

The Honorable Ricardo S. Martinez
Chief United States District Judge

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

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

DANIEL RAMIREZ MEDINA,

Plaintiff,

v.

U.S. DEPARTMENT OF HOMELAND
SECURITY; U.S. IMMIGRATION AND
CUSTOMS ENFORCEMENT; and U.S.
CITIZENSHIP AND IMMIGRATION
SERVICES,

Defendants.

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

**PLAINTIFF'S MOTION FOR SECOND
PRELIMINARY INJUNCTION, OR, IN THE
ALTERNATIVE, TO COMPEL
COMPLIANCE WITH PRELIMINARY
INJUNCTION ORDER**

ORAL ARGUMENT REQUESTED

NOTE ON MOTION CALENDAR: July 5, 2019

1 Attorneys for Plaintiff:

2 PUBLIC COUNSEL

3 MARK D. ROSENBAUM (CA SBN 59940), *pro hac vice*

mrosenbaum@publiccounsel.org

4 JUDY LONDON (CA SBN 149431), *pro hac vice*

jlondon@publiccounsel.org

5 KATHRYN A. EIDMANN (CA SBN 268053), *pro hac vice*

keidmann@publiccounsel.org

610 South Ardmore Avenue

Los Angeles, CA 90005

6 Telephone: (213) 385-2977

7 Facsimile: (213) 385-9089

8 GIBSON, DUNN & CRUTCHER LLP

9 THEODORE J. BOUTROUS, JR. (CA SBN 132099), *pro hac vice*

tboutrous@gibsondunn.com

10 KATHERINE M. MARQUART (CA SBN 248043), *pro hac vice*

kmarquart@gibsondunn.com

11 NATHANIEL L. BACH (CA SBN 246518), *pro hac vice*

nbach@gibsondunn.com

333 South Grand Avenue

12 Los Angeles, CA 90071-3197

13 Telephone: (213) 229-7000

Facsimile: (213) 229-7520

14 ETHAN D. DETTMER (CA SBN 196046), *pro hac vice*

15 edettmer@gibsondunn.com

555 Mission Street

16 San Francisco, CA 94105

17 Telephone: (415) 393-8200

Facsimile: (415) 393-8306

18 ERWIN CHEMERINSKY (DC SBN 289330; IL SBN 3122596), *pro hac vice*

19 echemerinsky@law.berkeley.edu

University of California, Berkeley, School of Law

20 *Affiliation for identification purposes only

21 215 Boalt Hall

Berkeley, CA 94720-7200

22 Telephone: (510) 642-6483

23 LEAH M. LITMAN (DC SBN 1016310), *pro hac vice*

llitman@law.uci.edu

24 University of California, Irvine School of Law

25 *Affiliation for identification purposes only

401 East Peltason Drive, Educ 1095

26 Irvine, CA 92697

27 Telephone: (949) 824-7722

28

1 LAURENCE H. TRIBE (MA SBN 126736; CA SBN 039441), *pro hac vice*
larry@tribelaw.com
2 Harvard Law School
*Affiliation for identification purposes only
3 1575 Massachusetts Avenue
Cambridge, MA 02138
4 Telephone: (617) 495-1767

5
6 ELIZABETH HAWKINS (SBN 43187)
ehawkins@hawkinsimmigration.com
Hawkins Law Group
7 17544 Midvale Avenue, Suite 301
Shoreline, WA 98133
8 Telephone: (206) 728-4220
Facsimile: (206) 973-5326

9
10 IMMIGRANT ADVOCACY & LITIGATION CENTER, PLLC
LUIS CORTES ROMERO (CA SBN 310852), *pro hac vice*
11 lcortes@barreralegal.com
19309 68th Avenue South, Suite R-102
12 Kent, WA 98032
Telephone: (253) 872-4730
13 Facsimile: (253) 237-1591

14
15 NORTHWEST IMMIGRANT RIGHTS PROJECT
MATT ADAMS (SBN 28287)
matt@nwirp.org
16 615 Second Ave., Suite 400
Seattle, WA 98104
17 Telephone: (206) 957-8611

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. BACKGROUND..... 2

 A. The establishment and rescission of DACA 2

 1. The DACA application and renewal process..... 2

 2. Limitations on denying an individual’s DACA renewal request..... 3

 B. Mr. Ramirez benefitted from his DACA status 4

 1. Mr. Ramirez was twice granted DACA status..... 4

 2. Mr. Ramirez received many benefits from DACA 5

 C. The government’s unlawful and arbitrary conduct 5

 1. Mr. Ramirez’s unlawful arrest and detention..... 5

 2. The unlawful and arbitrary revocations of Mr. Ramirez’s DACA status 6

 3. The Court enjoins Defendants from terminating Mr. Ramirez’s DACA status..... 7

 4. The government’s unlawful and arbitrary denial of Mr. Ramirez’s May 2018 DACA renewal request 8

III. LEGAL STANDARD 9

IV. ARGUMENT..... 9

 A. Defendants violated the First Preliminary Injunction 9

 B. Mr. Ramirez Is Entitled to a Second Preliminary Injunction..... 10

 1. Mr. Ramirez is likely to succeed on the merits of his claims 10

 a. The denial of Mr. Ramirez’s May 2018 DACA renewal request was arbitrary and capricious 11

 b. Defendants violated the APA by failing to follow their own internal procedures 15

 c. Defendants violated the APA by disregarding Mr. Ramirez’s Due Process rights 16

 d. Defendants violated Mr. Ramirez’s First Amendment rights..... 19

 e. Equitable estoppel precludes Defendants from denying Mr. Ramirez’s renewal request 20

 2. Mr. Ramirez has suffered and continues to suffer irreparable harm..... 22

 3. The balance of equities and public interest weigh heavily in favor of provisional relief 23

V. CONCLUSION 24

TABLE OF AUTHORITIES

Page(s)

Cases

1

2

3

4

5 *Abdur-Rahman v. Napolitano*,

6 814 F. Supp. 2d 1098 (W.D. Wash. 2011).....14

7 *United States ex rel. Accardi v. Shaughnessy*,

8 347 U.S. 260 (1954).....15

9 *Alcaraz v. INS*,

10 384 F.3d 1150 (9th Cir. 2004).....15

11 *All. for the Wild Rockies v. Cottrell*,

12 632 F.3d 1127 (9th Cir. 2011).....9

13 *Alpha Energy Savers, Inc. v. Hansen*,

14 381 F.3d 917 (9th Cir. 2004).....19

15 *Ariz. Dream Act Coal. v. Brewer*,

16 757 F.3d 1053 (9th Cir. 2014).....9, 22, 23

17 *Ariz. Dream Act Coal. v. Brewer*,

18 855 F.3d 957 (9th Cir. 2017).....24

19 *Bd. of Regents of State Colls. v. Roth*,

20 408 U.S. 564 (1972).....17

21 *Butte Env'tl. Council v. U.S. Army Corps of Eng'rs*,

22 620 F.3d 936 (9th Cir. 2010).....11

23 *Castro-Cortez v. INS*,

24 239 F.3d 1037 (9th Cir. 2001).....18

25 *Chalk v. U.S. Dist. Court Cent. Dist. of Cal.*,

26 840 F.2d 701 (9th Cir. 1988).....23

27 *Church of Scientology of Cal. v. United States*,

28 920 F.2d 1481 (9th Cir. 1990).....15

Citizens to Preserve Overton Park, Inc. v. Volpe,

401 U.S. 402 (1971).....11

Cleveland Bd. of Educ. v. Loudermill,

470 U.S. 532, 105 S. Ct. 1487, 84 L. Ed. 2d 494 (1985).....22

TABLE OF AUTHORITIES *(continued)*

Page(s)

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

Coszalter v. City of Salem,
320 F.3d 968 (9th Cir. 2003).....20

Coyotl v. Kelly,
261 F. Supp. 3d 1328 (N.D. Ga. 2017)12, 15

Cty. of Sacramento v. Lewis,
523 U.S. 833 (1998).....18, 19

Enyart v. National Conference of Bar Exam’rs, Inc.,
630 F.3d 1153 (9th Cir. 2011).....22

FCC v. Fox Television Stations, Inc.,
556 U.S. 502 (2009).....12

Franklin v. Massachusetts,
505 U.S. 788 (1992).....11

Gonzalez Torres v. U.S. Dep’t of Homeland Sec.,
No. 17-cv-1840, 2017 WL 4340385 (S.D. Cal. Sept. 29, 2017).....13, 23

Gonzalez Torres v. U.S. Dep’t of Homeland Sec.,
No. 17-cv-1840, 2018 WL 1757668 (S.D. Cal. Apr. 12, 2018).....17

Hernandez v. Sessions,
872 F.3d 976 (9th Cir. 2017).....22

Inland Empire-Immigrant Youth Collective v. Duke,
No. 17-cv-2048, 2017 WL 5900061 (C.D. Cal. Nov. 20, 2017). Dkt. 61.....6, 7, 13, 23

INS v. Yang,
519 U.S. 26 (1996).....15

Johnson v. Williford,
682 F.2d 868 (9th Cir. 1985).....21

Judulang v. Holder,
565 U.S. 42 (2011).....11, 12

League of Wilderness Defs./Blue Mountains Biodiversity Project v. Connaughton,
752 F.3d 755 (9th Cir. 2014).....23

Lopez-Valenzuela v. Arpaio,
770 F.3d 772 (9th Cir. 2014).....16

Mathews v. Diaz,
426 U.S. 67 (1976).....16

TABLE OF AUTHORITIES *(continued)*

Page(s)

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

Mathews v. Eldridge,
424 U.S. 319 (1976).....17

McDonald v. Gonzales,
400 F.3d 684 (9th Cir. 2005).....15

Melendres v. Arpaio,
695 F. 3d 990 (9th Cir. 2012).....22, 23

Montes Bojorquez v. CBP,
No. 3:17-cv-00780-GPC-NLS, Dkt. 29-112

Morgan v. Heckler,
779 F.2d 544 (9th Cir. 1985).....20

Morrissey v. Brewer,
408 U.S. 471 (1972).....16

Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.,
463 U.S. 29 (1983).....11

Ms. L. v. ICE,
302 F. Supp. 3d 1149 (S.D. Cal. 2018)18, 19

Mukherjee v. INS,
793 F.2d 1006 (9th Cir. 1986).....20

NLRB v. Welcome-Am. Fertilizer Co.,
443 F.2d 19 (9th Cir. 1971).....15

Norsworthy v. Beard,
87 F. Supp. 3d 1164 (N.D. Cal. 2015)23

Nozzi v. Hous. Auth. of City of L.A.,
806 F.3d 1178 (9th Cir. 2015), *cert. denied*, 137 S. Ct. 52 (2016)16, 17

O’Brien v. Welty,
818 F.3d 920 (9th Cir. 2016).....19

Pinard v. Clatskanie Sch. Dist. 6J,
467 F.3d 755 (9th Cir. 2006).....19

Ramirez Medina v. U.S. Dep’t of Homeland Sec.,
No. 17-cv-218, 2017 WL 5176720 (W.D. Wash. Nov. 8, 2017).....11

TABLE OF AUTHORITIES (continued)

Page(s)

1		
2		
3	<i>Ranchers Cattlemen Action Legal Fund United Stockgrowers of Am. v. U.S. Dep't of</i>	
4	<i>Agric.</i> ,	
5	499 F.3d 1108 (9th Cir. 2007).....	11, 13
6	<i>Regents of the Univ. of Cal. v. DHS</i> ,	
7	908 F.3d 476 (9th Cir. 2018).....	2
8	<i>Regents of Univ. of Cal. v. U.S. Dep't of Homeland Sec.</i> ,	
9	No. 3:17-cv-05211-WHA, Dkt. 111	12
10	<i>Republic of the Philippines v. Marcos</i> ,	
11	862 F.2d 1355 (9th Cir. 1988).....	9
12	<i>Reyes-Melendez v. INS</i> ,	
13	342 F.3d 1001 (9th Cir. 2003).....	17
14	<i>Rodriguez v. Robbins</i> ,	
15	715 F.3d 1127 (9th Cir. 2013).....	24
16	<i>Salgado-Diaz v. Gonzales</i> ,	
17	395 F.3d 1158 (9th Cir. 2005).....	20, 21
18	<i>Sameena Inc. v. U.S. Air Force</i> ,	
19	147 F.3d 1148 (9th Cir. 1998).....	15
20	<i>Texas v. United States</i> ,	
21	809 F.3d 134 (5th Cir. 2015).....	15
22	<i>Torres v. DHS</i> ,	
23	2017 U.S. Dist. LEXIS 161406 (S.D. Cal. Sept. 29, 2017)	22
24	<i>Valle del Sol, Inc. v. Whiting</i> ,	
25	732 F.3d 1006 (9th Cir. 2013).....	24
26	<i>Vitarelli v. Seaton</i> ,	
27	359 U.S. 535 (1959).....	15
28	<i>Wilkie v. Robbins</i> ,	
	551 U.S. 537 (2007).....	19
	<i>Winter v. Nat'l Res. Def. Council, Inc.</i> ,	
	555 U.S. 7 (2008).....	9
	<i>Wolff v. McDonnell</i> ,	
	418 U.S. 539 (1974).....	18

TABLE OF AUTHORITIES *(continued)*

Page(s)

Zolotukhin v. Gonzales,
417 F.3d 1073 (9th Cir. 2005).....18

Statutes

5 U.S.C. § 706(2)(A).....11, 12

8 U.S.C. § 1182(a)(9)(B)–(C)23

Regulations

8 C.F.R. § 236.1(c)(8) (2017)6

Other Authorities

U.S. Citizenship & Immigration Servs., *Number of Form I-821D, Consideration of Deferred Action for Childhood Arrivals, by Fiscal Year, Quarter, Intake and Case Status* (Feb. 28, 2019),
https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/DACA_FY19_Q2_FEB_FINAL_Update.pdf.....3

I. INTRODUCTION

On May 15, 2018 this Court issued its Preliminary Injunction Order, enjoining Defendants from terminating Plaintiff Daniel Ramirez Medina’s DACA status and work authorization and from calling him a gang member or threat to public safety in any further proceedings. At that point, Mr. Ramirez believed he would be able to get back to living his life and working to support his son. But Defendants have now attempted to do again what this Court previously enjoined them from doing—vindictively terminate Mr. Ramirez’s DACA status. On December 19, 2018, Defendants arbitrarily and capriciously denied his most recent request to renew his DACA status, requests that are otherwise approved more than 99% of the time. In so doing, Defendants violated the letter and spirit of this Court’s Preliminary Injunction Order. Mr. Ramirez now brings this motion to remedy the government’s latest unlawful actions, and once again restore Mr. Ramirez’s DACA status until his claims can be litigated to conclusion.

In denying Mr. Ramirez’s DACA renewal, Defendants went to great lengths to attempt to skirt this Court’s Preliminary Injunction Order by making no express mention of the discredited allegations of gang membership and affiliation that they originally advanced in this action, and by not using the term “public safety.” But Defendants’ denial of Mr. Ramirez’s application based on his alleged “offense history” is nothing other than pretext. That “offense history” was already known to the government when it granted Mr. Ramirez’s initial DACA application *and* when it renewed his DACA in 2016. Defendants’ pretext is proven by, among other things, an internal USCIS email dated March 20, 2018, admitting that Mr. Ramirez has “no criminality” on his rap sheet and that “[t]here is NOT sufficient evidence to conclude this person is an EPS [“Egregious Public Safety”] concern.” Dkt. 144-1 (Mar. 20, 2018 USCIS Email) (capitalization in original).

Despite that admission, Defendants told this Court just weeks later that the government’s principal basis for attempting to revoke Mr. Ramirez’s DACA was its (knowing) falsehood that he was “a gang member, [or] has associated with gang members.” Dkt. 129, at 20:10–12. The present record presents even more compelling circumstances warranting immediate relief than the record that was before this Court when it entered the Preliminary Injunction Order. This Court should grant Mr. Ramirez’s Motion and enjoin Defendants from denying, terminating, or otherwise interfering with Mr.

1 Ramirez’s DACA status pending trial on the merits, and should order Defendants to (again) restore his
2 DACA and work authorization.

3 **II. BACKGROUND**

4 **A. The establishment and rescission of DACA**

5 On June 15, 2012, then-Secretary of Homeland Security Janet Napolitano issued a
6 memorandum establishing the DACA program (the “2012 DACA Memorandum”). Dkt. 144-4. Under
7 DACA, individuals who were brought to the United States as young children and meet certain specific
8 criteria may request deferred action for a period of two years, subject to renewal. In exchange,
9 applicants are required to provide the government with highly sensitive personal information, submit
10 to a rigorous background check, and pay a considerable fee. The 2012 DACA Memorandum explained
11 that DACA covers “certain young people who were brought to this country as children and know only
12 this country as home” and that the immigration laws are not “designed to remove productive young
13 people to countries where they may not have lived or even speak the language.” *Id.* at 1–2.

14 Like other forms of deferred action, DACA serves the government’s interests by allowing the
15 government to prioritize its resources and exercise discretion for its own convenience and to advance
16 sound policies. As the government has recognized, our nation “continue[s] to benefit . . . from the
17 contributions of those young people who have come forward and want nothing more than to contribute
18 to our country and our shared future.” Dkt. 144-3, at 2 (Secretary Johnson Letter).¹

19 **1. The DACA application and renewal process**

20 Before the Rescission Memorandum, when the government was still processing new requests
21 for deferred action under DACA, applicants were required to submit extensive documentation
22 establishing that they meet specific criteria. Dkt. 144-2 (“DACA FAQs”), at 9–15 (Q28–41). They
23 were also required to undergo a thorough background check, in which DHS reviewed each applicant’s
24

25
26 ¹ On September 5, 2017, Acting Secretary of Homeland Security Elaine Duke issued a memorandum rescinding the
27 DACA program (the “Rescission Memorandum”), announcing the government’s intention to terminate the DACA
28 program as of March 5, 2018. However, various nationwide preliminary injunctions and orders of vacatur—including
one that was upheld by the United States Court of Appeals for the Ninth Circuit, *see Regents of the Univ. of Cal. v. DHS*,
908 F.3d 476 (9th Cir. 2018), require the government to maintain DACA for existing DACA recipients on substantially
the same terms and conditions that existed prior to the Rescission Memorandum.

1 biometric and biographic information “against a variety of databases maintained by DHS and other
2 federal government agencies.” *Id.* at 7 (Q23).

3 The government uses the same criteria to evaluate renewal requests as it used to evaluate initial
4 applications for deferred action under DACA. *Id.* at 18 (Q51). Additionally, it requires that the renewal
5 applicant (1) has not departed the United States on or after August 15, 2012 without advance parole;
6 (2) has continuously resided in the United States since the applicant’s most recent DACA request was
7 approved; (3) has not been “convicted of a felony, a significant misdemeanor, or three or more
8 misdemeanors,” and (4) does not otherwise “pose a threat to national security or public safety.” *Id.*
9 Approximately 99% of adjudicated DACA renewal applications are approved.²

10 For DACA purposes, a “significant misdemeanor” is an offense for which the “maximum term
11 of imprisonment authorized” is “one year or less but greater than five days” and is either “an offense
12 of domestic violence; sexual abuse or exploitation; burglary; unlawful possession or use of a firearm;
13 drug distribution or trafficking; or, driving under the influence” or an offense for which the applicant
14 “was sentenced to time in custody of more than 90 days.” *Id.* at 22 (Q61). Minor traffic offenses,
15 “such as driving without a license,” are not considered misdemeanors for purposes of DACA. *Id.* at
16 23 (Q64). Additionally, if any information in the applicant’s background check “indicates that [the
17 applicant’s] presence in the United States threatens public safety or national security,” the applicant is
18 ineligible for DACA renewal absent “exceptional circumstances.” *Id.* at 23 (Q65). Indicators that an
19 individual poses a safety threat include “gang membership, participation in criminal activities, or
20 participation in activities that threaten the United States.” *Id.*

21 2. Limitations on denying an individual’s DACA renewal request

22 DHS’s “National Standard Operating Procedures” set forth detailed guidelines for “Notices of
23 Intent to Deny” (“NOID”) a DACA renewal request, though virtually all of these guidelines are
24 redacted. *See* Dkt. 144-7 (“DACA SOP”), at 106. Specifically, before denying a DACA renewal
25

26
27 ² U.S. Citizenship & Immigration Servs., *Number of Form I-821D, Consideration of Deferred Action for Childhood*
28 *Arrivals, by Fiscal Year, Quarter, Intake and Case Status* (Feb. 28, 2019),
[https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/
All%20Form%20Types/DACA/DACA_FY19_Q2_FEB_FINAL_Update.pdf](https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/DACA_FY19_Q2_FEB_FINAL_Update.pdf).

1 application, the government must prepare an NOID and provide the recipient with 33 days to respond.
2 *Id.* at 45 and Appendices E, J.

3 The DACA SOP also sets forth detailed guidelines for evaluating “issues of criminality, public
4 safety, and national security.” *Id.* at 82–97. It states that the USCIS Background Check Unit (“BCU”)
5 DACA Team is responsible for evaluating DACA applications that present “issues of criminality.” *Id.*
6 at 6. If the BCU DACA Team determines that an application raises issues of criminality, “processing
7 of the DACA request must be categorized as either EPS or non-EPS.” *Id.* at 94. The DACA SOP
8 defines EPS—which stands for “Egregious Public Safety Concern”—as “[a]ny case where routine
9 systems and background checks indicate that an individual is under investigation for, has been arrested
10 for (without disposition), or has been convicted of, a specified crime, including but not limited to,
11 murder, rape, sexual abuse of a minor, trafficking in firearms or explosives, or other crimes listed in
12 the November 7, 2011 [USCIS policy memorandum regarding the issuance of NTAs (“USCIS NTA
13 Memorandum”).” *Id.* at 8. If the “issues of criminality” presented in a DACA request are non-EPS,
14 the BCU DACA Team must “adjudicate Form I-821D, taking into account all issues of criminality.”
15 *Id.* at 95. If denial is warranted, “a denial for Form I-821D and Form I-765 will be issued, pending
16 supervisory review.” *Id.*

17 **B. Mr. Ramirez benefitted from his DACA status**

18 **1. Mr. Ramirez was twice granted DACA status**

19 In late 2013, Mr. Ramirez first applied for deferred action and work authorization pursuant to
20 DACA. Dkt. 78-15 ¶ 3. As part of this process, Mr. Ramirez provided the government with his birth
21 certificate, school records, and information about where he lived, and attended a biometrics
22 appointment so that USCIS could take his fingerprints and photographs. *Id.* Mr. Ramirez was granted
23 deferred action and work authorization in 2014. *Id.* ¶ 6. In 2016, Mr. Ramirez reapplied for DACA,
24 and was again granted deferred action and work authorization after being once again subject to rigorous
25 vetting. *Id.* ¶ 9. Mr. Ramirez was also subject to additional vetting in 2015, when USCIS conducted
26 an additional screening of all DACA beneficiaries. Dkt. 144-6, at 4 (USCIS Letter).

1 **2. Mr. Ramirez received many benefits from DACA**

2 DACA confers a wide range of benefits beyond deferred action, many of which Mr. Ramirez
3 received and took advantage of. Dkt. 78-15 ¶¶ 5–7. These benefits include work authorization,
4 eligibility for public benefits such as Social Security, retirement, and disability, and, under Washington
5 law, unemployment insurance, financial aid, and food assistance. Dkt. 144 ¶¶ 26–28. DACA also
6 allows beneficiaries access to other important benefits, enabling recipients to open bank accounts, start
7 businesses, purchase homes and cars, and conduct other aspects of daily life that are otherwise often
8 unavailable to them. *See id.* ¶ 29. Accordingly, denial of a DACA application or renewal request
9 implicates a broad range of valuable benefits that extend well beyond the immigration context.

10 **C. The government’s unlawful and arbitrary conduct**

11 **1. Mr. Ramirez’s unlawful arrest and detention**

12 Because this Court is familiar with the facts underlying Mr. Ramirez’s arrest and detention—
13 *see* Dkt. 133 (“Preliminary Injunction Order”)—he summarizes those facts only briefly again here.

14 On February 10, 2017, during an immigration raid targeting his father, a team of ICE agents
15 questioned Mr. Ramirez and, despite his valid work permit, brought him to a holding facility in
16 Tukwila, Washington. Dkt. 78-15 ¶¶ 11–17; *see also* Dkt. 93, at 25 (Form I-213). At the holding
17 facility, the ICE agents confiscated Mr. Ramirez’s work permit (which identified him as a DACA
18 recipient), fingerprinted him, and accessed his records, which revealed that Mr. Ramirez had no
19 criminal history, had twice been granted DACA status, and possessed valid employment authorization
20 through May 4, 2018. *See* Dkt. 78-15 ¶ 17. The ICE agents ignored Mr. Ramirez’s repeated
21 protestations regarding his work authorization. Dkt. 78-15 ¶¶ 15, 17.

22 The ICE agents further interrogated Mr. Ramirez, repeatedly asking him whether he was in a
23 gang or had ever known anyone who was gang member. Dkt. 78-15 ¶¶ 19–22. Each time he denied
24 any gang affiliation. *Id.* They also interrogated Mr. Ramirez about the “La Paz – BCS” tattoo on his
25 forearm, which refers to his birthplace in Baja California Sur. *Id.* ¶¶ 23–24. Mr. Ramirez repeatedly
26 told the ICE agents that the tattoo is not a gang tattoo, but they refused to believe him. *Id.* ¶ 25.

27 Mr. Ramirez was then transferred to the Northwest Detention Center, where he remained in
28 custody for the next 47 days. Dkt. 78-15 ¶ 27; Dkt. 78-23. Pursuant to an order of this Court, Mr.

1 Ramirez received a bond hearing in Immigration Court on March 28, 2017. *See* Dkt. 69, at 3. At the
2 bond hearing, the government did not offer any evidence of Mr. Ramirez’s supposed gang affiliation
3 and even conceded that Mr. Ramirez is not a danger to the community. Dkt. 122-1, at 31. The
4 Immigration Judge concluded that Mr. Ramirez is neither a flight risk nor a danger to the community.
5 Dkt. 144-11, at 1 (“Custody Order”); *see also* 8 C.F.R. § 236.1(c)(8) (2017). Mr. Ramirez was
6 therefore released on bond on March 29, 2017. Custody Order, at 1.

7 **2. The unlawful and arbitrary revocations of Mr. Ramirez’s DACA status**

8 Mr. Ramirez’s 2016 grant of DACA status and work authorization was to remain in effect until
9 May 4, 2018. Dkt. 144-8, at 1 (2016 Approval Notice). But as soon as the government unlawfully
10 arrested and detained Mr. Ramirez on February 10, 2017, it began a sustained campaign to strip his
11 DACA and keep it from him. Indeed, prior to this Court granting Mr. Ramirez’s first motion for a
12 preliminary injunction on May 15, 2018, the government had twice unlawfully revoked Mr. Ramirez’s
13 status based on false allegations of gang membership. Dkt. 122 (First Preliminary Injunction Motion).

14 First, on February 10, 2017, USCIS issued a Notice to Appear, alleging as the basis for removal
15 that Mr. Ramirez was unlawfully present in the United States. Dkt. 93, at 7–8 (“NTA”). One week
16 later, USCIS sent Mr. Ramirez a Notice of Action that stated that his deferred action and employment
17 authorization terminated “automatically” on February 10, 2017 and that no appeal or request to
18 reconsider could be filed. Dkt. 144-9, at 1 (“NOA”). The NOA contradicted provisions in the DACA
19 SOP that require DHS to provide DACA recipients with an opportunity to respond before their status
20 may be terminated. DACA SOP, at 136 and App’x I. It was this original revocation of Mr. Ramirez’s
21 DACA status and work authorization in February 2017 that precipitated the filing of the original
22 Complaint in this action, as well as the First Preliminary Injunction Motion.

23 While the First Preliminary Injunction Motion was pending, Mr. Ramirez’s DACA status and
24 work authorization were reinstated and extended to May 5, 2018 pursuant to a class-wide injunction
25 entered in *Inland Empire-Immigrant Youth Collective v. Duke*, No. 17-cv-2048, 2017 WL 5900061
26 (C.D. Cal. Nov. 20, 2017). Dkt. 61 (*Inland Empire Order*); Dkt. 144-12, at 1 (Reinstatement Notice).
27 However, on the same day the government purported to comply with the *Inland Empire Order* by
28 restoring Mr. Ramirez’s DACA status, it sent him a “Notice of Intent to Terminate” his just-restored

1 status. Dkt. 144-13, at 1 (“NOIT”). The stated basis for the issuance of the NOIT was the government’s
 2 continued, false insistence that Mr. Ramirez posed a risk to public safety because he allegedly was
 3 gang affiliated. *Id.*

4 But USCIS had determined just before issuing the April 3, 2018 NOIT—as demonstrated in a
 5 March 20, 2018 internal email—that Mr. Ramirez posed no threat:

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

11 Dkt. 144-1 (underlining added). Moreover, the government only produced this document to Mr.
 12 Ramirez in September 2018, after being compelled to do so by this Court. USCIS therefore ignored
 13 its own determination that Mr. Ramirez was not a gang member and issued an NOIT just two weeks
 14 later on the same false basis that Mr. Ramirez was a gang member.

15 3. The Court enjoins Defendants from terminating Mr. Ramirez’s DACA status

16 On May 15, 2018, this Court granted Mr. Ramirez’s First Preliminary Injunction Motion,
 17 ordering that “Defendants shall not terminate Plaintiff’s DACA status and work authorization pending
 18 a final decision by this Court on the merits of his claims,” and enjoining Defendant USCIS from
 19 “asserting, adopting, or relying in any proceedings on any statement or record made as of this date
 20 purporting to allege or establish that Mr. Ramirez is a gang member, gang affiliated, or a threat to
 21 public safety.” Dkt. 133. In doing so, this Court found that Mr. Ramirez was likely to succeed on the
 22 merits of the claims advanced in the Second Amended Complaint (“SAC”) because the government’s
 23 continued reliance on “unfounded allegations” of gang affiliation was arbitrary, capricious, and an
 24 abuse of discretion and also implicated Mr. Ramirez’s constitutional “right to an opportunity to be
 25 heard in a meaningful matter.” *Id.* at 16–21. The Court went on to state that, “[m]ost troubling to the
 26 Court, is the continued assertion that Mr. Ramirez is gang-affiliated, despite providing no evidence
 27 specific to Mr. Ramirez to the Immigration Court in connection with his administrative proceedings,
 28 and offering no evidence to this Court to support its assertion four months later.” *Id.* at 19.

1 What neither this Court nor Mr. Ramirez knew at that time was that USCIS had confirmed in
 2 its March 20, 2018 internal email that it knew “there is not sufficient evidence to conclude [Mr.
 3 Ramirez] is currently a known or suspected gang member.” Dkt. 144-1. Nevertheless, at the May 1,
 4 2018 hearing, the government affirmed to this Court that there is no “record that establishes, one way
 5 or the other, with absolute conclusiveness, about Mr. Ramirez’s gang affiliations or lack thereof.” Dkt.
 6 129 at 21:4–7. But the government had just concluded that “[t]here is NOT sufficient evidence to
 7 conclude this person is an EPS concern.” Dkt. 144-1.

8 **4. The government’s unlawful and arbitrary denial of Mr. Ramirez’s May 2018**
 9 **DACA renewal request**

10 On May 21, 2018, Mr. Ramirez timely applied to renew his DACA status and work
 11 authorization. Declaration of Nathaniel Bach (“Bach Decl.”) Ex. A (Fourth Supplemental Declaration
 12 of Daniel Ramirez (“Ramirez Decl.”)), ¶ 2. On September 26, 2018, the government issued a Notice
 13 of Intent to Deny that request notwithstanding the Preliminary Injunction Order. Bach Decl. Ex. B
 14 (“the NOID”). Mr. Ramirez responded on October 24, 2018 in a letter describing why a denial of his
 15 renewal request on the grounds articulated in the NOID would violate the Preliminary Injunction and
 16 the APA. *Id.* Ex. C. Nevertheless, the government formally denied Mr. Ramirez’s renewal request on
 17 December 19, 2018. Dkt. 144-14 (“Decision”). The government stated in the Decision that it reviewed
 18 Mr. Ramirez’s NOID response and “determined that the response does not sufficiently overcome the
 19 discretionary factors outlined the NOID,” apparently because Mr. Ramirez did not submit with his
 20 response “any evidence that is not already on the record” apart from his own declaration. *Id.* at 1.

21 The Decision provides four inadequate reasons in support of the government’s conclusion that
 22 Mr. Ramirez no longer “warrant[s] a favorable exercise of prosecutorial discretion.” First, that ICE is
 23 “actively pursuing” Mr. Ramirez’s removal (*id.* at 1), notwithstanding that the fact that a noncitizen
 24 has been ordered removed from the United States based on mere unlawful presence is not sufficient in
 25 and of itself for termination of DACA status, *e.g.*, 2012 DACA Memorandum, at 2; DACA FAQs, at
 26 4 (Q7). Second, that Mr. Ramirez was reported for having sexual intercourse with his son’s mother in
 27 2013 (resulting in the conception of his son), when he was 20 years old and his son’s mother was 17
 28 years old, even though no charges were filed, the relationship was consensual, and both sets of parents

1 approved of the relationship and the pregnancy that resulted therefrom. Decision, at 1–2. Third, that
 2 Mr. Ramirez was cited for possession of a small quantity of marijuana in Oregon in 2014. *Id.* at 2.
 3 And fourth, that Mr. Ramirez has not fully paid off certain fines he incurred for minor traffic violations.
 4 *Id.* at 2–3. The government’s reliance on this last ground is especially egregious, given that it is the
 5 government’s own wrongful denial of Mr. Ramirez’s work authorization that has, in large measure,
 6 prevented him from paying his traffic fines. Ramirez Decl. ¶ 5.

7 III. LEGAL STANDARD

8 A court may issue a preliminary injunction to “preserv[e] the status quo”—such as Mr.
 9 Ramirez’s repeatedly granted DACA status—“pending a determination of the action on the merits.”
 10 *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1060 (9th Cir. 2014) (quotation omitted). A
 11 preliminary injunction is warranted where the plaintiff establishes that (1) he is “likely to succeed on
 12 the merits,” (2) he is “likely to suffer irreparable harm in the absence of preliminary relief,” (3) “the
 13 balance of equities” tips in his favor, and (4) an “injunction is in the public interest.” *All. for the Wild*
 14 *Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (quoting *Winter v. Nat’l Res. Def. Council,*
 15 *Inc.*, 555 U.S. 7, 20 (2008)). Under the Ninth Circuit’s sliding scale approach, “serious questions going
 16 to the merits and a balance of hardships that tips sharply towards the plaintiff can support issuance of
 17 a preliminary injunction, so long as” the irreparable injury and public interest elements are satisfied.
 18 *All. for the Wild Rockies*, 632 F.3d at 1135 (internal quotation marks omitted). In other words, “[i]f
 19 the balance of harm tips decidedly toward [Mr. Ramirez], then [he] need not show as robust a likelihood
 20 of success on the merits as when the balance tips less decidedly.” *Republic of the Philippines v.*
 21 *Marcos*, 862 F.2d 1355, 1362 (9th Cir. 1988) (internal quotation marks omitted).

22 IV. ARGUMENT

23 The government’s denial of Mr. Ramirez’s DACA renewal application violates both the letter
 24 and the spirit of the Preliminary Injunction that the Court already entered, and warrants issuance of a
 25 new injunction to remedy Defendants’ latest unlawful salvo in their campaign against Mr. Ramirez.

26 A. Defendants violated the First Preliminary Injunction

27 This Court’s Preliminary Injunction Order enjoined Defendants from “terminat[ing] Plaintiff’s
 28 DACA status and work authorization pending a final decision by this Court on the merits of his claims,”

1 or “asserting, adopting, or relying in any proceedings on any statement or record made as of this date
2 purporting to allege or establish that Mr. Ramirez is . . . a threat to public safety.” Dkt 133, at 23. In
3 issuing its Decision denying Mr. Ramirez’s routine DACA renewal request on pretextual public safety-
4 related reasons, Defendants have violated this Court’s order.

5 The Decision states that the government is “not assert[ing], adopt[ing], or rely[ing] on any
6 statement or record made as of May 15, 2018, purporting to allege or establish” that Mr. Ramirez is “a
7 gang member, gang affiliated, or a threat to public safety” to justify denying his renewal request. *Id.*
8 at 1. But the government is unquestionably relying on statements and records dated prior to May 15,
9 2018 that it views as relevant to whether Mr. Ramirez is a threat to public safety. Indeed, three of the
10 four justifications described in the Decision attempt to portray Mr. Ramirez as a public safety risk.
11 And the Decision cites the California Penal Code, the criminal U.S. Code, and references five traffic
12 safety-related violations in support of its stated conclusion that he “do[es] not merit deferred action
13 under the DACA policy.” Because the substantive bases cited in the Decision are fundamentally public
14 safety-related, and were part of the record that existed long before May 15, 2018, the Decision violates
15 the Preliminary Injunction Order.

16 **B. Mr. Ramirez Is Entitled to a Second Preliminary Injunction**

17 In addition to the government’s violation of the Preliminary Injunction Order, its unlawful
18 denial of Mr. Ramirez’s DACA renewal supports issuance of a second preliminary injunction because
19 its actions violated the APA in numerous ways. Each of the preliminary injunction factors weighs in
20 favor of granting the additional relief requested herein.

21 **1. Mr. Ramirez is likely to succeed on the merits of his claims**

22 Turning to the traditional preliminary injunction factors—the same factors that warranted the
23 first Preliminary Injunction Order—Mr. Ramirez is likely to establish that the government’s denial of
24 his DACA renewal violated the APA in several ways. Specifically, the government’s conduct was: (1)
25 arbitrary, capricious, and an abuse of discretion, TAC ¶¶ 91–101; (2) contrary to its own internal
26 operating procedures and therefore in violation of the *Accardi* doctrine, *id.* ¶¶ 97, 100; (3) in violation
27 of Mr. Ramirez’s rights under the Due Process Clause, *id.* ¶¶ 102–115; and (4) in violation of Mr.
28 Ramirez’s rights under the First Amendment; *id.* ¶¶ 116–118. Mr. Ramirez is also likely to establish

1 that the government should be equitably estopped from terminating his DACA status and work
2 authorization. *Id.* ¶¶ 119–126.

3 **a. The denial of Mr. Ramirez’s May 2018 DACA renewal request was**
4 **arbitrary and capricious**

5 The APA “sets forth the procedures by which federal agencies are accountable to the public
6 and their actions subject to review by the courts.” *Franklin v. Massachusetts*, 505 U.S. 788, 796 (1992).
7 To ensure that agency actions are reasonable and lawful, a court must conduct a “thorough, probing,
8 in-depth review” of the agency’s reasoning and a “searching and careful” inquiry into the factual
9 underpinnings of its decision. *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 415–16
10 (1971). A court “shall” set aside agency action if it is “arbitrary, capricious, an abuse of discretion, or
11 otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A); *see also Butte Env’tl. Council v. U.S.*
12 *Army Corps of Eng’rs*, 620 F.3d 936, 945 (9th Cir. 2010).

13 Agency action is “arbitrary and capricious” if the agency “[1] relied on factors which Congress
14 has not intended it to consider, [2] entirely failed to consider an important aspect of the problem, [3]
15 offered an explanation for its decision that runs counter to the evidence before the agency, or [4] is so
16 implausible that it could not be ascribed to a difference in view or the product of agency expertise.”
17 *Ranchers Cattlemen Action Legal Fund United Stockgrowers of Am. v. U.S. Dep’t of Agric.*, 499 F.3d
18 1108, 1115 (9th Cir. 2007) (quoting *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463
19 U.S. 29, 43 (1983)).

20 Contrary to the government’s assertion in this case “that it is allowed to withdraw DACA at
21 any time for no reason at all,” *Ramirez Medina v. U.S. Dep’t of Homeland Sec.*, No. 17-cv-218, 2017
22 WL 5176720, at *9 (W.D. Wash. Nov. 8, 2017), the APA requires the government to “exercise its
23 discretion in a reasoned manner” and make discretionary decisions “based on non-arbitrary, ‘relevant
24 factors,’” *Judulang v. Holder*, 565 U.S. 42, 53, 55 (2011). Indeed, the Supreme Court emphasized that,
25 even where agencies exercise discretion, “courts retain a role, and an important one, in ensuring that
26 agencies have engaged in reasoned decisionmaking.” *Id.* at 53. In such circumstances, courts “must
27 assess, among other matters, ‘whether the decision was based on a consideration of the relevant factors
28 and whether there has been a clear error of judgment.’” *Id.* (citation and internal punctuation omitted).

1 That task “involves examining the reasons for agency decisions—or, as the case may be, the absence
2 of such reasons.” *Id.* (citing *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (noting
3 “the requirement that an agency provide reasoned explanation for its action”).

4 The Supreme Court’s decision in *Judulang* is especially instructive. There, the Court
5 considered a Board of Immigration Appeals (“BIA”) rule governing eligibility for suspension of
6 deportation. 565 U.S. at 46–47. The Court made clear that, although the relief was ultimately within
7 the agency’s discretion, “the BIA’s approach must be tied, even if loosely, to the purposes of the
8 immigration laws or the appropriate operation of the immigration system.” *Id.* at 55. The Court
9 emphasized that “[a] method for disfavoring deportable aliens . . . that neither focuses on nor relates to
10 an alien’s fitness to remain in the country—is arbitrary and capricious.” *Id.* Ultimately, the Court
11 invalidated the BIA rule because it was based on “a matter irrelevant to the alien’s fitness to reside in
12 this country,” and concluded that the BIA therefore “has failed to exercise its discretion in a reasoned
13 manner.” *Id.*

14 Here, the government’s denial of Mr. Ramirez’s request to renew his DACA status—requests
15 that are otherwise approved 99% of the time—was arbitrary, capricious, and unlawful for multiple
16 reasons.³ *See* 5 U.S.C. § 706(2)(A).

17 **(i) Defendants’ reliance on unlawful presence was arbitrary and**
18 **capricious**

19 The Decision cites as one justification for the denial of Mr. Ramirez’s renewal request that an
20 “Immigration Judge ordered [Mr. Ramirez] removed on January 17, 2018,” and that “ICE considers
21 [Mr. Ramirez] an enforcement priority and continues to actively pursue [Mr. Ramirez’s] removal.”
22 Decision, at 1. This is the same rationale that was cited in the NTA. NTA, at 1.

23 Mr. Ramirez was ordered removed on the ground that he is unlawfully present in the United
24 States. *See* Dkt. 124-1 (Jan. 17, 2018 Tr. of Oral Decision of I.J.), at 1. But lack of lawful immigration

25 ³ Other courts have held that the government is violating its own procedures in revoking DACA. *See Regents of*
26 *Univ. of Cal. v. U.S. Dep’t of Homeland Sec.*, No. 3:17-cv-05211-WHA, Dkt. 111, Mot. For Prelim. Inj. (N.D. Cal. Nov.
27 1, 2017) (and related cases); *Coyotl*, 261 F. Supp. 3d at 1343 (enjoining decision to terminate Plaintiff’s DACA status and
28 noting that government agencies “failed to present any evidence that they complied with their own administrative
processes and procedures with regard to the termination of Plaintiff’s DACA status”); *Montes Bojorquez v. CBP*, No.
3:17-cv-00780-GPC-NLS, Dkt. 29-1, Mot. for Prelim. Inj. at 22 (S.D. Cal. July 17, 2017) (alleging that DHS unlawfully
expelled plaintiff from United States and then “use[d] their own wrongful conduct as a predicate” to revoke his DACA
status).

1 status is a *predicate* to DACA eligibility and common among every DACA recipient. Moreover,
 2 DACA is now and always has been available to individuals subject to orders of removal. *See* DACA
 3 FAQs, at 4 (Q7) (“All individuals who believe they meet the guidelines, including those in removal
 4 proceedings, [or] with a final removal order . . . may affirmatively request consideration of DACA
 5 from USCIS . . .”). Therefore, Mr. Ramirez’s unlawful presence, and the order of removal based on
 6 that ground, “does not provide a reasoned basis” for terminating his DACA. *Inland Empire*, 2017 WL
 7 5900061, at *6 (internal quotation marks omitted); *see id.* at *7 (“[G]iven that *all* DACA recipients are
 8 necessarily removable due to their unauthorized presence, ‘[t]he agency’s reliance on an NTA citing
 9 [Plaintiff’s] presence without admission simply fails to explain, much less justify, the agency’s decision
 10 to reverse course and terminate his DACA.’” (citation omitted)): *cf. Gonzalez Torres v. U.S. Dep’t of*
 11 *Homeland Sec. (Gonzalez Torres I)*, No. 17-cv-1840, 2017 WL 4340385, at *6 (S.D. Cal. Sept. 29,
 12 2017). For this reason alone, Mr. Ramirez is likely to succeed on the merits of his APA claim.

13 (ii) **Defendants’ remaining justifications are not supported by the**
 14 **record**

15 The remaining three bases for the Decision are also insufficient, because they cannot be
 16 reconciled with the evidence before DHS. Agency action is arbitrary and capricious if the
 17 contemporaneous reasons underlying the decision “run[] counter to the evidence before the agency.”
 18 *Ranchers Cattlemen*, 499 F.3d at 1115 (internal quotation marks omitted). In March 2018, a member
 19 of the BCU DACA Team summarized Mr. Ramirez’s “criminal history” as follows: “[n]o criminality
 20 on rap sheet.” This clear concession—made just two months before Mr. Ramirez timely submitted his
 21 request to renew his DACA status and work authorization—cannot be squared with the conclusion
 22 presented in the Decision that Mr. Ramirez’s “offense history” justifies denying his renewal request.
 23 Decision at 3. Mr. Ramirez’s supposed “offense history” consists of minor, non-violent infractions,
 24 none of which the government views as disqualifying for purposes of DACA renewal. *See* DACA
 25 FAQs, at 23 (Q64) (minor traffic offenses, “such as driving without a license,” are not considered
 26 misdemeanors for purposes of DACA).

27 The conclusion implicit in the reasoning presented in the Decision—that Mr. Ramirez poses a
 28 risk to public safety—is also inconsistent with numerous prior conclusions reached by the government.

1 Indeed, it flies in the face of the determination made by a member of the BCU DACA Team in March
2 2018, approximately two months before Mr. Ramirez submitted his renewal request, that Mr. Ramirez
3 has “[n]o criminality on [his] rap sheet.” Dkt. 144-1. The government has also confirmed on *three*
4 *prior separate occasions* that Mr. Ramirez does not pose a threat to public safety—first, in 2014, when
5 his initial DACA application was approved; then in 2015, when USCIS conducted an additional
6 screening of all DACA beneficiaries; and again in 2016, when he reapplied for DACA. Dkt. 78-15
7 ¶¶ 6, 9; Dkt. 144-6, at 4. This finding was also confirmed by the government’s lawyer on March 28,
8 2017, when he stated in immigration court that the government had no evidence that Mr. Ramirez was
9 a threat to public safety. Dkt 122-1, at 31. Two different immigration judges have reached the same
10 conclusion. Dkt. 144-11, at 1; 124-1, at 14.

11 Moreover, even if this supposed “offense history” could justify denying Mr. Ramirez’s renewal
12 request, the government has offered no explanation for why it reversed course, after previously
13 reviewing the offense history and determining that he was eligible and merited the discretionary
14 benefit. Indeed, the government did not cite these bases until September 2018 when it issued the NOID
15 stating its intent to terminate Mr. Ramirez’s renewal request, even though the government expressly
16 stated in the NOID and the Decision that it was made aware of the facts described therein during Mr.
17 Ramirez’s “removal proceedings,” which occurred in January 2018. NOID, at 1–2; Decision, at 1–2.
18 If there were valid bases on which to terminate or deny Mr. Ramirez’s DACA, there were numerous
19 other opportunities when the government should have cited those bases, including the April 2018 NOIT
20 or at the May 1, 2018 hearing. The government cannot, consistent with the APA, concoct a shifting
21 story as to why Mr. Ramirez no longer warrants favorable consideration under DACA.

22 The government’s conclusion—*i.e.*, that Mr. Ramirez’s “offense history” warrants denying his
23 renewal request—runs counter to history and to the evidence before it, and therefore violates the APA.
24 *See, e.g., Abdur-Rahman v. Napolitano*, 814 F. Supp. 2d 1098, 1110 (W.D. Wash. 2011) (revocation
25 of approved petition to support noncitizen’s permanent resident status was “arbitrary and capricious”
26 where “agency failed to articulate a rational explanation for its decision”).

1 **b. Defendants violated the APA by failing to follow their own internal**
 2 **procedures**

3 Defendants also acted unlawfully—violating the *Accardi* doctrine—because they failed to
 4 follow their own internal procedures when denying Mr. Ramirez’s renewal request. *See Church of*
 5 *Scientology of Cal. v. United States*, 920 F.2d 1481, 1487 (9th Cir. 1990) (citing *United States ex rel.*
 6 *Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954)). “Pursuant to the *Accardi* doctrine, an
 7 administrative agency is required to adhere to its own internal operating procedures.” *Id.* In the Ninth
 8 Circuit, the *Accardi* doctrine “extends beyond formal regulations,” to include “internal operating
 9 procedures,” “[h]andbook[s],” “policy statement[s],” “Order[s],” “Standards,” “Directive[s],” “Weekly
 10 Bulletin[s],” and unpromulgated rules documenting “usual practice.” *Alcaraz v. INS*, 384 F.3d 1150,
 11 1162 (9th Cir. 2004) (internal quotation marks omitted; citing cases).⁴ As discussed above, DACA
 12 operates under strict guidelines, and the determinations at issue here are nondiscretionary. *Texas v.*
 13 *United States*, 809 F.3d 134, 172–73 (5th Cir. 2015); *Coyotl*, 261 F. Supp. 3d at 1340.

14 The government violated the *Accardi* doctrine when it denied Mr. Ramirez’s renewal request
 15 in December 2018. A DACA request that presents “issues of criminality” must be reviewed and
 16 adjudicated by the BCU DACA Team. DACA SOP, at 33, 95–97. As noted, the Decision concludes
 17 that Mr. Ramirez no longer warrants favorable consideration under DACA based on his alleged
 18 criminal or “offense” history. Decision, at 3. This conclusion violated the internal guidelines
 19 governing the processing of DACA applications for three reasons.

20 First, it contravened the conclusion reached by the BCU DACA Team in March 2018 regarding
 21 Mr. Ramirez’s lack of criminal history. The internal operating procedures do not provide for a process
 22 by which determinations of the BCU DACA Team with respect to an applicant’s criminal history may

23 ⁴ Indeed, *Accardi* itself was about the exercise of discretion in immigration removal proceedings. *Accardi*, 347 U.S.
 24 at 261. And courts have applied *Accardi* and its principles in a wide variety of administrative and civil enforcement
 25 contexts. *See, e.g., INS v. Yang*, 519 U.S. 26, 32 (1996) (“Though the agency’s discretion is unfettered at the outset, if it
 26 announces and follows-by rule or by settled course of adjudication-a general policy by which its exercise of discretion
 27 will be governed, an irrational departure from that policy (as opposed to an avowed alteration of it) could constitute action
 28 that must be overturned as ‘arbitrary, capricious, [or] an abuse of discretion’ within the meaning of the [APA]”);
McDonald v. Gonzales, 400 F.3d 684, 686 & n.5 (9th Cir. 2005) (noting that “INS is obligated to follow its own policy”
 when investigating potential immigration violations); *Sameena Inc. v. U.S. Air Force*, 147 F.3d 1148, 1153 (9th Cir.
 1998) (decision to debar government contractors); *NLRB v. Welcome-Am. Fertilizer Co.*, 443 F.2d 19, 20 (9th Cir. 1971)
 (NLRB enforcement action); *see also Vitarelli v. Seaton*, 359 U.S. 535, 539–40 (1959) (termination of employment for
 security reasons); *cf. Coyotl v. Kelly*, 261 F. Supp. 3d 1328, 1340 (N.D. Ga. 2017).

1 be overridden.⁵ *See* DACA SOP, at 33 (“All DACA requestors with . . . criminality concerns will be
 2 processed by the BCU DACA Team . . .”). Second, there is no evidence whatsoever in the
 3 administrative record that the BCU DACA Team actually adjudicated Mr. Ramirez’s May 2018
 4 renewal request—as was required here—much less that it reached a conclusion contrary to its March
 5 2018 determination that Mr. Ramirez had “[n]o criminality on his rap sheet.” Dkt 144-1. Third, there
 6 is no evidence in the administrative record that supervisory review was obtained prior to denying Mr.
 7 Ramirez’s renewal request, even though supervisory review is required in all cases presenting issues
 8 of criminality that are non-EPS. *See* DACA SOP, at 95 (in non-EPS cases, “[i]f an approval is not
 9 warranted, a denial . . . will be issued, pending supervisory review”). The Decision is signed by “Loren
 10 K. Miller” and states that USCIS has “consulted with ICE” in connection with Mr. Ramirez’s DACA
 11 renewal request. Decision, at 3–4. But it does not specify who adjudicated Mr. Ramirez’s renewal
 12 request, or whether a supervisor reviewed and approved of the Decision. These failures violated DHS’s
 13 internal guidelines, and, therefore, the *Accardi* doctrine.

14 **c. Defendants violated the APA by disregarding Mr. Ramirez’s Due Process**
 15 **rights**

16 Defendants also violated the APA by depriving Mr. Ramirez of constitutionally protected
 17 liberty and property interests—including important public benefits and the ability to legally work in
 18 the United States—without due process of law. The Due Process Clause of the Fifth Amendment
 19 “protect[s] every person within the nation’s borders from deprivation of life, liberty or property without
 20 due process of law. Even one whose presence in this country is unlawful, involuntary, or transitory is
 21 entitled to that constitutional protection.” *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772, 781 (9th Cir.
 22 2014) (en banc) (quoting *Mathews v. Diaz*, 426 U.S. 67, 77 (1976)) (internal quotation marks omitted).

23 “[T]he first question in any case in which a violation of procedural due process is alleged is
 24 whether the plaintiffs have a protected property or liberty interest and, if so, the extent or scope of that
 25 interest.” *Nozzi v. Hous. Auth. of City of L.A.*, 806 F.3d 1178, 1190–91 (9th Cir. 2015), *cert. denied*,
 26 137 S. Ct. 52 (2016). The liberty interests protected by the Due Process Clause include the ability to
 27 work, raise a family, and “form the other enduring attachments of normal life.” *Morrissey v. Brewer*,

28 ⁵ Although the internal operating procedures do provide for supervisory review under certain circumstances, for the reasons explained below, there is no evidence that Defendants obtained supervisory review prior to issuing the Decision.

1 408 U.S. 471, 482 (1972). And the property interests protected by the Due Process Clause “extend
2 beyond tangible property and include anything to which a plaintiff has a ‘legitimate claim of
3 entitlement.’” *Nozzi*, 806 F.3d at 1191 (quoting *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564,
4 576–77 (1972)). An individual possesses a protected property if he or she has a reasonable expectation
5 of entitlement to that interest. *Id.*

6 Here, it is undisputed that Mr. Ramirez enjoys significant liberty and property interests in his
7 DACA status. Indeed, this Court expressly held in the Preliminary Injunction Order that DACA
8 recipients like Mr. Ramirez “enjoy[] significant liberty and property interests, including the right to
9 obtain lawful employment authorization and the right to be considered lawfully present in the United
10 States” once the “objective and non-discretionary” criteria set forth in the 2012 DACA Memorandum
11 are satisfied. Preliminary Injunction Order at 20 (quoting *Gonzalez Torres v. U.S. Dep’t of Homeland*
12 *Sec.*, No. 17-cv-1840, 2018 WL 1757668, at *9 (S.D. Cal. Apr. 12, 2018) (*Gonzalez Torres II*)); *see*
13 *also* DACA FAQs (Q9) (“[I]f an individual meets the guidelines for DACA, CBP or ICE should
14 exercise their discretion on a case-by-case basis to prevent qualifying individuals from being
15 apprehended, placed into removal proceedings, or removed.”). The government determined not once—
16 but three times—that Mr. Ramirez satisfied these criteria. Accordingly, he has a legitimate claim of
17 entitlement to his DACA status and the benefits that status conferred.

18 The denial of Mr. Ramirez’s renewal request in December 2018 fails the *Mathews v. Eldridge*
19 test, which requires the government to ensure than an individual at risk of losing a protected interest be
20 given “the opportunity to be heard at a meaningful time and in a meaningful manner.” 424 U.S. 319,
21 333 (1976) (internal quotation omitted). This Court has already held that the government’s now-
22 abandoned determination that Mr. Ramirez “is in a gang or gang-affiliated, without supporting
23 evidence,” and admission that Mr. Ramirez’s “DACA status will be terminated for that reason,
24 implicates Mr. Ramirez’s right to an opportunity to be heard in a ‘meaningful manner.’” Preliminary
25 Injunction Order at 20. In failing to give fair and impartial consideration to Mr. Ramirez’s 2018 DACA
26 renewal request, Defendants “abandon[ed] [their] role as a neutral fact-finder” and deprived Mr.
27 Ramirez of his due process right to have his renewal request evaluated in a meaningful and impartial
28 manner. *Reyes-Melendez v. INS*, 342 F.3d 1001, 1006 (9th Cir. 2003) (noting that a neutral arbiter is

1 “one of the most basic due process protections” (quoting *Castro-Cortez v. INS*, 239 F.3d 1037, 1049
2 (9th Cir. 2001)); *see, e.g., id.* at 1006–07 (holding that a noncitizen’s due process rights were violated
3 during deportation proceedings because the record “indisputably demonstrate[d] that the [immigration
4 judge] was hostile towards [the noncitizen] and judged his behavior as being morally bankrupt”);
5 *Zolotukhin v. Gonzales*, 417 F.3d 1073, 1075 (9th Cir. 2005) (noting that the Due Process Clause is
6 violated if a decisionmaker “improperly prejudge[s]” a case). At the very least, the government was
7 required to provide sufficient procedural safeguards to make sure that Mr. Ramirez’s renewal
8 application received fair consideration. They did the opposite.

9 Relatedly, the government violated Mr. Ramirez’s substantive due process rights by repeatedly
10 reaching arbitrary determinations regarding his DACA status and work authorization. “The touchstone
11 of due process is protection of the individual against arbitrary action of the government.” *Cty. of*
12 *Sacramento v. Lewis*, 523 U.S. 833, 845 (1998) (quoting *Wolff v. McDonnell*, 418 U.S. 539, 558
13 (1974)). Substantive due process is violated by governmental conduct that is “arbitrary, or conscience
14 shocking, in a constitutional sense.” *Ms. L. v. ICE*, 302 F. Supp. 3d 1149, 1166 (S.D. Cal. 2018). The
15 government first arbitrarily revoked Mr. Ramirez’s DACA status without advance notice, and then
16 continued to rely on unsubstantiated allegations of gang membership despite being confronted with
17 evidence to the contrary and conceding that its allegations were uncorroborated. Now that the
18 government has been enjoined from expressly citing such allegations in its dealings with Mr. Ramirez,
19 it relies on different bases in the NOID and Decision, solely to punish Mr. Ramirez. It shocks the
20 conscience for the federal government to take such retaliatory action. Not only have the underlying
21 facts been known to the government for a substantial period of time, but in no other known case would
22 similar facts warrant a denial of DACA. The government is motivated by animus and spite toward Mr.
23 Ramirez, not by any legitimate purpose. *See Ms. L.*, 302 F. Supp. 3d at 1166 (“[S]ubstantive due
24 process protects against government power arbitrarily and oppressively exercised.”).

25 In sum, Mr. Ramirez is likely to succeed on his claims that the government impermissibly
26 deprived him of liberty and property interests entitled to protection under the Due Process Clause, and
27 thereby violated the APA by wrongfully depriving him of his DACA status. Mr. Ramirez is also likely
28 to succeed on his substantive due process claim. *Id.* (substantive due process rights are violated by

1 government conduct that is so “egregious . . . [and] outrageous, that it may fairly be said to shock the
2 contemporary conscience.” (quoting *Cty. of Sacramento*, 523 U.S. 833, 847 n.8)).

3 **d. Defendants violated Mr. Ramirez’s First Amendment rights**

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

14 Defendants’ denial of Mr. Ramirez’s request to renew his DACA status and work authorization
15 violates the First Amendment’s prohibition against retaliation for protected speech. First, Mr. Ramirez
16 has engaged in constitutionally protected speech in connection with this case by, among other things,
17 filing his complaint and then the First Preliminary Injunction Motion. *Alpha Energy Savers, Inc. v.*
18 *Hansen*, 381 F.3d 917, 927 (9th Cir. 2004) (“Litigation seeking to expose . . . wrongful governmental
19 activity is, by its very nature, a matter of public concern” that is protected by the First Amendment);
20 *see also id.* at 926 (“[P]roceedings before a judicial . . . body constitute a matter of public concern if
21 they bring to light potential or actual discrimination, corruption, or other wrongful conduct by
22 government agencies or officials.”). Second, approximately seven months after Mr. Ramirez filed the
23 First Preliminary Injunction Motion and four months after this Court granted that motion, the
24 government informed Mr. Ramirez that it intended to deny his most recent renewal request. Because
25 the Preliminary Injunction Order explicitly prohibits the government from terminating Mr. Ramirez’s
26 DACA, the government appears to have viewed the otherwise-routine DACA renewal process as its
27 first opportunity to once again try to revoke Mr. Ramirez’s status. This timing, when viewed in light
28 of Defendants’ history of mistreating Mr. Ramirez and considering the fact that virtually all DACA

1 renewal requests are granted, supports an inference of a retaliation. *Coszalter v. City of Salem*, 320
2 F.3d 968, 977 (9th Cir. 2003) (“Depending on the circumstances, three to eight months is easily within
3 a time range that can support an inference of retaliation.”). Indeed, it is hard to imagine a different
4 rationale for the government’s unconscionable treatment of Mr. Ramirez.

5 **e. Equitable estoppel precludes Defendants from denying Mr. Ramirez’s**
6 **renewal request**

7 Finally, Mr. Ramirez is likely to establish that Defendants should be estopped from denying his
8 DACA renewal because the government has engaged in “affirmative misconduct.” *Salgado-Diaz v.*
9 *Gonzales*, 395 F.3d 1158, 1165 (9th Cir. 2005) (“The government in immigration cases may be subject
10 to equitable estoppel if it has engaged in affirmative misconduct.”). Specifically, equitable estoppel
11 applies when the government “made a knowing false representation or concealment of material facts
12 to a party ignorant of the facts, with the intention that the other party rely on it, where the other party
13 actually and detrimentally relies on it” and its “wrongful act will cause a serious injustice, and the
14 public’s interest will not suffer undue damage by imposition of the liability.” *Mukherjee v. INS*, 793
15 F.2d 1006, 1008–09 (9th Cir. 1986) (quoting *Morgan v. Heckler*, 779 F.2d 544, 545 (9th Cir. 1985)).

16 Each of these criteria are satisfied. First, the government made numerous false representations
17 to this Court and to the immigration judges who presided over Mr. Ramirez’s removal proceedings
18 about his supposed gang affiliation. *See* Preliminary Injunction Order at 19 (“Most troubling to the
19 Court, is the continued assertion that Mr. Ramirez is gang-affiliated, despite providing no evidence
20 specific to Mr. Ramirez to the Immigration Court in connection with his administrative proceedings,
21 and offering no evidence to this Court to support its assertions four months later.”). The government,
22 moreover, concealed its intent to rely on the bases cited in the NOID and the Decision by principally
23 relying on the false allegations of gang membership in the NOIT it transmitted to Mr. Ramirez in April
24 2018 even though the facts underlying the NOID and the Decision had been known to the government
25 for months if not years.

26 Second, Mr. Ramirez has, on numerous occasions, relied to his detriment on the government’s
27 prior focus on gang affiliation as the principal basis for its position with respect to his DACA status.
28 He did so when he submitted evidence during his removal proceedings that the government now

1 contends warrants denying his renewal request.⁶ He also did so in the briefing submitted in connection
2 with the First Preliminary Injunction Motion. Had Mr. Ramirez known that the government viewed
3 his past minor infractions as disqualifying under DACA, he could have sought preliminary relief in this
4 Court. He also could have tried to pay down the outstanding balances on his traffic tickets. But
5 Defendants intentionally kept Mr. Ramirez in the dark as to their plan to shift their focus from gang
6 affiliation to the information learned during Mr. Ramirez's removal proceedings. Indeed, the
7 government reiterated its singular focus on the allegations of gang affiliation as late as the May 1, 2018
8 hearing on the First Preliminary Injunction Motion:

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

13 MR. ROBINS: Essentially, yes, Your Honor.

14 Dkt. 130-1, at 25 (Transcript of May 1, 2018 Hearing).

15 Mr. Ramirez planned his future based on the government's representations in this regard,
16 including by submitting his DACA renewal application in good faith and paying the renewal fee. The
17 injustice to Mr. Ramirez arising out of Defendants' misconduct plainly outweighs any possible harm
18 to the public interest that restoration of his DACA status and work authorization would cause. Mr.
19 Ramirez has lived in the United States since he was ten years old, has gone to school and worked here,
20 and is the father of a United States citizen for whom he wishes to provide, but the government's
21 retaliatory campaign and false representations have hampered his ability to do so. *See Johnson v.*
22 *Williford*, 682 F.2d 868, 871 (9th Cir. 1985) (the government's "deliberate" but mistaken release of a
23 federal prisoner on parole did not "seriously threaten the public interest" in light of the prisoner's
24 "subsequent successful reintegration into the community"). For all of these reasons, Mr. Ramirez is
25 likely to succeed on the merits of his claims.

26
27 ⁶ At a minimum, Defendants should be estopped from relying on the facts they learned at Mr. Ramirez's removal
28 proceedings because those proceedings were "set in motion" by the government's knowing misrepresentations about Mr.
Ramirez's gang affiliation. *Salgado-Diaz*, 395 F.3d at 1165 (equitable estoppel barred the government from relying on
"events its own misconduct set in motion").

2. Mr. Ramirez has suffered and continues to suffer irreparable harm

It is undisputed—and this Court has already recognized—that the denial of Mr. Ramirez’s DACA status causes him irreparable harm, weighing heavily in favor of provisional relief. This irreparable harm arises out of the government’s violations of the APA and Mr. Ramirez’s rights under the United States Constitution, as well as the terms of the Preliminary Injunction. As this Court recognized in the Preliminary Injunction Order:

The Ninth Circuit has held that “loss of opportunity to pursue [one’s] chosen profession” constitutes irreparable harm. *Enyart v. National Conference of Bar Exam’rs, Inc.*, 630 F.3d 1153, 1165 (9th Cir. 2011); *see also Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 543, 105 S. Ct. 1487, 84 L. Ed. 2d 494 (1985) (“We have frequently recognized the severity of depriving a person of the means of livelihood.”). Moreover, the Ninth Circuit has specifically found irreparable harm in a similar case involving DACA recipients. *See Arizona Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014) (finding irreparable harm where professional opportunities are limited). Furthermore, Mr. Ramirez has demonstrated that his earnings are used to support his family, Dkt. #35-1 at ¶¶ 8, 10 and 29, which also suggests irreparable harm. *See Torres v. DHS*, 2017 U.S. Dist. LEXIS 161406 at *19 (S.D. Cal. Sept. 29, 2017) (“The potential harm caused by Defendants’ conduct includes the loss of employment, a core benefit under DACA. The deprivation of employment impacts Plaintiff’s ability to financially provide for himself and his family.”).

Preliminary Injunction Order at 21.

The government’s recent denial of Mr. Ramirez’s renewal request has caused Mr. Ramirez further irreparable harm in terms of his financial livelihood. Because he lacks authorization to work in the United States, he remains unable to earn an income. This has greatly interfered with his ability to provide for himself and his family, and made it all but impossible to pay off the traffic fines that the government now claims justify denying his DACA. Ramirez Decl. ¶ 5.

The denial of Mr. Ramirez’s renewal request has harmed him irreparably in several other ways. For example, as discussed above, the government’s arbitrary denial of Mr. Ramirez’s renewal request violated his First Amendment and Fifth Amendment due process rights. *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017) (“It is well established that the deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’” (quoting *Melendres v. Arpaio*, 695 F. 3d 990, 1002 (9th Cir. 2012))). As with the unlawfully detained immigrants in *Hernandez* and *Melendres*, “it follows inexorably from [the] conclusion that the government’s [action is] likely unconstitutional” that Mr. Ramirez “ha[s] also carried [his] burden as to irreparable harm.” *Hernandez*, 872 F.3d at 995.

1 Additionally, Mr. Ramirez is currently accruing time for unlawful presence, which may affect
 2 his ability to pursue legal presence or status in the United States through other avenues in the future.
 3 *See* DACA FAQs, at 19 (Q52); 8 U.S.C. § 1182(a)(9)(B)–(C). Mr. Ramirez is also being denied access
 4 to DACA’s many public benefits, such as paying into Social Security, retirement, and disability
 5 accounts, and the ability to take advantage of unemployment insurance, financial aid, and food
 6 assistance. *See* TAC ¶ 28. And should he not recover the benefits that DACA status affords, he will
 7 again suffer additional harm by separation from family, as he did when he was wrongfully detained.
 8 These practical injuries are continuing irreparable harms that justify injunctive relief. *See Ariz. Dream*
 9 *Act Coal.*, 757 F.3d at 1068; *Inland Empire*, 2017 WL 5900061, at *9–10; *Gonzalez Torres*, 2017 WL
 10 4340385, at *6. Mr. Ramirez is, moreover, suffering emotional and psychological injury caused by
 11 Defendants’ conduct. Ramirez Decl. ¶ 4. These injuries constitute irreparable harm warranting
 12 provisional relief. *See, e.g., Chalk v. U.S. Dist. Court Cent. Dist. of Cal.*, 840 F.2d 701, 710 (9th Cir.
 13 1988); *Norsworthy v. Beard*, 87 F. Supp. 3d 1164, 1192 (N.D. Cal. 2015).

14 **3. The balance of equities and public interest weigh heavily in favor of provisional**
 15 **relief**

16 The final two elements of the preliminary injunction test—the balance of the equities and the
 17 public interest—merge when the government is a party. *See League of Wilderness Defs./Blue*
 18 *Mountains Biodiversity Project v. Connaughton*, 752 F.3d 755, 766 (9th Cir. 2014). Here, these factors
 19 weigh overwhelmingly in favor of provisional relief. *See Inland Empire*, 2017 WL 5900061, at *10.
 20 Indeed, this Court has previously held that these factors support the entry of a preliminary injunction:

21 The Court acknowledges that there is a strong interest to be found in the effective and
 22 efficient enforcement of the nation’s immigration laws, as Defendants assert in this case.
 23 Dkt. #123 at 12. However, the Court should not conclude that this interest outweighs
 24 the ongoing harm that Plaintiff is experiencing as a result of losing his DACA and EAD,
 especially when he has received DACA benefits twice, there is no demonstrable
 evidence that he is of particular risk, and there are several nationwide injunctions
 preventing the wind down of DACA.

25 Furthermore, public interest exists in ensuring that the government complies with its
 26 obligations under the law and follows its own procedures. *Melendres v. Arpaio*, 695
 F.3d 990, 1002 (9th Cir. 2012) (“[I]t is always in the public interest to prevent the
 violation of a party’s constitutional rights.”).

27 Preliminary Injunction Order, at 22.

1 This reasoning applies with even greater force to the present record. Indeed, the government’s
 2 failure to follow the law in denying Mr. Ramirez’s renewal request violates not only the APA and Mr.
 3 Ramirez’s constitutional rights, but also the terms of the Preliminary Injunction. *See Rodriguez v.*
 4 *Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013) (“[Government] cannot suffer harm from an injunction
 5 that merely ends an unlawful practice.”); *Ariz. Dream Act Coal. v. Brewer*, 855 F.3d 957, 978 (9th Cir.
 6 2017) (“[I]t is clear that it would not be equitable or in the public’s interest to allow the state to violate
 7 the requirements of federal law, especially when there are no adequate remedies available.” (quoting
 8 *Valle del Sol, Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013))). There is also still “no
 9 demonstrable evidence” in the record that Mr. Ramirez “is of particular risk.” Indeed, the only
 10 additional evidence in the record that bears on this question is the BCU DACA Team email that
 11 confirms there is “[n]o criminality on [Mr. Ramirez’s] rap sheet.” Dkt. 144-1.

12 Accordingly, the balance of the equities and the public interest factors tip even more heavily in
 13 favor of provisional relief than they did on the prior record.

14 **V. CONCLUSION**

15 For the reasons set forth above, Mr. Ramirez respectfully requests that the Court grant the
 16 Motion and thereby order the government to restore his DACA status and work authorization pending
 17 a decision on the merits of his claims.

1
2 DATED: June 7, 2019
3 Seattle, Washington

4 Respectfully submitted,

5 /s/ Theodore J. Boutrous Jr.
6 GIBSON, DUNN & CRUTCHER LLP
7 THEODORE J. BOUTROUS JR. (CA SBN 132099), *pro hac vice*
8 ETHAN D. DETTMER (CA SBN 196046), *pro hac vice*
9 KATHERINE M. MARQUART (CA SBN 248043), *pro hac vice*
10 NATHANIEL L. BACH (CA SBN 246518), *pro hac vice*

11 /s/ Mark D. Rosenbaum
12 PUBLIC COUNSEL
13 MARK D. ROSENBAUM (CA SBN 59940), *pro hac vice*
14 JUDY LONDON (CA SBN 149431), *pro hac vice*
15 KATHRYN A. EIDMANN (CA SBN 268053), *pro hac vice*

16 /s/ Luis Cortes Romero
17 IMMIGRANT ADVOCACY & LITIGATION CENTER, PLLC
18 LUIS CORTES ROMERO (CA SBN 310852), *pro hac vice*

19 Attorneys for Plaintiff
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on June 7, 2019, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document should automatically be served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Theodore J. Boutrous, Jr.