

TUCSON SECTOR

WEEKLY

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

ATV Unit & HPU apprehension submitted by BPA (b)(6), (b)(7)(C)

ISSUE 241

(b)(7)(E)

REL0000000028_0001_0001

TUCSON SECTOR STRATEGIC COMMUNICATIONS

PHOTO OF THE WEEK



Red and Blues submitted by BPA (b)(6), (b)(7)(C)



INTERNAL
COMMUNICATIONS
BRANCH

LINKS

YOU HAVE CHOICES



TUCSON SECTOR
PEER SUPPORT
(b)(7)(E)



TUCSON SECTOR
CHAPLAIN
(b)(7)(E)



TCA
PERSONNEL DIRECTORY



SHAREPOINT
TUCSON SECTOR

SUBMIT YOUR
PICTURES HERE



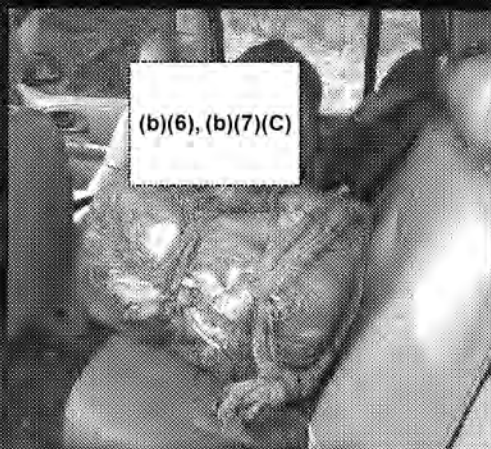
TUCSON SECTOR
PICTURES



TUCSON SECTOR

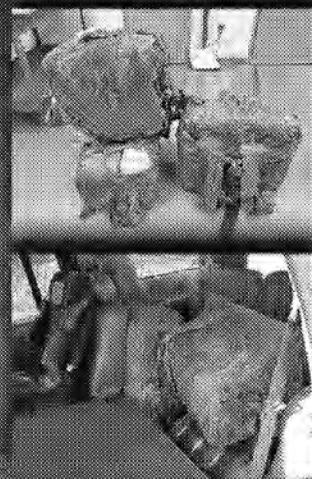
Weekly Information Display System Updates

TEAMS 2 WATCH - DOUGLAS



(b)(6), (b)(7)(C)

Douglas BPA (b)(6), (b)(7)(C) observed a suspicious, white SUV near the International Border near (b)(7)(E) on August 17. BPA (b)(6), (b)(7)(C) notified (b)(7)(E) Team Agents (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) prompting them to perform a vehicle stop. BPA (b)(6), (b)(7)(C) along with K9 partner (b)(6), (b)(7)(C) discovered 134.7 pounds of marijuana within the vehicle. The SUV and marijuana were seized, and the USC driver was referred for prosecution.



BPA (b)(6), (b)(7)(C)

K9 (b)(6), (b)(7)(C)

134.7 POUNDS OF MARIJUANA SEIZED

TRANEER HIGHLIGHT

Nogales Station agents from Border Patrol Academy Class (b)(7)(E) have hit the ground running. Seen here, BPA(T) (b)(6), (b)(7)(C) aided in the discovery of 60 pounds of marijuana near (b)(7)(E) Arizona, on August 17. Agents seized both bundles as well as apprehended four subjects while searching the area.



(b)(7)(E)

(b)(6), (b)(7)(C)

(b)(7)(E)

(b)(6), (b)(7)(C)

CLASS

(b)(7)(E)

18 APPREHENDED

As Douglas SBPA (b)(6), (b)(7)(C) attempted a vehicle stop with a silver Ford Expedition on (b)(7)(E) on August 19, the Expedition failed to yield.

Responding agents used a Controlled Tire Deflation Device to stop the vehicle on the (b)(7)(E)

(b)(7)(E) and apprehended all 18 of its fleeing occupants. Agents determined the vehicle entered from Mexico through an opening in the barricades near (b)(7)(E)



Operation (b)(7)(E)



During ACTT Operation (b)(7)(E) a (b)(7)(E) observed subjects loading into a 2014 Mazda 6 near (b)(7)(E) DPS and USBP later located the vehicle near (b)(7)(E) and initiated a joint vehicle stop. Seven subjects were arrested, and the Mazda was seized. The operation ran August 16-22 and (b)(7)(E) (b)(7)(E) before they reached the (b)(7)(E)

(b)(6), (b)(7)(C)

HIGH PROFILE REMOVALS

Agents from Tucson Sector's **(b)(7)(E)** executed two high profile removals through the **(b)(7)(E)** POE in Nogales on August 20. The first subject, **(b)(6), (b)(7)(C)** was wanted for homicide; while the second subject, **(b)(6), (b)(7)(C)** was wanted for the charge of rape out of Jalisco, Mexico. Both subjects were turned over to Mexican authorities to face charges for their crimes.

DOUGLAS STATION APPREHENSION

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Douglas Station BPA **(b)(6), (b)(7)(C)** observed a vehicle east of **(b)(7)(E)** on the International Border on August 13. When agents stopped the green 1995 GMC Suburban for an immigration inspection on **(b)(7)(E)** multiple occupants attempted to flee. In total, agents apprehended 12 illegal aliens. The driver remained unidentified.

(b)(6), (b)(7)(C)

TUCSON SECTOR DETAIL SOLICITATIONS

*Detail:
CIT Management Mentorship Program*

*Location:
Tucson Sector HQ*

*Eligibility:
Supervisory Border Patrol Agent
GS-13*

*Packet Due:
September 4, 2020*

TUCSON SECTOR DETAIL SOLICITATIONS

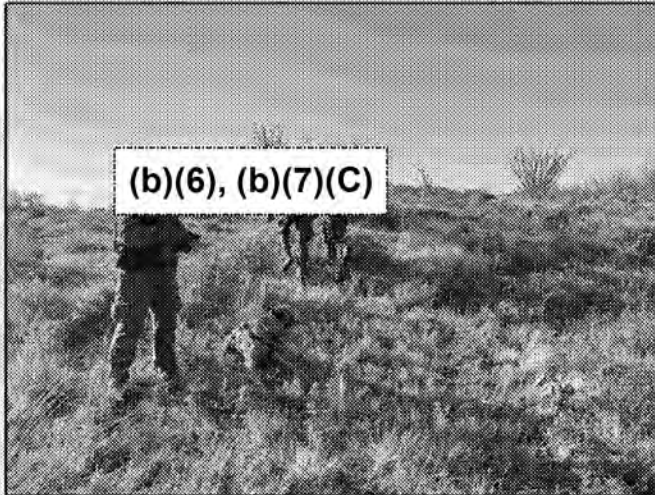
*Detail:
Small Unmanned Aircraft Systems Program Coordinator*

*Location:
Tucson Sector HQ*

*Eligibility:
GS-13 SBPA and above*

*Packet Due:
September 4, 2020*

(b)(7)(E)



(b)(6), (b)(7)(C)

(b)(7)(E) BPAs (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) along with K9 (b)(6), (b)(7)(C)

deployed under (b)(7)(E)

from a (b)(7)(E) helicopter on August 17 to arrest seven subjects during 3 encounters.

The agents also located human remains following an event on the Tohono O'odham Nation. Good work!

Light Duty: OFFER vs. REQUEST

Employee returns to work with restrictions

Related to On Duty work injury/illness

- Employee is **OFFERED** light duty
- Light Duty Offer is created
- The employee will accept/decline the offer
- The paperwork is turned into the ICC to submit to Department of Labor

Related to Off Duty injury/illness

- Employee must **REQUEST** light duty and provide required medical documentation
- Approving Officials are PAICs, Directors, ACPAs or higher
- This includes injuries/illnesses which have been denied by Department of Labor
- This does not include restrictions related to pregnancy

Supervisors, please collaborate with your local station ICC's for current guidance.
If further clarification is needed, email (b)(7)(E)

(b)(6), (b)(7)(C)

HEROES
FUEL FOR SUCCESS!

**DON'T LET DEHYDRATION
BE YOUR KRYPTONITE**

TUCSON SECTOR DETAIL SOLICITATIONS

Detail:
Patrol K9 Agitator

Location:
Tucson Sector HQ

Eligibility:
GS-12 BPA and GS-13 SBPA

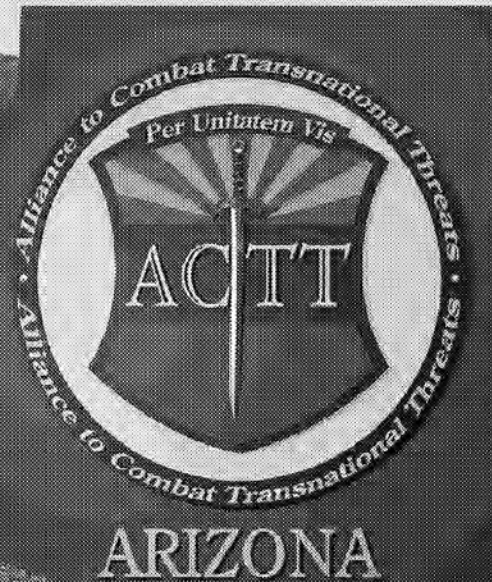
Packet Due:
September 4, 2020

OPERATION

(b)(6), (b)(7)(C)

ACTT Operation (b)(6), (b)(7)(C) which ran August 20-22, combined BPAs from the (b)(7)(E) Station with forces from the AZ Department of Public Safety and (b)(7)(E) County Sheriff's Office.

The operation produced a positive vehicle stop, yielding the arrest of three illegal aliens. Personal use meth and related paraphernalia were also confiscated during the encounter.



TUCSON SECTOR DETAIL SOLICITATIONS

Detail:

*MSS - TCA Asset Management Branch
(120-day detail)*

Location:

Tucson Sector HQ

Eligibility:

*MSS qualified as Local Property Officer
GS-9 or GS-11*

Packet Due:

September 4, 2020

TUCSON SECTOR DETAIL SELECTIONS

MSS (b)(6), (b)(7)(C) - NGL

*Selected for:
Sector Worker's Compensation Office
(120 Days)*

TUCSON SECTOR DETAIL SELECTIONS

MSS (b)(6), (b)(7)(C)

*Selected for:
Sector Worker's Compensation Office*

VACANCY ANNOUNCEMENTS

Vacancy:
MSS (Generalist)

Location:
Tucson Sector HQ SWCO

Eligibility:
GS-0301-9

Application Due:
August 28, 2020

VACANCY ANNOUNCEMENTS

Vacancy:
Patrol Agent in Charge

Location:
Ajo, AZ

Eligibility:
GS-15 - Relocation authorized

Application Due:
September 1, 2020

VACANCY ANNOUNCEMENTS

Vacancy:
Border Patrol Agent (Intelligence)

Location:
*NCO, CAG, NGL, SON &
Sector Intelligence Unit*

Eligibility:
GS-12

Application Due:
September 8, 2020

VACANCY ANNOUNCEMENTS

Vacancy:
Special Operations Supervisor

Location:
Tucson Sector HQ SIU

Eligibility:
GS-13

Application Due:
September 3, 2020

TUCSON SECTOR DETAIL SELECTIONS

SBPA (b)(6), (b)(7)(C) (TUS)

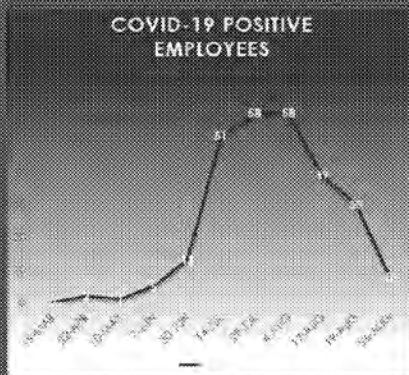
*Selected for:
Sector Investigations Team*

*Start Date:
August 30, 2020*

COVID-19

TUCSON SECTOR

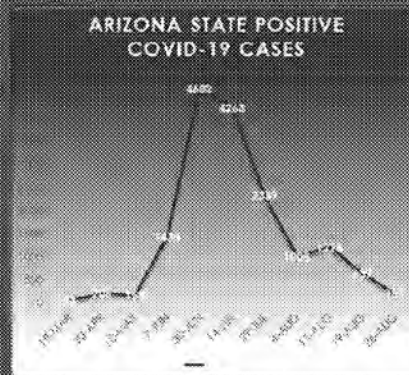
COVID-19 POSITIVE
EMPLOYEES



EMPLOYEES QUARANTINED



ARIZONA STATE POSITIVE
COVID-19 CASES



VACANCY ANNOUNCEMENTS

Vacancy:
Watch Commander

Location:
Tucson, AZ

Eligibility:
GS-14 - Relocation authorized

Application Due:
September 2, 2020

Join the 2020 Tucson Sector Lean Green Challenge

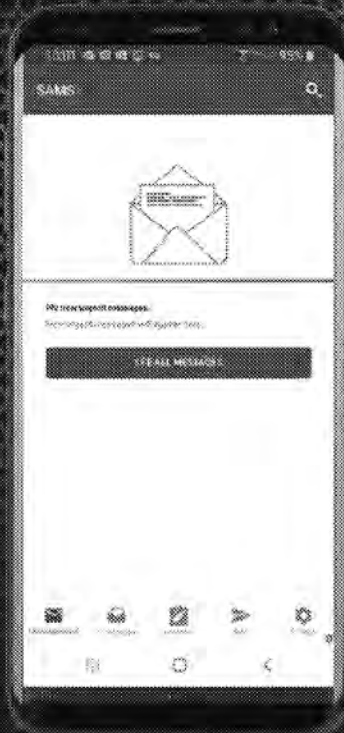
Weigh-ins begin September 2nd and run thru September 4th



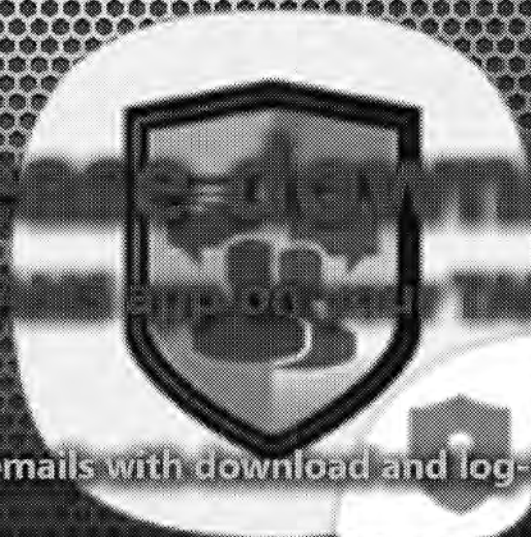
For questions contact TCA Health and Fitness Coordinator

(b)(6), (b)(7)(C)

Click [HERE](#) to view the video.

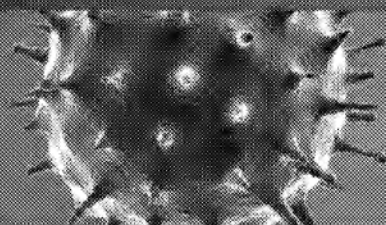


SAMS – Situational Awareness Messaging System



Look for emails with download and log-in instructions.

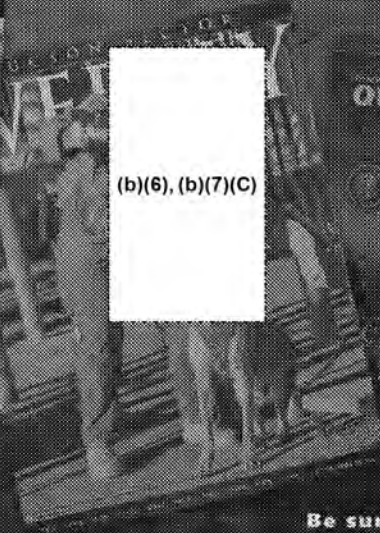
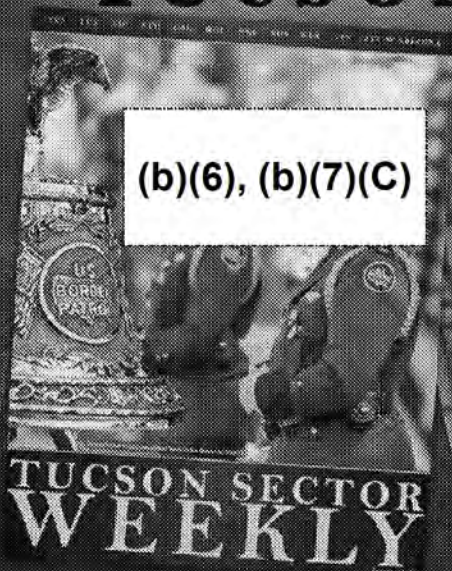
**For all the latest news and updates check the TCA
Sharepoint page link below.**



COVID-19
Resource Page

Questions and Answers • Current Mustergrams
Up to date guidance and information

TUCSON SECTOR *Weekly*



OUR VETERANS

TUCSON SECTOR WEEKLY

Be sure to check out the Weekly newsletter!

You can view past issues on the TCA main page under "Weekly Archives".

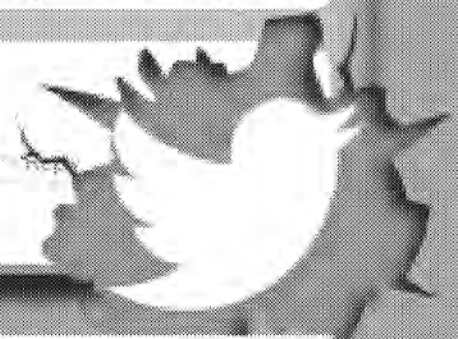
[Click here to view past issues](#)



follow me @USBPChiefTCA



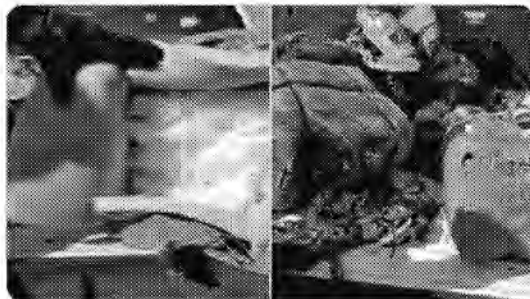
Roy D. Villareal
@USBPChiefTCA



Roy D. Villareal @USBPChiefTCA · Aug 23

Over 100 pounds of meth. [Border Patrol](#) Agents found the drugs stuffed into three backpacks deep in the Sonoran Desert. Three [illegal border crossers](#) arrested in connection with this seizure.

Details: [B-D-17/17/17/17](#)



👍 12 🗨 12 📷 12 🔄 12



Roy D. Villareal @USBPChiefTCA · Aug 24

Last Friday Agents responded to a 911 call where the 911 operators could only hear a person breathing. They found a border crosser laying unconscious in the desert, choking on his own vomit. [@BorderPatrol](#) Agents saved his life. [@SentryAndRevolver](#) [@CDAP](#) [@USBPChief](#)

911 call.
Operators can only hear labored breathing.
Agents rush to the location and find an unconscious man.

0:12 | 711 views



👍 2 🗨 27 📷 64 🔄 12



Roy D. Villareal @USBPChiefTCA · Aug 24

Time-lapse video of ongoing border wall system construction in Saguaro, Arizona. You can track construction along the southwest border at [bit.ly/2YH4H4E](#)

MLBP @USBPChief

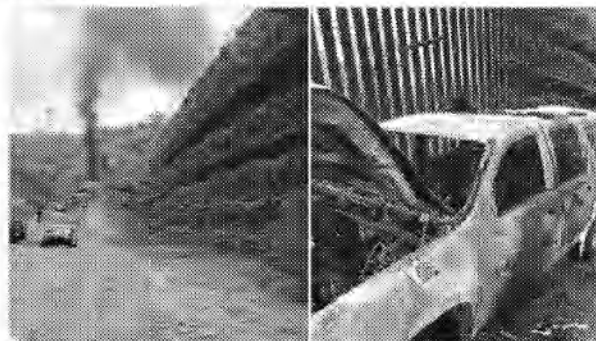


👍 18 🗨 12 📷 12 🔄 12



Roy D. Villareal @USBPChiefTCA · Aug 25

Many thanks to Nogales Fire Department for responding quickly when a [@BorderPatrol](#) truck caught fire yesterday in Nogales. I am happy to report that the Agents walked away unscathed.



👍 6 🗨 20 📷 30 🔄 12



Roy D. Villareal @USBPChiefTCA · Aug 27

I am proud of the generosity of our Tucson Sector [@BorderPatrol](#) Agents and staff - 67,000 pounds of food donated to [@TheHunger](#) for this summer's [#FeedtheHomeless](#) campaign. Thank you Tucson Sector!!!



0:31 | 15K views

👍 12 🗨 12 📷 12 🔄 12

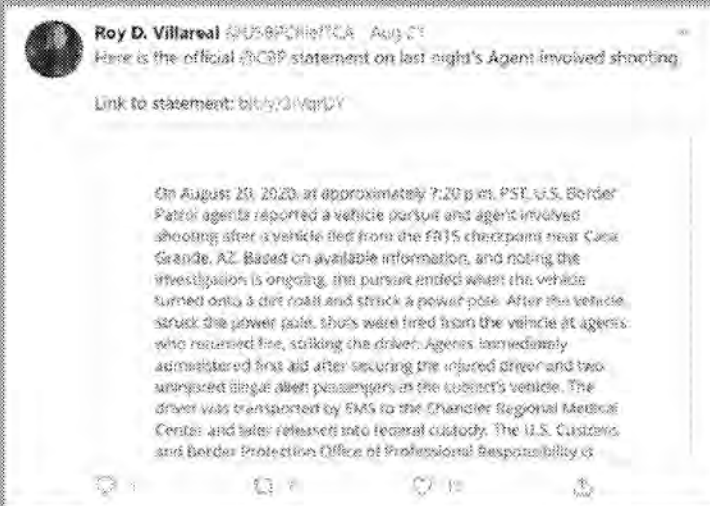


Roy D. Villareal @USBPChiefTCA · Aug 21

Yesterday, Tucson Sector [@BorderPatrol](#) executed two High Profile Removals through a port of entry in Nogales, Arizona. The two men were wanted for homicide and rape in Mexico. Both were turned over directly to Mexican authorities. Partnerships work to secure our nation.



👍 12 🗨 12 📷 12 🔄 12





usbpchiefca [Follow](#)

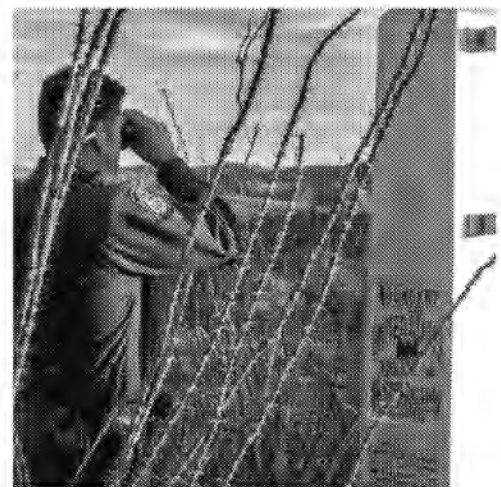
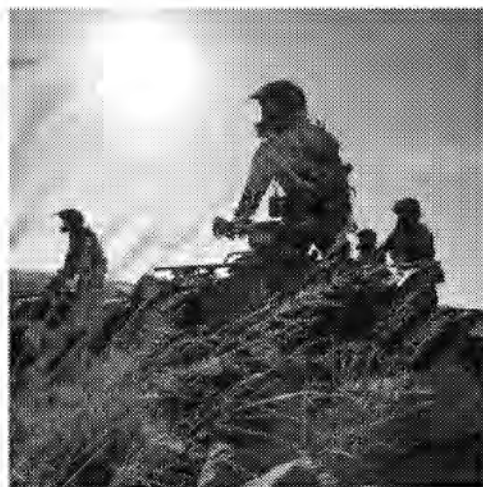
8 posts 409 followers 106 following

Roy D. Villareal

Chief of Tucson Sector Border Patrol, Leading 2,900 agents/mission support staff in southern Arizona

Twitter @USBPChiefCA

POSTS





U.S. Customs and
Border Protection

News Release

August 24, 2020
Contact: Tucson Sector
Public Affairs Office
(520) 748-3210
www.cbp.gov

Border Patrol Seizes 100 lbs. of Meth & Arrests 3

TUCSON, Ariz. – U.S. Border Patrol agents arrested three men and seized 100 pounds of suspected methamphetamine near the village of Vaya Chin, Arizona, Sunday morning.

Tucson Sector agents patrolling in the Crooked Hills area southwest of Tucson encountered three suspected illegal aliens around 8:30 a.m. Sunday. Agents discovered their backpacks were filled with small packages of what appeared to be drugs.

The contents, weighing over 100 pounds, subsequently tested positive for the characteristics of methamphetamine.

The three Mexican nationals were found to be illegally present in the United States and face drug-related as well as immigration violations charges.

This case was turned over to Homeland Security Investigations (HSI) in partnership with the NATIVE task force. The NATIVE task force is led by the Tohono O'odham Police Department and composed of special agents within HSI, Drug Enforcement Administration, Federal Bureau of Investigation, Bureau of Land Management Office of Law Enforcement and Security, Bureau of Indian Affairs Drug Enforcement Division, U.S. Border Patrol and Arizona HIDTA.

For more details regarding this media release or to schedule a remote interview via the LiveU system, please contact the Tucson Border Patrol Sector Public Affairs Office at tca-pao@cbp.dhs.gov or at 520-748-3210.

~CBP~

U.S. Customs and Border Protection is the unified border agency within the Department of Homeland Security charged with management, control and protection of our nation's borders at and between official ports of entry. CBP's mission includes keeping terrorists and terrorist weapons out of the country while enforcing hundreds of U.S. laws. Follow us on Twitter @CBPArizona.

News Release



U.S. Customs and
Border Protection

August 26, 2020
Contact: Tucson Sector
Public Affairs Office
(520) 748-3210
www.cbp.gov

Tribal/Federal Collaboration Leads to Sex Offender Arrest

TUCSON, Ariz. – U.S. Border Patrol agents assisted the Tohono O'odham Police Department (TOPD) in arresting a previously deported sex offender on the Tohono O'odham Nation, Tuesday evening.

Just after 5 p.m., Tucson Sector agents patrolling southwest of Tucson were routed a TOPD call for assistance. TOPD officers had in their custody two potential border crossers and requested Border Patrol to verify their identities.

Upon arrival, agents learned the 20-year-old woman and 35-year-old man were Guatemalan nationals illegally present in the country. Agents transported the pair to a field processing center.

During processing, records checks revealed the man, Juan Jose Mazariegos-Perez, was previously convicted of child molestation in Georgia. Mazariegos was sentenced to two years of confinement, three years of probation and subsequent removal from the country for his conviction.

Mazariegos remains in custody, pending federal prosecution for reentry of a previously deported felon. The woman will be expelled to Mexico under Title 42 authority.

Border Patrol works with all local, state, federal and tribal law enforcement agencies in border communities to create a unified force against transnational criminal organizations, who victimize migrants as well as the general populace.

For more details regarding this news release, contact the Tucson Sector Public Affairs Office at tca-pao@cbp.dhs.gov or by phone at 520-748-3210. Tucson Sector is also LiveU capable. Contact us to schedule an interview.

~CBP~

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U.S. Customs and
Border Protection

News Release

August 20, 2020
Contact: Tucson Sector
Public Affairs Office
(520) 748-3210
www.cbp.gov

Cold-Hearted Smugglers Undeterred by Extreme Heat or Social Distancing Practices

TUCSON, Ariz. – U.S. Border Patrol agents foiled two separate human smuggling incidents, arresting eight people in Amado and Lukeville, AZ, Wednesday afternoon.

Tucson Sector agents at the Interstate 19 Immigration Checkpoint in Amado encountered a Chevrolet Malibu around 3:40 p.m. After referring the vehicle to secondary inspection, agents discovered three Guatemalan men concealed in the trunk. All three were illegally present in the United States.

The three migrants as well as the vehicle's driver, a Tucson man, were arrested.

Around the same time, agents witnessed two men illegally entering the U.S. by scaling a section pedestrian fencing not yet replaced by new Border Wall west of Lukeville. The men walked into an awaiting vehicle that then drove north on state Route 85.

Agents at the state Route 85 immigration checkpoint encountered the Chevrolet Impala a short while later, discovering a Honduran woman and Guatemalan man concealed in the trunk. Both were arrested, as were the vehicle's driver and passenger, both Phoenix women.

Although southern Arizona temperatures surpassed 105 degrees near the time of the incidents, none of the five people inside the confined space of the trunks required medical attention. None were wearing personal protective equipment (PPE), such as facial coverings, at the time of apprehension.

The three U.S. citizens involved face federal human smuggling charges.

Tucson Sector Border Patrol would like to remind the public that hiding people in a vehicle's trunk is a cruel tactic, especially during summer months. Those inside can suffer heat related illness, asphyxiation from a lack of oxygen and serious injury or death in the event of a collision.

For more details regarding this news release, contact the Tucson Sector Public Affairs Office at tea-pao@cbp.dhs.gov or by phone at 520-748-3210. Tucson Sector is also LiveU capable. Contact us to schedule an interview.

~CBP~

REL0000000028_0001_0022

News Release



U.S. Customs and
Border Protection

August 25, 2020
Contact: Tucson Sector
Public Affairs Office
(520) 748-3210
www.cbp.gov

Spare Tire Loaded with Hard Drugs Seized at BP Checkpoint

TUCSON, Ariz. – U.S. Border Patrol agents arrested a Phoenix man after finding a variety of drugs inside his vehicle's spare tire outside of Gila Bend early Monday.

Just after midnight, Tucson Sector agents at the state Route 85 immigration checkpoint referred a Ford Explorer SUV for a secondary inspection. In the subsequent search, agents discovered numerous packages of suspected narcotics concealed within the spare tire.

Testing later confirmed the packages, weighing more than 70 pounds, contained an assortment of meth, fentanyl, cocaine and heroin with a combined street value of more than \$600,000.

Agents arrested the 39 year-old driver. He and the contraband were turned over to ICE Homeland Security Investigations for prosecution.

For more details regarding this news release, contact the Tucson Sector Public Affairs Office at tca-pao@cbp.dhs.gov or by phone at 520-748-3210. Tucson Sector is also LiveU capable. Contact us to schedule an interview.

~CBP~

U.S. Customs and Border Protection is the unified border agency within the Department of Homeland Security charged with the management, control, and protection of our nation's borders at and between official ports of entry. CBP's mission includes keeping terrorists and terrorist weapons out of the country while enforcing hundreds of U.S. laws. Follow us on Twitter @CBPArizona.

U.S. CUSTOMS AND BORDER PROTECTION DIRECTIVE

CBP DIRECTIVE NO. 2120-010A

DATE: June 29, 2022

ORIGINATING OFFICE: OC-PDO

REVIEW DATE: June 29, 2025

SUBJECT: PRIVACY POLICY, COMPLIANCE, AND IMPLEMENTATION

1. PURPOSE

This Directive is designed to provide U.S. Customs and Border Protection (CBP) personnel with procedures and practices for safeguarding the collection, maintenance, use, and dissemination of personally identifiable information (PII); or when engaged in activities that otherwise impact the privacy of individuals.

2. SCOPE

This Directive applies to all personnel as defined in Section 5, particularly those individuals who have access to, and work with, PII in the conduct of their job-related duties.

3. POLICY

3.1 This Directive applies to all CBP personnel.

3.2 This Directive applies to all CBP forms, Information Technology (IT) systems, tools, platforms, programs, and mobile applications.

3.3 This Directive provides procedures to ensure that the collection, maintenance, use, and dissemination of PII complies with all applicable laws, regulations, and policies.

3.4 The procedures set forth in this Directive must be followed before CBP begins the collection of PII on or from individuals, including CBP personnel; or prior to a change in CBP practices pertaining to the collection, maintenance, use, or dissemination of PII, regardless of whether the source of the change is operational, technological, or regulatory.

3.5 The procedures set forth in this Directive shall be followed before any records owned by CBP that contain PII are shared with another party external to CBP, including any onward sharing of CBP data by other Department of Homeland Security (DHS) Components; and the terms of any new information sharing access agreement or contract services should be consistent with the procedures set forth in this Directive.

WARNING: This document is FOR OFFICIAL USE ONLY (FOUO). It is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to FOUO information. This information shall not be distributed beyond the original addressees without prior authorization of the originator.

- 3.6** The procedures set forth in this Directive shall be followed when there is an unauthorized access, sharing, or use of PII collected and maintained by CBP.
- 3.7** This Directive, which follows and implements DHS Directive 047-01, Instruction 047-01-001, and Instruction 047-01-005, at CBP, supersedes any previous conflicting CBP Directives, policy statements, and manual supplements regarding CBP’s privacy policy.¹

4. AUTHORITIES/REFERENCES

- 4.1** “E-Government Act of 2002,” as amended, Public Law 107-347 Section 208 [Title 44, United States Code (U.S.C.), § 3501 note]
- 4.2** The Privacy Act of 1974, as amended [5 U.S.C. § 552a]
- 4.3** Tariff Act of 1930, as amended
- 4.4** “Privacy Officer” 6 U.S.C § 142
- 4.5** The Federal Information Security Management Act of 2002, as amended (FISMA) [44 U.S.C., Chapter 35, Subchapter II, “Information Security”]
- 4.6** “Disclosure of records and information” [Title 6, Code of Federal Regulations (CFR), Chapter 1, Part 5]
- 4.7** “Availability of Information” [19 CFR Chapter 1, Part 103]
- 4.8** DHS Directive 047-01 “Privacy Policy and Compliance” (July 7, 2011)
- 4.9** DHS Instruction 047-01-001 “Privacy Policy and Compliance” (July 25, 2011)
- 4.10** DHS Instruction 047-01-003 “Privacy Policy for DHS Mobile Applications” (December 14, 2018)
- 4.11** DHS Instruction 047-01-005 “Component Privacy Officer” (February 6, 2017)
- 4.12** DHS Instruction 047-01-006 “Privacy Incident Responsibilities and Breach Response Team” (December 4, 2017)
- 4.13** DHS Instruction 047-01-007 “Handbook for Safeguarding Sensitive PII” (December 4, 2017)

¹ In the event a conflict between an existing information sharing agreement and this Directive arises, the terms of the existing agreement will continue to govern the exchange of information until such time as the agreement has been amended to conform to the terms of this Directive.

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- 4.14** DHS Instruction 047-01-008 “Privacy Incident Handling Guidance” (April 28, 2020)
- 4.15** DHS Instruction 047-01-010 “Social Security Number Collection And Use Reduction” (June 18, 2019)
- 4.16** DHS Privacy Policy 262-16 “DHS Privacy Policy Regarding Collection, Use, Retention, and Dissemination of Personally Identifiable Information”
- 4.17** DHS Privacy Policy Instruction 262-16-001 “DHS Privacy Policy Regarding Collection, Use, Retention, and Dissemination of Personally Identifiable Information”
- 4.18** CBP Memorandum “Privacy Compliance and U.S. Customs and Border Protection” (February 10, 2012)
- 4.19** CBP Directive 4320-025A “Disclosure of Official Information to Foreign Authorities” (April 14, 2014)
- 4.20** CBP Directive 4320-033 “Sharing of CBP Information for Law Enforcement and Security Purposes” (May 24, 2021)
- 4.21** CBP Directive 2110-040 “Records and Information Management Directive” (June 3, 2019)
- 4.22** DHS Information Sharing and Safeguarding Governance Board Charter
- 4.23** Privacy and Civil Liberties Guidance Memorandum 2009-01, “The Department of Homeland Security’s Federal Information Sharing Environment Privacy and Civil Liberties Protection Policy” (June 5, 2009)
- 4.24** Information Sharing and Access Agreements Guidebook and Templates (October 2010)
- 4.25** Secretary Michael Chertoff memorandum to all DHS components regarding DHS Policy for Internal Information Exchange and Sharing (hereafter “One-DHS Memorandum”) (February 1, 2007)
- 4.26** Memorandum from Soraya Correa, DHS Chief Procurement Officer, entitled *Class Deviation 15-01 from the Homeland Security Acquisition Regulation: Safeguarding of Sensitive Information* (March 9, 2015)
- 4.27** NIST SP 800-53 *Security and Privacy Controls for Federal Information Systems and Organizations*

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- 4.28** Office of Management and Budget (OMB) Memorandum M-17-12, “Preparing for and responding to a Breach of Personally Identifiable Information.” (Jan. 3, 2017)

5. DEFINITIONS

- 5.1 Authority to Operate (ATO):** a formal declaration by a Designated Approving Authority (DAA) that authorizes operation of an Information Technology System and explicitly accepts the risk of operating that system to agency operations. The ATO is signed after the system has met and passed all requirements to become operational. No Authority to Operate (ATO) shall be issued without the DHS Chief Privacy Officer’s approval signifying that the system is in compliance with the requirements outlined in NIST SP 800-53 Appendix J, “Privacy Control Catalogue.”
- 5.2 Authority to Test (ATT):** An interim authorization to operate that allows personnel to begin testing systems under development or in the prototype phase. ATTs are typically granted for the testing of systems using production data.
- 5.3 Bulk Sharing:** The dissemination of large quantities of information, in a single disclosure or multiple disclosures, to external partners, including other DHS components, federal Departments/Agencies, or foreign partners.²
- 5.4 Business Owner:** The CBP personnel responsible for the planning and execution of a CBP project, operation, or program, including pilots and demonstrations, mobile applications, CBP Forms, regulations, and rulemakings.
- 5.5 CBP Privacy Office:** The CBP Privacy Office is a division within the CBP Privacy and Diversity Office, under the Office of the Commissioner. The CBP Privacy Office is tasked with developing and fostering a culture of privacy at CBP by promoting transparency and data integrity in all border security, immigration, and law enforcement activities; as well as assuring that the use of technologies sustain and do not erode privacy protections relating to the use, collection, and disclosure of personal information.

² For the purpose of this Directive, the definition of Bulk Sharing differs slightly from the standard DHS DARC definition, which describes “bulk data transfer” as collection or dissemination of large quantities of intelligence or information, a significant portion of which is not reasonably likely to have any ultimate intelligence or operational value to the recipient, but which is provided to the data recipient for the recipient to identify information of intelligence or operational value within it. Bulk data transfer does not include the transfer of records responsive to individual identifiers (e.g., name, date of birth, social security number, etc.), but it does include the transfer of records identified through the application of selectors where the transfer would include a significant number of records that, while responsive to the applied selectors, is not reasonably likely to have any ultimate intelligence or operational value to the recipient (e.g., records responsive to demographic profiles such as age, citizenship, gender, etc.).

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- 5.6 CBP Privacy Officer:** The senior official within CBP with primary responsibility for privacy compliance and policy, including, but not limited to: monitoring CBP compliance with all federal privacy laws and regulations; implementing corrective, remedial, and preventative actions; assisting in drafting and reviewing all forms of privacy compliance documentation; serving as the point of contact to handle privacy incident response responsibilities; implementing and monitoring privacy training for CBP personnel; contributing CBP information responsive to the public reporting requirements of the DHS Privacy Office; and communicating CBP privacy initiatives, both internally and externally.
- 5.7 Chief Privacy Officer:** As set forth in Section 222 of the Homeland Security Act of 2002, as amended, 6 U.S.C. § 142, the senior official in DHS who reports directly to the DHS Secretary, with the primary responsibility for privacy compliance and policy within DHS.
- 5.8 Data Access Review Council (DARC):** The coordinated oversight and compliance mechanism for the review of departmental initiatives and activities involving the internal or external transfer of personally identifiable information (PII) through bulk data transfers³ that are domestic in nature and are in support of the Department's national and homeland security mission.
- 5.9 Data Access Request Process (DARP) Questionnaire:** The form that may be used to initiate any domestic information sharing project that may require an Information Sharing Access Agreement (ISAA). In filling out a DARP Questionnaire, both parties to the ISAA must identify all relevant stakeholders, the information subject to the exchange, the authorities permitting the exchange, intended uses of the information, and any policy implications of the information exchange.
- 5.10 Fair Information Practice Principles (FIPPs):** The policy framework adopted by DHS in Directive 047-01, "Privacy Policy and Compliance," regarding the collection, use, maintenance, disclosure, deletion, or destruction of PII.
- 5.11 Homeland Security Acquisition Regulation:** The Department of Homeland Security Acquisition Regulation (HSAR) establishes uniform acquisition policies and procedures, which implement and supplement the Federal Acquisition Regulation (FAR) and help to ensure privacy protections are in place for technologies and services acquired by the Department and its components.

³ Coordination with the DARC is only required when the bulk data transfer involves the collection or dissemination of large quantities of intelligence or information, a significant portion of which is not reasonably likely to have any ultimate intelligence or operational value to the recipient, but which is provided to the data recipient for the recipient to identify information of intelligence or operational value within it. See Footnote 2.

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- 5.12 Individual:** Any natural person. As a matter of law, the Privacy Act of 1974 (Privacy Act), as amended, provides statutory privacy rights only to U.S. citizens and Lawful Permanent Residents. As a matter of policy, DHS affords administrative Privacy Act protections to all persons, regardless of immigration status, consistent with the Fair Information Practice Principles and applicable law. Additionally, the Judicial Redress Act (JRA) provides certain statutory rights related to access, amendment, and disclosure of covered records related to covered persons as defined by the JRA.⁴
- 5.13 Information Sharing Access Agreement (ISAA):** Any Memorandum of Understanding or Agreement (MOU/A) or other document, such as a Letter of Intent or Release Authorization, intending to represent an agreement or arrangement that defines the terms and conditions of information/data exchanges between CBP and one or more non-DHS parties.
- 5.14 Information Sharing Action Officer (ISAO):** Member of the Privacy and Diversity Office (PDO) identified to represent CBP privacy equities on the DHS Information Sharing Coordination Council (ISCC) and the DHS Data Access Review Council (DARC). The ISAO supports the coordination, drafting, review, and clearance of all ISAAs involving CBP data (including PII).
- 5.15 Information Sharing and Safeguarding Governance Board (ISSGB):** The senior level DHS body that governs the implementation and execution of ISAAs. The ISSGB will reconcile information sharing issues referred to it by the Information Sharing Coordination Council (ISCC) and raise unresolved issues to senior leadership.
- 5.16 Information Sharing Coordination Council (ISCC):** The working body for the ISSGB. The ISCC provides a forum for DHS Components to raise information sharing issues. The ISCC is responsible for reviewing all Component requests for an exemption to the One DHS policy for an ISAA. The ISCC will work collaboratively to mitigate these issues. If the ISCC cannot resolve an issue, it will refer the issue to the ISSGB.
- 5.17 Information Technology Acquisition Review (ITAR):** The DHS process to ensure that all information technology investments are aligned with DHS mission objectives and privacy-protective practices, and to effectively manage contract and procurement risks.
- 5.18 Letter of Release Authorization:** A written approval for the provision of copies of CBP records in response to a request for information that conveys the terms and conditions for the use, retention, onward sharing, and disposition of said information.

⁴ See: Judicial Redress Act of 2015, Pub. L. 114-126 (JRA)

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- 5.19 Ongoing Authorization (OA):** The ongoing assessment of security and privacy controls in support of the continual authorization of DHS/CBP Information Technology systems.
- 5.20 Personnel:** All permanent and temporary CBP employees, non-CBP personnel serving with CBP, and contracted personnel; including those personnel representing CBP while assigned to multi-agency task forces or other joint governmental efforts.
- 5.21 Personally Identifiable Information (PII):** Any information that permits the identity of an individual to be directly or indirectly inferred, including any other information that is linked or linkable to that individual regardless of whether the individual is a United States citizen, lawful permanent resident, or a visitor to the United States.⁵
- 5.22 Privacy Analyst:** CBP personnel designated by the CBP Privacy Officer to serve as a point of contact for the operational components (Office of Field Operations, United States Border Patrol, Air and Marine Operations) and support offices (Office of Information and Technology, Office of Professional Responsibility, Human Resources Management, etc.) regarding privacy issues associated with the collection, maintenance, use, or sharing of PII by that office.
- 5.23 Privacy Compliance Documentation:** Any document required by statute, policy, or by the DHS Chief Privacy Officer that supports compliance with DHS privacy policy, procedures, or requirements, including, but not limited to, Privacy Threshold Analyses (PTAs), Privacy Impact Assessments (PIAs),⁶ System of Records Notices (SORNs), Notices of Proposed Rulemaking (NPRM) for exemption from certain aspects of the Privacy Act, or Final Rules for exemption from certain aspects of the Privacy Act.⁷
- 5.24 Privacy Impact Assessment (PIA):** The DHS Privacy Office process to be followed and the document required whenever a CBP information technology (IT) system, technology, rulemaking, program, pilot project, demonstration, or other activity

⁵ For example, when linked or linkable to an individual, such information includes a name, Alien Registration Number, Social Security number, date and place of birth, mother's maiden name, account number, license number, vehicle identifier number, license plate number, device identifier or serial number, internet protocol address, biometric identifier (e.g., photograph, fingerprint, iris scan, voice print), educational information, financial information, medical information, criminal or employment information, and information created specifically to identify or authenticate an individual (e.g., a random generated number).

⁶ Section 208 of the E-Government Act of 2002 [44 U.S.C. § 3501) requires the completion of a Privacy Impact Assessment whenever the government develops or procures information technology that collects, maintains, or disseminates PII about members of the public.

⁷ The Privacy Act of 1974, as amended (5 U.S.C. § 552a) establishes a code of fair information practices that governs the collection, maintenance, use, and dissemination of information about individuals that is maintained in systems of records by federal agencies.

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involves the planned use of PII, or otherwise impacts the privacy of individuals as determined by the Chief Privacy Officer.⁸

- 5.25 Privacy Incident:** The loss of control, compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, or any similar term referring to situations where persons other than authorized users have access or potential access to PII in usable form, whether physical or electronic, or where authorized users access PII for an unauthorized purpose. Privacy Incidents include both suspected and confirmed incidents involving PII that raise a reasonable risk of harm. The determination of what constitutes a Privacy Incident will be made by the CBP Privacy Office. The term “Privacy Incident” will be used synonymously with the term “breach.”
- 5.26 Privacy Liaison:** Employee responsible for serving as a field-level point of contact and initial identifier of privacy issues and programmatic considerations on behalf of the CBP office. This employee is designated by the Director of Field Operations (DFO) for each Field Office within the Office of Field Operations (OFO), the Chief Patrol Agent for each Sector within Border Patrol (BP), the Director of each Branch within the Office of Air and Marine Operations (AMO), the Executive Assistant Commissioner for the Office of Trade, and the Assistant Commissioners for each of the offices within Operations Support and Enterprise Services. Each Field Office, Sector, Branch, and support office shall designate one or more employees, at the GS-14 level or higher in their operational and/or program compliance units as the Privacy Liaison(s).
- 5.27 Privacy Threshold Analysis (PTA):** The DHS Privacy Office process to be followed and the document used to identify the privacy implications of information technology (IT) systems, technologies, rulemakings, programs, pilot projects, or information sharing and access agreements. The DHS Privacy Office, working in conjunction with the CBP Privacy Officer, uses the PTA to determine if an activity may involve PII or otherwise impact the privacy of individuals and to assess whether there is a need for additional Privacy Compliance Documentation. A PTA includes a general description of the IT system, technology, rulemaking, program, pilot project, or other Department activity and describes what PII (if any) is collected (and from whom) and how that information is used or retained. The Privacy Office will determine which PTA template (IT system, Mobile Application, information sharing, form, disposition, etc.) is appropriate based on the activity being reviewed.

⁸ A PIA describes what information DHS is collecting; why the information is being collected; how the information will be used, stored, and shared; how the information may be accessed; how the information will be protected from unauthorized use or disclosure; and how long it will be retained. A PIA also provides an analysis of the privacy considerations posed and the steps DHS has taken to mitigate any impact on privacy. As a general rule, PIAs are public documents. The Chief Privacy Officer may modify or waive publication for security reasons or to protect classified, sensitive, or private information included in a PIA.

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- 5.28 Project Manager (PM):** CBP employee responsible for acquiring, building, technically maintaining, and/or operating a system, tool, program, or project with privacy implications.
- 5.29 Sensitive Personally Identifiable Information:** Personally Identifiable Information, which if lost, compromised, or disclosed without authorization, could result in substantial harm, embarrassment, inconvenience, or unfairness to an individual.
- 5.30 System of Records Notice (SORN):** The official public notice of a DHS system of records as required by the Privacy Act of 1974 (as amended). SORNs identify the purpose for the system of records, the individuals covered by information in the system of records, the categories of records maintained about individuals, and the ways in which the information is generally shared by the agency, and provide notice of the mechanisms available for individuals to exercise their Privacy Act rights to access and correct the PII that CBP maintains about them.⁹
- 5.31 Representative of the press:** Any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. A freelance journalist may qualify if the journalist can demonstrate a solid basis for expecting publication, such as a publication contract or extensive history of regular publication.

6. RESPONSIBILITIES

- 6.1 All CBP personnel, and others who have access to or use of CBP systems and data will:**
- 6.1.1** Comply with this CBP Directive and with privacy policies and procedures issued by the DHS Chief Privacy Officer or by CBP's Privacy Officer;
- 6.1.2** Alert their Privacy Liaison, designated Privacy Analyst, or the CBP Privacy and Diversity Office about any systems, technologies, regulations, rulemakings, programs, pilot projects, demonstrations,¹⁰ information sharing, contracts, and other activities that involve PII or otherwise impact the privacy of individuals (e.g., the development or use of facial recognition and other biometric technologies; efforts involving the collection, use, or sharing of cellular phone and location data; access to and use of social media information; the collection or disclosure of medical information; the

⁹ See: 5 U.S.C. § 552a(e)(4).

¹⁰ Demonstrations of third-party developed software, systems, or tools, including those in which CBP engages in using free/no cost accounts, in order to test a product, must be coordinated with the CBP Privacy Office before any use, testing, or deployment occurs.

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development or application of artificial intelligence or machine learning; surveillance or body-worn cameras; etc.);

- 6.1.3** Protect PII from unauthorized collection, maintenance, use, disclosure, or public dissemination and display, whether in physical/hard copy, electronic, or verbal form;
- 6.1.4** Report any suspected or actual Privacy Incidents, as required by Section 9 of this Directive and the DHS Privacy Incident Handling Guidance;
- 6.1.5** Ensure any disclosure of PII from a System of Records to a party outside of CBP is consistent with DHS and CBP policy, specifically the parameters outlined in Section 8 of this Directive;
- 6.1.6** Ensure that any disclosures of PII from a System of Records to a party outside of DHS are properly accounted for through either a system generated or electronically filed DHS-191 Form, other Privacy Act Disclosure Record, or other form or process specifically authorized by the Chief Privacy Officer, and comply with any other reporting requirements which may be applicable to specific data (e.g., Passenger Name Record (PNR) data);
- 6.1.7** Ensure that any dissemination of PII and SPII to parties outside of DHS is conducted in accordance with DHS Privacy Policy Directive 047-01-007, and is:
 - 6.1.7.1** Sent via password-protected or encrypted attachment to an email, with the password or key sent in a separate message;
 - 6.1.7.2** Transferred via approved system connections or on approved, encrypted removable media device pursuant to the requirements outlined in the DHS Sensitive Systems Policy Directive 4300A; or
 - 6.1.7.3** Transferred in a sealed, opaque envelope or container mailed using First Class Mail, Priority Mail, or a traceable, receipted commercial delivery service;¹¹
- 6.1.8** Safeguard Social Security numbers (SSNs) so that they are protected from public dissemination and display, and only used or accessed consistent with relevant statutes, rules, or directives:

¹¹ See: DHS Management Directive (MD) 11042.1, Safeguarding Sensitive But Unclassified (For Official Use Only) Information, for the transportation or mailing of data.

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- 6.1.8.1** Where possible, the collection, use, maintenance, and dissemination of SSNs should be avoided, and in their place, separate unique identifiers should be used; and
- 6.1.8.2** Where the use of SSNs cannot be eliminated, a privacy-enhancing measure, including but not limited to truncation should be implemented where possible;
- 6.1.9** Safeguard PII and Sensitive PII so that they are protected from public unauthorized dissemination and display, and only used or accessed consistent with relevant statutes, rules, or directives;
- 6.1.10** Complete mandatory annual privacy training, as well as any program, IT system, or activity-specific privacy training as described in Section 10 of this Directive; and
- 6.1.11** Contact the Office of Chief Counsel for assistance with any requested or proposed disclosure of CBP information when CBP is under an apparent legal obligation to disclose information in the course of, or in conjunction with, a judicial proceeding (e.g., due to a subpoena or discovery request, in response to a court order, or in response to litigation against the Government), or as required by any other CBP policy regarding the disclosure of CBP information requiring review by the Office of Chief Counsel.

6.2 The CBP Privacy Officer will:

- 6.2.1** Oversee the completion of required Privacy Compliance Documentation for all proposed CBP IT systems, technologies, rulemakings, programs, pilot projects, information sharing, contracts, or other activities that involve PII or otherwise may impact the privacy of individuals;
- 6.2.2** Oversee the completion of required Privacy Compliance Documentation for the continuation of, or changes to, operational IT systems, technologies, rulemakings, programs, pilot projects, information sharing, contracts, or other activities that involve PII or otherwise may impact the privacy of individuals;
- 6.2.3** Review and develop CBP policies and Directives to ensure compliance with DHS and CBP privacy policy, privacy laws, and federal government-wide privacy policies;
- 6.2.4** Oversee CBP privacy training and the provision of educational materials, consistent with mandatory and supplementary training developed by the DHS Chief Privacy Officer;

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- 6.2.5** Provide privacy training to all Privacy Liaisons in order to assist them in identifying CBP IT systems, technologies, rulemakings, programs, pilot projects, demonstrations, information sharing, contracts, and other activities with privacy implications;
- 6.2.6** Maintain an ongoing review of all CBP IT systems, technologies, rulemakings, programs, pilot projects, information sharing, contracts, and other activities to identify collections and uses of PII and to identify any other attendant privacy impacts;
- 6.2.7** Oversee CBP implementation of DHS privacy policy, including any guidance, Directive, memorandum, or related document issued by the DHS Chief Privacy Officer;
- 6.2.8** Provide the DHS Chief Privacy Officer all CBP information necessary to meet the Department's responsibilities to report to Congress and the Office of Management and Budget (OMB) on DHS activities that involve PII or otherwise impact the meeting of privacy statutory requirements, including issues of policy and process;
- 6.2.9** Oversee CBP's implementation of CBP procedures, and guidance issued by the DHS Chief Privacy Officer, for handling suspected and confirmed Privacy Incidents, including making a determination of whether an issue constitutes an Incident; determining a Privacy Incident's level of severity; notifying the DHS Chief Privacy Officer and other Department offices of such Incidents as DHS and CBP procedures dictate; ensuring that Privacy Incidents have been properly mitigated and remediated; and making recommendations to the DHS Chief Privacy Officer for closure of Privacy Incidents;
- 6.2.10** Where PII is being collected or used through an automated system or pursuant to a project, operation, or regulatory change before the proper Privacy Compliance Documentation is completed, make a determination in coordination with the DHS Privacy Office on how to address the situation, including whether to shut down the collection or to take any other corrective actions according to DHS Directive 262-16 and Instruction 262-16-001;
- 6.2.11** Process privacy complaints and amendment requests from organizations, DHS employees, and other individuals, whether received directly or by referral from the DHS Privacy Office or any other office;
- 6.2.12** Document and implement procedures for identifying, processing, tracking, and reporting requests for amendments to records made under the Privacy Act;

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- 6.2.13** Maintain an ongoing review of all CBP data collections, whether in electronic or paper-based form, to ensure compliance with the Privacy Act Statements and all implementing regulations and guidelines;
- 6.2.14** Review CBP record retention schedules for paper or electronic records that contain PII to ensure privacy interests are considered in the establishment of CBP record disposition policies;
- 6.2.15** In consultation with the DHS Chief Privacy Officer, advise CBP on information sharing activities that involve the disclosure or receipt of PII, and participate in the review of ISAAAs. All requests for ISAAAs must comply with procedures established by the DHS ISSGB and follow the process established by the ISCC when seeking an exception to the One DHS Rule;¹²
- 6.2.16** Advise CBP personnel on activities involving bulk sharing initiatives or activities involving the transfer of bulk data to domestic partner agencies for national security purposes brought before the Data Access Review Council (DARC), and participate in the review of such bulk data transfer and bulk sharing initiatives or activities. All bulk data transfer agreements being used for national security purposes must comply with the procedures and processes established by the DARC;¹³
- 6.2.17** Oversee the issuance of Letters of Release Authorization to permit the ad hoc sharing of records containing PII, when an ISAA or other policy-based mechanism authorizing or supporting the sharing is not in place (ex. Delegation of Authority), under the authority and routine uses of a System of Records Notice, other statutory authority, or through CBP procedure as discussed in Section 8 of this Directive; and
- 6.2.18** Review technology and service-related procurement documentation, including: Solicitations, Contracts, Statements of Work (SOW), Performance Work Statements (PWS), and Statements of Objectives (SOO) provided in

¹² Pursuant to Secretary Michael Chertoff's memorandum to all DHS components regarding DHS Policy for Internal Information Exchange and Sharing (hereafter "One-DHS Memo") (February 1, 2007), internal information sharing and safeguarding purposes, including for purposes of Title 5, United States Code, Section 552a, "Privacy Act of 1974," the Department is one agency, and no Component is a separate agency from another Component.

¹³ Coordination with the DARC is only required when the bulk data transfer involves the collection or dissemination of large quantities of intelligence or information, a significant portion of which is not reasonably likely to have any ultimate intelligence or operational value to the recipient, but which is provided to the data recipient for the recipient to identify information of intelligence or operational value within it. See Footnote 2.

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support of the acquisition review process (HSAR and ITAR), to ensure that required privacy-protective clauses are present.¹⁴

6.3 All Executive Assistant Commissioners, Assistant Commissioners, Chief of Border Patrol, and Independent Office Directors (Business Owners) will:

- 6.3.1** Coordinate with CBP's Privacy Officer to ensure that privacy is appropriately addressed when proposing, developing, implementing, or changing any IT system, technology, regulation, rulemaking, program, proposed ISAA, or other activity, including pilot activities, before any PII is collected, used, or disclosed (e.g., the development or use of facial recognition and other biometric technologies; efforts involving the collection, use, or sharing of cellular phone and location data; access to and use of social media information; the collection or disclosure of medical information; the development or application of artificial intelligence or machine learning; surveillance or body-worn cameras; etc.); and
- 6.3.2** In consultation with CBP's Privacy Officer, develop and implement privacy procedures and job-related privacy training to safeguard PII in program and system operations.

6.4 The Assistant Commissioner for the Office of Information and Technology will:

- 6.4.1** Ensure no submission of a new system is made to OMB under the "OMB 300" review process prior to the CBP Privacy Office's clearance and the DHS Privacy Office's adjudication of a PTA for the CBP IT system; and
- 6.4.2** Ensure no "Authority to Operate" (ATO), "Authority to Test" (ATT), or "Ongoing Authorization" (OA) is granted to systems that lack proper Privacy Compliance Documentation and DHS Chief Privacy Officer approval, as required by OMB 14-04.
 - 6.4.2.1** No Authority to Operate (ATO) shall be issued without the DHS Chief Privacy Officer's approval signifying that the system is in compliance with the requirements outlined in NIST SP 800-53 Appendix J, "Privacy Control Catalogue."

¹⁴ Privacy-protective clauses related to the Safeguarding of Sensitive Information (HSAR Class Deviation 15-01), Information Technology Security and Privacy Training (HSAR Class Deviation 15-01), and Contractor Employee Access (HSAR 3052.204-71) shall be incorporated into new and existing contracts where the service provider will have access to sensitive information, or contractor IT systems are used to input, store, process, output, and/or transmit sensitive information.

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- 6.5 The CBP Chief Records Officer (CRO) will Ensure Privacy Compliance**
Documentation cites accurate and appropriate NARA-approved records retention schedules or unauthorized disposal language.
- 6.6 The Executive Assistant Commissioner for the Office of Trade and the Assistant Commissioners for each of the offices within Operations Support and Enterprise Services will** designate one or more employees, at the GS-14 level or higher, in their offices and/or directorates as a Privacy Liaison(s).
- 6.7 The Director of Field Operations (DFO) for each OFO Field Office, the Chief Patrol Agent for each Border Patrol Sector, and the Director of each AMO Branch will** designate one or more employees, at the GS-14 level or higher, or individuals serving in a supervisory capacity in their operational and/or program compliance units, as a Privacy Liaison(s).
- 6.8 Privacy Liaisons will:**
- 6.8.1** Serve as Field and support office-level point of contact for the Privacy Office personnel;
 - 6.8.2** Serve as the local privacy point of contact for field and support office-level personnel seeking guidance on privacy-related issues or assistance resolving privacy-related matters, and refer concerns to the CBP Privacy Office as necessary;
 - 6.8.3** Identify IT systems, technologies, rulemakings, programs, pilot projects, demonstrations, information sharing, contracts, and other activities or initiatives with possible privacy issues within their area of responsibility and alert their designated CBP Privacy Analysts (formally or informally) about them;
 - 6.8.4** Coordinate between the Business Owner and the Privacy Analyst during the development of the IT systems, technologies, rulemakings, programs, pilot projects, demonstrations, information sharing, contracts, and other activities with potential or actual privacy issues within their area of responsibility;
 - 6.8.5** Assist in the drafting and submission of PTAs to the CBP Privacy and Diversity Office for IT systems, technologies, rulemakings, programs, pilot projects, demonstrations, information sharing, contracts, and other activities involving PII within their area of responsibility;
 - 6.8.6** Report to and coordinate with the Privacy Analyst during the response to, and remediation of, Privacy Incidents, including facilitating the provision of remedial training to field and support office-level personnel within their area of responsibility; and

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6.8.7 Complete required privacy training as described in Section 10 of this Directive.

6.9 Privacy Analysts will:

- 6.9.1** Serve as points of contact for CBP personnel regarding privacy issues;
- 6.9.2** Assist in the drafting and review of privacy compliance documentation submitted by Program Managers, Business Owners, Privacy Liaisons, and others;
- 6.9.3** Provide guidance to Business Owners and Project Managers regarding privacy issues;
- 6.9.4** Review ISAAs, other information sharing proposals, and documentation related to privacy compliance and the safeguarding of PII;
- 6.9.5** Draft Letters of Release Authorization to the extent required to permit ad hoc disclosures of CBP information with agencies external to DHS, when an ISAA or other policy-based mechanism authorizing or supporting the sharing is not in place (ex. Delegation of Authority), in accordance with the conditions of disclosure under the Privacy Act; and
- 6.9.6** Provide privacy training to CBP personnel.

6.10 Business Owners and Project Managers will:

- 6.10.1** Coordinate with their Privacy Liaison, Privacy Analyst, and CBP's Privacy Officer to ensure that privacy is appropriately addressed when proposing, developing, implementing, or changing any IT systems, technologies, rulemakings, programs, pilot projects, demonstrations, information sharing, contracts, and other activities;
- 6.10.2** Coordinate with their Privacy Liaison, Privacy Analyst, and CBP's Privacy Officer to ensure that privacy is appropriately addressed for systems prior to the issuance of an "Authority to Operate" (ATO), "Authority to Test" (ATT), or "Ongoing Authorization" (OA);
- 6.10.3** Coordinate with their Privacy Liaison, CBP's Privacy Officer, the Records and Information Management Office, and the Office of Chief Counsel in the preparation of drafts of all Privacy Compliance Documentation as required when proposing, developing, implementing, or changing any IT systems, technologies, rulemakings, programs, pilot projects, demonstrations, information sharing, contracts, and other activities;

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- 6.10.4** Monitor the design, deployment, operation, and retirement of the IT systems, technologies, rulemakings, programs, pilot projects, demonstrations, information sharing, contracts, and other activities, to ensure that the use of PII is limited to those uses described in the Privacy Compliance Documentation;
- 6.10.5** Oversee systems and programs that maintain PII, whether in electronic or paper form, and report any suspected or confirmed Privacy Incidents to the appropriate party in accordance with DHS and CBP procedures for handling Privacy Incidents in Section 9 of this Directive; and
- 6.10.6** Establish administrative, technical, and physical controls for storing and safeguarding PII consistent with DHS and CBP privacy, security, and records management requirements to ensure the protection of PII from unauthorized access, disclosure, or destruction.
- 6.10.7** Ensure that personnel are not provided access to CBP systems, programs, or tools containing PII without a fully adjudicated Background Investigation (BI).¹⁵

6.11 Contracting Officers and Contracting Officers' Representatives will:

- 6.11.1** Ensure that all contract personnel supporting CBP operations complete the required Privacy Awareness training, review and acknowledge necessary rules of behavior, and complete any system or access-specific training related to privacy;
- 6.11.2** Coordinate with the Privacy Office to ensure that all contractor-operated systems include necessary safeguards for PII and that all necessary Privacy Compliance documentation sufficiently describes the functionality of the system and the uses of information contained within it;
- 6.11.3** Notify the CBP Security Operations Center (CBP-SOC) at (703) 921-6507 and the CBP Privacy Office at PRIVACYINCIDENTS@CBP.DHS.GOV immediately upon becoming aware of a privacy incident involving a contractor/subcontractor owned/managed system involving CBP data.

¹⁵ The requirements and processes associated with the completion of Background Investigations (BI) at CBP are outlined in the CBP Personnel Security Handbook (HB 1400-07A), *available at* <http://cbpnet.cbp.dhs.gov/1A/Documents/HB%201400-07A.pdf#search=system%20access%2C%20background%20investigation>.

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- 6.11.4** Support the Privacy Office's response and remediation of contractor-involved Privacy Incidents through the provision of documentation or other support as identified by the Privacy Office.

7. PRIVACY COMPLIANCE PROCEDURES

- 7.1** CBP's Privacy and Diversity Office will provide training to all Privacy Liaisons in order to enable them to identify projects or activities with privacy issues early in the development process.
- 7.2** Each Business Owner who is proposing, developing, implementing, or changing IT systems, technologies, rulemakings, programs, pilot projects, demonstrations, information sharing, contracts, and other activities that may involve the use of PII will include either their in-house Privacy Liaison or a CBP Privacy Analyst in early discussions of such activities to facilitate the determination of the need for Privacy Compliance Documentation.
- 7.3** Privacy Liaisons must alert their designated CBP Privacy Analysts (formally or informally) about the development or expansion of IT systems, technologies, rulemakings, programs, pilot projects, demonstrations, information sharing, contracts, and other activities, as well as any possible privacy issues.
- 7.4** The Business Owners of the IT systems, technologies, rulemakings, programs, pilot projects, demonstrations, information sharing, contracts, and other activities are responsible for contacting a Privacy Analyst, through or in coordination with their Privacy Liaison, so that the Privacy Analyst can provide privacy guidance during the development of the system, project, activity, or operation.
- 7.5** Business Owners and Project Managers of IT systems, technologies, rulemakings, programs, pilot projects, demonstrations, information sharing, contracts, and other activities involving a change in the use of PII shall contact the CBP Privacy Office for assistance.
- 7.6** The Business Owners, working with a Privacy Analyst, will prepare a PTA to determine the required level of privacy compliance:
- 7.6.1** The Business Owner will submit completed PTAs to the CBP Privacy Office through their assigned Privacy Analyst;
- 7.6.2** If the Business Owner has not been assigned a Privacy Analyst, they will submit completed PTAs to PRIVACY.CBP@CBP.DHS.GOV; and
- 7.6.3** All PTAs must identify the lead Business Owner, as well as the lead Project Manager, as applicable. PTAs without these points of contact will be rejected.

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- 7.7** CBP's Privacy Office will review the PTA, resolve any questions or issues, and transmit the PTA to the DHS Privacy Office. No submission of new systems shall be made to OMB under the "OMB 300" review process before the PTA relating to such system has been cleared by CBP's Privacy and Diversity Office and adjudicated by the DHS Privacy Office.
- 7.8** The DHS Privacy Office will use the PTA to determine whether the program or system is privacy sensitive. Additionally, the PTA notes if a PIA and/or SORN is required.
- 7.9** Following the DHS Privacy Office's adjudication of the PTA and a determination of the need for further Privacy Compliance Documentation, CBP's Privacy Officer will direct the Privacy Liaison and Privacy Analyst to prepare the necessary compliance documents for review by the CBP Privacy Officer.
- 7.10** CBP's Privacy and Diversity Office will use the drafting of the Privacy Compliance Documentation to ensure that the proper privacy compliance measures are followed and incorporated into the development of, or change to, any automated system, project, or operation that collects, maintains, or uses PII, or where there is a change in statutory or regulatory requirements pertaining to PII.
- 7.11** Upon completion of the drafting of the Privacy Compliance Documentation, CBP's Privacy Officer should provide drafts to the Office of Chief Counsel for a legal sufficiency review.
- 7.12** Following the Office of Chief Counsel's legal sufficiency review, when appropriate, and formal clearance by the Business Owner's Office and other CBP stakeholders, the final compliance documents (e.g., PTA, PIA, and/or SORN) will be transmitted electronically by CBP's Privacy Office to the DHS Privacy Office for review and approval.
- 7.13** No CBP personnel may begin collecting or using PII through an automated system, project, operation, pilot, or regulatory change without first completing all of the proper Privacy Compliance Documentation:
- 7.13.1** No Authority to Operate (ATO) nor Authority to Test (ATT) may be granted to systems that lack properly adjudicated Privacy Compliance Documentation.
- 7.13.2** For programs in Ongoing Authorization (OA), all proper Privacy Compliance Documentation must be current and complete in order to maintain OA status.
- 7.13.2.1** For programs entering OA, all compliance documentation must have been completed within the past year.

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- 7.14** Where PII is being collected, maintained, used, or disseminated through IT systems, technologies, rulemakings, programs, pilot projects, demonstrations, information sharing, contracts, and other activities, before the proper privacy compliance documents are completed, CBP's Privacy Officer, in conjunction with the DHS Privacy Office, will make a determination as to whether the IT systems, technologies, rulemakings, programs, pilot projects, demonstrations, information sharing, contracts, and other activities, should be shut down or other corrective actions should be taken in accordance with DHS Directive 047-01 and Instruction 047-01-001.
- 7.15** As appropriate, CBP's Privacy and Diversity Office will conduct a review of IT systems, technologies, rulemakings, programs, pilot projects, demonstrations, information sharing, contracts, and other activities, to ensure that it conforms to the Privacy Compliance Documentation.

8. INFORMATION SHARING PROCEDURES

- 8.1** Sharing of PII within DHS pursuant to the One-DHS Memorandum does not require a written agreement between CBP and the other component(s) of DHS. However, where information is shared with another component of DHS as part of a routine or automated process, the Business Owner shall ensure that the request and intended use of the information are compliant with applicable DHS privacy policies by submitting a PTA, detailing the component access, through the procedures in Section 7.
- 8.2** All domestic bulk sharing initiatives with entities outside DHS require an ISAA:¹⁶
- 8.2.1** All requests for ISAAs must comply with procedures established by this Directive in conformance with the DHS ISSGB Charter and overseen by the ISCC;
 - 8.2.2** The party seeking an ISAA is required to prepare all relevant portions of the DARP Questionnaire or draft the ISAA with all the necessary information as identified in the DARP Questionnaire for submission to the ISAO;
 - 8.2.3** The ISAO identifies a business owner for the ISAA who completes the CBP portions of the DARP Questionnaire or reviews the draft ISAA;

¹⁶ Coordination with the DARC is only required when an ISAA associated with a bulk data transfer involves the collection or dissemination of large quantities of intelligence or information, a significant portion of which is not reasonably likely to have any ultimate intelligence or operational value to the recipient, but which is provided to the data recipient for the recipient to identify information of intelligence or operational value within it. See Footnote 2.

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- 8.2.4** The ISAO supports CBP stakeholders in the drafting of the ISAAs based upon the equities identified in the DARP Questionnaire and reviews the draft ISAAs;
- 8.2.4.1** In filling out a DARP Questionnaire, both parties to the ISAA must identify all relevant stakeholders, the information subject to the exchange, the authorities permitting the exchange, intended uses of the information, and any policy implications of the information exchange.
- 8.2.5** The ISAO circulates the component-cleared ISAA through the ISCC, if required; or if the One-DHS Policy is not implicated, then the ISAO circulates the draft to the DHS Privacy Office and the Office for Civil Rights and Civil Liberties for oversight review; and
- 8.2.6** The ISAO is responsible for presenting ISCC or DHS-cleared ISAAs to CBP for acceptance and signature by an appropriate CBP authority.
- 8.3** All domestic discretionary distribution or ad hoc sharing of CBP records for Law Enforcement purposes must be in accordance with CBP Directive No. 4320-033 on the Sharing of Information for Law Enforcement and Security Purposes.
- 8.4** For any ad hoc sharing of uncertified CBP records containing PII with foreign authorities, that is not covered by an ISAA, a Delegation of Authority, or intended for use in a judicial proceeding, CBP personnel must coordinate with the CBP Privacy Office at PRIVACY.CBP@CBP.DHS.GOV, as well as the record owner prior to making a disclosure. All discretionary distribution or ad hoc sharing of CBP records with foreign authorities must also be in accordance with CBP Directive No. 4320-025A, Disclosure of Official Information to Foreign Authorities, including personnel seeking the assistance of the Office of Chief Counsel when required by that Directive:
- 8.4.1** CBP's Privacy Officer shall evaluate the requested disclosure and as appropriate, provide guidance and support to the CBP office and/or personnel supporting the request.
- 8.5** Requests to disclose CBP records or information containing PII through press releases, articles, social media posts, or in response to media inquiries, may only occur with the review and approval of the CBP Privacy Office (cbp-privacymediareleases@cbp.dhs.gov):
- 8.5.1** The CBP Privacy Office will assess whether the public interest in disclosure outweighs the privacy interests of the individual to the extent the information would shed light on CBP's performance of its duties and whether there are any applicable prohibitions on release of the information; and

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8.5.2 The CBP Privacy Office will coordinate any requests to disclose PII belonging to U.S. persons to the media with the DHS Privacy Officer and the DHS General Counsel.

8.6 Any CBP Office or personnel responsible for sharing PII from a System of Records with a party outside of DHS must confirm that an automated (i.e., system generated) or “hard” copy (i.e., paper or electronic version) DHS-191, Privacy Act Disclosure Record (available from “FORMS” on CBPnet), or other form or process specifically authorized by the CBP Privacy Officer, is prepared to document the sharing of the information. The original DHS-191 or record of disclosure must be retained by the CBP Office providing the information for a period of five years, and a copy must be submitted to the CBP Privacy and Diversity Office at PRIVACY.CBP@CBP.DHS.GOV.

9. PRIVACY INCIDENT HANDLING AND RESPONSE

9.1 In accordance with the DHS Privacy Incident Handling Guidance (PIHG), CBP's Privacy Office will issue guidance to the workforce designed to assist all CBP personnel in responding to suspected or confirmed Privacy Incidents:

9.1.1 The PIHG assigns to all CBP personnel the responsibility to immediately report any suspected or confirmed Privacy Incident to their supervisor, the CBP Privacy and Diversity Office at PRIVACYINCIDENTS@CBP.DHS.GOV, or the CBP CBP-SOC at (703) 921-6507 for review, investigation, and remediation, as necessary; and

9.1.2 The Privacy Incident guidance will provide instruction and best practices on the management of PII and how to safeguard PII. Guidance could include Factsheets, electronic communications via email, FAQs and other guidance documents to provide workflow and reminders for CBP personnel to aid in meeting their respective responsibilities in responding to privacy incidents and safeguarding PII.

9.2 The CBP Privacy Office will coordinate the response to all Privacy Incidents, including ensuring the involvement of key personnel within the Office of Chief Counsel, the Office of Information and Technology, the Office of Professional Responsibility, and the Office of the Commissioner, as necessary:

9.2.1 For incidents involving contract personnel or contractor operated systems, the CBP Privacy Office will also coordinate with personnel from the Office of Acquisition, the Contracting Officer, and relevant program personnel as necessary; and

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9.2.1.1 The CBP Privacy Office will coordinate the review of relevant contract documents, ISAAs, non-disclosure agreements, training records, rules of behavior documents, etc.

9.2.2 The CBP Privacy Office will coordinate with the DHS Privacy Office to determine whether an incident should be classified as Major, resulting in the initiation of the departmental Breach Response Team (BRT).

9.3 The CBP Privacy Office will develop a response and remediation plan that, in coordination with the office within which the incident occurred, will be implemented to mitigate the impact of the breach and ensure to the extent possible that similar incidents will not occur in the future:

9.3.1 All personnel will comply with remediation requirements identified and assigned by the CBP Privacy Office in response to a Privacy Incident, including the provision of training and any other remedial measures or obligations deemed necessary by the CBP Privacy Officer; and

9.3.2 The Office determined to be responsible for the incident will bear the costs associated with all response and remediation requirements, including the provision of notification to affected individuals, as well as identity protection and credit monitoring, if deemed necessary.

10. PRIVACY TRAINING REQUIREMENTS

10.1 All CBP personnel must complete privacy training in order to access or use PII as part of their official duties. Training includes:

10.1.1 Annual completion of “Privacy at DHS: Protecting Personal Information” in the DHS Performance and Learning Management System (PALMS TRAEN Course ID: G0597020-31) or successor training course;

10.1.2 System or program-specific training in order to access or use PII in that system or as part of that program. For example, users of TECS must complete the “TECS Privacy and Security Awareness” course annually in order to maintain access to TECS; and

10.1.3 Remedial or refresher training as required in response to a Privacy Incident.

11. TREATMENT OF VESSEL MANIFEST INFORMATION

11.1 In accordance with 19 CFR 103.31, which implements the requirements of 19 U.S.C. 1431(c), , CBP provides confidential treatment under certain circumstances for the name and address of importers, consignees, and shippers (foreign suppliers) on inward vessel manifests, and for the name and address of shippers (exporters) on

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outward vessel manifests. Note that the confidential treatment of such information only applies to public disclosure of manifest information and does not impact internal use of this information or use for law enforcement purposes.

- 11.2** Requests under 19 C.F.R. § 103.31(d) for confidential treatment of manifest information for shipments of goods received by sea (vessel) are received from the public by mail, fax, email at vesselmanifestconfidentiality@cbp.dhs.gov, or other electronic means (such as submission through CBP's public website, www.CBP.gov) and shall be processed by the Office of Trade (OT), Trade Transformation Office, through the ACE/Automated Manifest System (Inward) and the ACE/Automated Export System (Outward).
- 11.3** Availability of vessel manifest information, as required in 19 CFR 103.31(e), is managed by the Office of Finance, Revenue Division (receipts of payment), and the Office of Information and Technology, Cargo Systems Program Directorate (dissemination of information).
- 11.4** Coordination of outreach and response to inquiries from representatives of the press is provided by the Office of Trade Relations, Office of the Commissioner:
 - 11.4.1** The Trade Transformation Office, Office of Trade, will assess and determine whether to grant or deny requests from representatives of the press seeking accreditation and access to import and/or export vessel manifest information pursuant to 19 C.F.R. 103.31(a). With regard to vessel manifest information maintained at port locations, the Trade Transformation Office will coordinate with the Office of Field Operations;
 - 11.4.2** The Regulations and Rulings Directorate, Office of Trade, will assess and determine whether to grant or deny administrative appeals of adverse determinations made by the Trade Transformation Office regarding a representative of the press' request for accreditation and access to vessel manifest information pursuant to 19 C.F.R. 103.31(a); and
 - 11.4.3** The Trade Transformation Office, Office of Trade, will facilitate access to vessel manifest information for accredited representatives of the press.
- 11.5** Inquiries and complaints relating to the publication or non-publication of information, from shippers, importers, consignees, other members of the trade or the public, are coordinated by the Office of Trade Relations, Office of the Commissioner.

12. NO PRIVATE RIGHT CREATED

This Directive is an internal policy statement of CBP and does not create nor confer any rights, privileges, or benefits for any person or entity. United States v. Caceres, 440 U.S. 741 (1979).

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Chris Magnus

Commissioner

U.S. Customs and Border Protection

A handwritten signature in black ink, featuring a large, stylized loop at the beginning and a long, horizontal stroke extending to the right.

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UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

MARTÍN JONATHAN BATALLA VIDAL,)
ANTONIO ALARCON, ELIANA FERNANDEZ,)
CARLOS VARGAS, MARIANO)
MONDRAGON, and CAROLINA FUNG FENG,)
on behalf of themselves and all other similarly)
situated individuals, and MAKE THE ROAD)
NEW YORK, on behalf of itself, its members, its)
clients, and all similarly situated individuals,)

Plaintiffs,)

v.)

ELAINE C. DUKE, Acting Secretary, Department)
of Homeland Security, JEFFERSON)
BEAUREGARD SESSIONS III, Attorney General)
of the United States, and DONALD J. TRUMP,)
President of the United States,)

Defendants.)

**SECOND AMENDED
COMPLAINT**

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

INTRODUCTION

Plaintiffs Martín Batalla Vidal, Antonio Alarcon, Eliana Fernandez, Carlos Vargas, Mariano Mondragon, and Carolina Fung Feng (“Individual Plaintiffs”), on behalf of themselves and all other similarly situated individuals, and Make the Road New York (“MRNY”), on behalf of itself, its members and clients, and all similarly situated individuals (collectively “Plaintiffs” or “Named Plaintiffs”), bring this action to challenge the Trump Administration’s unlawful termination of the Deferred Action for Childhood Arrivals (“DACA”) program. Nearly one million young immigrants rely on DACA to work, study, hold driver’s licenses, serve in the military, support their families, and live securely in the only country they know as home. Defendants’ arbitrary decision to terminate this established and successful program upends the lives of these individuals and threatens to destabilize their families, communities, and

workplaces. The termination of DACA violates federal statutes and the Constitution, necessitating this Court's intervention to protect against imminent and devastating harm.

The termination of DACA will prevent Mr. Batalla Vidal from caring for patients at the nursing home where he works. It will prohibit Ms. Fernandez from working to support her two U.S.-citizen children, making her mortgage payments, and paying for health insurance for her family. It will throw into disarray the lives of Mr. Mondragon's two young children and pregnant wife, who depend on his ability to make a living wage. It will bar Mr. Vargas, who recently started attending night classes at City University of New York School of Law, from fulfilling his dream of becoming a lawyer. Defendants' decision to abruptly end the program will force nearly 800,000 people to live with the persistent fear of being separated from their families.

Defendants impose these harms in violation of the procedural requirements meant to protect individuals from arbitrary government action. The termination of DACA binds the Department of Homeland Security to categorically deny deferred action to new applicants as of September 5, 2017, and to deny all renewal applications as of October 5, 2017, without following public notice-and-comment procedures required by the Administrative Procedure Act ("APA"), and without the analysis required by the Regulatory Flexibility Act.

Separately, Defendants' DACA termination reverses longstanding agency policy on which nearly 800,000 people have relied, including assurances to DACA applicants that the information they provided would not be used against them or their loved ones. Under the APA, Defendants must provide a reasoned explanation for choosing to terminate this program. Rather than do so, Defendants have justified the reversal based on fear of a hypothetical lawsuit, the legally erroneous claim that DACA is unlawful, and a variety of inaccurate factual assertions.

Defendants' termination of DACA additionally violates the Fifth Amendment.

Defendants have failed to correct misleading notices previously sent to many DACA recipients who are now required to submit renewal applications by October 5, 2017, in violation of procedural due process requirements. Finally, Defendants' contradictory, illogical, and false explanations for terminating DACA evidence that the true reasons for ending this highly successful program are pretextual, in violation of the guarantee of equal protection under law.

Because Plaintiffs and other similarly situated individuals face the imminent loss of their eligibility for DACA status due to Defendants' unlawful actions, Plaintiffs ask this Court to declare the termination of DACA unlawful and to enjoin its enforcement.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, as this case arises under the U.S. Constitution, the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 551 *et seq.*, and the Regulatory Flexibility Act ("RFA"), 5 U.S.C. §§ 601 *et seq.*

2. Venue properly lies in this district because Individual Plaintiffs reside in the district, and Plaintiff Make the Road New York ("MRNY") operates community centers in Bushwick, Brooklyn; Jackson Heights, Queens; Port Richmond, Staten Island; and Brentwood, Long Island. 28 U.S.C. § 1391(e)(1). Venue also properly lies in this district because a substantial part of the events or omissions giving rise to this action occurred in the district. *Id.* § 1391(b).

PARTIES

Plaintiff Martín Batalla Vidal

3. Plaintiff Martín Jonathan Batalla Vidal ("Mr. Batalla Vidal") is a recipient of DACA. He has resided in Queens, New York for twenty years.

4. Mr. Batalla Vidal was born in Mexico and raised in New York since he was a young child. Mr. Batalla Vidal has a younger brother who has also received DACA, and two younger brothers who were born in the United States. Mr. Batalla Vidal considers New York his home, as it is the only place he has lived in since he was a child.

5. Mr. Batalla Vidal attended Bushwick Leaders High School for Academic Excellence in Brooklyn, New York from September 2004 until his graduation in June 2008.

6. After graduating from high school, Mr. Batalla Vidal hoped to attend a nursing program at a school such as the City University of New York (“CUNY”), but could not seriously consider these programs because those universities did not offer financial aid to undocumented students. His guidance counselor and other advisors also stressed the difficulty of finding work in the medical field without employment authorization, in light of which Mr. Batalla Vidal chose not to pursue a degree he might not be able to use in the future.

7. In November 2012, the Obama Administration created DACA. In November 2014, Mr. Batalla Vidal applied for DACA with the assistance of MRNY. To prepare his application, Mr. Batalla Vidal attended a workshop at MRNY’s Brooklyn office, where he made follow-up visits. To prove his eligibility for DACA, Mr. Batalla Vidal spent many hours over the course of several months gathering paperwork and obtaining documents from his high school, hospital, and bank. On February 17, 2015, DHS approved Mr. Batalla Vidal’s application.

8. Receiving DACA reinvigorated Mr. Batalla Vidal’s dreams of working in the medical profession, and in fall 2015, he enrolled at ASA College in a medical assistant’s degree program. With DACA, Mr. Batalla Vidal was able to raise money for school and support his mother and younger siblings. He worked two jobs at the same time, full time at Bocca Catering and part time at the New York Sports Club. He currently works full time at Park Terrace

Rehabilitation and Nursing Center, where he cares for patients with serious health needs. Mr. Batalla Vidal also received a scholarship for DACA recipients from ASA College.

9. Defendants approved Mr. Batalla Vidal's DACA renewal on February 16, 2017. His current grant will expire on February 15, 2019. Because of Defendants' termination of DACA, Mr. Batalla Vidal is ineligible to apply to renew DACA.

10. Through employment he was able to obtain with DACA, Mr. Batalla Vidal can financially support himself, his mother, and his younger siblings. Mr. Batalla Vidal's ability to pursue his career and provide for his family has been thrown into jeopardy due to Defendants' termination of DACA. Without Mr. Batalla Vidal's income, he and his family will face significant financial hardship. If Mr. Batalla Vidal is deported, his family will also lose his emotional support and be irreparably harmed.

Plaintiff Antonio Alarcon

11. Plaintiff Antonio Alarcon ("Mr. Alarcon") is a recipient of DACA. He resides in Queens, New York.

12. Mr. Alarcon was born in Mexico and has lived in New York since he was eleven years old. As a child, he lived in New York with his parents, while his younger brother stayed behind in Mexico with their grandparents. When Mr. Alarcon was seventeen, his grandparents passed away, and his parents felt compelled to return to Mexico to care for his younger brother. When his parents left, Mr. Alarcon moved in with his aunt and uncle.

13. Mr. Alarcon received DACA on March 26, 2013, with the assistance of MRNY, which then hired Mr. Alarcon as an Immigrant Youth Organizer. Employment by virtue of DACA enabled Mr. Alarcon to financially support himself, his aunt, and his uncle as he pursued his education.

14. Mr. Alarcon graduated from Flushing High School, and received his associate's degree from LaGuardia Community College in 2015. He is currently pursuing a Bachelor of Arts degree in Film Studies from Queens College, where he is on track to graduate in December 2017.

15. Through his employment and volunteer activities, Mr. Alarcon has become a leading voice for youth in his community and beyond. From facilitating local youth meetings and retreats, to serving as a regional coordinator on national campaigns, he has worked to expand educational opportunities for immigrant youth throughout New York and the United States.

16. Defendants granted Mr. Alarcon DACA renewals on March 6, 2015 and again on January 26, 2017. His current grant will expire on January 25, 2019. He is ineligible to renew DACA because of Defendants' termination of the program, thereby jeopardizing his and his family's wellbeing.

Plaintiff Eliana Fernandez

17. Plaintiff Eliana Fernandez ("Ms. Fernandez") is a recipient of DACA. She resides in Suffolk County, New York.

18. Ms. Fernandez was born in Ecuador and came to the United States at the age of fourteen, where she was finally able to reunite with her parents after not seeing them for many years. She has lived in New York since she was fourteen years old. She has two New York-born, U.S. citizen, children of elementary-school age, whom she is raising.

19. Ms. Fernandez first received DACA on December 11, 2012 and renewed her status on November 4, 2016. Her current grant will expire on November 20, 2018, and so she is no longer eligible to renew DACA as a result of Defendants' termination of the program.

20. Ms. Fernandez has worked hard to build a life for herself and her family. Despite being ineligible for financial aid and other types of support, she attended St. Joseph's College,

where she was on the Dean's List many semesters and earned a degree in Sociology in 2015. She now works as an Immigration Case Manager in MRNY's Long Island office. This semester she started graduate school at CUNY School of Professional Studies to obtain an Advanced Certificate on Immigration Law.

21. Ms. Fernandez is a mother and homeowner who contributes every day to the state of New York by working, studying, and giving back to her community. She was able to achieve these goals because of DACA, which allowed her to go back to school, earn a living wage, and purchase a home in which her children can grow up.

22. Without DACA, Ms. Fernandez would no longer have a driver's license to drive her children to the doctor or to school. Without the employment authorization that her DACA status provides, she could not afford her mortgage or her family's health insurance. Defendants' termination of the DACA program puts Ms. Fernandez at risk of being separated from her children, as she was from her parents as a child.

Plaintiff Carlos Vargas

23. Plaintiff Carlos Vargas ("Mr. Vargas") is a recipient of DACA. He resides in Staten Island, New York.

24. Mr. Vargas was born in Puebla, Mexico. He came to the United States with his mother, who was struggling to raise Mr. Vargas and his siblings after Mr. Vargas's father passed away two months before he was born. Mr. Vargas has lived in New York City since he was four, and in Staten Island since he was sixteen.

25. Mr. Vargas began working in restaurants at age thirteen to help his family, leaving school at 3 P.M. and working shifts from 4 P.M. to midnight, five days a week. He had

hoped to attend college but was told by a school counselor that he could not attend because he was undocumented.

26. After graduating from James Madison High School in Brooklyn, Mr. Vargas began working sixty hours per week to support his family, while remaining committed to going to college and earning a degree. Mr. Vargas learned that his undocumented status would not prevent him from enrolling in CUNY College of Staten Island (“CUNY CSI”), provided he could pay his tuition without government loans. He applied for admission and was accepted. By taking classes at night and working full time during the day, Mr. Vargas obtained his Bachelor of Science degree in Business in 2014.

27. Mr. Vargas applied for DACA in August 2012. His application was granted on December 13, 2012. DHS renewed his DACA on November 14, 2014 and again on September 14, 2016, with his current grant expiring on September 13, 2018. Mr. Vargas is no longer eligible to renew DACA as a result of Defendants’ termination of the program.

28. DACA allowed Mr. Vargas to obtain work authorization and a New York driver’s license for the first time in his life, thereby opening up new employment and life opportunities.

29. After volunteering for many years in Staten Island for Make the Road New York, El Centro del Inmigrante, and the Staten Island Community Job Center, Mr. Vargas became accredited as a U.S. Department of Justice Accredited Representative, authorizing him to represent individuals before U.S. Citizenship and Immigration Services and the Executive Office for Immigration Review, the component of the Department of Justice that hears immigration cases.

30. Mr. Vargas now works at MRNY, where he screens individuals and provides assistance applying for DACA and other forms of immigration relief. He plans to become a

lawyer so that he can be a more effective advocate for his community. Last month, he began attending evening classes at CUNY School of Law.

Plaintiff Mariano Mondragon

31. Plaintiff Mariano Mondragon (“Mr. Mondragon”) is a recipient of DACA. He resides in Queens, New York.

32. Mr. Mondragon was born in Mexico and first came to the United States with his father in 1999, when he was fourteen years old. Six months after they arrived, his father returned to Mexico while Mr. Mondragon remained in the United States with his aunt. He has not seen his parents in seventeen years.

33. Mr. Mondragon began working at the age of sixteen. Since graduating from Flushing High School in 2005, he has worked in the restaurant industry.

34. Mr. Mondragon has been married for five years. He and his wife have two U.S.-born children together, ages eight and one, and his wife is pregnant with their third child.

35. Mr. Mondragon also has a ten-year-old daughter from a previous relationship. Her mother moved to Mexico when she was pregnant. While Mr. Mondragon has never met his daughter in person, he provides financial support for her.

36. Mr. Mondragon received DACA on April 14, 2014 and renewed it on February 25, 2016. His DACA status will expire on February 24, 2018. In addition, two of Mr. Mondragon’s brothers are DACA recipients.

37. DACA has allowed Mr. Mondragon to support his family by working as a bartender in Manhattan and it has provided assurance that he will not be separated from his children and wife.

38. At the time of filing this complaint, Mr. Mondragon is making every effort to renew his DACA status before the October 5, 2017 deadline.

Plaintiff Carolina Fung Feng

39. Plaintiff Carolina Fung Feng (“Ms. Fung Feng”) is a recipient of DACA. She resides in Middle Village, Queens.

40. Ms. Fung Feng was born in Costa Rica and came to the United States to live with her aunt in 2001 when she was twelve. She has not seen her father—her only living parent—since she left Costa Rica sixteen years ago. Ms. Fung Feng first applied for DACA around September 2012 and was approved around December 2012. She has successfully renewed DACA twice, in July 2014 and June 2016. Her status expires in September 2018, and so she is no longer eligible to renew DACA as a result of Defendants’ termination of the program.

41. Ms. Fung Feng graduated from Hunter College in January 2013 with a Bachelor of Arts in English-Spanish Translation and Interpretation, and English Language Arts. She also received an English teaching certification from Teaching House in 2015.

42. Ms. Fung Feng has worked for MRNY since 2015 as a Program Assistant for the Adult Literacy Program. She supports her younger brother, a U.S. citizen who graduated from CUNY City College in 2017, and her younger cousin, who came to the U.S. to study.

Plaintiff Make the Road New York

43. Plaintiff Make the Road New York (“MRNY”) brings this action on behalf of itself, as well as on behalf of its clients and members and all similarly situated individuals. MRNY is a nonprofit, membership-based § 501(c)(3) organization dedicated to empowering immigrant, Latino, and working-class communities in New York. With offices in Brooklyn, Queens, Staten Island, and Suffolk County, MRNY integrates adult and youth education, legal

and survival services, and community and civic engagement, in order to assist low-income New Yorkers improve their lives and neighborhoods.

44. MRNY has a legal department staffed by twenty-three attorneys and eleven advocates who provide a broad range of civil legal services to immigrant New Yorkers. MRNY's immigration team provides individualized assistance to immigrants facing deportation, as well as in affirmative applications for immigration relief. MRNY also directly assists individuals prepare the documentation and paperwork necessary for DACA applications and renewals. Given the immigrant-rich nature of the New York neighborhoods it serves, MRNY's limited staff is unable to fully meet the high demand for its services and resources.

45. MRNY currently offers weekly DACA clinics in large group settings in Queens and assists DACA-eligible individuals through its Action NYC program, which provides comprehensive immigration screenings to New Yorkers. MRNY also provides assistance with DACA renewals in its Brooklyn, Staten Island, and Long Island offices. Since fall 2012, MRNY has conducted approximately 392 DACA clinics and has submitted more than 2,582 DACA applications on behalf of its clients. MRNY assists its DACA-eligible clients with initial applications as well as renewals.

46. MRNY has more than 20,000 dues-paying members residing in New York City and Long Island, primarily in the boroughs of Queens and Brooklyn. Its members include Plaintiffs Batalla Vidal, Alarcon, Fernandez, Vargas, Mondragon, and Fung Feng, along with many other members who will lose their DACA status as a result of Defendants' termination of the program.

47. At least eleven current MRNY employees have DACA, including Plaintiffs Alarcon, Fernandez, Fung Feng, and Vargas.

48. Approximately forty MRNY members, and a significant additional number of MRNY clients, have DACA that expires between September 5, 2017 and March 5, 2018 and are therefore subject to the mandatory October 5, 2017 renewal deadline. Of these members, MRNY has not been able to reach four DACA recipients to inform them they need to renew now. Some of these MRNY members and clients have received notices from Defendants advising them to renew “as soon as possible” and within 120 to 150 days before their status expires. Defendants’ notices have made no mention of the October 5, 2017 deadline. None of these MRNY members or clients have received a corrected notice from Defendants informing them of the mandatory October 5, 2017 deadline for renewals.

49. At least seven MRNY members, and an additional number of clients, were eligible for DACA as of September 5, 2017, but had not yet submitted their initial applications. Most of them were in the process of assembling the documentation necessary to satisfy the DACA eligibility requirements.

50. Still, other youth members of MRNY, and an additional number of clients, were not eligible for DACA on September 5, 2017 but will become eligible for DACA in the future, under the terms of the 2012 Guidance. One member received a letter from her GED course indicating she met the education requirement of DACA on September 7, 2017—two days after she lost the ability to apply for DACA.

51. Plaintiff MRNY, its staff, its members, and its clients are aggrieved by Defendants’ final agency action and have exhausted their administrative remedies.

52. The legal interests of MRNY, its staff, its members, and its clients in not having the DACA program terminated unlawfully, and in having their DACA applications and renewals considered, are germane to MRNY’s purpose of advocating for the rights of low-income

immigrant communities, to its role as an employer of individuals with DACA, and are inextricably bound up with the legal services that MRNY attorneys provide the organization's clients.

53. MRNY's clients face hindrances to bringing suit to protect their own interests, including but not limited to lack of notice, privacy concerns, fear of retaliation (against themselves and/or their families), language barriers, and lack of resources.

54. Defendants' planned unlawful termination of the DACA program has already directly harmed MRNY by causing the organization to divert its resources from other time-sensitive immigration cases to assist individuals to apply for renewals by October 5, 2017, and to conduct additional screenings of its clients (members and non-members) to determine whether they are eligible for other forms of immigration relief.

55. Since September 5, 2017, MRNY has already hosted twelve workshops on DACA renewal that they would not have had to host if Defendants had not terminated the program. MRNY's ActionNYC program in Queens, part of an initiative co-sponsored by the N.Y.C. Office of Immigrant Affairs and CUNY that connects New Yorkers with free and safe immigration services, has had to be put on hold for a month. Five Department of Justice Accredited Representative staff members who each do screenings and immigration application assistance had to cancel all of their September appointments and reschedule them for October and later, in order to schedule DACA renewal applications in their September slots. This has also involved the extra administrative burden of calling and rescheduling numerous appointments and delaying work on their other active cases.

56. In addition, MRNY's legal team has expended its limited resources creating Know-Your-Rights materials, answering calls, addressing walk-in questions, mailing renewal

applications, and coordinating an emergency support plan, including mental health support, for members, clients, and staff due to the termination.

57. MRNY has spent additional money on application fees for individuals who have received scholarships that would not be granted until after their applications needed to be submitted, as well as on priority shipping fees for renewal applications, to ensure they arrive by the October 5 deadline.

58. MRNY will sustain further injuries if its DACA employees lose work authorization as a result of the Defendants' actions.

59. MRNY has also expended extensive resources in bringing the current action to vindicate the rights of its members, its clients, itself, and others who are affected.

60. These injuries to MRNY, its members, and its clients would be redressed by a favorable decision from this Court.

61. As a New York-focused, non-profit organization, MRNY is a "small organization" under the RFA. 5 U.S.C. § 601(4). MRNY is directly affected by Defendants' termination of DACA, as the Agency's final action has adversely affected it. *Id.* § 611(a)(1).

Defendants

62. Defendant Elaine C. Duke is the Acting Secretary of the U.S. Department of Homeland Security. She is sued in her official capacity.

63. Defendant Jefferson Beauregard Sessions III is the Attorney General of the United States and the head of the U.S. Department of Justice. He is sued in his official capacity.

64. Defendant Donald J. Trump is the President of the United States. He is sued in his official capacity.

STATEMENT OF FACTS

The 2012 DACA Memorandum

65. On June 15, 2012, then-Secretary of Homeland Security Janet Napolitano (“the Secretary”) announced the creation of the DACA program, which set out guidelines for U.S. Citizenship and Immigration Services (“USCIS”) to use its prosecutorial discretion to extend deferred action to certain young immigrants “who were brought to this country as children and know only this country as home.” Mem. from Janet Napolitano, Sec’y of Homeland Security, to Alejandro Mayorkas, Dir., U.S. Citizenship and Immigration Servs., *Exercising Prosecutorial Discretion With Respect to Individuals Who Came to the United States as Children*, June 15, 2012 (“DACA Memorandum”) (attached hereto as Exhibit A). Those granted deferred action also became eligible for employment authorization. 8 C.F.R. § 274a.12(c)(14).

66. The DACA Memorandum states that individuals who came to the United States as children, lack a serious criminal history, attend school or participate in the Armed Services, and meet other criteria may request that the Secretary grant deferred action, a discretionary form of relief from removal, for a period of two years, subject to renewal. Those granted deferred action in this manner could also obtain employment authorization and a social security card. *See* Ex. A, DACA Memorandum.

67. The Secretary made findings that the individuals eligible to apply for DACA “have already contributed to our country in significant ways” and “lacked the intent to violate the law.” *Id.* at 1. She found that our nation’s immigration laws “are not designed to be blindly enforced without consideration given to the individual circumstances of each case,” and that the limited resources of DHS must be “focused on people who meet our enforcement priorities.” *Id.*

68. Individuals who met the criteria listed in the DACA Memorandum did not automatically receive deferred action. Instead, DHS was directed to exercise its discretion to consider grants of deferred action “on a case by case basis.” *Id.*

69. Pursuant to the DACA Memorandum, USCIS established an application and background-check procedure to evaluate whether individuals would qualify for deferred action. Applicants were required to disclose extensive sensitive and personal information to Defendants, including their lack of lawful immigration status as of June 15, 2012, current and previous mailing addresses, country of birth, dates of initial and subsequent entries, and contact information. *See* USCIS Form I-821D and Instructions (attached hereto as Exhibit B).

70. In order to prove that they met the eligibility criteria, DACA applicants also routinely provided Defendants documents containing personal information, including copies of school records, pay stubs, bank statements, passports, birth certificates, and similar records.

71. The information and records DACA applicants provided Defendants frequently included sensitive and personal information about third parties as well, including family members of DACA applicants.

72. Defendants consistently represented to DACA applicants that the information they provided would be protected from disclosure to U.S. Immigration and Customs Enforcement (“ICE”) and Customs and Border Protection (“CBP”) for immigration enforcement proceedings against them and their family members or guardians, except in limited, delineated circumstances. *Id.* at 20; U.S. Citizenship & Immigration Servs.: Frequently Asked Questions (excerpt attached hereto as Exhibit C); Letter from Jeh Johnson, Sec’y of Homeland Sec., to Judy Chu, U.S. House Representative (Dec. 30, 2016) (“[T]he U.S. government represented to [DACA] applicants that the personal information they provided will not later be used for

immigration enforcement purposes. . . . We believe these representations . . . must continue to be honored.”) (attached hereto as Exhibit D). These assurances allowed applicants to apply for deferred action without fear that the information they provided would later be used by Defendants to deport them or their families.

Impact of the DACA Program

73. Since the program was first introduced in 2012, nearly 800,000 individuals have received deferred action and employment authorization under DACA. Close to 42,000 DACA recipients live in New York State alone.

74. As a result of the DACA program, these young immigrants have been able to enroll in colleges and universities, and to obtain jobs, driver’s licenses, bank accounts, and health insurance (through employment, college, or state-run programs). DACA recipients have come to rely on the program to allow them to work, study, and live without the constant threat of deportation. Indeed, in reliance on the program, DACA recipients have made significant investments in their futures, such as enrolling in higher education and graduate programs; pursuing employment opportunities; marrying and having children of their own; and purchasing homes and automobiles, to name a few examples.

75. They have also relied on the availability of renewing DACA. New York DACA recipients have submitted more than 53,000 renewal applications since DACA began—10,000 more than initial applications, meaning that some recipients have renewed more than once.

76. This reliance has continued since Defendant President Trump took office, because he maintained the program for nearly eight months, accepting both first-time applications and renewals while assuring DACA-eligible immigrants that he would “take care of” them.

77. The Trump Administration's arbitrary decision to terminate DACA reverberates well beyond the nearly 800,000 DACA recipients. The opportunities DACA recipients acquired and created as a result of the program benefitted their families, communities, and employers, as well. All of these groups stand to lose these gains, on which they have come to rely, if Defendants' arbitrary decision to end DACA stands.

78. For example, Ms. Fernandez works as an immigration advocate with MRNY and is enrolled in a graduate program at CUNY School of Professional Studies to obtain an Advanced Certificate on Immigration Law. Without DACA, she will be forced to leave her job and cease her studies. If Ms. Fernandez is deported, her two U.S.-citizen sons will be left without their primary caretaker. Like Ms. Fernandez, many DACA recipients depend on their work authorization to financially support family members, including U.S.-citizen children and siblings.

79. The positive impact DACA has made on the overall U.S. economy would disappear if the Administration's arbitrary decision to terminate the program holds. Economists calculate that DACA has boosted labor-force participation, raised DACA recipients' purchasing power, and increased state and federal tax revenues.

80. Economists estimate that the U.S. economy would lose tens of billions of dollars if the program is terminated. New York state alone stands to lose nearly \$2.6 billion if DACA recipients leave the workforce. Terminating the program would have a significant fiscal and economic cost—estimated to be more than \$60 billion—borne by the entire U.S. population.

The Trump Administration's Animus Toward Individuals of Latino and Mexican Heritage

81. A hallmark of Defendant Trump's campaign and presidency has been unabashed nativism, in both words and deeds, rarely seen in this country's recent history. As part of that

nativist platform, Defendant Trump and some members of his Administration have portrayed immigrants as imminent threats to the health, safety, and wellbeing of the United States.

82. One group that Defendant Trump has repeatedly targeted is Latinos, especially those of Mexican heritage. When Defendant Trump announced his candidacy in June 2015, he labeled Latinos and Mexicans as “criminals,” a characterization he used to justify his harsh immigration proposals.

83. In his presidential announcement speech, then-candidate Trump stated: “When Mexico sends its people, they’re not sending their best . . . They’re sending people that have lots of problems, and they’re bringing those problems with us. They’re bringing drugs. They’re bringing crime. They’re rapists.”

84. Defending these remarks, then-candidate Trump explained: “I can’t apologize for the truth. I said tremendous crime is coming across.” He later added: “What can be simpler or more accurately stated? The Mexican Government is forcing their most unwanted people into the United States. They are, in many cases, criminals, drug dealers, [and] rapists”

85. A few weeks after he announced his candidacy, Defendant Trump again described Mexicans as murderers and rapists, stating, “I do business with the Mexican people, but you have people coming through the border that are from all over. And they’re bad. They’re really bad.” He labeled the people who were coming in as “killers and rapists.”

86. During a Republican presidential debate in August 2015, then-candidate Trump again characterized Mexicans as criminals. He stated that “the Mexican government is much smarter, much sharper, much more cunning and they send the bad ones over because they don’t want to pay for them, they don’t want to take care of them.”

87. Later that same month, Defendant Trump criticized fellow-candidate Jeb Bush because his wife is Latina, retweeting a post criticizing Governor Bush, which told him to stop speaking “Mexican” and instead speak English.

88. In May 2016, then-candidate Trump criticized U.S. District Judge Gonzalo Curiel for his Mexican heritage. Judge Curiel was born a U.S. citizen in Indiana. While Judge Curiel was presiding over a lawsuit against Trump University, then-candidate Trump complained that the jurist would not be able to fairly adjudicate the case because of his ancestry: “He’s a Mexican. We’re building a wall between here and Mexico. The answer is, he is giving us very unfair rulings—rulings that people can’t even believe.”

89. Since his inauguration, Defendant Trump has continued to express animus toward Mexicans and Latinos through both his words and actions. In August 2017, in a speech in Arizona, Defendant Trump described some undocumented immigrants as “animals.”

90. That same month, Defendant Trump pardoned former Sheriff Joe Arpaio for contempt of court. Sheriff Arpaio had violated an injunction barring the Maricopa County Sheriff’s Office from implementing a policy that allowed officers to arrest someone on suspicion of illegal presence and directed officers to consider “race or ‘Mexican ancestry’” as a factor. *United States v. Arpaio*, 2017 WL 3268180 (D. Ariz. 2017). By pardoning Sheriff Arpaio, Defendant Trump implicitly approved of unconstitutional discrimination against Latinos and Mexicans, and stated that Sheriff Arpaio was convicted merely for “doing his job.”

91. In his speeches since the Inauguration, when discussing the undocumented Latino community, Defendant Trump has characterized them as criminals and gang members.

92. In his April 2017 prepared remarks announcing the Department of Justice's "Renewed Commitment to Criminal Immigration Enforcement," Defendant Sessions argued for securing the borders by taking a stand against "filth."

The Trump Administration's Decision to Terminate the DACA Program

93. On June 29, 2017, Texas Attorney General Ken Paxton, along with the attorneys general of nine other states, wrote Defendant Sessions threatening to amend their complaint in *Texas v. United States*, No. 1:14-cv-00254 (S.D. Tex.), to challenge the DACA program if Defendants did not terminate DACA by September 5, 2017.

94. On September 5, 2017, Defendant Duke issued a memorandum announcing that DHS would terminate the DACA program. *See* Mem. from Elaine C. Duke, Acting Sec'y of Homeland Sec., to James W. McCament, Acting Dir., U.S. Citizenship and Immigration Servs., *Memorandum on Rescission of Deferred Action For Childhood Arrivals (DACA)*, Sept. 5, 2017 ("DACA Termination") (attached hereto as Exhibit E).

95. Defendants Sessions, Duke, and Trump jointly made the decision to end DACA and jointly prepared the DACA Termination.

96. The DACA Termination directs DHS to categorically reject all new DACA applications received after September 5, 2017. DHS will consider renewal applications from existing DACA recipients whose status expires on or before March 5, 2018, but only if such renewal applications are received by October 5, 2017. DHS will categorically reject renewal applications from DACA recipients whose status expires after March 5, 2018.

97. Defendant Duke stated that the decision was based on two reasons: (1) the preliminary injunction issued against a separate program, *see Texas v. United States*, 86 F. Supp. 3d 591 (S.D. Tex. 2015), *aff'd*, 809 F.3d 134 (5th Cir. 2015), *aff'd by an equally divided court*,

136 S. Ct. 2271 (2016) (per curiam); and (2) Defendant Sessions' opinion that DACA "was an unconstitutional exercise of authority by the Executive Branch," *see* Ex. E, DACA Termination.

98. DHS provided no other explanation for its decision to terminate DACA.

99. The preliminary injunction issued by a Texas court does not reach the original DACA program. Rather, it enjoins the Deferred Action for Parents of Americans and Lawful Permanent Residents program, a different program which is no longer in force.

100. On September 5, 2017, Defendant Sessions held a press conference, falsely asserting that DACA "contributed to a surge of unaccompanied minors on the southern border that yielded terrible humanitarian consequences." He stated further, "It also denied jobs to hundreds of thousands of Americans by allowing those same jobs to go to illegal aliens."

Attorney General Sessions Delivers Remarks on DACA, Dep't of Justice (Sept. 5, 2017)

(attached hereto as Exhibit F).

101. While Defendant Duke based the decision to terminate DACA on the legally erroneous conclusion that DHS lacks authority to exercise its discretion in granting deferred action under DACA, Defendant Trump has made contradictory statements that suggest he believes it is within his executive authority. On September 5, 2017, shortly after the DACA Termination was published, Defendant Trump tweeted that if Congress did not act before March 5, 2018, he would "revisit this issue." If the unlawfulness of DACA were the true reason for terminating the program, then the President would lack authority to "revisit" ending DACA.

102. In addition, on September 14, 2017, a week after the Administration's announcement terminating DACA, and facing multiple suits challenging his actions, Defendant Trump tweeted, "Does anybody really want to throw out good, educated and accomplished young people who have jobs, some serving in the military? Really!....." This statement is

inconsistent with previous statements by Defendant Trump and the Trump Administration, and reflects the arbitrariness of the Administration's decision to end the program.

103. The DACA status of more than 150,000 DACA recipients will expire before March 5, 2018. Many of those individuals have received the standard DHS renewal notice directing the recipient to submit a renewal application "as soon as possible," and to avoid a lapse in status by submitting the renewal application 120 to 150 days before expiration. *See* Dep't Homeland Sec., I-797C Notice of Action, July 15, 2017 (attached hereto as Exhibit G).

104. Defendants' renewal notices do not advise recipients whose status will expire before March 5, 2018 that they, in fact, must submit a renewal application by the October 5, 2017 deadline.

105. On information and belief, DHS has not provided and does not plan to provide accurate or corrected individualized notices to those DACA recipients who must renew by October 5, 2017, including those individuals whom Defendants have previously advised to renew "as soon as possible" but without mention of the October 5, 2017 deadline.

Impact of the DACA Termination on Named Plaintiffs and the Putative Class

106. The DACA Termination will upend the lives of the nearly 800,000 DACA recipients, as well as those of their families, communities, and employers. Without DACA, the Individual Plaintiffs will lose their work authorization, preventing them from supporting themselves and their families. MRNY will lose approximately a dozen highly valued employees.

107. For example, Mr. Batalla Vidal relies on his work authorization through DACA to work at a rehabilitation center caring for elderly and disabled patients; he supports himself, his mother, and his younger siblings. Without Mr. Batalla Vidal's income, he and his family will face substantial financial hardship.

108. Ms. Fernandez depends on her work authorization to support herself and her two U.S.-citizen children.

109. Additionally, the DACA Termination will prevent DACA recipients from enrolling in university and graduate programs since they will be unable to secure employment after graduating, blocking all future opportunities for professional or educational advancement. Similarly, their inability to secure employment while in school would severely hinder their financial ability to afford their education.

110. For example, Mr. Alarcon relies on DACA to allow him to enroll as a Bachelor of Arts candidate at Queens College, where he is on track to graduate in December 2017.

111. Ms. Fernandez has also relied on DACA to graduate from college and has just enrolled in graduate school at CUNY School of Professional Studies to obtain an Advanced Certificate on Immigration Law.

112. The October 5, 2017 renewal deadline imposed on DACA recipients whose deferred action and work permit expire before March 5, 2018 is untenable for many DACA recipients for various reasons, including financial ones.

113. For example, eighteen-year-old DACA recipient Guendi Castro and her nineteen-year-old brother Edgar Castro, also a DACA recipient, came to the United States from Mexico as toddlers. They currently live in New Mexico with their parents. Their DACA permits expire in early December 2017, and both must renew by October 5th or risk losing the protections of deferred action.

114. Ms. Castro and her brother are struggling to muster the funds to pay the renewal fees by October 5th. She, her brother, and both of their parents work full time so they can pay for the family's household expenses, leaving little income to pay for both DACA renewal fees,

which add up to approximately \$1,000. Ms. Castro and her brother are actively fundraising to pay the renewal fees, but at this moment still lack sufficient funds to file their renewals.

115. In addition, the September 5, 2017, cutoff for initial applicants has inflicted severe harm on those who were unable to file by September 5, 2017.

116. For example, Jose Rangel is DACA eligible, lives in Houston, Texas, and is thirty-four years old. He arrived in the United States from Mexico when he was six. He is married and has a seven-year-old U.S.-citizen daughter.

117. Mr. Rangel did not apply for DACA in 2012 because he received erroneous legal advice that he was not eligible. Years later, a friend insisted he was eligible and encouraged him to apply.

118. In mid-to-late August 2017, Mr. Rangel and his lawyer completed his initial application, which was ready to be finalized and mailed. On September 5, 2017, when Mr. Rangel heard Defendant Sessions' announcement, he was relieved that he had finished his DACA application two-weeks earlier and assumed it had been submitted.

119. After calling his lawyer to confirm, Mr. Rangel found out that due to Hurricane Harvey, his lawyer's office had been closed and they were behind on mailing out applications—preventing his initial DACA application from being filed by September 5, 2017 and depriving him of the opportunity to receive the status.

120. Similarly, M.J. is an eighteen-year-old Mexican national who has lived in the United States for almost all of her life. M.J.'s U.S.-citizen stepfather had been in the process of petitioning for her to receive permanent resident status. However, her stepfather became abusive and recently abandoned the family petition, leaving M.J. without status.

121. M.J. met with non-profit attorneys who advised her to apply for DACA. The attorneys started work on the case, but Hurricane Harvey prevented them from completing the application because their homes and offices were flooded and closed.

122. On the day Harvey landed, the attorneys tried to work with M.J. to get documents together and file for DACA prior to the expected announcement of the program's termination, but Houston was largely under water and the schools were closed, preventing M.J. from getting the requisite documents, the attorneys from getting into the office, and the postal service from sending any mail. There was no viable way for M.J. to file her DACA before September 5th.

123. The DACA Termination, in most states, including New York, will prevent individuals from obtaining driver's licenses or state identification cards. For example, Ms. Fernandez relies on her driver's license to bring her children to school every day and the doctor when needed. Many DACA recipients rely on a driver's licenses or state identification cards as a form of photo identification for banking, insurance, notarizations, and other everyday services.

124. Moreover, the DACA Termination places these individuals at risk of immediate apprehension and deportation. Under Defendant Trump, DHS has significantly increased its targeting of DACA recipients whose statuses have lapsed for deportation.

125. The Trump Administration's new enforcement priorities, which are so all encompassing that they cannot in earnest be called "priorities," target individuals who would qualify for DACA. Trump has directed DHS to prioritize for removal anyone present in the United States without admission or parole, including those eligible for DACA.

126. In fact, at the same time the DACA Termination was announced, the government issued "talking points" stating, *inter alia*, that: "The Department of Homeland Security urges DACA recipients to use the time remaining on their work authorization to prepare for and

arrange their departure from the United States” Similarly, a DHS “Frequently Asked Questions” document issued the same day refers to the time period prior to March 5, 2018 as a “grace period for DACA recipients” whose grants of deferred action will soon expire “to make appropriate plans to leave the country.”

127. DHS can easily deport the Plaintiffs because the Department already has their personal information. Plaintiffs and other DACA recipients provided extensive personal information to DHS in reliance on the agency’s repeated promises to use the information only to grant them protection from deportation, and not to use that information for immigration-enforcement purposes except in narrow, delineated circumstances.

128. Notwithstanding those prior assurances, DHS has changed its policy regarding the permissible uses of the information provided by DACA applicants to remove the limitations on using that information for immigration-enforcement purposes. This policy change constitutes final agency action.

129. If they are deported from the United States, Plaintiffs and others similarly situated face grievous harm. The Individual Plaintiffs, as well as the members and clients of MRNY, will be forced to leave the only country that many of them have known as home; they have grown up in American neighborhoods, attended American schools, and have structured their lives around living in the United States.

130. The termination of DACA is already having profound impacts on the lives of DACA recipients. DACA recipients, including Individual Plaintiffs, fear deportation. Some have started to make provisions for what happens if they were deported, such as having difficult conversations with their parents and children about emergency plans.

131. Faced with the loss of their work authorization, many DACA recipients have taken on additional jobs while they still have work authorization.

CLASS ACTION ALLEGATIONS

132. Pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure, Named Plaintiffs seek to represent a certified Plaintiff class consisting of (1) all persons with DACA as of September 5, 2017; and (2) all persons who are or will be eligible for DACA under the terms of the 2012 Guidance.

133. Plaintiffs seek to represent the above-described class for all claims except that under the Regulatory Flexibility Act.

134. This action meets all the Rule 23(a) prerequisites for maintaining a class action.

135. The class members are sufficiently numerous as to render joinder impracticable, satisfying Rule (23)(a)(1). Defendants' decision to terminate the DACA program without providing adequate reasons and based on legal error, without going through the proper notice-and-comment procedure, without providing corrected notices to individual recipients subject to the October 5, 2017 renewal deadline, and based on animus toward individuals of Latino and Mexican origin, harms millions of individuals residing throughout the United States. In addition, the class action is the only appropriate procedural avenue for the protection of the class members' constitutional rights and rights under the APA.

136. This action presents common questions of law and fact, resolution of which will not require individualized determinations of the circumstances to any plaintiff, satisfying Rule 23(a)(2). Such common questions of law and fact include, but are not limited to:

- a. whether the DACA Termination constituted a substantive rule, such that notice-and-comment rulemaking was required under 5 U.S.C. § 706(2)(D);

b. whether Defendants' termination of DACA and change in the policy regarding the permissible uses of the sensitive information DACA applicants provided was arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with the law, in violation of 5 U.S.C. § 706(2)(A);

c. whether Defendants failed to provide corrected notices to individuals whom Defendants had previously written advising them to renew "as soon as possible" but without mention of the October 5, 2017 deadline, in violation of procedural due process; and

d. whether the termination of DACA was substantially motivated by animus toward individuals of Latino and Mexican origin, and whether it had a disparate impact on such individuals in violation of the equal protection guarantee of the Due Process Clause of the Fifth Amendment.

137. The Named Plaintiffs' claims are typical of the putative class, satisfying Rule 23(a)(3). Like the other members of the class, the Defendants' termination of the DACA program and change to the confidentiality policy without providing adequate reasons, in violation of 5 U.S.C. § 706(2)(A); failure to go through the proper notice-and-comment procedure, in violation of 5 U.S.C. § 706(2)(D); having its decision substantially motivated by animus, in violation of the equal protection guarantee of the Fifth Amendment; and failure to provide adequate notice to individuals who must renew by October 5, 2017, in violation of the Due Process Clause of the Fifth Amendment, harms the Named Plaintiffs.

138. The interests of the putative class are fairly and adequately protected by the Named Plaintiffs and their attorneys, satisfying Rule 23(a)(4).

139. The Named Plaintiffs' interests do not conflict with other members of the class. Instead, the Named Plaintiffs' interests are the same as those of the class: not to be subjected to agency rules that are promulgated without adequate basis, without undergoing the required notice-and-comment procedure, and that are implemented without fair notice and based on animus towards individuals of Latino and Mexican origin.

140. The legal theories under which the Named Plaintiffs seek declaratory and injunctive relief are the same or similar to those on which all members of the class would rely, and the harms suffered by the Named Plaintiffs are typical of those suffered by the class members.

141. With respect to Rule 23(a)(4) adequacy, undersigned counsel are qualified, experienced, and able to conduct the litigation. The attorneys have the necessary knowledge, experience, and resources to litigate this matter. In addition, attorneys have expended the time and effort necessary to identify the class.

142. Counsel for Plaintiffs do not anticipate any conflicts of interest between the Named Plaintiffs and the other class members, nor does Counsel anticipate any reason that the other class members would dispute the adequacy of Counsel's representation.

143. This action also meets all the requirements of, and is brought in accordance with, Rule 23(b)(2). Defendants' unlawful termination of the DACA program and changes to the confidentiality policy pose a real and immediate threat generally applicable to each member of the class, thus making final declaratory and injunctive relief with respect to the class as a whole appropriate.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Administrative Procedure Act: Agency Action Without Observance of Procedure Required By Law By all Plaintiffs against Defendants Duke and Sessions

144. Plaintiffs repeat and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

145. The APA requires that agency action that is substantive in nature follow notice-and-comment procedures. 5 U.S.C. § 706(2)(D).

146. The DACA Termination constitutes a substantive rule, as it binds DHS to categorically deny applications for deferred action to individuals who fit the original DACA eligibility criteria.

147. It is undisputed that Defendants failed to follow notice-and-comment rulemaking procedures prior to issuing the DACA Termination.

148. Defendants' termination of DACA violated the APA.

SECOND CLAIM FOR RELIEF

Administrative Procedure Act: Agency Action that is Arbitrary and Capricious, An Abuse of Discretion, and Otherwise Not In Accordance with Law By all Plaintiffs against Defendants Duke and Sessions

149. Plaintiffs repeat and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

150. The APA prohibits federal agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

151. Defendants' DACA Termination and its change to the confidentiality of DACA applicant information constitute final agency action, and are arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with the law because they (a) lack a rational

explanation for the change in policy on which persons had reasonably relied, (b) are based on a legal error, and (c) failed to consider all relevant factors.

152. Defendants justified the DACA Termination on the grounds of litigation risk and the legal conclusion that the program is unlawful. These grounds are inadequate to justify termination, are legally erroneous, and fail to address the government's previous conclusion that the DACA program was lawful. These justifications are also contradicted by Defendant Trump's own subsequent statement that he would "revisit" the termination if necessary.

153. Defendants provided no justification for many of the details of the DACA Termination, including the September 5, 2017 deadline for initial applications; the October 5, 2017 deadline to file renewal applications; the March 5, 2018 cut-off for renewal eligibility; and changes to the confidentiality of applicant information.

154. Defendants' termination of DACA and changes to the confidentiality of DACA-applicant information violated the APA.

THIRD CLAIM FOR RELIEF
Regulatory Flexibility Act
By Plaintiff MRNY against Defendants Duke and Sessions

155. Plaintiff repeat and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

156. DHS failed to conduct any regulatory flexibility analysis to determine how the DACA Termination will affect small entities, such as MRNY, in violation of the Regulatory Flexibility Act. 5 U.S.C. §§ 601 *et seq.*

157. MRNY, as a "small organization" within the meaning of 5 U.S.C. § 601(4), is directly affected by the DACA Termination, and therefore DHS was required to conduct a regulatory flexibility analysis prior to promulgating the rule.

158. It is undisputed that Defendants failed to conduct a regulatory flexibility analysis.

159. Defendants' termination of DACA violated the RFA.

FOURTH CLAIM FOR RELIEF
Fifth Amendment (Procedural Due Process)
By all Plaintiffs against Defendants Duke and Sessions

160. Plaintiffs repeat and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

161. The hallmark of due process is notice and a meaningful opportunity to be heard.

162. The Due Process Clause of the Fifth Amendment prohibits the federal government, including Defendants, from depriving individuals of their liberty or property interests without due process of law.

163. Defendants have not provided DACA recipients with the process to which they are entitled.

164. Defendants, in individualized written notices, have advised many DACA recipients whose status expires by March 5, 2018 to apply to renew "as soon as possible" and, to ensure no lapse in status, to renew between 120 to 150 days before expiration.

165. Defendants have not sent corrected notices to these DACA recipients advising them that they must apply to renew DACA by October 5, 2017 or be forever ineligible to renew their status. Nor do Defendants intend to issue such corrected notices, on information and belief.

166. Defendants' failure to issue corrected notices advising of the October 5, 2017 deadline violates the Due Process Clause of the Fifth Amendment.

FIFTH CLAIM FOR RELIEF
Fifth Amendment (Equal Protection)
By all Plaintiffs against All Defendants

167. Plaintiffs repeat and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

168. The Due Process Clause of the Fifth Amendment prohibits the federal government, including Defendants, from denying to any person equal protection of the laws.

169. The DACA Termination targets Latinos and, in particular, Mexicans, and will have a disparate impact on these groups.

170. Defendants Sessions, Duke, and Trump have violated the equal protection guarantee of the Fifth Amendment because the DACA Termination was substantially motivated by animus toward Latinos and, in particular, Mexicans.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

171. Declare that the DACA Termination and actions taken by Defendants to terminate DACA and to change the confidentiality of DACA applicant information are void and without legal force or effect;

- (a) Declare that the DACA Termination and actions taken by Defendants to terminate DACA and to change the confidentiality of DACA applicant information are arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law, and without observance of procedure required by law, in violation of 5 U.S.C. §§ 702–706;
- (b) Declare that the DACA Termination and actions taken by Defendants to terminate DACA are in violation of the equal protection and due process guarantees of the Fifth Amendment of the U.S. Constitution and contrary to the law of the United States;

- (c) Vacate and set aside the DACA Termination and any other action taken by Defendants to terminate DACA, including the change to the confidentiality of DACA-applicant information;
- (d) Enjoin and restrain Defendants, their agents, servants, employees, attorneys, and all persons in active concert or participation with any of the Defendants, from implementing or enforcing the DACA Termination and the change in confidentiality of DACA-applicant information, and from taking any other action to terminate DACA that is not in compliance with applicable law or the U.S. Constitution; and
- (e) Grant such other relief as this Court deems just and proper.

Dated: September 19, 2017

Respectfully submitted,

/s/ Michael J. Wishnie

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[†] Motion for *pro hac vice* admission pending

CERTIFICATE OF SERVICE

I hereby certify that on September 19, 2017, a true and correct copy of the foregoing Second Amended Complaint was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF system.

/s/ Michael Wishnie

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