Jennifer Chang Newell (SBN 233033)
jnewell@aclu.org
Katrina L. Eiland (SBN 275701)
keiland@aclu.org
ACLU FOUNDATION
IMMIGRANTS' RIGHTS PROJECT
39 Drumm Street
San Francisco, CA 94111
Telephone: (415) 343-0770
Facsimile: (415) 395-0950

Michael K. T. Tan*
mtan@aclu.org
David Hausman*
dhausman@aclu.org
ACLU FOUNDATION
IMMIGRANTS' RIGHTS PROJECT
125 Broad Street, 18th Floor
New York, NY 10004
Telephone: (212) 549-2660
Facsimile: (212) 549-2654

Attorneys for Plaintiffs (Additional counsel listed on following page)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

INLAND EMPIRE – IMMIGRANT YOUTH COLLECTIVE, et al., on behalf of themselves and others similarly situated,

Plaintiffs,

v.

KIRSTJEN NIELSEN, Secretary, U.S. Department of Homeland Security, et al.,

Defendants.

Case No. 5:17-cv-2048-PSG-SHK

REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR A CLASSWIDE PRELIMINARY INJUNCTION

Judge: Hon. Philip S. Gutierrez
Courtroom: 6A
Hearing: February 26, 2018
Time: 1:30 p.m.

Ahilan T. Arulanantham (SBN 237841)
aarulanantham@aclusocal.org
Michael Kaufman (SBN 254575)
mkaufman@aclusocal.org
Dae Keun Kwon (SBN 313155)
akwon@aclusocal.org
ACLU FOUNDATION OF SOUTHERN CALIFORNIA
1313 West 8th Street
Los Angeles, CA 90017
Telephone: (213) 977-5232
Facsimile: (213) 977-5297

Attorneys for Plaintiffs

*Admitted *pro hac vice*

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Regulations

INTRODUCTION

This motion for classwide preliminary relief presents precisely the same claims that Plaintiff Jesús Arreola raised in his individual motion for a preliminary injunction, which this Court granted. The government never explains why the Court should reach a different decision on the same claims. Instead, the government repeats arguments that this Court squarely rejected: that the Court lacks jurisdiction; that the Deferred Action for Childhood Arrivals Standard Operating Procedures ("DACA SOPs") do not mean what they say; that the government is free to take contradictory actions and reverse its position arbitrarily; and that the government's interest in violating its own rules outweighs the harm to the Plaintiff class in being stripped of permission to live and work in the United States. *Compare* Arreola PI Opp., Dkt. 23, *with* Class PI Opp., Dkt. 54. Yet this Court has already explained in detail why it has jurisdiction over these claims, why USCIS's termination of DACA without notice violates the Administrative Procedure Act ("APA"), and why the equities favor an injunction. *See* PI Order, Dkt. 31. The Court should reach the same conclusion here.

Unable to offer new arguments, the government resorts to mischaracterizing the named Plaintiffs' facts. Contrary to the government's assertions, Mr. Gil was never charged with any felony. The city attorney found that the only charge for which there was probable cause was driving on a cancelled license. Declaration of Maria Teresa Trafton ¶ 2, Ex. A. As a result, Mr. Gil was charged with a single misdemeanor traffic violation. *Id.* ¶ 3 Ex. B.[1] As to Mr. Moreira, the government emphasizes that he was initially arrested for forgery, but fails to mention that he was never charged with that offense. As he stated in his declaration, Mr. Moreira instead was only charged with a misdemeanor for possession of an altered identification document. *See* Declaration of David Hausman ¶ 2, Ex. A. Indeed, the government's mischaracterizations only

[1] Mr. Gil has not been convicted of the charge, and indeed, the case has been continued and the charge will be dismissed if Mr. Gil successfully completes probation. Trafton Decl. ¶ 4, Ex. C.

underline the importance of the procedures Plaintiffs seek here. Had Mr. Gil or Mr. Moreira had notice of USCIS's termination decision and an opportunity to respond, each would have corrected the government's mistaken conclusions. And in any event, such facts are irrelevant because USCIS did not address them in its rationale for the challenged DACA termination decisions: as the government concedes, USCIS has a practice of automatically terminating DACA when a Notice to Appear ("NTA") is issued.

The class members' request for relief is straightforward: this Court should restore the status quo by vacating the revocations of class members whose DACA was revoked without process after January 19, 2017, and by preliminarily enjoining the future unlawful revocation of class members' DACA absent a termination process that complies with the APA and the Due Process Clause.

ARGUMENT

I. NO STATUTE PRECLUDES JUDICIAL REVIEW.

The Court correctly determined that it had jurisdiction to enjoin the termination of Mr. Arreola's DACA and work authorization. *See* PI Order at 4-8; *see also* Arreola PI Reply, Dkt. 25, at 2-11. The Court has jurisdiction here for the same reasons. In suggesting otherwise, the government simply rehashes arguments that this Court has already considered and rejected.

First, the government again suggests that review of USCIS's failure to provide notice and process in terminating DACA is precluded by 8 U.S.C. § 1252(g). Yet that provision insulates from review only a "'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (quoting 8 U.S.C. § 1252(g)). The government asserts that "[t]here can be no reasonable argument that DACA termination by . . . issuance [of an NTA] does not arise out of the decision to initiate removal proceedings." Class PI Opp. at 8 (emphasis omitted). But as the Court explained, and multiple courts have agreed, class members are "challenging neither

the issuance of the NTA nor the [government's] decision to commence removal proceedings," but instead "USCIS's separate and independent decision to revoke [their] DACA *on that basis*, which is independent of the limited category of decisions covered by § 1252(g)." PI Order at 6; *accord* Arreola PI Reply at 2-6; *Ramirez Medina v. DHS*, No. 17-cv-0218, 2017 WL 5176720, at *6-7 (W.D. Wash. Nov. 8, 2017); *Gonzalez Torres v. DHS*, No. 17-cv-1840, 2017 WL 4340385, at *4 (S.D. Cal. Sept. 29, 2017); *Colotl v. Kelly*, 261 F. Supp. 3d 1328, 1338-40 (N.D. Ga. 2017).

The Court was also correct to hold that in any event, § 1252(g) does not bar review of legal questions related to discretionary decisions, and that the Plaintiffs' claims are therefore reviewable on that basis. PI Order at 6. The government does not contest that such legal questions are reviewable, but instead mischaracterizes the Plaintiffs' claims as seeking to require the agency to exercise its discretion not to terminate DACA. Class PI Opp. at 13 n.11. But as this Court found and the Plaintiffs have explained, Plaintiffs seek review not of USCIS's ultimate exercise of discretion to grant or deny DACA, but rather of the agency's compliance with its own rules, the APA, and due process. *Compare id.with* PI Order at 6; *accord* Arreola PI Reply at 1.

Second, the government repeats its suggestion that the Plaintiffs' claims are precluded by 8 U.S.C. §§ 1252(b)(9) and 1252(a)(5), which require that challenges to removal orders be raised through a petition for review of a final removal order in the courts of appeal. Yet the government fails even to acknowledge this Court's observation that "[a]n immigration judge in a removal proceeding does *not* have the power to grant or deny deferred action, or to review or reverse an agency's decision to revoke it." PI Order at 7. That fact alone is decisive because, in the government's own words, "*if* the issue is one that can be raised in removal proceedings, and ultimately in a petition for review, then the statute precludes district court review." Class PI Opp. at 10 (emphasis added); *accord* Arreola PI Reply at 7. Because the Plaintiffs are unable to challenge the termination of their DACA in removal proceedings, §§ 1252(b)(9) and 1252(a)(5) do not preclude them from raising their challenge in district court.

Accord Arreola PI Reply at 6-8; *Ramirez Medina*, 2017 WL 5176720, at *8; *Gonzalez Torres*, 2017 WL 4340385, at *5; *Colotl*, 261 F. Supp. 3d at 1339-40.

Finally, the government argues once again that USCIS need not provide notice or process in terminating DACA because the decision is "committed to agency discretion by law." 5 U.S.C. § 701(a)(2); *see also* Class PI Opp. at 10-11. But again, the government simply ignores this Court's prior decision and the controlling Ninth Circuit cases, which rely on the established proposition that review is available where "'discretion has been legally circumscribed by various memoranda.'" PI Order at 4 (quoting *Alcaraz v. INS*, 384 F.3d 1150, 1161 (9th Cir. 2004)); *accord* Arreola PI Reply at 9-11; *Ramirez Medina*, 2017 WL 5176720, at *8; *Colotl*, 261 F. Supp. 3d at 1340-41. As this Court correctly held, "[h]ere, the decision to revoke DACA is governed by both the Napolitano Memo and the DACA SOPs." PI Order at 4. Review is therefore available under those authorities, the APA, and the Constitution.

II. USCIS'S AUTOMATIC TERMINATION OF DACA IS ARBITRARY AND CAPRICIOUS UNDER THE APA.

Plaintiffs have established a likelihood of success on their APA claims. Defendants acknowledge that they have a practice of automatically terminating class members' DACA and work authorization without process. *See* Class PI Opp. at 23. This Court has already held that this practice violates the APA for multiple reasons. The Court held that automatically terminating DACA based on an NTA charging unlawful presence is arbitrary and capricious in violation of the APA because all DACA recipients are unlawfully present and being in removal proceedings is not disqualifying. PI Order at 8-13. The Court also held that abruptly terminating an individual's DACA without providing a reasoned explanation for the agency's reversal, after granting DACA on one or more occasions, violates the APA. *Id* at 10-11. Further, the Court held that Defendants' automatic termination practice violates the DACA procedures, which the agency is required to follow. *See id*. Defendants fail to grapple with the Court's reasoning, which applies equally here.

Defendants instead focus their response on a number of arguments that are irrelevant to the Court's reasoning and to the arguments raised by Plaintiffs. Class PI Opp. at 17-20. Plaintiffs are not challenging the government's authority to initiate removal proceedings, issue an NTA, or select the charges alleged in the NTA. And the Court's preliminary injunction with respect to Plaintiff Arreola—granting the same relief that Plaintiffs now seek for the class—does not preclude the government from issuing an NTA or initiating removal proceedings, nor does it dictate what charges must be included in an NTA. PI Order at 15-16; *see also* PI Order at 6. Indeed, Plaintiff Arreola's removal proceedings are ongoing, and his NTA remains unaffected.

Defendants' focus on ICE and CBP's authority to initiate removal proceedings and issue NTAs is beside the point, as the only questions in this case pertain to *USCIS*'s decisions to terminate DACA. The Napolitano Memo and SOPs unmistakably vest that termination authority in USCIS, and provide detailed procedures governing USCIS's exercise of that authority. Class PI. Mot., Dkt. 34-1, at 9-16. As this Court has explained, the Napolitano "Memo instructed *USCIS*, not ICE or CBP, to make DACA determinations." PI Order at 12. "[N]othing in the Napolitano Memo supports the notion that, once USCIS implemented the DACA adjudication process and made a considered judgment to grant an individual DACA, the decision could be unilaterally undone by any ICE or CBP officer." *Id.*[2]

Defendants make a number of other erroneous representations about the DACA rules, addressed below. In one critical respect, however, Defendants are correct: Defendants now concede that "the DACA SOP provides that USCIS should notify an individual of its intent to terminate DACA and provide an opportunity to respond to

[2] Defendants' repeated references to ICE and CBP's alleged reasons for pursuing removal in Plaintiffs' and other individual cases are irrelevant for an additional reason: as this Court has held, "[c]ourts review agency action according to the contemporaneous reasons given by the agency and disregard alternative rationales presented during litigation." PI Order at 12-13. The only relevant potential justifications are those provided by USCIS in its termination decisions.

intended DACA termination when . . . subsequent criminal activity comes to USCIS's attention that is not EPS [Egregious Public Safety concern]." Class Cert. Opp. at 15. As this Court has recognized, absent specified criminal, national security, or public safety concerns, "the DACA termination guidelines prescribe the issuance of a Notice of Intent to Terminate and require that the individual should be allowed 33 days to file a brief or statement contesting the grounds cited." PI Order at 11 (internal quotation marks and citation omitted). Defendants' automatic termination practice therefore violates the agency's own rules and the APA.

Defendants erroneously suggest that the DACA SOPs provide for automatic termination—without process—whenever a DACA recipient is labeled an enforcement priority. Class Cert. Opp. at 15. Defendants also make the sweeping assertion that "[i]n reality, DHS considers every individual it issues an NTA to [be] an enforcement priority." *Id.* at 14 n.8. Defendants are wrong on both counts. Critically, the class is defined to include only individuals who are eligible for DACA—and the rules of the DACA program expressly provide that eligible individuals are *not* enforcement priorities. The DACA Memorandum explains that DHS's enforcement resources should not be expended on "these low priority cases"—referring to individuals who meet the eligibility criteria—and instead "on people who meet our enforcement priorities."[3] Further, the DACA Memorandum and SOPs repeatedly provide that the fact that an individual is in removal proceedings does not disqualify him from being deemed "low priority" via the DACA program. *See* PI Order at 9-10.

In addition, if Defendants' assertion were true that all individuals issued an NTA are enforcement priorities, then the detailed enforcement priorities enumerated in the Kelly Memorandum would be a nullity. *See* Kwon Decl., Dkt. 16-4, ¶ 13, Ex. 12. Notably, the Kelly Memorandum on its face makes clear that it does not apply to the DACA program. *See, e.g.*, *Colotl*, 261 F. Supp. 3d at 1343 (holding that "the Kelly

[3] Napolitano Memo, Declaration of Dae Keun Kwon, Dkt. 16-4, ¶ 10, Ex. 9, at 1.

Memo, by its own terms, has no application to the DACA program"); Class PI Mot. at 4; *see also* Second Declaration of Katrina Eiland ¶ 9, Ex. 1 (USCIS correspondence confirming that "USCIS cannot apply the new February 2017 Kelly memo standards to DACA requests."). Defendants would therefore violate their own rules in deeming DACA-eligible individuals enforcement priorities and terminating on that basis. In sum, because by virtue of their continued DACA eligibility, class members are by definition *not* enforcement priorities under the DACA rules, Defendants' contention as to the SOP's treatment of those deemed an "enforcement priority" is irrelevant.[4]

Defendants appear to suggest, incorrectly, that Plaintiffs are not entitled to a classwide injunction because in at least some cases involving "Egregious Public Safety" issues, automatic termination is permitted under the DACA rules. Class Cert. Opp. at 16-17. Even assuming Defendants were correct, this argument would only affect Plaintiffs' APA claim alleging violation of the SOPs; Plaintiffs would still be entitled to classwide relief on their other APA claims, as well as on the due process claim. Moreover, Defendants' suggestion is wrong. As this Court has held, there is "only one narrow circumstance in which automatic termination based on an NTA is appropriate—when an NTA is issued after USCIS determines that a disqualifying offense or public safety concern is deemed to be 'Egregious Public Safety' ('EPS')." PI Order at 11. The Court held that automatic termination is *not* appropriate, however,

[4] In any event, Defendants' interpretation of the SOPs section referencing enforcement priorities cannot be reconciled with other relevant sections of the SOPs or DHS guidance. Indeed, as explained above, the SOPs section entitled "Criminal National Security, or Public Safety Issues" requires notice and an opportunity to respond in all non-EPS cases. *See* PI Order at 11; Dkt. 16-24 at 137. Moreover, it could not be more crystal clear that in cases involving enforcement priorities, a specified process requiring notice is mandated: the section is entitled, "Enforcement Priority – DACA *Not* Automatically Terminated." Dkt. 16-24 at 138 (emphasis added). *See also id.* (providing that USCIS can determine whether to initiate termination by issuing a Notice Of Intent to Terminate, and then "[i]f it is determined that the case warrants final termination, the officer will issue . . .Termination Notice[:] Enforcement Priority; Not Automatically Terminated") (internal brackets omitted).

where the "NTA was issued on the basis of presence without admission, not EPS." *Id.* *Accord Gonzalez Torres*, 2017 WL 4340385, at *5-6. Yet Defendants' policy is to terminate automatically regardless of whether the NTA is based on EPS—in violation of Defendants' own rules. In any event, as Plaintiffs have explained, the Court could modify the class definition to create a subclass of noncitizens whose Termination Notices have stated or will state that the reason for the termination is EPS. Class Cert. Reply at 6 & n. 5. As a result, there is no question that for all class members (i.e. individuals who have not been convicted of a disqualifying offense and whose termination notices do not assert an EPS concern), automatic termination violates the DACA rules.

The government's failure to explain its changes of position in terminating each class member's DACA is also arbitrary and capricious in violation of the APA. *See FCC v. Fox Television Stations*, 556 U.S. 502, 515 (2009). The government offers no authority for its view that an agency may change its position in individual cases with no explanation. Class PI Opp. at 22. In fact, as this Court has held, whenever an agency "chang[es] position," *Fox*, 556 U.S. at 515, it is "required to provide a reasoned explanation . . . for disregarding the facts and circumstances that underlay its previous decision." PI Order at 10 (quoting *Organized Vill. of Kake v. U.S. Dep't of Agric.*, 795 F.3d 956, 968 (9th Cir. 2015)) (other citations and internal quotation marks omitted). *See also, e.g.*, *California Pub. Utils. Comm'n v. Federal Energy Regulatory Comm'n*, 879 F.3d 966, 978 (9th Cir. 2018) (holding that the Federal Energy Regulatory Commission had acted arbitrarily in departing—in individual cases and without explanation—from a previous decision to grant utility company requests only under particular circumstances); *LeMoyne-Owen Coll. v. NLRB*, 357 F.3d 55, 61 (D.C. Cir. 2004) (holding that agencies must explain themselves when "a party makes a significant showing that *analogous* cases have been decided differently").

The government does not address this Court's holding or the controlling authority on which it relied. Instead, the government asserts that it may change its

position arbitrarily, with no explanation, as long as it has a practice of doing so. Class PI Opp. at 23 (relying on USCIS's practice—contrary to its own rules—of automatic termination without explanation). In other words, the government takes the position that an agency may violate the APA so long as it has a consistent practice of doing so. This argument is self-refuting. Unsurprisingly, the lone case on which the government relies does not stand for this remarkable proposition. *See Sierra Club v. Bureau of Land Management.*, 786 F.3d 1219, 1226 (9th Cir. 2015) (finding no *Fox* violation where the agency altered its analysis but did not reverse any decision).[5] The Court should again hold that the government's unexplained reversal violates the APA.

III. THE GOVERNMENT PROVIDES NO RESPONSE TO PLAINTIFFS' DUE PROCESS ARGUMENT THAT ONCE GRANTED DACA, RECIPIENTS ARE ENTITLED TO A FAIR PROCESS FOR REVOCATION.

While the Court can grant Plaintiffs' motion based on their non-constitutional APA claims, the government notably fails to address Plaintiffs' core constitutional argument. That procedural due process argument is based on a controlling line of cases holding that, even absent a claim of entitlement to an important benefit, once it is *conferred*, recipients have a protected property interest that requires a fair process before the government may take that benefit away. *See* Class PI Mot. at 17 (citing, *inter alia*, *Bell v. Burson*, 402 U.S. 535, 539 (1971)); *see also* Arreola PI Mot., Dkt. 16-2, at 18-21; Arreola PI Reply at 19-21. Thus, even though DACA is ultimately discretionary, *once granted,* the government cannot take it away without due process.

[5] *Chemehuevi Indian Tribe v. Brown*, No. ED CV 16-1347-JFW (MRWx), 2017 WL 2971864, at *8 n.9 (C.D. Cal. Mar. 30, 2017), did not even concern a claim that a change in position was arbitrary and capricious under the APA. The footnote cited by the government, Class PI Opp. at 23, discusses the unrelated question of when an agency practice interpreting a statute can receive deference under *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944). *See also* PI Order at 12 (noting that *Skidmore* only requires deference to the extent that an agency interpretation has "the power to persuade") (citation and quotation marks omitted).

The government makes no attempt to refute this principle. Instead, it cites cases holding that, as a general matter, discretionary benefits do not give rise to a protected property interest. *See* Class PI Opp. at 13-16 (citing cases). But the Plaintiffs never make that contention, and none of those cases involve the *revocation* of a discretionary benefit that has *already* been conferred.

The government further argues that the DACA guidance does not give rise to a protected property interest, *see* Class PI Opp. at 15-17, but again this argument is a straw man. The Plaintiffs do not argue that the DACA program itself establishes a protected interest. Instead, they argue only that, having previously granted them DACA, the government may not strip them of it without a fair procedure. Class PI Mot. at 16-19. Defendants' remaining arguments likewise miss the mark. The Plaintiffs do not premise their claim on a substantive "right to work in the United States," nor have they alleged a "right to DACA." Class PI Opp. at 15.[6]

Finally, the government does not even attempt to suggest that its actions satisfy due process. Indeed, the government could not since—as it concedes, *see* Class PI Opp. at 2-3—the Plaintiffs were stripped of DACA without any process whatsoever. Indeed, USCIS *already* provides a procedure whereby DACA recipients are afforded a reasoned explanation for its actions and an opportunity to present arguments and

[6] The government also half-heartedly suggests, incorrectly, that a federal regulation provides for automatic termination of a DACA EAD when an NTA is filed with the immigration court. Class PI Opp. at 16 (citing 8 C.F.R. § 274a.14(a)(1)(ii)). Although the cited regulation provides for termination in some cases, it also contains a specific exception stating that "this shall not preclude the authorization of employment pursuant to § 274a.12(c) of this part *where appropriate*." 8 C.F.R. § 274a.14(a)(1)(ii) (emphasis added). *See Alfaro-Orellana v. Ilchert*, 720 F. Supp. 792, 794 (N.D. Cal. 1989) (recognizing that 8 C.F.R. § 274a.14(a)(1)(ii) "creates an exception for appropriate work authorizations under § 274a.12(c)). In any event, the Supreme Court has held that the government "may not constitutionally authorize the deprivation of [a property] interest, once conferred, without appropriate procedural safeguards." *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 541– 42 (1985).

evidence. *See* Class PI Mot. at 19. In sum, the termination of Plaintiffs' DACA and EADs in the absence of a fair process violates their procedural due process rights.

IV. THE REMAINING INJUNCTION FACTORS FAVOR THE PLAINTIFFS.

The government does not dispute that the harm it is causing the Plaintiffs is irreparable. Indeed, it could not do so given that this Court has already held that the revocation of DACA imposes irreparable harm. PI Order at 13-14. The Court relied on controlling Ninth Circuit case law holding that undermining DACA recipients' employment constitutes irreparable harm. *See id.*; *see also Arizona Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014); *Gonzalez Torres*, 2017 WL 4340385, at *6 (finding irreparable harm caused by loss of employment and "sense of well-being" following termination of DACA); *Colotl*, 261 F. Supp. 3d at 1343-44.

The government also does not dispute that requiring it to comply with the APA and the Constitution would serve the public interest, as this Court has held. *See* PI Order at 14-15. Indeed, the only government interest that it names—"the need for Defendants to pursue removal for individuals like the named Plaintiffs," Class PI Opp. at 24—concerns the Plaintiffs' removal proceedings, which are not at issue in this case. And although the government certainly has a general interest in the enforcement of the immigration laws, the agencies administering those laws are required to act lawfully. In sum, the remaining factors support a preliminary injunction.[7]

[7] Defendants' passing suggestion that enjoining the termination of the Plaintiffs' DACA would require a mandatory injunction is incorrect. Class PI Opp. at 5. A prohibitory injunction maintains the status quo, which is defined as "not simply any situation before the filing of the lawsuit, but rather the last uncontested status that preceded the parties' controversy." *Dep't. of Parks & Recreation v. Bazaar Del Mundo Inc.*, 448 F.3d 1118, 1124 (9th Cir. 2006). Here, that "last uncontested status" is when the Plaintiffs had DACA and EADs.

CONCLUSION

For these reasons, the Court should grant (1) Plaintiffs' Motion for a Classwide Preliminary Injunction, (2) vacate and enjoin Defendants' unlawful revocation of Plaintiffs Gil's and Moreira's DACA and EADs, as well as the DACA and EADs of proposed class members whose DACA has been terminated since January 19, 2017, and (3) enjoin Defendants from terminating Plaintiffs' and proposed class members' DACA and EADs pursuant to their unlawful policies in the future.

Dated: February 12, 2018

Respectfully submitted,

/s/ Jennifer Chang Newell
Jennifer Chang Newell
Katrina L. Eiland
Michael K. T. Tan*
David Hausman*
ACLU FOUNDATION
IMMIGRANTS' RIGHTS PROJECT

Ahilan T. Arulanantham
Michael Kaufman
Dae Keun Kwon
ACLU FOUNDATION
OF SOUTHERN CALIFORNIA

Attorneys for Plaintiffs
*Admitted *pro hac vice*