatives ought to be squarely aligned in interests with the represented group.'" 1 Newberg on Class Actions § 3:29 (quoting Benjamin Kaplan, *Continuing Work of the Civil Committee: 1966 Amendments of the Federal Rules of Civil Procedure (I)*, 81 Harv. L. Rev. 356, 387 n.120 (1967)).

Plaintiffs satisfy the typicality requirement. First, because of Defendants' unlawful and arbitrary action, the six individual Plaintiffs, the clients and members of organizational Plaintiff Make the Road New York ("MRNY"), and members of the proposed class alike have lost the ability to be considered for deferred action under the DACA guidelines. One member of MRNY, for example, received a letter from his high school confirming that he met DACA's education requirement on September 7, 2017—two days after the DACA Termination deprived him of the opportunity to apply for deferred action under the DACA guidelines. TAC ¶ 52; *see also id.* ¶¶ 10, 17, 20, 28, 42 (describing imminent expiration of individual Plaintiffs' currently-active periods of deferred action); *Id.* ¶ 142 (describing MRNY members who were unable to meet the Oct. 5 deadline); Decl. of Javier Valdes dated Dec. 15, 2017 ("Valdes Decl."), Pls. Mot. For Prelim. Inj., ECF No. 123, Ex. MMM, ¶¶ 25-34 (detailing stories of MRNY members who were unable to meet the Sept. 5 deadline).

Second, the harms suffered by the Plaintiffs are typical of the harms suffered by class members. Class members face the loss of educational and employment opportunities. Plaintiff

Martín Batalla Vidal, for example, currently relies on deferred action and the accompanying work authorization to work full-time caring for patients with serious health needs at Park Terrace Rehabilitation and Nursing Center in Queens, New York, and to study criminal justice at LaGuardia Community College. TAC ¶ 8; Decl. of Martín Batalla Vidal dated Dec. 13, 2017 (“Vidal Decl.”), Pls. Mot. For Prelim. Inj., ECF No. 123, Ex. HHH, ¶¶ 18, 34; *see also* TAC ¶¶ 14-15, 19, 22, 43-44 (describing educational and employment opportunities lost by Plaintiffs); Valdes Decl. ¶¶ 47-61 (describing the staff members MRNY would lose if DACA is revoked). Plaintiff Carlos Vargas relies on deferred action and the accompanying work authorization to study at CUNY School of Law while working full-time to provide *pro bono* legal services to low-income New Yorkers. Decl. of Carlos Vargas dated Dec. 12, 2017 (“Vargas Decl.”), Pls. Mot. For Prelim. Inj., ECF No. 123, Ex. EEE, ¶¶ 17-18. Losing DACA means he will lose his job, potentially his professional accreditation, and the possibility of being admitted to the New York bar. *Id* at ¶ 24.

Without these opportunities, class members will be unable to support themselves or their immediate, and extended family members through their incomes or their health insurance. Plaintiff Eliana Fernandez raises her two elementary-age, U.S. citizen children on her income. TAC ¶ 19; Decl. of Eliana Fernandez dated Dec. 12, 2017 (“Fernandez Decl.”), Pls. Mot. For Prelim. Inj., ECF No. 123, Ex. LLL, ¶ 1; *see also* TAC ¶¶ 11, 14, 36-37, 44 (describing support Plaintiffs provide to immediate and extended family members). After losing deferred action, she will be unable to afford the mortgage on her house or her family’s health insurance. TAC ¶ 19; Fernandez Decl. ¶ 13.

The DACA Termination also threatens all class members with deportation, a threat exacerbated by changes in DHS policy regarding interior enforcement of immigration laws as

well as information privacy. TAC ¶¶ 152-53, 155. Plaintiffs and class members alike are at risk of separation from their families and communities, such as Plaintiff Mariano Mondragon, who now lives with his two children and pregnant wife. *Id.* ¶¶ 36-37; Decl. of Mariano Mondragon dated Dec. 13, 2017 (“Mondragon Decl.”), Pls. Mot. For Prelim. Inj., ECF No. 123, Ex. GGG, ¶¶ 14, 21; *see also* TAC ¶¶ 11, 14, 16, 19, 44 (describing Plaintiffs’ family ties in the United States).

Third, the theories under which the Plaintiffs seek declaratory and injunctive relief are the same as those upon which all members of the class will rely.

Plaintiffs are typical of class members, both persons who did not have deferred action as of September 5, 2017 and those who stand to lose deferred action previously conferred. Since the announcement of the DACA program, Plaintiffs have relied on their eligibility for deferred action under the DACA guidelines to plan for and invest in a future in this country. With the threat of deportation eased, they have strengthened community ties, started families, and pursued educational and employment opportunities. However, the DACA Termination forecloses these opportunities and jeopardizes those ties. The injuries of both the Plaintiffs and the putative class members “derive from [this] unitary course of conduct by a single system.” *Marisol A.*, 126 F.3d at 377. Thus, all Plaintiffs and members of the proposed class are aggrieved by Defendants’ unlawful agency action.

Moreover, Plaintiff MRNY brings claims on behalf of its members and clients, as well as itself.⁸ Some members and clients, including the six individual Plaintiffs in this action, have already applied for or received deferred action through DACA. Other MRNY members or clients

⁸ During motion practice last fall, in a brief served but not filed pursuant to this Court’s “bundling” rule, Defendants conceded that MRNY has standing to sue on behalf of its members. *See* Mem. in Supp. of Defs.’ Consolidated Mot. to Dismiss and in Opp’n to Pls.’ Mot. for Summ. J. at 9, Nov. 10, 2016 (“Defendants do not contest that MRNY has standing as a membership organization[.]”), Wishnie Decl., Attach. 4.

were eligible under the 2012 DACA Memo but had not applied as of September 5, 2017, or would have become eligible in the future but for the DACA Termination. TAC ¶¶ 49, 53. For instance, MRNY has a significant number of “youth members,” who were too young to apply for deferred action through DACA as of September 5, 2017 but would have “aged in” to DACA’s eligibility criteria but for Defendants’ unlawful termination. Valdes Decl. ¶¶ 26-33. The claims of MRNY’s youth members are typical of the claims of putative class members who were too young to qualify for DACA when it was terminated but would otherwise have become eligible. *See also* Wishnie Decl., Attach. 3 (estimating 228,000 persons would age-in to DACA after 2016).

Where, as here, the interests of Plaintiffs are squarely aligned with those of the proposed class, minor or immaterial differences in individual circumstances cannot defeat 23(a)(3) typicality. Plaintiffs satisfy the typicality requirement because “their claims arise from the same conduct as those of the proposed members of the class, their claims are premised on the same legal bases, and their interests are not adverse to the interests of other class members.” *Mayer v. Wing*, 922 F. Supp. 902, 908 (S.D.N.Y. 1996).

4. Adequacy of Representation

The final requirement of Rule 23(a) is that “the representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). This requirement too “tends to merge” with the inquiry into commonality and typicality. *See Amchem*, 521 U.S. at 626 n.20 (quoting *Falcon*, 457 U.S. at 157). “The adequacy inquiry under Rule 23(a)(4) serves to uncover conflicts of interest between named parties and the class they seek to represent.” *Id.* at 625. Minor or speculative conflicts alone will not defeat class certification; instead, conflicts must be “fundamental.” *Denney v. Deutsche Bank AG*, 443 F.3d 253, 268 (2d Cir. 2006)

(internal quotation marks omitted); see *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 574 F.3d 29, 35 (2d Cir. 2009).

No conflict exists between the proposed class representatives and the putative members of the class, let alone a fundamental one. Indeed, the Plaintiffs seek the same remedies through declaratory and injunctive relief. First, they all seek the opportunity to apply for or renew DACA through vacatur of the unlawful DACA Termination and its accompanying policy change regarding the sharing of sensitive personal information. Second, in their motion for preliminary relief filed today, the Plaintiffs assert the same claims as the other members of the class: the DACA Termination was arbitrary and capricious and failed to undergo the requisite notice-and-comment rulemaking procedures, in violation of the APA. Plaintiffs are knowledgeable about the facts, the litigation, and the obstacles persons facing the termination of the DACA program face daily, and are dedicated to actively participating in the litigation on behalf of all class members. Collectively, there is no more adequate representative.

“The adequacy [requirement] also factors in competency and conflicts of class counsel.” *Amchem*, 521 U.S. at 626 n.20. Class counsel in this case meet the adequacy requirement of Rule 23(a)(4). “The adequacy of counsel prong of Rule 23(a)(4) asks whether counsel are qualified, experienced and generally able to conduct the litigation and whether counsel will vigorously prosecute the interests of the class.” 1 Newberg on Class Actions § 3:72 (internal quotations marks and citations omitted).

The Plaintiffs have retained adequate counsel to represent the class. Plaintiffs are represented by attorneys at the National Immigration Law Center and MRNY, and by attorneys and law student interns at the Jerome N. Frank Legal Services Organization at Yale Law School. The counsel involved are experienced in litigating complex civil rights matters and class actions.

See Wishnie Decl., ¶¶ 2, 4; Decl. of Karen C. Tumlin dated Dec. 15, 2017 (hereinafter “Tumlin Decl.”), ¶ 4 (attached hereto as Exhibit B); Decl. of Amy S. Taylor dated Dec. 15, 2017 (hereinafter “Taylor Decl.”), ¶ 4 (attached hereto as Exhibit C). They have served as lead counsel in class actions, Wishnie Decl. ¶ 3; Tumlin Decl. ¶ 5, have deep expertise in DACA practice and procedures, Taylor Decl. ¶ 5, and they have devoted, and will continue to devote, substantial time and resources to the prosecution of this action. Wishnie Decl. ¶ 7; Tumlin Decl. ¶ 6; Taylor Decl. ¶ 6.

For the same reasons, undersigned counsel satisfy Rule 23(g), which requires that the Court appoint class counsel at the time of certification, and that in doing so the Court consider (1) “the work counsel has done in identifying or investigating potential claims in the action,” (2) “counsel’s experience in handling class actions, other complex litigation, and the types of claims asserted in the action,” (3) “counsel’s knowledge of the applicable law,” and (4) “the resources that counsel will commit to representing this class.” Fed. R. Civ. P. 23(g)(1)(A)(i)-(iv).

Plaintiffs have met their initial burden to demonstrate adequacy of representation and, absent any evidence to the contrary, the Court should thus presume the adequacy requirement has been satisfied. *See, e.g., Fleischman v. Albany Med. Ctr.*, No. 1:06–CV–765, 2008 WL 2945993 at *4 (N.D.N.Y. Jul. 28, 2008) (“[A]dequacy is easily presumed.”).

5. Class Certification Is Appropriate Under Rule 23(b)(2).

A class action may be maintained pursuant to Rule 23(b)(2) when “the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.” Fed. R. Civ. P. 23(b)(2). Courts in this circuit have held that class certification under Rule 23(b)(2) is appropriate in cases involving federal statutory claims. *See Hill* 136 F. Supp. 3d

at 357-59 (finding class certification under Rule 23(b)(2) appropriate for claims arising under 42 U.S.C. § 1981 and the Family and Medical Leave Act claims); *Houser v. Pritzker*, 28 F. Supp. 3d 222, 249-50 (S.D.N.Y. 2014) (certifying class under Rule 23(b)(2) for claims arising under Title VII of the Civil Rights Act of 1964). “The key to the (b)(2) class is the ‘indivisible nature of the injunctive or declaratory remedy warranted—the notion that the conduct is such that it can be enjoined or declared unlawful only as to all of the class members or as to none of them.’” *Dukes*, 564 U.S. at 360 (internal quotation omitted).

Class certification is appropriate in this case because Defendants have acted on grounds that apply generally to the class, such that declaratory or injunctive relief is appropriate to the class as a whole. Fed. R. Civ. P. 23(b)(2). Defendants’ unlawful DACA Termination affects all class members in the same harmful manner. Because of Defendants’ arbitrary and capricious action, class members will be unable to apply for deferred action under the DACA guidelines. In turn, they will lose the opportunity to work lawfully, pursue higher education, provide financial support for themselves and their family members, obtain employer-sponsored health insurance, and engage in everyday activities. Further, without deferred action, class members will live in constant fear that they will be deported and separated from their families at any moment. Class members do not seek individualized relief. Instead, they seek declaratory relief that the agency action is unlawful and injunctive relief vacating the DACA Termination. The relief sought by Plaintiffs would provide the entire proposed class the same opportunity to apply for a two-year grant of deferred action under DACA through which they can obtain relief from deportation and apply for employment authorization. In short, the nature of the alleged injuries and the requested relief apply to all members of the proposed class equally and indivisibly.

III. CONCLUSION

Plaintiffs seek to represent a class of (1) all persons with deferred action through DACA as of September 5, 2017, and (2) all persons who are or will be eligible for deferred action under the terms of the 2012 Guidance, (3) *except* the individual recipients of, or applicants for, deferred action through DACA who are Plaintiffs in any other action challenging the DACA Termination in a U.S. District Court as of December 11, 2017. The proposed class members are all adversely affected by Defendants' unlawful DACA Termination. Plaintiffs have met their burden to satisfy the requirements of Rule 23(a) and (b)(2), and the Court should therefore certify Plaintiffs' proposed class.

Respectfully submitted,

Dated: December 15, 2017

/s/ Michael J. Wishnie

David Chen, Law Student Intern
Susanna D. Evarts, Law Student Intern
Victoria Roeck, Law Student Intern
Healy Ko, Law Student Intern
Hannah Schoen, Law Student Intern
Emily Villano, Law Student Intern
Muneer I. Ahmad, Esq.[†]
Marisol Orihuela, Esq.[†]
Michael J. Wishnie, Esq. (MW 1952)
JEROME N. FRANK LEGAL SVCS. ORG.
127 Wall Street
New Haven, CT 06511
Phone: (203) 432-4800

Amy S. Taylor, Esq. (AT 2056)
Deborah Axt, Esq. (DA 4885)
Scott Foletta, Esq. (SF 9452)
Alexia Schapira, Esq. (AS 8222)
Natalia Renta, Esq.*
MAKE THE ROAD NEW YORK
301 Grove Street
Brooklyn, NY 11237
Phone: (718) 418-7690

[†] *Appearing pro hac vice*

**Pro hac vice* motion forthcoming

Jessica R. Hanson, Esq.[†]
Mayra B. Joachin, Esq.[†]
Karen C. Tumlin, Esq.[†]
Trudy S. Rebert, Esq.*+
NATIONAL IMMIGRATION LAW CENTER
3450 Wilshire Blvd, #108-62
Los Angeles, CA 90010
Phone: (213) 639-3900

Justin Cox, Esq.[†]
NATIONAL IMMIGRATION LAW CENTER
PO Box 170208
Atlanta, GA 30317
Phone: (678) 279-5441

Joshua A. Rosenthal, Esq.[†]
NATIONAL IMMIGRATION LAW CENTER
1121 14th Street NW
Suite 200
Washington, DC 20005
Phone: (202) 216-0261

Attorneys for Plaintiffs

+Admitted only in Louisiana

CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2017, true and correct copies of the foregoing notice of Motion for Class Certification, accompanying memorandum of law, and declarations attached thereto were filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF system.

/s/ Michael Wishnie

Michael Wishnie, Supervising Attorney (MW 1952)

Jerome N. Frank Legal Services Organization

127 Wall Street

New Haven, CT 06511

Tel: (203) 432-4800

Fax: (203) 432-1426

michael.wishnie@ylsclinics.org

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

MARTÍN JONATHAN BATALLA VIDAL, *et al.*,

Plaintiffs,

v.

KIRSTJEN NIELSEN, Secretary, Department of Homeland Security, *et al.*,

Defendants.

No. 1:16-cv-04756 (NGG) (JO)

December 15, 2017

PLAINTIFFS' NOTICE OF MOTION FOR CLASS CERTIFICATION

PLEASE TAKE NOTICE that Plaintiffs shall move before the Honorable Nicholas G. Garaufis, U.S.D.J., at the U.S. District Court for the Eastern District of New York, United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York, on January 18, 2018, for an Order pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2) certifying a class of Plaintiffs defined as: (1) all persons with deferred action through DACA as of September 5, 2017; and (2) all persons who are or will be eligible for deferred action under the terms of the original DACA guidance issued by the Department of Homeland Security (“DHS”) in 2012; (3) *except* the individual recipients of, or applicants for, deferred action through DACA who are Plaintiffs in other actions challenging the DACA Termination pending in a U.S. District Court as of December 11, 2017.

This motion is based on the accompanying Memorandum of Law and the Declarations and Attachments annexed thereto, together with Declarations and Exhibits annexed to Plaintiffs' motion for a preliminary injunction filed on this same date, and any other evidence that may be presented to the Court before or at the hearing on this motion.

PLEASE TAKE FURTHER NOTICE that, pursuant to the schedule endorsed by the

Court on November 16, 2017, Defendants' opposition papers shall be served no later than January 13, 2018.

Respectfully submitted,

/s/ Michael J. Wishnie

Dated: December 15, 2017

David Chen, Law Student Intern
Susanna D. Evarts, Law Student Intern
Victoria Roeck, Law Student Intern
Healy Ko, Law Student Intern
Hannah Schoen, Law Student Intern
Emily Villano, Law Student Intern
Muneer I. Ahmad, Esq.[†]
Marisol Orihuela, Esq.[†]
Michael J. Wishnie, Esq. (MW 1952)
JEROME N. FRANK LEGAL SVCS. ORG.
127 Wall Street
New Haven, CT 06511
Phone: (203) 432-4800

Amy S. Taylor, Esq. (AT 2056)
Deborah Axt, Esq. (DA 4885)
Scott Foletta, Esq. (SF 9452)
Alexia Schapira, Esq. (AS 8222)
Natalia Renta, Esq.*
MAKE THE ROAD NEW YORK
301 Grove Street
Brooklyn, NY 11237
Phone: (718) 418-7690

Jessica R. Hanson, Esq.[†]
Mayra B. Joachin, Esq.[†]
Karen C. Tumlin, Esq.[†]
Trudy S. Rebert, Esq.*+
NATIONAL IMMIGRATION LAW CENTER
3450 Wilshire Blvd, #108-62
Los Angeles, CA 90010
Phone: (213) 639-3900

Justin Cox, Esq.[†]
NATIONAL IMMIGRATION LAW CENTER
PO Box 170208
Atlanta, GA 30317
Phone: (678) 279-5441

Joshua A. Rosenthal, Esq.[†]
NATIONAL IMMIGRATION LAW CENTER
1121 14th Street NW
Suite 200
Washington, DC 20005
Phone: (202) 216-0261

Attorneys for Plaintiffs

[†] *Appearing pro hac vice*

**Pro hac vice* motion forthcoming

+Admitted only in Louisiana

EXHIBIT A

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

MARTÍN JONATHAN BATALLA VIDAL, et al.,)

Plaintiffs,)

v.)

KIRSTJEN NIELSEN, Secretary, Department of)
Homeland Security, et al.,)

Defendants.)

Case No. 1:16-cv-04756 (NGG) (JO)

December 15, 2017

DECLARATION OF MICHAEL J. WISHNIE

I, Michael J. Wishnie, declare under penalty of perjury that the following is true and correct:

1. I am the William O. Douglas Clinical Professor of Law at Yale Law School, where I co-teach the Worker & Immigrant Rights Advocacy Clinic (“WIRAC”), a part of the Jerome N. Frank Legal Services Organization (“LSO”). I represent the Plaintiffs in this action and submit this declaration in support of their Motion for Class Certification. The statements in this declaration are based on my personal knowledge including on information provided to me by colleagues or other personnel working under my supervision on this case.

2. I am a graduate of Yale College and Yale Law School and former clerk on the U.S. District Court for the District of New Jersey, the U.S. Court of Appeals for the Third Circuit, and the Supreme Court of the United States. I have practiced law since 1993, including at the Legal Aid Society (Brooklyn Neighborhood Office) and the American Civil Liberties

Union Immigrants' Rights Project. I have served as a clinical professor for nearly twenty years at New York University School of Law and Yale Law School. My teaching and practice are focused on civil rights, immigration, labor and employment law, habeas corpus, veterans' law, and government transparency.

3. Muneer I. Ahmad is a Clinical Professor of Law at Yale Law School, Deputy Dean for Experiential Education, and Director of LSO. He also co-teaches WIRAC. He is a graduate of Harvard College and Harvard Law School and served as a law clerk on the U.S. District Court for the District of Vermont. In WIRAC, he and his students represent individuals, groups, and organizations in both litigation and advocacy related to immigration, immigrants' rights, and labor. He has represented immigrants in a range of labor, immigration, and trafficking cases, and for three years represented a prisoner at Guantanamo Bay. He has previously served on the faculty of American University Washington College of Law and as a staff attorney at the Asian Pacific American Legal Center in Los Angeles, California.

4. Marisol Orihuela is an Assistant Clinical Professor of Law at Yale Law School, where she co-teaches WIRAC. She is a graduate of Boston College and Yale Law School. She has served as a law clerk on the U.S. District Court for the Central District of California and the U.S. Court of Appeals for the Eleventh Circuit. She previously worked as a staff attorney for the American Civil Liberties Union of Southern California and most recently as Deputy Federal Public Defender at the Office of the Federal Public Defender in Los Angeles.

5. Professor Ahmad, our students in WIRAC, and I have previously been certified as class counsel in complex immigrant rights litigation. *See Reid v. Donelan*, 297 F.R.D. 185, 194 (D. Mass. 2014) ("Muneer Ahmad, Michael J. Wishnie, and the Law Student Interns of the Jerome N. Frank Legal Services Organization at Yale Law School are appointed class counsel

pursuant to Fed. R. Civ. P. 23(g)” in habeas class action on behalf of long-term immigration detainees). We currently remain class counsel on that matter.

6. Professor Ahmad and I have served as lead counsel in other proposed class action suits that resolved favorably while motions for class certification were pending. *See Brizuela v. Feliciano*, No. 3:12-cv-226-JBA (D. Conn.) (settlement with Connecticut Department of Corrections for form of class-wide relief); *Monk v. Mabus*, No. 3:14-cv-260-WWE (D. Conn.) (action dismissed without prejudice after Secretary of Defense issued binding instruction to military review boards benefiting hundreds of thousands of veterans, providing form of class-wide relief).

7. Professor Ahmad, Profesor Orihuela, and I have significant experience supervising law students litigating complex federal civil rights cases as lead counsel, either together or individually. *See, e.g., Darweesh v. Trump*, No. 17-cv-00480 (E.D.N.Y. filed Jan. 28, 2017); *Liberian Comm’y Ass’n of Conn. v. Malloy*, No. 16-cv-00201 (filed Feb. 8, 2016); *Doe v. Hagenbeck*, 98 F.Supp.3d 672 (S.D.N.Y. 2015), *rev’d*, 870 F.3d 36 (2d Cir. 2017); *Service Women’s Action Network v. Secretary of Veterans Affairs*, 815 F.3d 1369 (Fed. Cir. 2016); *Monk v. Shulkin*, 855 F.3d 1312 (Fed. Cir. 2017); *Barrera v. Boughton*, No. 3:07- cv-1436-RNC (D. Conn.) (filed Sept. 26, 2007); *Diaz-Bernal v. Meyers*, 758 F.Supp.2d 106 (D. Conn. 2010); *Families for Freedom v. Napolitano*, 628 F.Supp.2d 535 (S.D.N.Y. 2009); *El Badrawi v. Department of Homeland Sec.*, 579 F.Supp.2d 249 (D. Conn. 2008); *Maldonado v. Holder*, 763 F.3d 155 (2d Cir. 2014); *Giammarco v. Kerlikowske*, 665 Fed.Appx. 24 (2d Cir. Oct. 31, 2016); and as co-counsel supervising students when others served as lead counsel. *See, e.g., Ashcroft v. Al-Kidd*, 563 U.S. 731 (2011); *Tabbaa v. Chertoff*, 509 F.3d 89 (2d Cir. 2007); *Chacon v. East Haven Police Dept.*, No. 3:10-cv-1692-JBA (D. Conn.).

8. Counsel have already devoted significant resources to investigating and identifying the claims of potential class members and to maintaining this litigation, as evidenced by the staffing of this case with experienced attorneys supervising the work of multiple law student interns, and will continue to do so.

9. Counsel do not anticipate any reason that other class members would dispute the adequacy of LSO's representation.

10. Attached hereto as Attachment 1 is a true and accurate copy of statistics released by United States Citizenship and Immigration Services ("USCIS") on or about June 30, 2017, available on the USCIS website at https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/daca_performancedata_fy2017_qtr3.pdf.

11. Attached hereto as Attachment 2 is a true and accurate copy of statistics released by USCIS on September 4, 2017, available on the USCIS website at https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/daca_population_data.pdf.

12. Attached hereto as Attachment 3 is a true and accurate copy of an issue brief released by the Migration Policy Institute in August 2017, available at <https://www.migrationpolicy.org/research/education-and-work-profiles-daca-population>.

13. Attached hereto as Attachment 4 is a true and correct excerpt of the Defendants' memorandum of law in support of their motion to dismiss, served on the Plaintiffs in this case on November 10, 2016 but not filed with the Court pursuant to its bundling rule.

BY: /s/ Michael J. Wishnie

Michael J. Wishnie (MW1952)

ATTACHMENT 1



U.S. Citizenship and Immigration Services

Number of Form I-821D, Consideration of Deferred Action for Childhood Arrivals, by Fiscal Year, Quarter, Intake, Biometrics and Case Status
Fiscal Year 2012-2017 (June 30)

Period	Requests by Intake, Biometrics and Case Status									
	Intake ¹				Biometrics ⁶	Requests Under Review ⁹	Case Review ⁸			Pending ¹²
	Requests Accepted ²	Requests Rejected ³	Total Requests Received ⁴	Average Accepted/Day ⁵	Biometrics Scheduled ⁷	Approved ¹⁰	Denied ¹¹			
Fiscal Year - Total⁶										
2012	152,431	5,395	157,826	3,629	124,055	38,024	1,681	-	-	150,750
2013	427,616	16,351	443,967	1,697	445,013	77,747	470,354	10,972	-	97,040
2014	238,900	24,887	263,787	952	209,670	101,568	158,336	20,991	-	156,613
2014 Initial	122,424	19,127	141,551	488	-	-	136,101	20,988	-	62,375
2014 Renewal	116,476	5,760	122,236	464	-	-	22,235	0	-	94,238
2015	448,856	35,474	484,330	1,781	525,499	48,355	510,118	21,351	-	74,000
2015 Initial	85,304	7,477	92,781	338	-	-	90,667	19,068	-	37,944
2015 Renewal	363,552	27,997	391,549	1,443	-	-	419,451	2,283	-	36,056
2016	260,701	12,317	273,018	1,035	68,140	-	198,827	14,448	-	121,426
2016 Initial	73,383	1,204	74,587	291	-	-	52,863	11,399	-	47,065
2016 Renewal	187,318	11,113	198,431	744	-	-	145,964	3,049	-	74,361
2017	337,544	31,985	369,529	1,795	-	-	349,284	10,609	-	99,077
2017 Initial	36,447	31	36,478	194	-	-	41,360	7,854	-	34,298
2017 Renewal	301,097	31,954	333,051	1,602	-	-	307,924	2,755	-	64,779
Total Cumulative	1,866,048	126,409	1,992,457	1,509	1,372,377	-	1,688,600	74,997	-	99,077
Total Cumulative Initial	897,605	49,585	947,190	726	-	-	793,026	67,867	-	34,298
Total Cumulative Renewal	968,443	76,824	1,045,267	783	-	-	895,574	7,130	-	64,779
Fiscal Year 2017 by Quarter¹³										
Q1. October - December	110,189	4,138	114,327	1,777	-	-	121,973	2,733	-	106,909
Q1. October - December Initial	15,325	15	15,340	247	-	-	18,258	2,097	-	42,035
Q1. October - December Renewal	94,864	4,123	98,987	1,530	-	-	103,715	636	-	64,874
Q2. January - March	132,783	19,267	152,050	2,108	-	-	124,743	4,145	-	110,804
Q2. January - March Initial	10,321	8	10,329	164	-	-	17,242	3,029	-	32,085
Q2. January - March Renewal	122,462	19,259	141,721	1,944	-	-	107,501	1,116	-	78,719
Q3. April - June	94,572	8,580	103,152	1,501	-	-	102,658	3,731	-	99,077
Q3. April - June Initial	10,801	8	10,809	171	-	-	5,860	2,728	-	34,298
Q3. April - June Renewal	83,771	8,572	92,343	1,330	-	-	96,708	1,003	-	64,779
Q4. July - September										
Q4. July - September Initial										
Q4. July - September Renewal										

D - Data withheld to protect requestors' privacy.

- Represents zero.

¹Refers to a request for USCIS to consider deferred removal action for an individual based on guidelines described in the Secretary of Homeland Security's memorandum issued June 15, 2012.

Each request is considered on a case-by-case basis.

See <http://www.uscis.gov/childhoodarrivals>.

²The number of new requests accepted at a Lockbox during the reporting period.

³The number of requests rejected at a Lockbox during the reporting period.

⁴The number of requests that were received at a Lockbox during the reporting period.

⁵The number of requests accepted per day at a Lockbox as of the end of the reporting period. Also note the average accepted per day for initial plus renewal will not equal the total average.

⁶Refers to capture of requestors' biometrics.

⁷The number of appointments scheduled to capture requestors' biometrics during the reporting period.

⁸Refers to consideration of deferring action on a case-by-case basis during the reporting period.

⁹The number of new requests received and entered into a case-tracking system during the reporting period.

¹⁰The number of requests approved during the reporting period.

¹¹The number of requests that were denied, terminated, or withdrawn during the reporting period.

¹²The number of requests awaiting a decision as of the end of the reporting period.

¹³Data on biometrics scheduled is not available past January 31, 2016. Totals reflect up to January 31, 2016.

NOTE: 1. Some requests approved or denied may have been received in previous reporting periods.

2. The report reflects the most up-to-date estimate available at the time the report is generated.

Source: Department of Homeland Security, U.S. Citizenship and Immigration Services, Biometrics Capture Systems, CIS Consolidated Operational Repository (CISCOR), June 30th, 2017

U.S. Citizenship and Immigration Services			Number of Form I-821D Consideration of Deferred Action for Childhood Arrivals, by Fiscal Year, Quarter, Intake, Biometrics and Case Status Fiscal Year 2012-2017 (June 30)																	
Top Countries of Origin	Accepted to Date ¹			Approved to Date ²			Residence	Accepted to Date ¹			Approved to Date ²				Accepted to Date ¹			Approved to Date ²		
	Initials	Renewals	Total	Initials	Renewals	Total		Initials	Renewals	Total	Initials	Renewals	Total		Initials	Renewals	Total	Initials	Renewals	Total
Mexico	697,717	756,511	1,454,228	622,743	699,128	1,321,871	California	244,316	232,584	476,900	223,749	219,055	442,804	Arkansas	5,640	4,741	10,381	5,102	4,479	9,581
El Salvador	34,102	36,745	70,847	28,571	33,998	62,569	Texas	141,736	125,832	267,568	124,774	118,646	243,420	Alabama	4,828	4,177	9,005	4,287	3,906	8,193
Guatemala	24,583	23,991	48,574	20,000	21,966	41,966	New York	50,700	69,427	120,127	42,503	62,850	105,353	Missouri	3,945	4,187	8,132	3,549	3,847	7,396
Honduras	22,383	23,230	45,613	18,385	21,149	39,534	Florida	40,803	56,199	97,002	33,207	50,021	83,228	Nebraska	3,809	3,501	7,310	3,384	3,248	6,632
Peru	9,775	11,794	21,569	9,102	11,128	20,230	Missing	15,321	82,227	97,548	8,295	71,065	79,360	Kentucky	3,488	3,308	6,796	3,079	3,085	6,164
South Korea	7,854	11,593	19,447	7,282	10,933	18,215	Illinois	45,986	42,013	87,999	42,537	39,702	82,239	Iowa	3,185	3,379	6,564	2,812	3,120	5,933
Brazil	8,529	8,925	17,454	7,400	8,273	15,673	Arizona	30,850	26,865	57,715	27,932	25,315	53,247	Idaho	3,405	3,053	6,458	3,143	2,878	6,021
Ecuador	7,728	8,436	16,164	6,725	7,818	14,543	New Jersey	26,143	32,315	58,458	22,227	29,277	51,504	Louisiana	2,454	2,819	5,273	2,070	2,529	4,599
Colombia	7,258	8,351	15,609	6,608	7,793	14,401	North Carolina	29,741	24,870	54,611	27,455	23,619	51,074	Rhode Island	1,488	2,223	3,711	1,248	2,019	3,267
Philippines	5,088	6,156	11,244	4,674	5,888	10,562	Georgia	28,852	25,379	54,231	24,234	23,733	47,967	Delaware	1,621	1,698	3,319	1,451	1,583	3,034
Argentina	5,213	5,611	10,824	4,807	5,265	10,072	Washington	19,786	19,142	38,928	17,937	17,906	35,843	Mississippi	1,712	1,538	3,250	1,471	1,451	2,922
India	3,764	4,379	8,143	3,190	4,133	7,323	Colorado	19,242	16,200	35,442	17,310	15,322	32,632	Hawaii	821	2,463	3,284	582	2,179	2,761
Jamaica	4,406	3,953	8,359	3,453	3,629	7,082	Virginia	14,167	16,784	30,951	12,248	15,296	27,544	District of Columbia	963	1,459	2,422	773	1,390	2,072
Venezuela	3,466	3,835	7,301	3,104	3,576	6,680	Nevada	14,235	13,391	27,626	13,116	12,695	25,811	Puerto Rico	544	1,481	2,025	342	1,305	1,647
Dominican Republic	3,780	3,348	7,128	3,139	3,084	6,223	Maryland	11,686	13,794	25,480	9,872	12,564	22,436	Not Reported	214	1,415	1,629	125	1,241	1,366
Uruguay	2,603	2,648	5,251	2,374	2,486	4,860	Massachusetts	9,756	14,310	24,066	8,053	12,857	20,910	Wyoming	699	605	1,304	623	573	1,196
Unknown	2,679	2,596	5,275	2,014	2,274	4,288	Oregon	12,130	10,803	22,933	11,321	10,275	21,596	New Hampshire	462	871	1,333	374	752	1,126
Bolivia	2,224	2,685	4,909	2,069	2,513	4,582	Indiana	10,789	9,081	19,870	9,869	8,645	18,514	Alaska	205	605	810	146	532	678
Costa Rica	2,279	2,554	4,833	2,057	2,382	4,439	Utah	10,565	8,376	18,941	9,732	7,951	17,683	South Dakota	311	428	739	255	375	630
Tobago	2,441	1,709	4,150	2,094	1,697	3,791	Pennsylvania	7,324	11,059	18,383	5,982	9,875	15,857	Maine	139	467	606	98	422	520
Poland	1,970	2,150	4,120	1,792	2,025	3,817	Tennessee	9,374	7,957	17,331	8,373	7,518	15,891	Guam	107	468	575	63	421	484
Chile	1,891	2,185	4,076	1,749	2,044	3,793	Michigan	7,443	9,422	16,865	6,506	8,555	15,061	North Dakota	141	396	537	103	346	449
Pakistan	1,937	2,156	4,093	1,690	1,993	3,683	Wisconsin	8,219	7,124	15,343	7,583	6,742	14,325	Virgin Islands	165	295	460	99	259	358
Nicaragua	1,885	1,897	3,782	1,584	1,744	3,328	Minnesota	7,006	7,689	14,695	6,283	7,023	13,306	West Virginia	152	267	419	118	241	359
Guyana	1,479	1,567	3,046	1,273	1,481	2,754	Oklahoma	7,533	6,574	14,107	6,888	6,229	13,117	Montana	92	219	311	76	185	261
							Kansas	7,354	6,357	13,711	6,821	6,029	12,850	Vermont	63	233	296	44	199	243
							New Mexico	7,449	5,953	13,402	6,838	5,622	12,460	Armed Forces-Pacific	31	107	138	17	90	107
							South Carolina	7,209	6,032	13,241	6,432	5,724	12,156	Armed Forces-Europe, Middle East, Africa, Canada	26	80	106	16	70	86
							Connecticut	5,768	7,459	13,227	4,989	6,764	11,753	Armed Forces-Americas (except Canada)	17	65	82	12	59	71
							Ohio	5,364	6,654	12,018	4,487	5,990	10,477	Northern Mariana Isl	31	23	54	11	16	27

D. Data withheld to protect requestors' privacy.

- Represents zero.

¹ The number of requests that were accepted to date of the reporting period.² The number of requests that were approved to date of the reporting period.³ All fields with less than 10 or a blank in the state field are included in the field "not reported."

NOTE: 1) Some requests approved or denied may have been received in previous reporting periods.

2) The report reflects the most up-to-date estimate data available at the time the report is generated.

Source: Department of Homeland Security, U.S. Citizenship and Immigration Services, Biometrics Capture Systems, CIS Consolidated Operational Repository (CISCOR), June 2017

ATTACHMENT 2

Approximate Active DACA Recipients:
Country of Birth
As of September 4, 2017

Country of Birth	Number (rounded)	Percent
Total	689,800	100.0
Mexico	548,000	79.4
El Salvador	25,900	3.7
Guatemala	17,700	2.6
Honduras	16,100	2.3
Peru	7,420	1.1
Korea, South	7,310	1.1
Brazil	5,780	0.8
Ecuador	5,460	0.8
Colombia	5,020	0.7
Argentina	3,970	0.6
Philippines	3,880	0.6
India	2,640	0.4
Jamaica	2,640	0.4
Venezuela	2,480	0.4
Dominican Republic	2,430	0.4
Uruguay	1,930	0.3
Trinidad & Tobago	1,930	0.3
Bolivia	1,700	0.2
Costa Rica	1,620	0.2
Chile	1,410	0.2
Poland	1,390	0.2
Nicaragua	1,370	0.2
Pakistan	1,340	0.2
Nigeria	1,020	0.1
Guyana	980	0.1
Belize	820	0.1
Canada	750	0.1
China, People's Republic	740	0.1
Indonesia	710	0.1
Kenya	700	0.1
Portugal	520	0.1
United Kingdom	500	0.1
Bangladesh	490	0.1
Ghana	490	0.1
Mongolia	480	0.1
Panama	440	0.1

Approximate Active DACA Recipients:
Country of Birth
As of September 4, 2017

Country of Birth	Number (rounded)	Percent
Israel	360	0.1
Italy	340	0.0
Bahamas, The	300	0.0
Saint Lucia	270	0.0
Albania	250	0.0
Taiwan	240	0.0
Turkey	230	0.0
Jordan	220	0.0
Germany	220	0.0
Paraguay	210	0.0
Thailand	200	0.0
Saudi Arabia	200	0.0
South Africa	190	0.0
Egypt	180	0.0
France	180	0.0
Armenia	180	0.0
Hong Kong	180	0.0
Zambia	180	0.0
United Arab Emirates	170	0.0
Lithuania	160	0.0
Ukraine	160	0.0
Malaysia	160	0.0
Senegal	150	0.0
Haiti	150	0.0
Guinea	140	0.0
Russia	140	0.0
Saint Vincent & the Grenadines	140	0.0
Grenada	140	0.0
Zimbabwe	130	0.0
Cameroon	130	0.0
Japan	130	0.0
Sri Lanka	130	0.0
Cote d'Ivoire	130	0.0
Liberia	130	0.0
Morocco	130	0.0
Suriname	120	0.0
Gambia, The	120	0.0
Spain	110	0.0

Approximate Active DACA Recipients:
Country of Birth
As of September 4, 2017

Country of Birth	Number (rounded)	Percent
Lebanon	110	0.0
Greece	110	0.0
Romania	100	0.0
Barbados	100	0.0
Sierra Leone	100	0.0
Hungary	100	0.0
Fiji	90	0.0
Czech Republic	90	0.0
Malawi	80	0.0
Antigua-Barbuda	80	0.0
Tanzania	80	0.0
New Zealand	80	0.0
Macedonia	70	0.0
Bulgaria	70	0.0
Vietnam	70	0.0
Uganda	70	0.0
Nepal	60	0.0
Cape Verde	60	0.0
Iran	60	0.0
Kuwait	60	0.0
Angola	60	0.0
Netherlands	60	0.0
Tonga	60	0.0
Australia	50	0.0
Mali	50	0.0
Montenegro	50	0.0
Uzbekistan	50	0.0
Samoa	50	0.0
Congo, Democratic Republic	40	0.0
Singapore	40	0.0
Slovakia	40	0.0
Ethiopia	40	0.0
Cambodia	40	0.0
Qatar	40	0.0
Yemen	40	0.0
British Virgin Islands	40	0.0
Togo	40	0.0
Estonia	30	0.0

Approximate Active DACA Recipients:
Country of Birth
As of September 4, 2017

Country of Birth	Number (rounded)	Percent
Turks & Caicos Islands	30	0.0
Serbia	30	0.0
Serbia and Montenegro	30	0.0
Syria	30	0.0
Saint Kitts-Nevis	30	0.0
Belgium	30	0.0
Bahrain	30	0.0
Ireland	30	0.0
Sweden	30	0.0
Austria	20	0.0
Botswana	20	0.0
Gabon	20	0.0
Congo, Republic	20	0.0
Cayman Islands	20	0.0
Soviet Union, former	20	0.0
Netherlands Antilles	20	0.0
Bermuda	20	0.0
Georgia	20	0.0
Kosovo	20	0.0
Algeria	20	0.0
Belarus	20	0.0
Benin	20	0.0
Denmark	20	0.0
Laos	20	0.0
Switzerland	20	0.0
Latvia	10	0.0
Croatia	10	0.0
Burundi	10	0.0
Libya	10	0.0
Oman	10	0.0
Burkina Faso	10	0.0
Kazakhstan	10	0.0
Montserrat	10	0.0
Afghanistan	10	0.0
Azerbaijan	10	0.0
Moldova	10	0.0
Namibia	10	0.0

Approximate Active DACA Recipients:
Country of Birth
As of September 4, 2017

Country of Birth	Number (rounded)	Percent
Other Countries	200	0.0
Not Available	1,800	0.3

Notes:

- This table refers to individuals who were granted Deferred Action for Childhood Arrivals (DACA) as of September 4, 2017. The number of individuals who were ever granted DACA as of September 4, 2017 was approximately 800,000. This total excludes persons who applied for an initial grant of DACA and were not approved, as well as initial DACA requestors that were approved at first, but later had their initial request denied or terminated. Nearly 40,000 DACA recipients have adjusted to lawful permanent resident (LPR) status, leaving about 760,000 who are not LPRs. About 70,000 individuals who were granted DACA either failed to renew at the end of their 2-year validity period or were denied on renewal, leaving approximately 690,000 active DACA recipients as of September 4, 2017.
- Totals do not add due to rounding.
- Countries with fewer than 10 active DACA recipients are included in other.
- Not available: data are not available in electronic systems.

Source: U.S. Citizenship and Immigration Services,

Approximate Active DACA Recipients:
State of Residence
As of September 4, 2017

State or Territory of Residence	Number (rounded)	Percent
Total	689,800	100.0
California	197,900	28.7
Texas	113,000	16.4
Illinois	35,600	5.2
New York	32,900	4.8
Florida	27,000	3.9
Arizona	25,500	3.7
North Carolina	25,100	3.6
Georgia	21,600	3.1
New Jersey	17,400	2.5
Washington	16,300	2.4
Colorado	15,500	2.3
Nevada	12,400	1.8
Oregon	10,200	1.5
Virginia	10,100	1.5
Indiana	9,000	1.3
Utah	8,900	1.3
Maryland	8,100	1.2
Tennessee	7,900	1.1
Wisconsin	6,700	1.0
Oklahoma	6,100	0.9
South Carolina	6,000	0.9
New Mexico	6,000	0.9
Massachusetts	5,900	0.9
Kansas	5,900	0.9
Minnesota	5,500	0.8
Michigan	5,400	0.8
Pennsylvania	4,900	0.7
Arkansas	4,700	0.7
Ohio	4,000	0.6
Alabama	3,900	0.6
Connecticut	3,800	0.6
Missouri	3,300	0.5
Nebraska	3,100	0.5
Idaho	2,900	0.4
Kentucky	2,800	0.4
Iowa	2,500	0.4
Louisiana	1,800	0.3

**Approximate Active DACA Recipients:
State of Residence
As of September 4, 2017**

State or Territory of Residence	Number (rounded)	Percent
Mississippi	1,200	0.2
Delaware	1,100	0.2
Rhode Island	970	0.1
District of Columbia	920	0.1
Wyoming	450	0.1
Hawaii	320	0.1
New Hampshire	240	0.0
South Dakota	220	0.0
Puerto Rico	120	0.0
West Virginia	100	0.0
North Dakota	80	0.0
Alaska	70	0.0
Montana	60	0.0
U.S. Virgin Islands	40	0.0
Maine	40	0.0
Armed Forces overseas	30	0.0
Guam	20	0.0
Northern Mariana Islands	10	0.0
Vermont	10	0.0
Other territories	10	0.0
Not Available	4,180	0.6

Notes:

- This table refers to individuals who were granted Deferred Action for Childhood Arrivals (DACA) as of September 4, 2017. The number of individuals who were ever granted DACA as of September 4, 2017 was approximately 800,000. This total excludes persons who applied for an initial grant of DACA and were not approved, as well as initial DACA requestors that were approved at first, but later had their initial request denied or terminated. Nearly 40,000 DACA recipients have adjusted to lawful permanent resident (LPR) status, leaving about 760,000 who are not LPRs. About 70,000 individuals who were granted for DACA either failed to renew at the end of their 2-year validity period or were denied on renewal, leaving approximately 690,000 active DACA recipients as of September 4, 2017.
- State of residence at the time of most recent application.
- Totals do not add due to rounding.
- Territories with less than 10 residents are included in other.
- Not available: data are not available in electronic systems.

Source: U.S. Citizenship and Immigration Services, CLAIMS3 and ELIS Systems.

**Approximate Active DACA Recipients:
Leading Core Based Statistical Areas
As of September 4, 2017**

Core Based Statistical Area (CBSA)	Number (rounded)	Percent
Total	689,800	100.0
Los Angeles-Long Beach-Anaheim, CA	89,900	13.0
New York-Newark-Jersey City, NY-NJ-PA	47,200	6.8
Dallas-Fort Worth-Arlington, TX	36,700	5.3
Houston-The Woodlands-Sugar Land, TX	35,800	5.2
Chicago-Naperville-Elgin, IL-IN-WI	34,100	5.0
Riverside-San Bernardino-Ontario, CA	22,300	3.2
Phoenix-Mesa-Scottsdale, AZ	22,000	3.2
Atlanta-Sandy Springs-Roswell, GA	15,700	2.3
San Francisco-Oakland-Hayward, CA	15,500	2.3
Washington-Arlington-Alexandria, DC-VA-MD-WV	13,700	2.0
Miami-Fort Lauderdale-West Palm Beach, FL	11,400	1.7
San Diego-Carlsbad, CA	11,300	1.6
Denver-Aurora-Lakewood, CO	10,000	1.5
Las Vegas-Henderson-Paradise, NV	9,900	1.4
San Jose-Sunnyvale-Santa Clara, CA	9,400	1.4
McAllen-Edinburg-Mission, TX	7,500	1.1
Austin-Round Rock, TX	7,400	1.1
Seattle-Tacoma-Bellevue, WA	7,300	1.1
Charlotte-Concord-Gastonia, NC-SC	6,200	0.9
Portland-Vancouver-Hillsboro, OR-WA	6,200	0.9
Fresno, CA	5,900	0.9
Sacramento--Roseville--Arden-Arcade, CA	5,900	0.9
San Antonio-New Braunfels, TX	5,600	0.8
Salt Lake City, UT	5,000	0.7
Bakersfield, CA	4,900	0.7
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD	4,700	0.7
Boston-Cambridge-Newton, MA-NH	4,700	0.7
Indianapolis-Carmel-Anderson, IN	4,600	0.7
Minneapolis-St. Paul-Bloomington, MN-WI	4,600	0.7
Raleigh, NC	3,900	0.6
Kansas City, MO-KS	3,900	0.6
Oxnard-Thousand Oaks-Ventura, CA	3,700	0.5
Visalia-Porterville, CA	3,300	0.5
Nashville-Davidson--Murfreesboro--Franklin, TN	3,300	0.5
Santa Maria-Santa Barbara, CA	3,300	0.5
Tampa-St. Petersburg-Clearwater, FL	3,200	0.5
Stockton-Lodi, CA	3,100	0.5

**Approximate Active DACA Recipients:
Leading Core Based Statistical Areas
As of September 4, 2017**

Core Based Statistical Area (CBSA)	Number (rounded)	Percent
Oklahoma City, OK	3,100	0.4
Milwaukee-Waukesha-West Allis, WI	3,000	0.4
Orlando-Kissimmee-Sanford, FL	3,000	0.4
Santa Rosa, CA	2,900	0.4
Modesto, CA	2,800	0.4
Salinas, CA	2,800	0.4
Albuquerque, NM	2,800	0.4
Winston-Salem, NC	2,600	0.4
Detroit-Warren-Dearborn, MI	2,400	0.3
Yakima, WA	2,300	0.3
Durham-Chapel Hill, NC	2,300	0.3
Salem, OR	2,300	0.3
Brownsville-Harlingen, TX	2,200	0.3
Tucson, AZ	2,200	0.3
Memphis, TN-MS-AR	2,000	0.3
Greensboro-High Point, NC	2,000	0.3
Baltimore-Columbia-Towson, MD	2,000	0.3
Bridgeport-Stamford-Norwalk, CT	1,900	0.3
Tulsa, OK	1,900	0.3
El Paso, TX	1,900	0.3
Fayetteville-Springdale-Rogers, AR-MO	1,800	0.3
Reno, NV	1,800	0.3
Columbus, OH	1,800	0.3
Kennewick-Richland, WA	1,800	0.3
Omaha-Council Bluffs, NE-IA	1,700	0.3
Merced, CA	1,700	0.3
Santa Cruz-Watsonville, CA	1,700	0.3
Provo-Orem, UT	1,600	0.2
Birmingham-Hoover, AL	1,600	0.2
Grand Rapids-Wyoming, MI	1,600	0.2
North Port-Sarasota-Bradenton, FL	1,500	0.2
Cape Coral-Fort Myers, FL	1,500	0.2
Gainesville, GA	1,500	0.2
Wichita, KS	1,400	0.2
Greenville-Anderson-Mauldin, SC	1,400	0.2
Providence-Warwick, RI-MA	1,300	0.2
Boise City, ID	1,300	0.2
Vallejo-Fairfield, CA	1,300	0.2
Laredo, TX	1,300	0.2

**Approximate Active DACA Recipients:
Leading Core Based Statistical Areas
As of September 4, 2017**

Core Based Statistical Area (CBSA)	Number (rounded)	Percent
Ogden-Clearfield, UT	1,200	0.2
Elkhart-Goshen, IN	1,200	0.2
Lakeland-Winter Haven, FL	1,200	0.2
Tyler, TX	1,100	0.2
Richmond, VA	1,100	0.2
Des Moines-West Des Moines, IA	1,100	0.2
Louisville/Jefferson County, KY-IN	1,100	0.2
Naples-Immokalee-Marco Island, FL	1,100	0.2
Madison, WI	1,000	0.2
Cincinnati, OH-KY-IN	1,000	0.2
St. Louis, MO-IL	1,000	0.2
Lexington-Fayette, KY	1,000	0.2
Other CBSA	86,700	12.6
Non-CBSA	12,300	1.8
Not Available	6,600	1.0

Notes:

- This table refers to individuals who were granted Deferred Action for Childhood Arrivals (DACA) as of September 4, 2017. The number of individuals who were ever granted DACA as of September 4, 2017 was approximately 800,000. This total excludes persons who applied for an initial grant of DACA and were not approved, as well as initial DACA requestors that were approved at first, but later had their initial request denied or terminated. Nearly 40,000 DACA recipients have adjusted to lawful permanent resident (LPR) status, leaving about 760,000 who are not LPRs. About 70,000 individuals who were granted DACA either failed to renew at the end of their 2-year validity period or were denied on renewal, leaving approximately 690,000 active DACA recipients as of September 4, 2017.

- Core Based Statistical Areas (CBSA) at the time of most recent application. CBSAs are defined by the Office of Management and Budget.

- Totals may not add due to rounding.

- CBSAs with fewer than 1,000 residents are included in other.

- Not available: data are not available in electronic systems.

Source: U.S. Citizenship and Immigration Services, CLAIMS3 and ELIS Systems.

**Approximate Active DACA Recipients:
Sex and Age Group
As of September 4, 2017**

Sex	Number (rounded)	Percent
Total	689,800	100.0
Female	362,700	52.6
Male	326,900	47.4
Not available	200	0.0

Age as of 9/4/2017	Number (rounded)	Percent
Total	689,800	100.0
Under 16	2,000	0.3
16-20	196,500	28.5
21-25	253,100	36.7
26-30	163,400	23.7
31-36	74,900	10.9
Not available	5	0.0
Average Age	23.8	
Median Age	23.0	
Interquartile Range	20 to 27	

Notes:

- These tables refer to individuals who were granted Deferred Action for Childhood Arrivals (DACA) as of September 4, 2017. The number of individuals who were ever granted DACA as of September 4, 2017 was approximately 800,000. This total excludes persons who applied for an initial grant of DACA and were not approved, as well as initial DACA requestors that were approved at first, but later had their initial request denied or terminated. Nearly 40,000 DACA recipients have adjusted to lawful permanent resident (LPR) status, leaving about 760,000 who are not LPRs. About 70,000 individuals who were granted DACA either failed to renew at the end of their 2-year validity period or were denied on renewal, leaving approximately 690,000 active DACA recipients as of September 4, 2017.

- Age as of September 4, 2017 and marital status as of the time of most recent application.

- Totals do not add due to rounding.

- Interquartile range is the range between the 25th percentile and the 75th percentile. About half of the active DACA recipients are 20 to 27 years old.

- Not available: data are not available in electronic systems.

Source: U.S. Citizenship and Immigration Services, CLAIMS3 and ELIS Systems.

Approximate Active DACA Recipients:
Marital Status
As of September 4, 2017

Marital Status	Number (rounded)	Percent
Total	689,800	100.0
Single	571,600	82.9
Married	105,700	15.3
Divorced	7,800	1.1
Widowed	300	0.1
Not available	4,400	0.6

Notes:

- This table refers to individuals who were granted Deferred Action for Childhood Arrivals (DACA) as of September 4, 2017. The number of individuals who were ever granted DACA as of September 4, 2017 was approximately 800,000. This total excludes persons who applied for an initial grant of DACA and were not approved, as well as initial DACA requestors that were approved at first, but later had their initial request denied or terminated. Nearly 40,000 DACA recipients have adjusted to lawful permanent resident (LPR) status, leaving about 760,000 who are not LPRs. About 70,000 individuals who were granted DACA either failed to renew at the end of their 2-year validity period or were denied on renewal, leaving approximately 690,000 active DACA recipients as of September 4, 2017.
- Marital status at time of most recent application.
- Not available: data are not available in electronic systems.

Source: U.S. Citizenship and Immigration Services, CLAIMS3 and ELIS Systems.

ATTACHMENT 3



Issue Brief

The Education and Work Profiles of the DACA Population

By Randy Capps, Michael Fix, and Jie Zong

August 2017

Executive Summary

Now in its fifth year, the Deferred Action for Childhood Arrivals (DACA) program appears to be in jeopardy amid review by a Trump administration that has expressed skepticism of its merits and legality as well as a threatened legal challenge from state opponents. Nearly 800,000 unauthorized immigrants who entered the United States as children and who met certain educational and other requirements have received work authorization and a two-year reprieve from deportation under DACA, which was implemented by the Obama administration in August 2012. Ten state attorneys general, in an effort initiated by the state of Texas, have given notice that they will head into federal court to challenge the legality of the DACA program if the Trump administration does not rescind it and stop approving new applications by September 5, 2017.

To provide greater understanding of the educational and labor force characteristics of the program's eligible population, Migration Policy Institute (MPI) researchers employed an innovative demographic method to examine their educational attainment and occupational distribution. This issue brief also provides educational and labor force characteristics for the overall U.S. population and DACA-ineligible unauthorized population ages 15-32.

The analyses show that almost all individuals immediately eligible to apply for DACA are students or workers, with one-quarter of them juggling both college studies and work. This finding suggests that DACA recipients need to work in order to afford college. It also suggests that as they achieve college degrees, their movement into better jobs would rise over time.

The DACA population is almost evenly divided in terms of enrollment in secondary school, high school completion, or some college education. Five percent hold a bachelor's degree or higher. In the aggregate, the educational attainment of those eligible to apply for DACA lagged that of counterparts in the overall U.S. population. Gender makes a difference in terms of education, with DACA-eligible women over-represented among those with higher educational attainment (accounting for 54 percent of college degrees while comprising 45 percent of the immediately eligible population).

Analysis of the occupational distribution of the DACA eligible finds that this population is more likely to be in lower-skilled jobs when compared to all workers ages 16 to 32. When contrasted to unauthorized immigrants in the same age cohort who are not eligible for DACA, strikingly different occupational patterns emerge. The DACA ineligible are concentrated in work that involves manual labor, including construction, extraction, building and grounds cleaning and maintenance. By contrast DACA-eligible workers were concentrated in white-collar occupations that are carried out indoors, in formal business settings, with regular hours and better pay. As with education, gender makes a difference. DACA-eligible women



are more likely to hold higher-skilled jobs than their male counterparts, in occupations such as health care support and education.

In sum, consistent with the research literature, the DACA program appears to have led to occupational movement out of manual and outdoors employment toward more formal, service-oriented work conducted indoors. Further, the dual work-and-college track for one-fourth of the DACA-eligible population should lead to better jobs as their academic credentials rise. Of course, both of these trajectories would be largely reversed if the program is terminated.

I. Introduction: The Status of DACA at Five

Introduced by the Obama administration in June 2012 and implemented two months later, the Deferred Action for Childhood Arrivals (DACA) program offers work authorization and a two-year reprieve from deportation to unauthorized immigrants who entered the United States as children.¹ DACA links eligibility to a set of educational criteria, requiring that program participants be high school graduates or equivalent or have served honorably in the armed forces, among other requirements.² U.S. Citizenship and Immigration Services (USCIS) reported that 887,000 individuals had applied for DACA as of March 2017; 788,000 had been approved; and 799,000 requests for two-year renewals had been granted.³ The program's participants include many individuals who are students or workers and, as this analysis will reveal, many who are juggling both studies and work.

The Obama administration implemented the program through executive action after years of congressional impasse over immigration reform and, in particular, DREAM Act legislation that would provide legal status to highly educated unauthorized immigrants who had entered the United States as children.⁴ The

administration's action drew a sharp rebuke from a number of Republican politicians, including Donald Trump,⁵ who denounced DACA as an "unconstitutional executive amnesty."

In 2014, President Obama announced an expansion of DACA alongside the creation of a major new program, the Deferred Action for Parents of Americans (DAPA), a similar grant of work authorization and deferred action open to nearly 4 million parents of U.S.-citizen and lawful permanent resident children.⁶ In 2015, Texas and 25 other states sued the federal government to halt the implementation of DAPA and the DACA expansion.⁷ The states argued that Obama had exceeded his authority by granting *de facto* legal status and work authorization to recipients without congressional approval, and that this grant imposed significant costs on states by compelling them to issue driver's licenses and provide other services. A federal district court in Texas enjoined the program, and the injunction was upheld on appeal.⁸ As a result, DAPA and the DACA expansion were never implemented.

The states challenging DAPA did not target the original 2012 DACA program, even as some Republicans continued to oppose it and the Republican presidential contest featured pledges by Trump to terminate the program "on day one."⁹ In June 2017, however, Texas Attorney General Ken Paxton announced his intention to amend the original DAPA lawsuit and broaden it to challenge DACA if the Trump administration did not agree by September 5, 2017 to phase it out. Nine other state attorneys general joined Paxton.¹⁰ Soon after, Homeland Security Secretary John Kelly indicated that the administration would not attempt to defend the program.¹¹ In August 2017, at the time of this writing, President Trump had not stated publicly where he stood on DACA recipients' future. Several months earlier, he had referred to recipients as "incredible kids in many cases" and had indicated he would "deal with DACA with heart."¹²

Issue Brief

A bipartisan group led by Senators Richard Durbin (D-IL) and Lindsey Graham (R-SC) introduced legislation that would extend conditional legal status and a pathway to permanent residency to DACA recipients and some other groups of unauthorized immigrants who entered the United States as children.¹³ The Trump administration signaled that the President would not support this legislation.¹⁴

A. Eligibility and Enrollment

Using a unique demographic methodology, the Migration Policy Institute (MPI) estimated that as of 2016, there were 1.9 million unauthorized immigrants potentially eligible for the DACA program.¹⁵ These include three groups:

- 1.3 million individuals who met all eligibility criteria and were thus immediately eligible to apply for deferred action
- 398,000 unauthorized immigrants meeting all eligibility criteria except for the education requirement (i.e., a high school diploma or its equivalent). These individuals could still qualify if they enrolled in an adult education program leading to a high school diploma or equivalent.¹⁶
- 228,000 children younger than the program's minimum age of 15, who will age into eligibility provided they stay in school.¹⁷

Using the same methodology, MPI has also estimated DACA application rates. As of March 2017, USCIS reported that 887,000 individuals had applied for initial benefits, for an application rate of 68 percent among the immediately eligible population of 1.3 million.¹⁸ Including the 398,000 individuals without a high school degree raises the total potentially eligible population to 1.7 million, and lowers the application rate to 52 percent.¹⁹ MPI has estimated that application rates are higher among youth from Mexico and Central America, and lower among those from Asia and other world regions.²⁰

B. Outcomes for DACA Recipients: Findings from Early Surveys

Early research based on surveys of DACA participants has documented improvements in high school completion and college enrollment, along with acquisition of higher-paying jobs and other social and economic benefits.²¹ These surveys vary in the sizes and characteristics of their samples, and often include mostly better-educated individuals who completed their surveys via the Internet. A fully representative survey has not been conducted, and there are no administrative data on key program recipient characteristics such as educational attainment.

Despite these limitations, the surveys conducted to date indicate that DACA has yielded tangible benefits for large numbers of program participants. A 2013 national survey of 2,700 DACA participants, found that the program improved their access to public universities, trade schools, and additional scholarship opportunities.²² Having work authorization helped college-going DACA recipients afford tuition. Some participants, however, could still not afford four-year colleges or balance work and study, and instead enrolled in two-year colleges or trade schools. In a 2013-14 national survey of 1,300 DACA participants, more than 40 percent reported obtaining their first job as a result of DACA, and almost two-thirds reported getting a higher-paying job.²³ Almost half said they got jobs that better matched their education and training, and met their career goals as well as providing better working conditions. Six percent of survey respondents started a business, 54 percent bought a car, and 60 percent purchased a home. DACA, according to these survey results, has also promoted social integration by reducing participants' fears surrounding their unauthorized status and instilling in them a greater sense of belonging and promoting increased civic participation.²⁴

Besides the self-reported improvement in educational and employment opportunities, DACA enrollees have become eligible for driver's licenses in all states, allowing them to drive and engage in other activities that require government-issued IDs. Several states, including New York and Nebraska, allow DACA recipients to



obtain professional licenses for occupations such as teachers and health-care providers.²⁵

II. Educational Attainment of the Immediately Eligible DACA Population

To qualify, adult DACA participants must have a high school education or its equivalent.²⁶ Many DACA recipients have also attended college. Because the federal government does not report the educational attainment of the DACA grantee population, MPI estimated the population’s educational characteristics and school enrollment using its unique dataset with legal status assignments.²⁷ The analysis that follows here reviews characteristics of the immediately eligible population as of 2014—the latest year for which MPI has mapped all the relevant variables onto the data. Those who do not have a high school degree (the 398,000 unauthorized youth listed above in the “but-for-edu-

cation” group) were not included, under the assumption that most will not have enrolled in a qualifying adult education program.²⁸

Roughly two-thirds of the 1.2 million immediately eligible to apply for DACA as of 2014 were either still enrolled in secondary school (31 percent) or had completed high school but not gone on to higher education (33 percent, see Table 1.) Close to one-third had either enrolled in college or completed at least some college. Five percent had completed at least a bachelor’s degree. By comparison, 37 percent of the total U.S. population²⁹ in the same age range (15 to 32) were enrolled in college or had completed at least some college; 18 percent had at least a bachelor’s degree. Put differently, 54 percent of the overall U.S. population ages 15 to 32 had some college experience versus 36 percent of those immediately eligible for DACA.

DACA-eligible women were better educated than men. Although women accounted for 45 percent of the total immediately eligible

Table 1. Educational Attainment and School Enrollment of the Total U.S. and DACA-Eligible Populations (ages 15 to 32), 2014

Education and Enrollment Status	Immediately Eligible DACA Population		Total U.S. Population	
	Number	Percent	Number	Percent
Total	1,193,000	100	78,867,000	100
Not enrolled and has not completed high school	N/A	N/A	6,113,000	8
Enrolled in secondary school	365,000	31	14,783,000	19
Completed high school and not in higher education	396,000	33	15,154,000	19
Enrolled in college	241,000	20	15,720,000	20
Completed some college	134,000	11	13,115,000	17
Completed at least a bachelor’s degree	57,000	5	13,982,000	18

Note: “N/A” refers to the fact that virtually all immediately eligible individuals had either completed high school or were currently enrolled in school—consistent with the program’s education requirement. Secondary school includes both middle school and high school. The sample was limited to immediately DACA-eligible individuals and the overall U.S. population ages 15 to 32 in 2014.
Source: Migration Policy Institute (MPI) analysis of data from the U.S. Census Bureau 2014 American Community Survey (ACS) and 2008 Survey of Income and Program Participation (SIPP), with legal status assignments by James Bachmeier of Temple University and Jennifer Van Hook of The Pennsylvania State University, Population Research Institute.

Issue Brief

DACA population, they made up 49 percent of those enrolled in college and 54 percent of those who had completed at least a bachelor’s degree.

III. Labor Force Participation of the Immediately Eligible Population

Most DACA-eligible individuals who were not enrolled in secondary school were in the labor force, defined as being either employed or unemployed and searching for work. Equivalent shares of the DACA-eligible population and the total population ages 16 to 32³⁰ were in the labor force: 76 percent.

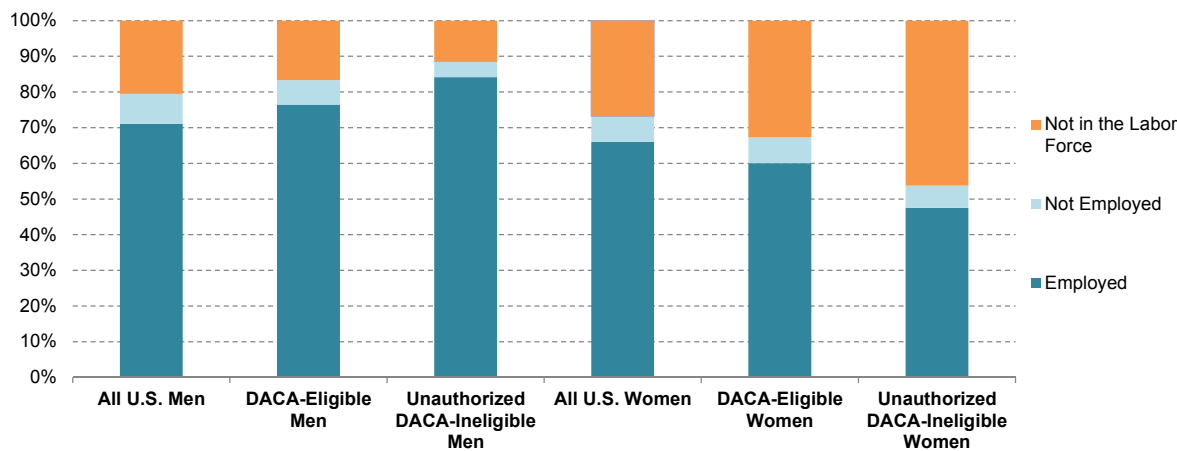
Labor force participation differed significantly by gender. DACA-eligible men were more likely to be in the labor force than U.S. men on average (83 percent versus 79 percent), while DACA-eligible women were less likely to work outside the home: 67 percent versus 73 percent (see Figure 1). DACA-eligible women may be less likely to participate in the labor force than U.S. women overall due to their higher

marriage and child-bearing rates and their lower educational attainment and English proficiency.

However, when compared to unauthorized immigrants in the same age range who were not eligible for deferred action,³¹ DACA-eligible men were less likely to be working (83 percent versus 88 percent), because some stayed in school, delaying their entry into the labor force.³² In contrast, DACA-eligible women participated in the labor force at a higher rate than DACA-ineligible unauthorized women: 67 percent versus 54 percent. These higher levels of participation may owe to the higher educational attainment and English proficiency of DACA-eligible women, and may be related to the wider employment opportunities available to women with work authorization, especially in service-sector jobs in formal settings.

All told, the DACA eligible comprised just 1.3 percent of the 48.9 million people ages 16 to 32 in the U.S. labor force in 2014. The small number and share of DACA participants in the labor force, alongside their occupational dispersal (discussed below), suggest they are not likely to have had a meaningful impact on the employment and wages of other U.S. workers.

Figure 1. Employment and Labor Force Participation of the Total U.S., DACA-Eligible, and DACA-Ineligible Populations (ages 16 to 32), by Gender, (%), 2014



Note: The universe of analysis includes the total U.S. population, those immediately eligible for DACA, and DACA-ineligible unauthorized immigrants ages 16 to 32 who were not enrolled in secondary school in 2014. *Source:* MPI analysis of data from U.S. Census Bureau 2014 ACS and 2008 SIPP, with legal status assignments by Bachmeier and Van Hook.



Table 2. All U.S., DACA-Eligible, and DACA-Ineligible Workers (ages 16 to 32), by Major Occupational Group, 2014

Occupational Group	Total U.S. Population		Immediately Eligible DACA Population		DACA-Ineligible Unauthorized Population	
	Number	Percent	Number	Percent	Number	Percent
Total	43,873,000	100	571,000	100	1,983,000	100
Food Preparation and Serving Occupations	4,425,000	10	89,000	16	311,000	16
Sales and Related Occupations	5,548,000	13	84,000	15	120,000	6
Office and Administrative Support Occupations	5,913,000	13	70,000	12	101,000	5
Construction and Extraction Occupations	1,986,000	5	59,000	10	391,000	20
Production Occupations	2,387,000	5	47,000	8	183,000	9
Transportation and Material Moving Occupations	2,609,000	6	43,000	8	152,000	8
Building and Grounds Cleaning and Maintenance Occupations	1,456,000	3	32,000	6	265,000	13
Management, Business, Science, and Arts	2,566,000	6	22,000	4	44,000	2
Personal Care and Service Occupations	1,939,000	4	22,000	4	52,000	3
Installation, Maintenance, and Repair Workers	1,307,000	3	17,000	3	50,000	2
Farming, Fishing, and Forestry Occupations	390,000	1	14,000	2	141,000	7
Education, Training, and Library Occupations	2,458,000	6	14,000	2	23,000	1
Health-Care Support Occupations	1,316,000	3	11,000	2	20,000	1
Health-Care Practitioners and Technical Occupations	2,209,000	5	9,000	2	24,000	1
Arts, Design, Entertainment, Sports, and Media Occupations	973,000	2	7,000	1	20,000	1
Computer and Mathematical Occupations	1,157,000	3	6,000	1	24,000	1
Business Operations Specialists	964,000	2	6,000	1	13,000	1
Protective Service Occupations	1,001,000	2	5,000	1	6,000	0
Other Occupations	3,268,000	7	13,000	2	49,000	2

Notes: The analysis sample includes all U.S. workers, immediately eligible DACA workers, and DACA-ineligible unauthorized immigrants ages 16 to 32 who were employed and not enrolled in secondary school in 2014. The major occupational groups are based on Census Bureau definitions. Only occupational groups employing at least 5,000 DACA-eligible individuals are presented here.

Source: MPI analysis of data from the U.S. Census Bureau 2014 ACS and 2008 SIPP, with legal status assignments by Bachmeier and Van Hook.

Issue Brief

Additionally, economists have concluded that immigrants (regardless of legal status) without a high-school diploma compete most directly with earlier-arriving immigrants and to a lesser extent with low-skilled U.S.-born workers, and that the effects of job competition are minimal for immigrants with a high school or greater education³³—a group comprising almost all DACA participants.

IV. Occupational Distribution of the DACA-Eligible Population

Unauthorized immigrants immediately eligible for DACA worked in a variety of occupations in 2014, MPI analysis shows. The most common included food preparation and serving (16 percent), sales and related services (15 percent), and office and administrative support occupations (12 percent, see Table 2).³⁴ Compared to all U.S. workers, the DACA eligible were more likely to be employed in lower-skilled occupations and less likely to be in educational, health-care, and management occupations.

Immediately eligible DACA workers were concentrated in different occupations than the unauthorized immigrants who were ineligible. While the latter were heavily represented in jobs that involve manual work—such as construction, extraction, and building and grounds cleaning and maintenance—DACA-eligible workers were most commonly found in white-collar occupations that are usually done indoors in formal business settings, with regular hours and moderate pay. Examples are sales, office, and administrative support occupations.

DACA-eligible workers were most commonly found in white-collar occupations that are usually done indoors in formal business settings, with regular hours and moderate pay.

A. Occupational Groups for DACA-Eligible Workers Who Also Attend College

A sizable share of unauthorized immigrants immediately eligible for DACA were both working and enrolled in college in 2014. Twenty-four percent of employed DACA-eligible workers were also college students, a rate slightly higher than the 20 percent share for all U.S. workers in the same age range (see Table 3). DACA students may be more likely to work while attending college because they cannot otherwise afford their education.³⁵ The level of college enrollment among DACA-eligible workers also underscores their potential future mobility into higher-skilled and higher-paying jobs.

B. Gender Differences in Occupational Distribution of DACA-Eligible Workers

Women appear to account for most of the relatively small share of immediately eligible DACA workers employed in middle- and high-skilled occupations. While women were just 40 percent of all DACA-eligible workers in 2014, they represented 80 percent of those in health-care support; 71 percent of those working in education, training, and library occupations; 67 percent of DACA health-care practitioners and technical workers; and 64 percent of office and administrative support workers (see Table 4). Women were also large majorities of all U.S. workers ages 16 to 32 in these four major occupation groups.



Table 3. Shares of All U.S. and DACA-Eligible Workers (ages 16 to 32) Enrolled in College, by Most Common Major Occupational Groups, 2014

Occupational Group	Immediately Eligible DACA Workers		All U.S. Workers	
	Number	Share Enrolled in College (%)	Number	Share Enrolled in College (%)
Total	571,000	24	43,873,000	20
Education, Training, and Library Occupations	14,000	39	2,458,000	18
Sales and Related Occupations	84,000	38	5,548,000	28
Office and Administrative Support Occupations	70,000	36	5,913,000	25
Arts, Design, Entertainment, Sports, and Media Occupations	7,000	33	973,000	18
Business Operations Specialists	6,000	27	964,000	11
Food Preparation and Serving Occupations	89,000	25	4,425,000	32
Personal Care and Service Occupations	22,000	24	1,939,000	30
Health-Care Support Occupations	11,000	24	1,316,000	26
Health-Care Practitioners and Technical Occupations	9,000	21	2,209,000	15
Computer and Mathematical Occupations	6,000	21	1,157,000	12
Transportation and Material Moving Occupations	43,000	20	2,609,000	16
Protective Service Occupations	5,000	19	1,001,000	21
Management, Business, Science, and Arts	22,000	17	2,566,000	10
Installation, Maintenance, and Repair Workers	17,000	16	1,307,000	11
Building and Grounds Cleaning and Maintenance Occupations	32,000	15	1,456,000	15
Production Occupations	47,000	10	2,387,000	10
Construction and Extraction Occupations	59,000	8	1,986,000	7
Farming, Fishing, and Forestry Occupations	14,000	7	390,000	10
Other Occupations	13,000	25	3,268,000	11

Notes: The analysis sample includes all U.S. workers and immediately eligible DACA workers ages 16 to 32 who were employed and not enrolled in secondary school in 2014. The major occupational groups are based on Census Bureau definitions. Only occupational groups employing at least 5,000 DACA-eligible individuals are presented here.

Source: MPI analysis of data from U.S. Census Bureau 2014 ACS and 2008 SIPP, with legal status assignments by Bachmeier and Van Hook.

Issue Brief

Table 4. Share of Women among All U.S. and DACA-Eligible Workers (ages 16 to 32), by Major Occupational Group, 2014

Occupational Group	Immediately Eligible DACA Workers		All U.S. Workers	
	Number	Female Share (%)	Number	Female Share (%)
Total	571,000	40	43,873,000	48
Health-Care Support Occupations	11,000	80	1,316,000	85
Personal Care and Service Occupations	22,000	75	1,939,000	76
Education, Training, and Library Occupations	14,000	71	2,458,000	71
Health-Care Practitioners and Technical Occupations	9,000	67	2,209,000	76
Office and Administrative Support Occupations	70,000	64	5,913,000	64
Sales and Related Occupations	84,000	60	5,548,000	56
Business Operations Specialists	6,000	50	964,000	56
Arts, Design, Entertainment, Sports, and Media Occupations	7,000	45	973,000	48
Management, Business, Science, and Arts	22,000	42	2,566,000	46
Food Preparation and Serving Occupations	89,000	36	4,425,000	52
Building and Grounds Cleaning and Maintenance Occupations	32,000	34	1,456,000	32
Production Occupations	47,000	30	2,387,000	24
Farming, Fishing, and Forestry Occupations	14,000	22	390,000	21
Computer and Mathematical Occupations	6,000	14	1,157,000	24
Protective Service Occupations	5,000	13	1,001,000	22
Transportation and Material Moving Occupations	43,000	11	2,609,000	15
Construction and Extraction Occupations	59,000	4	1,986,000	3
Installation, Maintenance, and Repair Workers	17,000	1	1,307,000	4
Other Occupations	13,000	45	3,268,000	43

Notes: The universe of analysis includes all U.S. and immediately eligible DACA workers ages 16 to 32 who were employed and were not enrolled in secondary school in 2014. Occupational groups presented here are based on the Census Bureau definitions. Only occupational groups employing at least 5,000 DACA-eligible individuals are presented here.

Source: MPI analysis of data from U.S. Census Bureau 2014 ACS and 2008 SIPP, with legal status assignments by Bachmeier and Van Hook.



V. Conclusion

According to Migration Policy Institute analysis, three-quarters of working-age DACA-eligible individuals were in the labor force in 2014, and one out of four of these employed workers was also in college—a group that could experience future upward occupational mobility.

Although DACA-eligible workers were more likely to hold lower-skilled jobs than U.S. workers overall, they were significantly less likely to be in outdoor manual jobs and more likely to be in white-collar office jobs when compared to unauthorized workers in the same age range who were DACA ineligible. Notably, women appeared to benefit significantly from DACA, as they achieved higher educational attainment and found employment in higher-skilled occupations than DACA men and had broader labor force participation than unauthorized immigrant women who were ineligible for DACA. Deferred action had effects for men as well, however, with males more likely to delay participation in the labor force and stay in school if they were eligible for DACA.

If the Trump administration terminates DACA or the program is successfully challenged in court and recipients lose their employment authorization, most would be unable to continue working in white-collar occupations in formal settings and would have fewer incentives or financial means to enroll in and complete college. Some DACA-eligible individuals could lose access to higher education in those states and institutions where in-state tuition, tuition assistance, or potentially even college enrollment are predicated on DACA. Participants also would lose other tangible benefits—for instance, driver's licenses and access to home mortgages—that promote better labor market and integration outcomes.

MPI's analysis indicates that DACA has had a significant impact on the occupational distribution of those who are eligible, as sizeable numbers find themselves in formal occupational settings and white-collar jobs that would have been outside their reach without employment authorization. Further, given the substantial share of the DACA-eligible population enrolled in college while also working, it is likely that their occupational trajectories will be upwards. Future mobility in the workforce would be reversed for these recipients, however, with the program's termination.

DACA has had a significant impact on the occupational distribution of those who are eligible, as sizeable numbers find themselves in formal occupational settings and white-collar jobs that would have been outside their reach without employment authorization.

Issue Brief

Appendix: Methodological Notes

The authors analyzed the educational attainment, school enrollment, labor force participation, and occupations of DACA-eligible immigrants using data from the U.S. Census Bureau's 2014 American Community Survey (ACS). The ACS is conducted annually and is the largest source of workforce and population data for the United States. The survey asks respondents whether they are U.S. born and whether they are U.S. citizens, but does not inquire about the legal status of noncitizens.

To identify likely unauthorized immigrants in the dataset, the Migration Policy Institute (MPI) research team linked the ACS to the 2008 Survey of Income and Program Participation (SIPP). The SIPP includes similar variables to the ACS on educational attainment, school enrollment, labor force participation, and occupation, but the SIPP also includes self-reported legal status: i.e., whether noncitizens report being lawful permanent residents (LPRs). The research team linked LPRs in the SIPP to noncitizens in the ACS with similar characteristics (e.g., country of origin, length of U.S. residence, gender, age, and the educational and workforce characteristics modelled for this brief). Noncitizens with nonimmigrant visas or other forms of temporary status—for instance, students, H-1B high-skilled nonimmigrant workers, and those with Temporary Protected Status (TPS)—were excluded from the sample based on the terms of these visas and statuses. The remaining noncitizens were assigned unauthorized status, and those who met the DACA eligibility criteria outlined earlier in this brief were included in the analysis. Eligibility due to adult education program enrollment and ineligibility due to criminal history or lack of continuous U.S. presence were not modeled due to lack of data.

MPI estimates of the DACA-eligible population as of 2016 include unauthorized immigrants who had been in the United States since 2007, were under the age of 16 at the time of their arrival, and were under age 31 as of 2012. Three DACA populations were estimated:

- The immediately eligible, who met both age and educational criteria (i.e., they were ages 15 to 34 in 2016 and were either enrolled in school or had at least a high school diploma or equivalent).
- Those eligible but for education, who were ages 15 to 34 in 2016, did not have a high school diploma or equivalent, and were not enrolled in school.
- Children eligible in the future, who met the age-at-arrival requirements but were ages 7 to 14 in 2016, and will become eligible when they reach age 15 provided they stay in school.

To capture the population eligible to apply as of 2016 based on the 2014 data source, MPI aged in the otherwise eligible 13- and 14-year-olds into two groups. Using Latino youth high school dropout rates (the majority of the DACA population is Latino), a portion of the aged-in cohort was assigned to the eligible but for education group. The remaining majority was assigned to the immediately eligible population.

These estimates were used to calculate the eligible populations and their application rates cited at the beginning of this brief. Estimates later in the brief of educational attainment, labor force participation, and occupations of employment for DACA-eligible immigrants were not aged forward to 2016. Instead, their survey responses in 2014 were used in the analysis, because labor force participation and occupation could not be aged forward by two years.



Endnotes

- 1 U.S. Citizenship and Immigration Services (USCIS), "Consideration of Deferred Action for Childhood Arrivals (DACA)," updated December 22, 2016, www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-daca.
- 2 First-time DACA applicants must demonstrate that they: (1) are age 15 or older; (2) were under age 31 at the time of the program's announcement on June 15, 2012; (3) came to the United States before the age of 16; (4) were physically present in the United States as of June 15, 2012; (5) had lived in the United States continuously for at least five years as of the creation of DACA (i.e. since June 15, 2007); (6) are currently in school, have earned a high school diploma or its equivalent, or are honorably discharged veterans of the U.S. armed forces or Coast Guard; and (7) have not been convicted of a felony, significant misdemeanor, or three or more misdemeanors, and do not otherwise pose a threat to public safety or national security. See USCIS, "Consideration of Deferred Action for Childhood Arrivals (DACA)."
- 3 USCIS, "Number of Form I-821D, Consideration of Deferred Action for Childhood Arrivals, by Fiscal Year, Quarter, Intake, Biometrics and Case Status Fiscal Year 2012-2017 (March 31)," updated June 8, 2017, www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/daca_performancedata_fy2017_qtr2.pdf. Based on how USCIS reports its data, it is not possible to know precisely who currently has DACA.
- 4 Dating to 2001, when the *Development, Relief, and Education of Alien Minors Act* (DREAM Act) was first introduced in the Senate, various proposals with bipartisan support have been offered in subsequent sessions of Congress. The legislation seeks to legalize unauthorized immigrants brought to the United States as children, conditioning eligibility on a number of criteria, including age at U.S. entry, length of U.S. residence, educational attainment, and a clean criminal record. After a period of conditional legal status, recipients could receive legal permanent residence if they met additional criteria. For more, see Jeanne Batalova, Ariel G. Ruiz Soto, and Michelle Mittelstadt, *Protecting the DREAM: The Potential Impact of Different Legislative Scenarios for Unauthorized Youth* (Washington, DC: Migration Policy Institute, 2017), www.migrationpolicy.org/research/protecting-dream-potential-impact-different-legislative-scenarios-unauthorized-youth.
- 5 Rishi Iyengar, "Read Donald Trump's Speech on Immigration," *Time*, August 31, 2016, <http://time.com/4475349/donald-trumps-speech-immigration-transcript/>.
- 6 Randy Capps and Marc R. Rosenblum, *Executive Action for Unauthorized Immigrants: Estimates of the Populations that Could Receive Relief* (Washington, DC: Migration Policy Institute, 2014), www.migrationpolicy.org/research/executive-action-unauthorized-immigrants-estimates-populations-could-receive-relief.
- 7 Muzaffar Chishti, Faye Hipsman, and Bethany Eberle, "As Implementation Nears, U.S. Deferred Action Programs Encounter Legal, Political Tests," *Migration Information Source*, February 11, 2015, www.migrationpolicy.org/article/implementation-nears-us-deferred-action-programs-encounter-legal-political-tests.
- 8 Muzaffar Chishti and Faye Hipsman, "Supreme Court DAPA Ruling a Blow to Obama Administration, Moves Immigration Back to Political Realm," *Migration Information Source*, June 29, 2016, www.migrationpolicy.org/article/supreme-court-dapa-ruling-blow-obama-administration-moves-immigration-back-political-realm.
- 9 Iyengar, "Read Donald Trump's Speech on Immigration."
- 10 Texas Attorney General's Office, "AG Paxton Leads 10-State Coalition Urging Trump Administration to Phase out Unlawful Obama-Era DACA Program" (press release, June 29, 2017), www.texasattorneygeneral.gov/news/releases/ag-paxton-leads-10-state-coalition-urging-trump-administration-to-phase-out.

Issue Brief

- 11 Maria Sacchetti, "DHS's Kelly: Program Shielding 800,000 Illegal Immigrants May Be in Jeopardy," *The Washington Post*, July 12, 2017, www.washingtonpost.com/local/social-issues/dhss-kelly-tells-hispanic-caucus-daca-might-not-survive-court-challenge/2017/07/12/b1f19686-672b-11e7-9928-22d00a47778f_story.html?utm_term=.ff4ea6172f92.
- 12 Nolan D. McCaskill, "Trump Says He Will Treat Dreamers 'with Heart,'" Politico, February 16, 2017, www.politico.com/story/2017/02/trump-press-conference-dreamers-heart-235103.
- 13 Batalova, Ruiz, and Mittelstadt, *Protecting the DREAM*.
- 14 Maria Sacchetti, "Durbin, Graham File Dream Act, Hoping to Ward Off Legal Challenge to DACA," *The Washington Post*, July 21, 2017, www.washingtonpost.com/local/immigration/durbin-graham-file-dream-act-hoping-to-ward-off-legal-challenge-to-daca/2017/07/20/19ade326-6cd4-11e7-b9e2-2056e768a7e5_story.html?utm_term=.9a0ee4629f5b.
- 15 Migration Policy Institute (MPI) Data Hub, "Deferred Action for Childhood Arrivals (DACA) Data Tools," accessed July 28, 2017, www.migrationpolicy.org/programs/data-hub/deferred-action-childhood-arrivals-daca-profiles.
- 16 Eligibility due to adult education program enrollment was not modeled due to lack of data.
- 17 MPI Data Hub, "Deferred Action for Childhood Arrivals (DACA) Data Tools."
- 18 Ibid.
- 19 Ibid.
- 20 Ibid.
- 21 Roberto Gonzales, *DACA at Year Three: Challenges and Opportunities in Accessing Higher Education and Employment* (Washington, DC: American Immigration Council, 2016); Tom K. Wong and Carolina Valdivia, *In Their Own Words: A Nationwide Survey of Undocumented Millennials* (Washington, DC: United We Dream, 2014), unitedwedream.org/wp-content/uploads/2014/05/Undocumented-Millennials-Survey-Summary.pdf.
- 22 Gonzales, *DACA at Year Three*.
- 23 Center for American Progress (CAP), "Results of Tom K. Wong, United We Dream, National Immigration Law Center, and Center for American Progress National Survey," accessed July 31, 2017, 2, https://cdn.americanprogressaction.org/content/uploads/2016/10/21111136/2016-daca_survey_draft_updated-FINAL2.pdf.
- 24 Zenén Jaimes Pérez, *A Portrait of Deferred Action for Childhood Arrivals Recipients* (Washington, DC: United We Dream, 2015), unitedwedream.org/wp-content/uploads/2015/10/DACA-report-final-1.pdf; Wong and Valdivia, *In Their Own Words*.
- 25 Don Walton and Zach Pluhacek, "Senators Override Ricketts' Veto on Young Immigrant Licensure Bill," *Lincoln Journal Star*, April 20, 2016, journalstar.com/legislature/senators-override-ricketts-veto-on-young-immigrant-licensure-bill/article_a2d6d276-cde0-5d26-a893-dd472c55dc44.html; Joseph Spector, "Despite Opposition, NY to Let Undocumented Workers Teach," *Lohud*, May 17, 2016, www.lohud.com/story/news/politics/politics-on-the-hudson/2016/05/17/despite-opposition-ny-let-undocuments-workers-teach/84498380/.
- 26 USCIS, "Consideration of Deferred Action for Childhood Arrivals (DACA)."
- 27 Jeanne Batalova, Sarah Hooker, and Randy Capps, *DACA at the Two-Year Mark: A National and State Profile of Youth Eligible and Applying for Deferred Action* (Washington, DC: MPI, 2014), www.migrationpolicy.org/research/daca-two-year-mark-national-and-state-profile-youth-eligible-and-applying-deferred-action.



- 28 The previous section on DACA-eligible populations aged forward unauthorized immigrants ages 13-14 in 2014 to ages 15-16 in 2016, for purposes of comparison to 2017 USCIS application data. In this section and those that follow, the analysis is based on 2014 data because characteristics such as labor force participation and occupations of employment could not be aged forward. See the appendix for more details on the methodology.
- 29 The total U.S. population in this and following sections includes the immediately eligible DACA population.
- 30 Employment related data are collected only for individuals ages 16 and over.
- 31 This includes those who met all DACA eligibility criteria except for the educational requirement, and those who arrived in the United States after 2012 or did not live in the United States continuously for five years, those who arrived when they were over age 15, and those who were ages 31 or older in 2012.
- 32 Tom K. Wong, Greisa Martinez Rosas, Adrian Reyna, Ignacia Rodriguez, Patrick O'Shea, Tom Jawetz, and Philip E. Wolgin, "New Study of DACA Beneficiaries Shows Positive Economic and Educational Outcomes" (news release, Center for American Progress, October 18, 2016), www.americanprogress.org/issues/immigration/news/2016/10/18/146290/new-study-of-daca-beneficiaries-shows-positive-economic-and-educational-outcomes/.
- 33 Giovanni Peri, "Do Immigrant Workers Depress the Wages of Native Workers?" *IZA World of Labor*, vol. 42 (2014): wol.iza.org/articles/do-immigrant-workers-depress-the-wages-of-native-workers.
- 34 Here the focus is on occupations of individuals immediately eligible for DACA in 2014 because USCIS does not collect data on the employment status and occupations of DACA recipients.
- 35 Gonzales, *DACA at Year Three*.

Issue Brief

Acknowledgments

The authors express their gratitude to a number of Migration Policy Institute (MPI) colleagues, in particular Jessica Bolter and Anja Parish for their research support.

This research was supported by the Ford Foundation, the Carnegie Corporation of New York, Unbound Philanthropy, and the Open Society Foundations.

About the Authors



Randy Capps, Director of Research for U.S. Programs at the Migration Policy Institute (MPI), is a leading national expert on the demography of the U.S. immigrant population, with a focus on families with children. Dr. Capps has managed the development of a database on the characteristics of unauthorized immigrants and their families at the national, state, and local levels. He has written numerous reports on immigrant populations at the state and local levels. He also led investigations into U.S. border security metrics, the participation of

state and local law enforcement authorities in immigration enforcement, and the experiences of children with unauthorized immigrant parents—including those with parents detained and deported from the United States.

Prior to joining MPI, Dr. Capps was a researcher in the Immigration Studies Program at the Urban Institute (1993–96 and 2000–08). He received his PhD in sociology from the University of Texas in 1999 and his master of public affairs degree, also from the University of Texas, in 1992.



Michael Fix is a Senior Fellow at the Migration Policy Institute, and previously served as its President. He joined MPI in 2005, as Co-Director of MPI's National Center on Immigrant Integration Policy and later assumed positions as Senior Vice President, Director of Studies, and CEO.

Mr. Fix's research focus is on immigrant integration and the education of immigrant children in the United States and Europe, as well as citizenship policy, immigrant children and families, the effect of welfare reform on immigrants, and the impact of immigrants on the U.S. labor force.

Prior to joining MPI, Mr. Fix was Director of Immigration Studies at the Urban Institute in Washington, DC, where his focus was on immigration and integration policy, race and the measurement of discrimination, and federalism.

Mr. Fix serves on the MPI Board of Trustees as well as the Board of MPI Europe, and is a Policy Fellow with IZA in Bonn, Germany. In December 2013, he was nominated to be a member of the National Research Council's Committee on the Integration of Immigrants into U.S. Society, which produced a seminal study on the integration of immigrants in the United States.



Jie Zong is an Associate Policy Analyst at the Migration Policy Institute, where she provides quantitative research support across MPI programs, particularly the National Center on Immigrant Integration Policy. Her research areas include structural and cultural integration of first- and second-generation immigrants, protective factors for children in refugee families, and workforce development in the United States.

Previously, Ms. Zong interned with the Center for Migration Studies of New York, where she provided research support on U.S. refugee and asylum issues, as well as the U.S. immigration detention system.

She holds a master's degree of public administration from New York University's Wagner Graduate School of Public Service with a specialization in policy analysis, and a bachelor of the arts degree in international finance from the Central University of Finance and Economics in China.

© 2017 Migration Policy Institute.
All Rights Reserved.
Cover Design and Typesetting: Liz Heimann, MPI

No part of this publication may be reproduced or transmitted in any form by any means, electronic or mechanical, including photocopy, or any information storage and retrieval system, without permission from the Migration Policy Institute. A full-text PDF of this document is available for free download from www.migrationpolicy.org. Information for reproducing excerpts from this publication can be found at www.migrationpolicy.org/about/copyright-policy. Inquiries can also be directed to communications@migrationpolicy.org.

Suggested citation: Capps, Randy, Michael Fix, and Jie Zong. 2017. *The Education and Work Profiles of the DACA Population*. Washington, DC: Migration Policy Institute.

The Migration Policy Institute (MPI) is an independent, nonpartisan, nonprofit think tank dedicated to the study of the movement of people worldwide. The Institute provides analysis, development, and evaluation of migration and refugee policies at the local, national, and international levels. It aims to meet the rising demand for pragmatic responses to the challenges and opportunities that migration presents in an ever more integrated world.

WWW.MIGRATIONPOLICY.ORG

About MPI's United States Immigration Policy Program

With the politics and policy issues of immigration more complex and contentious than ever, it is vitally important that policymakers and the American public have solid information, fact-based analysis, and sound policy ideas on which to base their discussions, and, ultimately, their decisions. Through its U.S. Immigration Policy Program, MPI is providing careful analysis of existing policies and articulating a series of pragmatic, workable policy proposals to overhaul an outdated U.S. immigration system so it can better reflect current realities and needs for U.S. society, employers, communities, and native-born and immigrant residents alike.

ATTACHMENT 4

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

MAKE THE ROAD NEW YORK and
MARTÍN JONATHAN BATALLA VIDAL

Plaintiffs,

v.

KATHY A. BARAN, *et al.*

Defendants.

No. 1:16-cv-04756-NGG-JO

**MEMORANDUM IN SUPPORT OF DEFENDANTS' CONSOLIDATED
MOTION TO DISMISS AND IN OPPOSITION TO
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

Dated: November 10, 2016

Respectfully submitted,

ROBERT L. CAPERS
United States Attorney

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General

SCOTT DUNN
Assistant United States Attorney

JOHN R. TYLER
Assistant Branch Director

/s/ Adam D. Kirschner

ADAM D. KIRSCHNER (IL Bar #6286601)
DANIEL J. HALAINEN (MA Bar #694582)
Civil Division, Federal Programs Branch
U.S. Department of Justice
P.O. Box 883
Washington, D.C. 20044
Tel.: (202) 353-9265
Fax: (202) 616-8470
Adam.Kirschner@usdoj.gov

Attorneys for Defendants

approved for three years, and that he was correspondingly granted employment authorization for three years, expiring February 16, 2018. *Id.* ¶ 34. In May 2015, upon learning that this action occurred after the issuance of the injunction, USCIS informed Mr. Batalla Vidal that his three-year validity period for deferred action and corresponding three-year employment authorization were issued in error and that his case was instead re-opened and approved for two years, requiring renewal in February 16, 2017. *Id.* ¶¶ 37-38, 41. In addition to Mr. Batalla Vidal, the second plaintiff in the case, Make the Road New York (“MRNY”), avers that at least three of its other members are similarly situated New York residents. *Id.* ¶ 59.⁴

Plaintiffs bring two claims under the APA. First, they claim that USCIS’s conversion of Mr. Batalla Vidal’s employment authorization, and those of other members of MRNY, from three years to two years “was not in accordance with law” because it was allegedly “based on a legal error—namely, the unlawfully broad preliminary injunction in *Texas v. United States*.” *Id.* ¶ 70. Plaintiffs do not challenge the conversion of these individuals’ deferred action, an underlying condition of the employment authorization. Second, Plaintiffs contend that Defendants acted without “good cause” in violation of 8 C.F.R. § 274a.14 when they converted Mr. Batalla Vidal’s employment authorization from three to two years. That regulation provides that employment authorization can be revoked “when it appears that any condition upon which it was granted has not been met or no longer exists, or for good cause shown.” 8 C.F.R. § 274a.14(b)(1)(i). Again, Plaintiffs do not challenge the conversion from three years to

⁴ Defendants do not contest that MRNY has standing as a membership organization, but do not concede that MRNY otherwise has organizational standing pursuant to *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982). *See, e.g., Knife Rights, Inc. v. Vance*, 802 F.3d 377, 388 (2d Cir. 2015).

EXHIBIT B

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

MARTÍN JONATHAN BATALLA VIDAL, et al.,)

Plaintiffs,)

v.)

KIRSTJEN NIELSEN, Secretary, Department of)
Homeland Security, et al.,)

Defendants.)

Case No. 1:16-cv-04756 (NGG) (JO)

December 15, 2017

DECLARATION OF KAREN C. TUMLIN

I, Karen C. Tumlin, declare under penalty of perjury that the following is true and correct:

1. I am an attorney at law and am one of the counsel for Plaintiffs in this case. I am making this declaration in support of Plaintiffs' Motion for Class Certification.

2. I am a 2004 graduate of the law school at the University of California at Berkeley (Boalt Hall). I served as a law clerk for Judge Dorothy W. Nelson of the U.S. Court of Appeals for the Ninth Circuit and have been practicing law at the National Immigration Law Center ("NILC") since 2005. I am currently NILC's Legal Director. In this capacity, I direct NILC's Legal Department and oversee all litigation at NILC.

3. Since 2005, the principal focus of my legal practice has been immigration law and federal litigation involving the civil and constitutional rights of immigrants. I have served as lead or principal co-counsel in numerous federal class action lawsuits as well as other federal

litigation related to immigration issues. I have also taught immigration legal practice as an adjunct professor at Loyola Law School.

4. Cases in which I have served as plaintiffs' counsel for classes that were certified pursuant to Federal Rule of Civil Procedure 23 include: *Doe v. Johnson*, No. 15-00250-TUC-DCB (Doc. 117, Jan. 11, 2016 Order) (D. Ariz. 2015) (certified class as to constitutional challenge by immigration detainees); *Valle Del Sol Inc. v. Whiting*, No. CV 10-1061-PHX-SRB (Doc. 725, July 24, 2012 Order) (D. Ariz. 2012) (argued successful class certification motion for statewide certified classes challenging provisions of Arizona statutes); *Buquer v. City of Indianapolis*, No. 11-0708-SEB-MJP (Doc. 82, July 8, 2011) (stipulation to certify class action across two most populous counties of Indiana as to challenged provisions of Indiana law); *Orates-Hernandez v. Smith*, 541 F. Supp. 351 (C.D. Cal. 1982) (nationwide class certification and preliminary injunction) (joined as class counsel in 2005).

5. Counsel have already devoted significant resources to investigating and identifying the claims of potential class members and to maintaining this litigation, as evidenced by the staffing of this case with experienced attorneys, and will continue to do so.

6. Counsel do not anticipate any reason that other class members would dispute the adequacy of NILC's representation.

I, Karen C. Tumlin, declare under penalty of perjury, under 28 U.S.C. § 1746 and the laws of the United States of America, that the foregoing Declaration is true and correct.

Executed this 15th day of December 2017 in Los Angeles, California.

By: /s/ Karen C. Tumlin
Karen C. Tumlin

EXHIBIT C

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

MARTÍN JONATHAN BATALLA VIDAL, et al.,)

Plaintiffs,)

v.)

KIRSTJEN NIELSEN, Secretary, Department of)
Homeland Security, et al.,)

Defendants.)

Case No. 1:16-cv-04756 (NGG) (JO)

December 15, 2017

DECLARATION OF AMY S. TAYLOR

I, Amy S. Taylor declare under penalty of perjury that the following is true and correct:

1. I am an attorney at law, and am one of the counsel for Plaintiffs in this case. I submit this declaration in support of Plaintiffs' Motion for Class Certification.
2. I am a 2006 graduate of the City University of New York School of Law and have been practicing law continuously in New York since 2007.
3. I served as a Staff Attorney at Legal Services NYC from 2007 to 2015. Since 2015, I have been employed at Make the Road New York ("MRNY"), and I am currently the organization's Legal Director. In this capacity, I direct MRNY's legal department and oversee all litigation at MRNY, which has litigated complex cases in federal court for over fifteen years.
4. MRNY's legal department is comprised of twenty-four attorneys and eleven paralegals who provide legal services, including full legal representation to immigrant clients. MRNY provides legal advice and representation to immigrant clients in immigration, wage and hour, discrimination, civil rights, public benefits, and housing cases.

5. MRNY provides legal assistance to over 9,000 individuals a year under my supervision. Since the inception of DACA, we have opened 4,560 DACA or DACA Renewal cases, assisting a total of 3,323 individuals. Since there are approximately 42,000 DACA recipients in New York State, MRNY has served nearly 8% of DACA recipients in New York. In addition, we have conducted Know Your Rights presentations covering information on how to apply for DACA. During the first two years of DACA, we routinely held weekly screening workshops and weekend clinics, which were staffed by our attorneys, advocates, administrative staff, and volunteers. Consistently from June of 2012 until the last day that DACA renewal applications were accepted, we held weekly DACA screening workshops at our Queens office and similar services at our other sites on an as-needed basis, escalating the number of workshops, screenings, and appointments in the final month that USCIS accepted DACA renewal applications.

6. Since 2005, the principal focus of my legal practice has been in the areas of civil rights, discrimination, immigration law, and related federal court litigation. I have served as lead or principal co-counsel in numerous federal court litigation related to civil rights issues. *See Gil-Diaz v. Frantzis*, No. 17-1520 (E.D.N.Y. 2017) (bringing wage and hour claims under the Fair Labor Standards Act [FLSA]); *Lopez Chajon et al. v. Tatrault et al.*, No. 16-4122 (E.D.N.Y. 2016) (same); *Aguilar et al. v. Aliaged Dining Inc. et al.*, No. 16-2369 (E.D.N.Y. 2016) (same); *Espinoza et al. v. Sky City Apartments, LLC et al.*, No. 14-2368 (granting conditional class certification for wage and hour claims under FLSA); *EEOC et al. v. Suffolk Laundry Svcs. et al.*, 48 F.Supp.3d 497 (E.D.N.Y. 2014) (bringing employment discrimination claims under Title VII).

7. Counsel have already devoted significant resources to investigating and identifying the claims of potential class members and to maintaining this litigation, as evidenced by the staffing of this case with experienced attorneys, and will continue to do so.

8. Counsel do not anticipate any reason that other class members would dispute the adequacy of MRNY's representation.

I, Amy S. Taylor, declare under penalty of perjury, under 28 U.S.C. § 1746 and the laws of the United States of America, that the foregoing Declaration is true and correct.

Executed this 15th day of December 2017 in New York, New York.

By: /s/ Amy S. Taylor
Amy S. Taylor (AT2056)