

1 Jeffrey M. Davidson (Bar No. 248620)
2 Alan Bersin (Bar No. 63874)
3 COVINGTON & BURLING LLP
4 One Front Street, 35th Floor
5 San Francisco, CA 94111-5356
6 Telephone: + 1 (415) 591-6000
7 Facsimile: + 1 (415) 591-6091
8 Email: jdavidson@cov.com,
9 abersin@cov.com

6 Lanny A. Breuer
7 Mark H. Lynch
8 Alexander A. Berengaut
9 Megan A. Crowley
10 Ashley Anguas Nyquist
11 Ivano M. Ventresca
12 (*pro hac vice* applications forthcoming)
13 COVINGTON & BURLING LLP
14 One CityCenter
15 850 Tenth Street, NW
16 Washington, DC 20001-4956
17 Telephone: + 1 (202) 662-6000
18 Facsimile: +1 (202) 662-6291
19 E-mail: lbreuer@cov.com, mlynch@cov.com,
20 aberengaut@cov.com, mcrowley@cov.com,
21 anyquist@cov.com, iventresca@cov.com

Attorneys for Plaintiffs
THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA and JANET NAPOLITANO,
in her official capacity as President of the
University of California

[Additional Counsel Listed on Next Page]

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA and JANET NAPOLITANO,
*in her official capacity as President of the
University of California,*

Plaintiffs,

v.

U.S. DEPARTMENT OF HOMELAND
SECURITY and ELAINE DUKE, *in her
official capacity as Acting Secretary of the
Department of Homeland Security,*

Defendants.

Charles F. Robinson (Bar No. 113197)
Margaret Wu (Bar No. 184167)
Julia Friedlander (Bar No. 165767)
Sonya Sanchez (Bar No. 247541)
Norman Hamill (Bar No. 154272)
Harpreet Chahal (Bar No. 233268)
Michael Troncoso (Bar No. 221180)
University of California
Office of the General Counsel
1111 Franklin Street, 8th Floor
Oakland, CA 94607-5200
Telephone: + 1 (510) 987-9800
Facsimile: + 1 (510) 987-9757
Email: charles.robinson@ucop.edu

Civil Case No.:

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

ADDITIONAL COUNSEL OF RECORD

Mónica Ramírez Almadani (Bar No. 234893)
COVINGTON & BURLING LLP
1999 Avenue of the Stars
Los Angeles, CA 90067-4643
Telephone: + 1 (424) 332-4800
Facsimile: + (424) 332-4749
Email: mralmadani@cov.com

Erika Douglas (Bar No. 314531)
COVINGTON & BURLING LLP
333 Twin Dolphin Drive, Suite 700
Redwood Shores, CA 94061-1418
Telephone: + 1 (650) 632-4700
Facsimile: + 1 (650) 632-4800
Email: edouglas@cov.com

Attorneys for Plaintiffs THE REGENTS OF THE UNIVERSITY OF CALIFORNIA and JANET NAPOLITANO, in her official capacity as President of the University of California

1 Plaintiffs The Regents of the University of California (“UC” or “the University”), on its own
2 behalf and on behalf of all students currently enrolled at the University, and Janet Napolitano, in her
3 official capacity as President of the University of California (together “Plaintiffs”), bring this action for
4 declaratory and injunctive relief against the Department of Homeland Security (“DHS”) and Acting
5 Secretary of Homeland Security, Elaine Duke (together, “Defendants”), and allege as follows:

6 INTRODUCTION

7 1. This lawsuit, brought under the Due Process Clause of the Fifth Amendment to the
8 United States Constitution and the Administrative Procedure Act (“APA”), 5 U.S.C. § 706, challenges
9 Defendants’ unlawful decision to rescind the Deferred Action for Childhood Arrivals (“DACA”)
10 program, which protected from deportation nearly 800,000 individuals brought to this country as
11 children, known as Dreamers. Under DACA, the Dreamers, who came to the United States through no
12 choice of their own, who have clean records, and who have lived continuously in the United States since
13 2007, were permitted to live, work, and study in this country without fear of deportation. The United
14 States, and the University, have benefited enormously from the presence of the Dreamers, accomplished
15 young men and women who are our students, and colleagues, and neighbors. They are Americans, a
16 fact that Defendants’ precipitous decision cannot change.

17 2. As a result of Defendants’ actions, the Dreamers face expulsion from the only country
18 that they call home, based on nothing more than unreasoned executive whim. The University faces the
19 loss of vital members of its community, students and employees. It is hard to imagine a decision less
20 reasoned, more damaging, or undertaken with less care. As explained below, Defendants’ capricious
21 rescission of the DACA program violates both the procedural and substantive requirements of the APA,
22 as well as the Due Process Clause of the Fifth Amendment. Accordingly, Defendants’ unconstitutional,
23 unjust, and unlawful action must be set aside.

24 3. On June 15, 2012, former Secretary of Homeland Security Janet Napolitano announced
25 that individuals who arrived in the United States as children and met certain criteria, and who otherwise
26 satisfied DHS’s exercise of discretion, could apply for deferred action for two-year periods, subject to
27 renewal. *See* Memorandum from Janet Napolitano, Sec’y of Homeland Security, to Alejandro
28 Mayorkas, Director, U.S. Citizenship and Immigration Servs. et al., Exercising Prosecutorial Discretion

1 With Respect to Individuals Who Came to the United States as Children (June 15, 2012) (“DACA
2 Memorandum”). DACA allowed these individuals to live, study, and work in the United States without
3 fear that they could be arrested and deported at any time. Because of the program, DACA recipients
4 were able to pursue opportunities in higher education, to more readily obtain driver’s licenses and access
5 lines of credit, to obtain jobs and access to certain Social Security and Medicare benefits, and to
6 contribute to their communities and American society in countless ways.

7 4. The University directly benefited from the DACA program, in its capacities as educator
8 and employer. UC has approximately 4,000 undocumented students, a substantial number of whom are
9 DACA recipients. Many of its staff members are also DACA recipients. These individuals make
10 important contributions to University life, expanding the intellectual vitality of the school, filling crucial
11 roles as medical residents, research assistants, and student government leaders, and increasing the
12 diversity of the community.

13 5. Over the past five years, DACA recipients have structured their lives—and the University
14 has made significant investments—on the government’s express assurances that if they self-identified,
15 registered with federal law enforcement agencies, and passed an extensive background investigation,
16 they would be shielded from deportation and allowed to work in the United States for renewable two-
17 year periods. Yet despite the substantial and well-founded reliance that these individuals and the
18 University placed in the continuation of the DACA program, on September 5, 2017, Defendants
19 suddenly and unilaterally rescinded it. *See* Ex. A, Memorandum on Rescission Of Deferred Action For
20 Childhood Arrivals (Sept. 5, 2017) (hereinafter the “Rescission”).

21 6. The Rescission, which renders DACA recipients once more subject to deportation, has
22 profound consequences for the University and its students. As a result of Defendants’ actions, DACA
23 recipients face the loss of their livelihood, education, and country. The University and all of its students
24 will lose the contributions of valued colleagues and employees. The University also will lose
25 intellectual capital and productivity, as DACA recipients are deprived of the work authorizations needed
26 to serve in the professional roles in which both they and the University have so heavily invested.

27 7. In the Rescission, Defendants offered no reasoned basis for their cancellation of DACA,
28 instead merely pointing to the purported illegality of another program known as Deferred Action for

1 Parents of Americans and Lawful Permanent Residents (“DAPA”), and stating that in light of the Fifth
2 Circuit’s conclusion that DAPA is unlawful, “it is clear that [DACA] should be terminated.” As
3 explained below, rescinding DACA on this specious basis was procedurally and substantively invalid
4 under the APA and violated the Due Process Clause of the Fifth Amendment.

5 8. Agency action is invalid under the APA if it is “arbitrary, capricious, an abuse of
6 discretion, or otherwise not in accordance with law,” or if it is taken “without observance of procedure
7 required by law.” 5 U.S.C. § 706(2). To survive judicial review under the APA, an agency must
8 “articulate a satisfactory explanation for its action including a ‘rational connection between the facts
9 found and the choice made.’” *Motor Vehicle Mfrs. Ass’n of the U.S., Inc. v. State Farm Mut. Auto. Ins.*
10 *Co.*, 463 U.S. 29, 43 (1983). In determining whether an agency has complied with this requirement, a
11 court must conduct a “thorough, probing, in-depth review” of the agency’s reasoning and a “searching
12 and careful” inquiry into the factual underpinnings of the agency’s decision. *Citizens to Preserve*
13 *Overton Park, Inc. v. Volpe*, 401 U.S. 402, 415–16 (1971). Here, in multiple respects, Defendants failed
14 to “articulate a satisfactory explanation” for their action that would enable a court to conclude that the
15 decision was “the product of reasoned decisionmaking.” *State Farm*, 463 U.S. at 52.

16 9. As an initial matter, Defendants’ reliance on the purported illegality of DAPA is an
17 entirely insufficient basis on which to terminate DACA. DAPA is a separate program from DACA.
18 The two programs were governed by different sets of rules, applied to different individuals, and
19 conferred different benefits. Therefore, the alleged illegality of DAPA does not justify the rescission of
20 DACA, and Defendants’ failure to recognize the many differences between the programs renders their
21 decision unreasonable.

22 10. Because the Rescission is based on an incorrect legal premise—the purported illegality of
23 DACA—it cannot survive judicial review under the APA. *See, e.g., Massachusetts v. EPA*, 549 U.S.
24 497, 532 (2007) (holding that action was unlawful under the APA because agency based its decision on
25 incorrect legal conclusion); *Safe Air For Everyone v. EPA*, 488 F.3d 1088, 1101 (9th Cir. 2007)
26 (“Because that flawed premise is fundamental to EPA’s determination . . . EPA’s outcome on those
27 statutory interpretation questions is arbitrary, capricious, or otherwise not in accordance with law.”).

1 11. Despite Defendants’ conclusory assertion that DACA “has the same legal and
2 constitutional defects” as DAPA, no court has held that DACA is unlawful. Instead, DHS has
3 previously concluded that programs like DACA are a lawful exercise of the Executive Branch’s broad
4 statutory authority to administer and enforce the Immigration and Nationality Act, 8 U.S.C. § 1101, *et*
5 *seq.* See Brief for Petitioners, *United States v. Texas*, 2016 WL 836758 (2016) (No. 15-674). Similarly,
6 the Department of Justice’s Office of Legal Counsel (“OLC”)—whose legal advice is binding on the
7 Executive Branch—provided a thoughtful and nuanced analysis of DAPA in 2014, concluding that
8 DAPA, as well as DACA, was a lawful exercise of the Executive Branch’s prosecutorial discretion.
9 Dep’t of Homeland Sec.’s Auth. to Prioritize Removal of Certain Aliens Unlawfully Present in the
10 United States & to Defer Removal of Others, 2014 WL 10788677 (O.L.C. Nov. 19, 2014).

11 12. The Rescission fails to acknowledge—let alone explain—the government’s departure
12 from its own prior interpretations of the law. Indeed, DHS vigorously defended the legality of DAPA in
13 the Supreme Court less than two years ago. See Brief for Petitioners, *supra*. Yet in making the
14 unfounded assertion that DACA is illegal for the same reasons that DAPA is illegal, Defendants neither
15 addressed the compelling arguments set forth in DHS’s own brief before the Supreme Court and in
16 OLC’s 2014 Opinion, nor offered a reasonable explanation for why their current view of the law is
17 superior to the view they and OLC previously espoused. Those failures, standing alone, are enough to
18 render their decision unlawful under the APA.

19 13. Defendants compound the irrationality of their decision by failing to acknowledge the
20 profound reliance interests implicated by DACA and the hundreds of thousands of individuals,
21 employers, and universities who will be substantially harmed by the termination of the program. The
22 Supreme Court has emphasized that the presence of serious reliance interests requires an agency to
23 proffer a “more substantial justification” than otherwise would be required when the agency changes
24 course. See *Perez v. Mortg. Bankers Ass’n*, 135 S. Ct. 1199, 1209 (2015); *FCC v. Fox Television*
25 *Stations*, 556 U.S. 502, 515 (2009). Here, Defendants entirely failed to comply with that directive.

26 14. Defendants did not analyze the actual costs and benefits of allowing DACA recipients to
27 live and work in this country, nor did they acknowledge the manifold benefits that have resulted from
28 the program or the harm that institutions like the University—as well as its students—would suffer as a

1 result of the Rescission. By failing to consider these factors and the interests at stake, Defendants have
2 failed to satisfy the APA's requirement of reasoned decision-making.

3 15. The Rescission also should be set aside because it is procedurally invalid. By prohibiting
4 DHS from granting advance parole or renewing recipients' DACA status after October 5, 2017, the
5 Rescission circumscribes DHS's discretion and therefore constitutes a substantive rule. *See W.C. v.*
6 *Bowen*, 807 F.2d 1502, 1505 (9th Cir. 1987), *opinion amended on denial of reh'g*, 819 F.2d 237 (9th
7 Cir. 1987) ("Rules which substantially limit an agency's discretion are generally substantive rules.").
8 Additionally, in contrast to the case-by-case assessment of individual applicants provided under DACA,
9 the Rescission is a categorical rule, which applies to all DACA recipients. This too underscores the
10 substantive nature of the Rescission, which is subject to the full range of the APA's rulemaking
11 requirements, including the notice-and-comment requirement of 5 U.S.C. § 553. *See Paulsen v.*
12 *Daniels*, 413 F.3d 999, 1003-04 (9th Cir. 2005) (holding that Bureau of Prisons "plainly violated the
13 APA" by promulgating a rule that barred category of prisoners from relief without notice). Defendants'
14 failure to abide by these mandatory procedural requirements renders their action unlawful.

15 16. Finally, in rescinding DACA, Defendants violated the Due Process Clause of the United
16 States Constitution by failing to provide the University with any process before depriving it of the value
17 of the public resources it invested in DACA recipients, and the benefits flowing from DACA recipients'
18 contributions to the University. More fundamentally, they failed to provide DACA recipients with any
19 process before depriving them of their work authorizations and DACA status, and the benefits that flow
20 from that status.

21 THE PARTIES

22 17. Plaintiff The Regents of the University of California is a California public corporation,
23 authorized and empowered to administer a public trust known as the University of California, pursuant
24 to Article IX, Section 9, subdivisions (a) and (f) of the California Constitution. Its principal place of
25 business is in Oakland, Alameda County, California. The University brings this complaint on behalf of
26 itself and on behalf of all students currently enrolled at the University. Approximately 4,000
27 undocumented students are enrolled at the University, a substantial number of whom are DACA
28 recipients. Some of these recipients are also employed by the University.

1 **BACKGROUND**

2 **A. The DACA Program**

3 25. On June 15, 2012, the Secretary of Homeland Security Janet Napolitano announced that
4 individuals who arrived in the United States as children and met certain criteria could apply for deferred
5 action for two-year periods, subject to renewal. *See* DACA Memorandum. In establishing the program,
6 the Secretary elected to extend deferred action to “certain young people who were brought to this
7 country as children and know only this country as home.” *Id.* The Secretary emphasized that federal
8 immigration laws are “not designed . . . to remove productive young people to countries where they may
9 not have lived or even speak the language. Indeed, many of these young people have already
10 contributed to our country in significant ways.” *Id.* This program is known as Deferred Action for
11 Childhood Arrivals (“DACA”).

12 26. Individuals were eligible for the program if they (1) came to the United States when they
13 were under the age of sixteen; (2) continuously resided in the United States since June 15, 2007, and
14 were present in the United States on June 15, 2012, and on the date they requested DACA; (3) were
15 currently in school, had graduated from high school, had obtained a general education development
16 certificate, or were an honorably discharged veteran of the Coast Guard or Armed Forces of the United
17 States; (4) had not been convicted of a felony, a significant misdemeanor, or three or more other
18 misdemeanors, and otherwise did not pose a threat to national security or public safety; (5) did not have
19 lawful immigration status on June 15, 2012; and (6) were under the age of 31 as of June 15, 2012. *See*
20 *id.*; *see also* Ex. B, U.S. Citizenship & Immigration Servs.: Consideration of Deferred Action for
21 Childhood Arrivals Process (Aug. 26, 2017) (hereinafter “USCIS FAQs”). Individuals who met these
22 criteria were then eligible for an exercise of prosecutorial discretion, following an individualized review
23 of their applications. *See* DACA Memorandum.

24 27. When they applied for admission to the program, DACA recipients were required to
25 disclose sensitive, personal information to Defendants, including their lack of lawful immigration status
26 as of June 15, 2012, their date of initial entry into the United States, their country of birth, their current
27 and previous mailing addresses, and other contact information. *See* USCIS Form I-821D; USCIS Form
28 I-821D Instructions.

1 28. Continuing their longstanding practice with respect to deferred-action applications,
2 Defendants repeatedly promised DACA applicants that the information they submitted as part of their
3 applications would not be used for civil immigration enforcement purposes against DACA applicants or
4 their families. *See* USCIS FAQs; Form I-821D Instructions. Because only individuals who might be
5 subject to removal proceedings would apply for DACA, this promise was necessary for individuals to
6 submit applications without fear that the Executive Branch was using DACA as a way to find and
7 remove undocumented immigrants.

8 29. Individuals who received deferred action under DACA were not subject to removal for a
9 period of two years, subject to renewal. *See* DACA Memorandum.

10 30. DACA recipients also were eligible for work authorizations that allowed them to work
11 legally in the United States, pursuant to a long-standing federal regulation. *See id.*; 8 C.F.R. §
12 274a.12(c)(14) (providing that “an alien who has been granted deferred action” may obtain work
13 authorization upon demonstrating economic necessity); USCIS FAQs (“Under existing regulations, an
14 individual whose case has been deferred is eligible to receive employment authorization for the period
15 of deferred action, provided he or she can demonstrate ‘an economic necessity for employment.’”). An
16 individual’s work authorization expires at the same time as his or her DACA status and could be
17 renewed upon a renewal of DACA status.

18 31. Individuals with DACA status were “not considered to be unlawfully present during the
19 period in which deferred action [was] in effect.” USCIS FAQs.

20 32. Since the program was first introduced in 2012, nearly 800,000 individuals received
21 DACA status. This includes an estimated 242,339 residents of the State of California. *See* Number of I-
22 821D, Consideration of Deferred Action for Childhood Arrivals by Fiscal Year, Quarter, Intake,
23 Biometrics and Case Status: 2012-2017 (Mar. 31, 2017); Carolyn Jones, California Colleges Undaunted
24 by Trump’s Decision to Phase out DACA, EDSOURCE (Sept. 1, 2017),
25 <https://edsources.org/2017/california-colleges-undaunted-by-trumps-threat-to-end-daca/586746>.

26 ***B. The Many Benefits of DACA***

27 33. As noted above, DACA recipients have contributed in innumerable ways to the
28 intellectual and social fabric of the University.

1 34. As an institution whose core mission is serving the interests of the State of California, the
2 University seeks “to achieve diversity among its student bodies and among its employees.” *See*
3 Academic Senate of the Univ. of Cal., *Regents Policy 4400: Policy of University of California Diversity*
4 *Statement*, UNIV. OF CAL.: BOARD OF REGENTS, [http://regents.universityofcalifornia.edu/](http://regents.universityofcalifornia.edu/governance/policies/4400.html)
5 [governance/policies/4400.html](http://regents.universityofcalifornia.edu/governance/policies/4400.html). The University recognizes the importance of diversity to its academic
6 mission, as it allows “students and faculty [to] learn to interact effectively with each other, preparing
7 them to participate in an increasingly complex and pluralistic society.” *Id.* The educational experience
8 of all University students is fuller and more enriching when ideas are “born and nurtured in a diverse
9 community.” *Id.* DACA students at the University are an integral part of that community. Their talent,
10 perspectives, and experiences are invaluable contributions to University life.

11 35. DACA recipients also make significant contributions to University life in their role as
12 employees. They work at UC campuses and in UC medical centers as teaching assistants, research
13 assistants, post-docs, and health care providers. DACA recipients often possess valuable foreign
14 language skills. By allowing DACA recipients to work lawfully, DACA moved recipients out of the
15 informal economy, increasing the pool of talent from which UC could fill positions at the University.

16 36. Additional DACA recipients who are enrolled as students support themselves and cover a
17 portion of their tuition through their part-time work for the University. For many of these students,
18 DACA work authorization plays a significant role in their ability to attend UC and continue each year
19 with their chosen program of study.

20 37. The University has invested considerable resources in recruiting and retaining these
21 individuals—as students and employees. It has made scarce enrollment space available to these students
22 on the basis of their individual achievements. It also has invested substantial time, financial aid,
23 research dollars, housing benefits, and other resources in them on the expectation that these students will
24 complete their course of study and become productive members of the communities in which the
25 University operates, and other communities throughout the nation. The University has significant
26 interests in retaining this wealth of talent and in continuing to enjoy the many benefits of their
27 participation in University life.

1 38. Furthermore, by allowing recipients to receive deferred action and obtain work
2 authorization, DACA opened myriad opportunities to them. As noted above, DACA recipients became
3 eligible for federal work authorization, which significantly improved their opportunities for employment
4 and higher paying jobs. Under the program, DACA recipients received social security numbers and
5 therefore were able to access credit more easily. DACA also enabled recipients to obtain driver's
6 licenses in a number of states where they otherwise could not. It also protected these individuals' right
7 to travel freely by making them eligible to receive "advance parole," which allowed them to travel
8 abroad temporarily for humanitarian, educational, or employment purposes, and to return to the United
9 States lawfully. *See* 8 C.F.R. § 212.5(f); USCIS FAQs.

10 ***C. Defendants Unlawfully Rescind DACA***

11 39. As recently as February 20, 2017, Defendants had reaffirmed the administration's
12 commitment to DACA, *see* Memorandum from John Kelly, Sec'y of Homeland Security, Enforcement
13 of the Immigration Laws to Serve the National Interest, at 2 (Feb. 20 2017), and up until September 5,
14 2017, Defendants had continued to approve DACA requests and renewals. Despite President Trump's
15 claim that DACA recipients "shouldn't be very worried" and that the Administration would treat DACA
16 recipients "with great heart," on September 5, 2017, Defendants announced that they were rescinding
17 the program. *See* Transcript: ABC News anchor David Muir interviews President Trump, ABC NEWS
18 (Jan. 25, 2017) [http://abcnews.go.com/Politics/transcript-abc-news-anchor-david-muir-interviews-](http://abcnews.go.com/Politics/transcript-abc-news-anchor-david-muir-interviews-president/story?id=45047602)
19 [president/story?id=45047602](http://abcnews.go.com/Politics/transcript-abc-news-anchor-david-muir-interviews-president/story?id=45047602); *see also* Madeline Conway, Trump Tells Dreamers To "Rest Easy,"
20 Politico.com (Apr. 21, 2017), [http://www.politico.com/story/2017/04/21/trump-dreamers-rest-easy-](http://www.politico.com/story/2017/04/21/trump-dreamers-rest-easy-immigration-237463)
21 [immigration-237463](http://www.politico.com/story/2017/04/21/trump-dreamers-rest-easy-immigration-237463).

22 40. Defendants announced their decision on the same day as a "deadline" imposed by ten
23 states that threatened to sue the Trump administration if DACA were not rescinded. *See* Letter from
24 Gov. Abbott to U.S. Att'y General Sessions (June 29, 2017). The Rescission expressly states that this
25 threat—rather than any reasoned evaluation of the legality and merits of the program—provoked the
26 decision to terminate DACA.

27 41. Prior to DHS's issuance of the Rescission, Attorney General Jeff Sessions held a press
28 conference in which he asserted that "[o]ur collective wisdom is that the policy is vulnerable to the same

1 legal and constitutional challenges that the courts recognized with respect to the DAPA program.” *See*
2 Ex. C, Attorney General Sessions Delivers Remarks On DACA (Sept. 5, 2017),
3 <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-daca> (“Press
4 Conference”). Similarly, a September 4, 2017 letter from the Attorney General to Acting Secretary of
5 DHS Duke reiterated that DACA “was effectuated . . . without proper statutory authority” and “was an
6 unconstitutional exercise of authority by the Executive Branch.” *See* Ex. D, Letter from Att’y General
7 Sessions to Acting Sec’y of DHS Duke (Sept. 4, 2017). The Attorney General also noted the potential
8 of litigation from several states and that DACA was “likely” to be enjoined in that yet-to-be-filed
9 litigation.

10 42. In addition, in his press conference Attorney General Sessions alleged, without offering
11 any evidence, that DACA had “denied jobs to hundreds of thousands of Americans by allowing those
12 same jobs to go to illegal aliens.” He also made the specious claim that DACA “contributed to a surge
13 of unaccompanied minors on the southern border that yielded terrible humanitarian consequences.” *See*
14 Press Conference. That claim is facially false. DACA by its terms applies only to individuals resident
15 in the United States since June 15, 2007—five years before the program began.

16 43. After the press conference, Acting Secretary of Homeland Security Duke, purporting to
17 act “[i]n the exercise of [her] authority in establishing national immigration policies and priorities,”
18 formally rescinded the DACA Memorandum. The Rescission states that “it is clear” that DACA
19 “should be terminated” in light of the Fifth Circuit’s ruling in *Texas v. United States*, 809 F.3d 134 (5th
20 Cir. 2015), regarding DAPA, the Supreme Court’s non-precedential affirmance of that ruling by an
21 equally divided court, and the Attorney General’s September 4 letter.

22 44. The President, however, does not appear to share the views of DHS or his Attorney
23 General regarding the legality of DACA. In direct contradiction to Defendants’ and Attorney General
24 Sessions’ position that the prior administration had exceeded the authority of the Executive Branch in
25 establishing DACA, *see* Ex. A and Press Conference, the President tweeted on the night of the
26 Rescission, “Congress now has 6 months to legalize DACA (something the Obama Administration was
27 unable to do). If they can’t, I will revisit this issue!” *See* Donald J. Trump (@realDonaldTrump),
28 Twitter (Sep. 5, 2017, 8:38 PM), <https://twitter.com/realDonaldTrump/status/905228667336499200>.

1 45. Although the Rescission concludes that DACA is unlawful, it does not immediately
2 revoke any individual’s DACA status or work authorization. Instead, it instructs that “the Department
3 will provide a limited window in which it will adjudicate certain requests for DACA and associated
4 applications.” Specifically, the Rescission explains that DHS will adjudicate pending DACA requests
5 and associated work authorization applications that already had been accepted by the agency as of
6 September 5, 2017, but will reject new requests and applications filed after September 5, 2017. It
7 further states that DHS will adjudicate pending renewal requests and applications from current DACA
8 recipients, as well as renewal requests and applications from current DACA recipients for grants of
9 deferred action that expire between September 5, 2017, and March 5, 2018, and that are accepted by the
10 agency as of October 5, 2017. Any renewal requests filed after October 5, 2017, or any renewal requests
11 for benefits that expire after March 5, 2018, will be rejected. DHS will not terminate the current grants
12 of deferred action to DACA recipients, but instead will allow individuals’ DACA status to expire. DHS
13 will not approve any new applications for advance parole and will administratively close all pending
14 applications for advance parole. *See* Ex. A at 4-5.

15 46. Defendants’ decision to rescind the program will have immense and devastating effects
16 on the University and all of its students. As a result of the termination of the program, the University
17 and its students will lose the vital contributions that DACA recipients have made as students and
18 employees. *See Washington v. Trump*, 847 F.3d 1151, 1160 (9th Cir. 2017) (“[S]chools have been
19 permitted to assert the rights of their students.”). The civic life of the school will be diminished, the
20 exchange of ideas will be reduced, teaching and research will be impaired, and diversity will be more
21 difficult to achieve. The University and its students benefit from cohesive family units, robust civic
22 participation, and the strength of social and educational communities. The Rescission damages each of
23 these interests, in California and nationwide.

24 47. Moreover, UC students and employees have friends or family members who are DACA
25 recipients, and the University will have to expend resources to address the detrimental effects that the
26 rescission of DACA will have on these individuals’ lives. The University also will lose the resources it
27 has spent educating students who ultimately do not graduate.

1 48. As a result of the Rescission, DACA students will be unable to plan for the future, apply
2 for and obtain internships and certain financial aid and scholarships, study abroad, or work to pay their
3 tuition and other expenses. Students subject to these hardships may choose to withdraw from UC
4 altogether.

5 49. DACA recipients also will be at risk of removal. Indeed, in a set of “Talking Points”
6 released the same day of the Rescission, DHS “urge[d] DACA recipients to use the time remaining on
7 their work authorizations to prepare for and arrange their departure from the United States.” *See*
8 Talking Points—DACA Rescission. Removal will self-evidently result in the loss of employment,
9 education, and relationships with others in the United States.

10 **FIRST CLAIM FOR RELIEF**
11 **Agency Action That Is Arbitrary and Capricious,**
12 **An Abuse of Discretion, and Otherwise Not In Accordance with Law**
 in Violation of 5 U.S.C. § 706(2)(A)

13 50. The above paragraphs are incorporated herein by reference.

14 51. DHS is an agency subject to the requirements of the APA. 5 U.S.C. § 701(b)(1).

15 52. Under 5 U.S.C. § 706(2), courts shall hold unlawful and set aside agency action that is
16 arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to
17 constitutional right, power, privilege, or immunity; in excess of statutory jurisdiction, authority, or
18 limitations; or without observance of procedure required by law.

19 53. The Rescission constitutes final agency action that is reviewable by this Court.

20 54. The Rescission and actions taken by Defendants to rescind DACA are arbitrary and
21 capricious, an abuse of discretion, and not in accordance with law because, among other things,
22 Defendants failed to articulate a reasonable explanation for their actions. In assessing Defendants’
23 actions under the arbitrary-and-capricious standard, a court “must consider whether the decision was
24 based on a consideration of the relevant factors and whether there has been a clear error of judgment.”
25 *San Luis & Delta-Mendota Water Auth. v. Jewell*, 747 F.3d 581, 601 (9th Cir. 2014) (citation omitted).
26 Here, Defendants have not considered the relevant factors in deciding to revoke DACA. They also have
27 failed to consider important aspects of the issue, including the arguments previously set forth by OLC
28 and DHS as to why DACA is lawful.

1 55. Defendants also disregarded the serious reliance interests engendered by the DACA
2 program. Where, as here, significant reliance interests are at stake, Defendants must, in addition to
3 demonstrating that “there are good reasons” for the new policy, offer “a reasoned explanation . . . for
4 disregarding facts and circumstances that underlay or were engendered by the prior policy.” *Fox*, 556
5 U.S. at 515. Defendants here have utterly failed in these obligations.

6 56. The Rescission and actions taken by Defendants to rescind DACA are arbitrary and
7 capricious, an abuse of discretion, and not in accordance with law because, among other things, they are
8 based on the legally incorrect premise that DACA is unlawful.

9 57. The Rescission and actions taken by Defendants to rescind DACA are arbitrary and
10 capricious, an abuse of discretion, and not in accordance with law because, among other things, they are
11 contrary to the constitutional protections of the Fifth Amendment.

12 58. The University and its students were harmed and continue to be harmed by these
13 unlawful acts.

14 **SECOND CLAIM FOR RELIEF**
15 **Agency Action Without Observance of Procedure Required by Law**
16 **in Violation of 5 U.S.C. § 706(2)(D)**

17 59. The above paragraphs are incorporated herein by reference.

18 60. The APA requires administrative agencies to follow notice-and-comment rulemaking
19 procedures to promulgate substantive rules. *See* 5 U.S.C. § 553. The APA defines “rule” broadly to
20 include:

21 the whole or part of an agency statement of general or particular applicability and
22 future effect designed to implement, interpret, or prescribe law or policy or
23 describing the organization, procedure, or practice requirements of an agency and
24 includes the approval or prescription for the future of rates, wages

25 5 U.S.C. § 551(4).

26 61. The Rescission constitutes a substantive rule subject to APA’s notice-and-comment
27 requirements.

28 62. The Rescission constitutes a substantive rule because it affirmatively circumscribes
DHS’s statutory authority in providing deferred action and prohibits DHS from renewing recipients’
DACA status after October 5, 2017.

1 63. The Rescission constitutes a substantive rule because it includes a ban on current DACA
2 recipients with work authorizations travelling on advance parole.

3 64. The Rescission constitutes a substantive rule because it is a categorical rule, which
4 applies to all DACA recipients.

5 65. In issuing the Rescission and rescinding DACA, Defendants impermissibly announced a
6 new rule without undertaking notice-and-comment rulemaking.

7 66. The University and its students were harmed and continue to be harmed by these
8 unlawful acts.

9 **THIRD CLAIM FOR RELIEF**
10 **Violation of Procedural Due Process**
11 **Under the Fifth Amendment**

12 67. The above paragraphs are incorporated herein by reference.

13 68. Under the Fifth Amendment to the Constitution, no person may be deprived of life,
14 liberty, or property without due process of law.

15 69. The University has constitutionally-protected interests in the multiple educational
16 benefits that flow from a diverse student body. Thousands of DACA students have earned prized places
17 as undergraduate and graduate students at the University of California through their record of high—
18 even extraordinary—personal achievement in high school and college. In reliance on DACA, the
19 University has chosen to make scarce enrollment space available to these students and to invest in them
20 substantial time, financial aid, research dollars, housing benefits, and other resources, on the expectation
21 that these students will complete their course of study and become productive members of the
22 communities in which the University operates, and other communities throughout the nation. If these
23 students leave the University before completing their education, UC will lose the benefits it derives from
24 their contributions, as well as the value of the time and money it invested in these students with the
25 expectation that they would be allowed to graduate and apply their talents in the United States job
26 market.

27 70. UC students who are DACA recipients also have constitutionally-protected interests in
28 their DACA status and the benefits that come from that status, including the ability to work, to pursue

1 opportunities in higher education, to more readily obtain driver's licenses and access lines of credit, to
2 obtain jobs, and to access certain Social Security and Medicare benefits.

3 71. The Rescission and actions taken by Defendants to rescind DACA unlawfully deprive the
4 University and its students of these and other constitutionally-protected interests without due process of
5 law. Such deprivation occurred with no notice or opportunity to be heard.

6 72. Defendants therefore have violated the Fifth Amendment to the United States
7 Constitution.

8 73. The University and its students were harmed and continue to be harmed by these
9 unlawful acts.

10 **RELIEF REQUESTED**

11 WHEREFORE, Plaintiffs respectfully request that this Court:

12 A. Vacate and set aside the Rescission and any other action taken by Defendants to
13 rescind DACA;

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

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

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

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

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

26 DATED: September 8, 2017

COVINGTON & BURLING LLP

27 By: _____
28 Jeffrey M. Davidson (Bar No. 248620)
One Front Street, 35th Floor

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

San Francisco, CA 94111-5356
Telephone: + 1 (415) 591-6000
Facsimile: + 1 (415) 591-6091
Email: j davidson@cov.com

Attorneys for Plaintiffs THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA and JANET
NAPOLITANO, in her official capacity as
President of the University of California