

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JESSICA M. COLOTL COYOTL,)	Case No. 1:17-cv-1670-MHC
)	
Plaintiff,)	
)	COMPLAINT FOR DECLARATORY
vs.)	AND INJUNCTIVE RELIEF
)	
JOHN F. KELLY, Secretary,)	
Department of Homeland Security;)	
MARK J. HAZUDA, Director, Nebraska)	
Service Center, U.S. Citizenship and)	
Immigration Services; JAMES)	
McCAMENT, Acting Director, U.S.)	
Citizenship and Immigration Services;)	
THOMAS D. HOMAN, Acting Director,)	
U.S. Immigration and Customs)	
Enforcement; SEAN W. GALLAGHER,)	
Atlanta Field Office Director, U.S.)	
Immigration and Customs Enforcement.)	
)	
Defendants.)	

FIRST AMENDED COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF

INTRODUCTION

1. Plaintiff Jessica Mayeli Colotl Coyotl (“Plaintiff” or “Ms. Colotl”), originally from Mexico, is a resident of Georgia who was first brought to this country as a child nearly eighteen years ago. For the past seven years, federal immigration authorities have repeatedly granted her permission to live and work in this country, most recently pursuant to the Deferred Action for Childhood Arrivals (“DACA”) program. However, Defendants have unlawfully stripped Ms. Colotl of her deferred action status without notice, without process, and without a reasoned explanation for their actions.

2. Ms. Colotl is an extraordinary young woman who has worked hard to pursue an education and has made substantial contributions to her community. She graduated with honors from Lakeside High School in DeKalb County, Georgia, and earned a Bachelor’s degree from Kennesaw State University in Kennesaw, Georgia, where she was named to the President’s List based on her academic performance, and was a founding member of her college’s chapter of the Lambda Theta Alpha Sorority. Since graduating from college in 2011, she has worked as a paralegal and dreams of going to law school and becoming a lawyer. Ms. Colotl is widely recognized as an outstanding and remarkable young role model who has devoted herself to community service and activism.

3. Created in June 2012, the DACA program was designed to provide a lifeline to young undocumented immigrants, like Ms. Colotl, who came to the United States as children.

4. As former President of the United States Barack Obama explained when the DACA program was first announced, these young immigrants “are Americans in their heart, in their minds, in every single way but one: on paper.”¹ He recognized that “it makes no sense” to deport “[t]hese [] young people who study in our schools , . . . play in our neighborhoods, [are] friends with our kids, [and] pledge allegiance to our flag.”²

5. Recognizing that the government must prioritize its limited law enforcement resources, the Department of Homeland Security (“DHS”) created the DACA program to allow young undocumented immigrants who satisfy certain age, educational, and other requirements to remain in the United States without fear of deportation for a specified, renewable two-year period, and thus continue to contribute to their communities.

6. Like all DACA recipients, Ms. Colotl has passed a criminal background check and has been found—in her case twice—to have satisfied each of the

¹ President Barack Obama, Remarks on Immigration Reform, 2012 DAILY COMP. PRES. DOC. 1 (June 15, 2012), *available at* <http://www.gpo.gov/fdsys/pkg/DCPD-201200483/pdf/DCPD-201200483.pdf>.

² *Id.*

applicable eligibility criteria for DACA—in 2013, when she initially applied, and again in 2015, when DHS granted her first renewal request.

7. The current administration has continued the DACA program. Recently both President Donald Trump and DHS Secretary John Kelly have reaffirmed DHS' policy not to prioritize young immigrants granted DACA for immigration enforcement. President Trump has described DACA recipients as “absolutely incredible kids,” explaining that it would be “very, very rough” to deport them, since they were brought to the United States as children.³

8. Because of the DACA program, Ms. Colotl and hundreds of thousands of young immigrants like her have been able to complete their educations, begin careers, and live meaningful and productive lives in the United States.

9. Yet notwithstanding the President's and DHS Secretary's assurances—and despite the fact that Ms. Colotl's circumstances have not changed during the four years she has been a DACA recipient—DHS recently terminated Ms. Colotl's DACA and denied her application for renewal on the grounds that she does not meet the program's eligibility criteria.

³ Nolan D. McCaskill, *Trump says he will treat Dreamers 'with heart'*, Politico, Feb. 16, 2017, <http://www.politico.com/story/2017/02/trump-press-conference-dreamers-heart-235103>.

10. Contrary to DHS' new position, Ms. Colotl remains eligible for DACA, as she continues to satisfy the program's education and residency requirements and she has no disqualifying criminal history.

11. Ms. Colotl has received no meaningful explanation from DHS as to why she is suddenly disqualified when her circumstances have not changed. Nor has DHS provided Ms. Colotl with any opportunity to contest the government's actions, in violation of its own procedures.

12. The revocation and nonrenewal of Ms. Colotl's DACA have deprived her of her ability to work and the assurance that she will be permitted to remain in the country she knows as her home.

13. The government's decisions to terminate Ms. Colotl's DACA and deny her renewal application, without meaningful explanation or process, and in violation of the program's enumerated eligibility criteria, violates the Administration Procedure Act, 5 U.S.C. §§ 553, 706, *et al.*, as well as the Due Process Clause of the Fifth Amendment to the U.S. Constitution. Ms. Colotl therefore asks that the Court: declare the government's actions unlawful; order that the government re-adjudicate her application for DACA under the program's existing eligibility criteria using a fair procedure; and, comply with its own rules and restore her DACA, pending the outcome of the government's decision.

JURISDICTION AND VENUE

14. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343 over Plaintiff's claims under the U.S. Constitution and the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.* The Court has authority to grant declaratory relief under 28 U.S.C. §§ 2201 and 2202.

15. Venue is proper in this Court under 28 U.S.C. § 1391(e) because Defendants John F. Kelly, James McCament, Mark J. Hazuda, Thomas D. Homan, and Sean W. Gallagher are Officers of the United States acting in their official capacities, and DHS, U.S. Immigration and Customs Enforcement ("ICE"), and the United States Citizenship and Immigration Services ("USCIS"), are agencies of the United States. Additionally, Plaintiff resides in this judicial district.

EXHAUSTION

16. There are no additional administrative remedies available for Plaintiff to exhaust. There is no administrative appeal of USCIS' decision that Plaintiff is no longer eligible for DACA.

PARTIES

17. Ms. Colotl, a resident of Georgia, is a 28-year-old native and citizen of Mexico who has lived in the United States since she was first brought here in 1999, when she was 11 years old. From May 2010 to May 2017—for the past seven

years—federal immigration authorities have granted her permission to live and work in the United States in the form of deferred action.

18. Defendant John F. Kelly is sued in his official capacity as Secretary of DHS. As DHS Secretary, Mr. Kelly is responsible for the administration and enforcement of the immigration laws of the United States.

19. Defendant James McCament is sued in his official capacity as Acting Director of USCIS. As Director of USCIS, Defendant McCament is responsible for the overall administration of USCIS and the implementation of the immigration laws of the United States.

20. Defendant Mark J. Hazuda is sued in his official capacity as Director of the USCIS Nebraska Service Center. As Director of the Nebraska Service Center, Mr. Hazuda is responsible for the overall administration of the USCIS Nebraska Service Center and the decisions that it issues.

21. Defendant Thomas D. Homan is sued in his official capacity as Acting Director of ICE. In this position, Mr. Homan is responsible for the overall administration of ICE and operation of ICE's immigration enforcement and detention activities.

22. Defendant Sean W. Gallagher is sued in his official capacity as Director of the ICE Field Office in Atlanta, Georgia. As Field Office Director, Mr.

Gallagher is responsible for the administration of the Atlanta Field Office and operation of the office's immigration enforcement and detention activities.

BACKGROUND

Deferred Action and the DACA Program

23. Deferred action is a longstanding form of administrative action by which the federal Executive Branch decides, for humanitarian or other reasons, to refrain from seeking a noncitizen's removal and to authorize her continued presence in the United States. A grant of deferred action indicates that the noncitizen's presence in the United States is known to the federal government, and that the federal government has made a determination, based on a review of the individual's case, to allow her to remain in the United States for a specified period. Recipients of deferred action are also eligible to receive employment authorization under federal law upon a showing of economic necessity. *See* 8 C.F.R. § 274a.12(c)(14). For decades, the federal government has used deferred action to authorize numerous groups of immigrants to live and work in the United States for a temporary period.

24. On June 15, 2012, the former DHS Secretary announced a new deferred action program—the DACA program—for young immigrants who came to the United States as children and are present in the country without a formal immigration status. The DACA program was established to allow these young

immigrants to remain in the United States without fear of deportation for a specified, renewable period.

25. In announcing the DACA program, the DHS Secretary explained that “[o]ur Nation’s immigration laws . . . are not designed to be blindly enforced without consideration given to the individual circumstances of each case. Nor are they designed to remove productive young people to countries where they may not have lived or even speak the language. Indeed, many of these young people have already contributed to our country in significant ways.”⁴

26. President Obama elaborated that the federal government decided to make deferred action available to young immigrants because “it makes no sense . . . to expel these young people who want to staff our labs or start new businesses or defend our country.”⁵ These individuals are “talented young people, who, for all intents and purposes, are Americans—they’ve been raised as Americans, understand themselves to be part of this country.” The DACA program is intended

⁴ Memorandum from Janet Napolitano, Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children (“Napolitano Memo”) 2 (June 15, 2012), *available at* <http://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf>.

⁵ President Barack Obama, Remarks on Immigration Reform, 2012 DAILY COMP. PRES. DOC. 1 (June 15, 2012), *available at* <http://www.gpo.gov/fdsys/pkg/DCPD-201200483/pdf/DCPD-201200483.pdf>.

“to lift the shadow of deportation from these young people” and “to mend our Nation’s immigration policy to make it more fair, more efficient, and more just.”⁶

27. Under DACA, young immigrants who entered the United States as children and who meet educational and residency requirements may apply for deferred action. The DHS Secretary’s guidance provides that noncitizens are eligible for DACA if they:

- were under the age of 31 as of June 15, 2012;
- came to the United States before reaching their 16th birthday;
- have continuously resided in the United States since June 15, 2007, up to the present time;
- were physically present in the United States on June 15, 2012, and at the time of making the request for consideration of deferred action with USCIS;
- entered without inspection before June 15, 2012, or had an expired lawful immigration status as of June 15, 2012;
- are currently in school, have graduated or obtained a certificate of completion from high school, have obtained a GED certificate, or are an honorably discharged veteran of the Coast Guard or Armed Forces of the United States;

⁶ *Id.*

- have not been convicted of a felony, significant misdemeanor,⁷ or three or more other misdemeanors; and,
- do not otherwise pose a threat to national security or public safety.⁸

28. If a DACA applicant satisfies these eligibility criteria, the agency may grant him or her deferred action on a case-by-case basis. The eligibility criteria themselves are not discretionary.

29. The DACA application process includes extensive criminal background checks.

30. Under the DACA program, deferred action is available for a period of two years, subject to renewal, and applicants who are approved may obtain work authorization, and if such authorization is granted, a Social Security Number.⁹

Noncitizens granted work authorization are issued federal employment authorization documents or EADs. A decision to grant or deny a deferred action application or renewal is separate and independent from any removal proceedings

⁷ A significant misdemeanor is a conviction that meets the following criteria: an offense of “domestic violence; sexual abuse or exploitation; burglary; unlawful possession or use of a firearm; drug distribution or trafficking; or, driving under the influence; or . . . [a conviction] for which the individual was sentenced to time in custody of more than 90 days.” *See* USCIS, Consideration of Deferred Action for Childhood Arrivals Process, Frequently Asked Questions (May 14, 2017), *available at* <https://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-process/frequently-asked-questions>.

⁸ Napolitano Memo at 2; USCIS, Consideration of Deferred Action for Childhood Arrivals Process, *supra* note 6.

⁹ See *id.*

in immigration court to determine whether a noncitizen should be deported from the United States. Although noncitizens with DACA or other types of deferred action generally will not be placed in removal proceedings so long as the deferred action grant has not been terminated or revoked, the granting of deferred action has no formal impact on removal proceedings. A noncitizen who is in removal proceedings can apply for DACA separately and simultaneously.¹⁰ If that application is granted, the removal proceedings nevertheless continue unless the immigration judge takes action to administratively close or terminate the proceeding. Further, an immigration judge has no power to grant or deny deferred action, or to review or reverse USCIS' decision to deny deferred action.

President Trump's Reaffirmation of the DACA Program

31. Since President Trump took office in January 2017, USCIS has continued to process and grant new DACA applications, and has also continued to grant renewals of DACA.

32. On February 20, 2017, the DHS Secretary, Defendant Kelly, issued a memorandum setting forth enforcement priorities that DHS would follow in its enforcement of the immigration laws.¹¹ Although that memorandum rescinded

¹⁰ Napolitano Memo at 2.

¹¹ See Memorandum from John Kelly, Enforcement of the Immigration Laws to Serve the National Interest 2 (Feb. 20, 2017), *available at*

other existing guidance concerning immigration enforcement priorities, the memorandum expressly kept the DACA guidance in place.¹² DHS also issued a “Q&A” document concerning this memorandum which states (at Question 22):

Q22: Do these memoranda affect recipients of Deferred Action for Childhood Arrivals (DACA)?

A22: No.¹³

33. Consistent with his administration’s continuation of the DACA program, both before and after taking office, President Trump has made multiple statements indicating his view that undocumented immigrants who were brought here by their parents should not be targeted for removal.

34. For example, in an interview with *TIME* magazine in December 2016, President-elect Trump stated that he was “going to work something out” for undocumented immigrants who were brought to this country as children. He explained: “They got brought here at a very young age, they’ve worked here, they’ve gone to school here. Some were good students. Some have wonderful

https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf.

¹² See *id.*

¹³ See Q&A: DHS Implementation of the Executive Order on Enhancing Public Safety in the Interior of the United States, Feb. 21, 2017, <https://www.dhs.gov/news/2017/02/21/qa-dhs-implementation-executive-order-enhancing-public-safety-interior-united-states>.

jobs.” President-elect Trump said that he will do something that will “make people happy and proud.”¹⁴

35. On the same day as his inauguration, January 20, 2017, President Trump reportedly told Senator Richard J. Durbin, regarding the DACA program, that “we don’t want to hurt those kids.”¹⁵

36. When President Trump was asked, on January 25, 2017, whether young immigrants who were brought here by their parents should be worried about deportation, he responded, “They shouldn’t be very worried. They are here illegally. They shouldn’t be very worried. I do have a big heart. We’re going to take care of everybody. . . . Where you have great people that are here that have done a good job, they should be far less worried.”¹⁶

37. On April 21, 2017, an Associated Press reporter asked President Trump, “that’s going to be the policy of your administration to allow the dreamers to stay?,” using the term “dreamers” which is commonly used to refer to young

¹⁴ Michael Scherer, *2016 Person of the Year: Donald Trump*, TIME Magazine, Dec. 7, 2016, available at <http://time.com/time-person-of-the-year-2016-donald-trump/>.

¹⁵ Michael D. Shear & Julie Hirschfeld Davis, *Trump’s Improvised Path to a Month of Executive Action*, N.Y. Times, Jan. 21, 2017, available at <https://www.nytimes.com/2017/01/21/us/politics/trump-presidency-executive-action.html>.

¹⁶ Transcript of Interview by David Muir with President Trump, ABC News, Jan. 25, 2017, <http://abcnews.go.com/Politics/transcript-abc-news-anchor-david-muir-interviews-president/story?id=45047602>.

undocumented immigrants who were brought here as children. President Trump's response was unequivocal: "Yes. Yes. That's our policy." He elaborated: "The dreamers should rest easy. OK? I'll give you that. The dreamers should rest easy."¹⁷

Ms. Colotl's Life in the United States

38. Jessica Colotl was born in Mexico and entered the United States without inspection in September 1999, when she was 11 years old. She has lived in the United States continuously since her arrival—indeed, this country is the only place she can call home.

39. Ms. Colotl attended public school in Georgia. She graduated from Lakeside High School in DeKalb County, Georgia, in May 2006 with a 3.8 GPA, having taken several advanced placement classes.

40. That fall, she enrolled in Kennesaw State University ("KSU"), majoring first in pre-med and eventually in political science. While at KSU, Ms. Colotl was named to the President's List based on her academic performance. She was also actively involved in various student organizations, such as the Hispanic Scholarship Fund and the Mexican American Student Alliance. She was a founding member of the campus' Epsilon Chapter of Lambda Theta Alpha

¹⁷ Transcript of AP Interview with President Trump, Associated Press, Apr. 23, 2017, <https://apnews.com/c810d7de280a47e88848b0ac74690c83>.

sorority, an organization dedicated to the needs of Latinas and women. The sorority aims to develop strong women leaders, promote unity through charitable and educational programs, and engage in political, social, and cultural activities.

41. Ms. Colotl's college professors have described her as an "outstanding" and "exemplary" person of "unblemished integrity." They have commended her for displaying "determination," "grace," and "focus" in difficult circumstances. Ms. Colotl's professors and sorority sisters have also recognized her for "contribut[ing] positively to" and "making [her] community a better place."

42. Ms. Colotl graduated from KSU in May 2011 with a Bachelor's degree in political science, with a legal studies concentration, and a minor in French.

43. Since graduating, she has worked as an administrative assistant, receptionist, legal assistant, and ultimately paralegal at Kuck Immigration Partners LLC. She aspires to attend law school and become an immigration lawyer.

44. Ms. Colotl also has continued to devote her time to community service. She volunteers for the Annual Latino Youth Leadership Conference, a yearly conference hosted by the Latin American Association that aims to motivate Latino youth to finish high school and go on to college. The director of that program has described Ms. Colotl as a "remarkable person" who is "honest, dependable," and a "powerful role model" to students. For several years, Ms. Colotl has regularly

donated blood platelets at the Northside Hospital in Atlanta, Georgia. She is also a member of Saint Patrick's Catholic Church in Norcross, Georgia.

45. Ms. Colotl remains active in her sorority. She has raised funds for St. Jude Children's Hospital—her sorority's national philanthropic project—through the annual Saint Jude Walk. From 2015 to 2016, she served as her sorority's Area Finance Coordinator, overseeing the funds for chapters at five separate universities in Georgia, as well as her sorority's alumnae chapter. Ms. Colotl also helps mentor new sorority sisters.

46. For the past several years, Ms. Colotl has been a passionate advocate for immigration reform. For example, this past April, Ms. Colotl travelled to Washington D.C. to lobby her members of Congress for immigration reform. She has been a frequent speaker at campus and community events on her experiences with the immigration system and on immigrants' rights issues. Currently Ms. Colotl is taking a class with the Georgia Association for Latino Elected Officials to develop her leadership skills and promote civil engagement within the Latino and other under-represented communities.

Ms. Colotl's Arrest in 2010 and Participation in a Pretrial Diversion Program

47. On March 29, 2010, while a senior in college months away from graduation, Ms. Colotl was pulled over by campus police for allegedly blocking

traffic while waiting for a parking space. She was unable to produce a driver's license.¹⁸

48. The next day, she was arrested on the charges of impeding the flow of traffic and driving without a license, and booked into the Cobb County jail. After a trial, a jury found her not guilty of impeding the flow of traffic, but guilty of driving without a license, a misdemeanor. She served a total of three days in jail.

49. Subsequently the Cobb County Sherriff additionally charged Ms. Colotl with allegedly making a false statement when she was booked into the county jail on the traffic violation charges. The felony charge stated that Ms. Colotl provided a false address during booking.

50. However, Ms. Colotl never made any false statement during the booking process. When she was being booked, a Cobb County Sheriff's Department officer recorded address information contained on a vehicle insurance card that the officer took from Ms. Colotl's purse. The officer never asked Ms. Colotl to provide any address information, and she never made any statement to the officer regarding her address.

¹⁸ Ms. Colotl was not eligible to obtain a driver's license at that time in Georgia due to her lack of a formal immigration status. However, routine activities such as attending school and church were effectively impossible without the ability to drive in Georgia, given the limited public transportation infrastructure.

51. The address the officer recorded was, in fact, her permanent home address while she attended school. However, Ms. Colotl's parents subsequently moved from the address in April 2010.

52. In February 2011, Ms. Colotl was indicted on the false information charge. Ms. Colotl entered a plea of not guilty. The District Attorney then exercised his discretion to offer Ms. Colotl the option of entering into his office's pretrial diversion program as an alternative to prosecution, which would result in dismissal of the charge. Although the charge was not justified, Ms. Colotl decided that, rather than undertaking the risk and expense of going to trial again, she would resolve the case by agreeing to perform community service. Ms. Colotl was informed that she would not be required to enter a guilty plea in order to participate. Although a form that Ms. Colotl was required to sign as part of the diversion program contained a boilerplate statement acknowledging that the participant "understand[s] that by [her] participation in the program [she is] admitting guilt," that form was never filed with the court and Ms. Colotl never admitted to any facts that would support any such charge.

53. Ms. Colotl successfully completed the diversion program, and the false statement charge was dismissed in January 2013. Ms. Colotl was never convicted of the charge and the judge never ordered any punishment or penalty.

54. Ms. Colotl has had no other criminal history or contact with law enforcement.

Ms. Colotl's Immigration Proceedings

55. Ms. Colotl's traffic violation arrest in March 2010 also resulted in her being referred to the immigration authorities and placed in removal proceedings.

56. ICE initiated removal proceedings against her on the grounds that she had entered the United States without inspection and was present in the country in violation of law. Ms. Colotl was detained for approximately a month.

57. On April 28, 2010, Ms. Colotl appeared in the Atlanta Immigration Court and accepted an order of voluntary departure, permitting her to leave the United States within 30 days and thereby avoid a final order of removal. *See* 8 U.S.C. § 1229c.

58. As explained below, although Ms. Colotl was granted voluntary departure, Ms. Colotl did not depart the United States because DHS subsequently granted her deferred action status. As a result of her initial grant of deferred action in 2010, Ms. Colotl was released from detention in May 2010.

59. In 2014, Ms. Colotl returned to immigration court and filed a motion to reopen her prior removal proceedings to enable her to travel outside of the country to visit her ailing mother in Mexico. In her motion, Ms. Colotl requested administrative closure of her removal proceedings, which would allow her to leave

the country and return without the risk of being barred from reentering the United States.

60. After the immigration judge denied Ms. Colotl's motion to reopen in January 2015, Ms. Colotl appealed to the Board of Immigration Appeals ("BIA"). On October 6, 2016, the BIA granted Ms. Colotl's appeal, reopened her removal case, and remanded to the immigration judge to grant administrative closure.

61. The immigration judge ignored the BIA's order and did not administratively close the proceedings. The immigration judge did so despite Ms. Colotl's repeated motions to the immigration court and a hearing on Ms. Colotl's request in January 2017.

62. Ms. Colotl was unable to travel to Mexico to visit her mother as a result.

Ms. Colotl's Grants of Deferred Action from 2010 to 2017

63. While her removal proceedings were pending in 2010, members of Ms. Colotl's community, including the President of Kennesaw State University, fellow students, and members of her sorority, rallied around her, urging ICE to allow her to remain in the United States and finish her undergraduate studies. Her case attracted nationwide attention in the media.

64. On May 5, 2010, ICE granted Ms. Colotl deferred action, permitting her to remain in the United States for one year.

65. DHS continued to renew Ms. Colotl's deferred action status during the following seven years, including pursuant to the DACA program, and was granted work authorization in relation to each of her grants of deferred action. In total, Defendants determined that Ms. Colotl was eligible for deferred action five separate times over the course of seven years. Each time she applied for deferred action and DACA, Ms. Colotl expressly disclosed to DHS all relevant information regarding the criminal proceedings arising out of her 2010 arrest. And each time, Defendants found Ms. Colotl eligible for deferred action, including issuing her two consecutive DACA grants for a total of four years.

66. Specifically, after her initial 2010 deferred action grant, ICE renewed Ms. Colotl's deferred action status for additional one-year periods on May 3, 2011, and again on April 30, 2012.

67. Ms. Colotl then received two consecutive two-year DACA grants on July 1, 2013, and May 19, 2015, until May 18, 2017.

68. In December 2016, Ms. Colotl submitted her application to renew her DACA to USCIS and, again, included the same relevant information about the criminal proceedings arising from her 2010 arrest. Because Ms. Colotl's criminal history does not disqualify her from eligibility for DACA, she was eligible for DACA when she applied for renewal in 2016 and remains eligible to this day.

69. On May 2, 2017, however, USCIS denied Ms. Colotl's application to renew her DACA. Ms. Colotl has yet to receive a copy of USCIS's decision denying her DACA application.

70. On May 3, 2017, USCIS terminated Ms. Colotl's DACA and employment authorization. The termination notice states—without any further explanation—that “USCIS has determined that exercising prosecutorial discretion in your case is not consistent with the Department of Homeland Security's enforcement priorities.” Although DHS has failed to provide Ms. Colotl with a meaningful explanation of its termination decision, the agency has stated to multiple news outlets that, in its view, she is not eligible for the program due to disqualifying criminal history—specifically, that Ms. Colotl has a felony conviction for immigration purposes. DHS' new position, however, is both inconsistent with its prior determinations and factually and legally incorrect.

71. Further, in terminating Ms. Colotl's DACA, DHS did not comply with its own procedures. Those procedures explicitly provide that if, after DHS grants an individual DACA, it comes to DHS' attention that the grant was in error, the agency should reopen the case, issue a “Notice of Intent to Terminate,” and afford the DACA recipient 33 days to file a brief or statement contesting the grounds cited in the Notice of Intent to Terminate. DHS procedures provide that the agency should issue a termination notice only if the adverse grounds are not overcome, or

the agency does not receive a response. However, USCIS failed to provide Ms. Colotl with a Notice of Intent to Terminate or an opportunity to present arguments and evidence before issuing the notice of termination.

72. As a result of USCIS' termination decision, Ms. Colotl was forced to stop working immediately and had to return her work permit to the immigration authorities.

73. Ms. Colotl has suffered and will continue to suffer significant and irreparable harm because of Defendants' decisions, acts, and failures to act as described herein.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF (Administrative Procedure Act)

74. The foregoing allegations are repeated and incorporated as though fully set forth herein.

75. Ms. Colotl satisfies the DACA program's eligibility criteria, as evidenced by her prior grant of DACA status and renewal of that status.

76. The government's decisions to revoke Ms. Colotl's DACA and deny her renewal application on the grounds that she does not meet the eligibility criteria are arbitrary and capricious and contrary to law. 5 U.S.C. § 706(2)(A).

77. The government's decisions are arbitrary and capricious and contrary to law because they misapply the mandatory DACA eligibility criteria and violate

DHS' own procedures for terminating DACA. Further, the government has failed to provide a reasoned explanation for its change in position.

**SECOND CLAIM FOR RELIEF
(Administrative Procedure Act)**

78. The foregoing allegations are repeated and incorporated as though fully set forth herein.

79. The Administrative Procedure Act ("APA"), 5 U.S.C. § 553, requires that before a federal agency promulgates a new rule, the agency must publish in the Federal Register a general notice of proposed rulemaking and provide an opportunity for comment by interested parties. *See* 5 U.S.C. § 553 (b), (c). A substantive rule must be published at least 30 days prior to its effective date. *See* 5 U.S.C. § 553(d).

80. Ms. Colotl satisfies the eligibility criteria for the DACA program, as demonstrated by her prior grant of DACA status and the renewal of that status.

81. To the extent the government's adverse decisions in Ms. Colotl's case reflects a change in the DACA eligibility criteria, such a change failed to satisfy the notice and comment requirements of the APA. 5 U.S.C. §§ 553(b), (c). Any such change also failed to provide the 30-day notice period required by 5 U.S.C. § 553(d).

THIRD CLAIM FOR RELIEF
(Due Process Clause of the Fifth Amendment to the U.S. Constitution)

82. The foregoing allegations are repeated and incorporated as though fully set forth herein.

83. The Due Process Clause of the Fifth Amendment to the United States Constitution prevents the government from depriving individuals of a liberty or property interest without due process of law.

84. Defendants revoked Ms. Colotl's DACA and, consequently, her work authorization, and denied her renewal request without providing her with a constitutionally adequate process.

85. Defendants have violated Ms. Colotl's due process rights by revoking her DACA and denying her renewal application without providing her with adequate notice of intent to terminate, a reasoned explanation for their decision, and an opportunity to respond, and to present arguments and evidence to demonstrate that she continues to meet DACA's eligibility requirements.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays this Court to:

- a. Declare Defendants' decision terminating Ms. Colotl's DACA and denying her application for renewal of DACA to be unconstitutional and contrary to law;
- b. Enter an order restoring Ms. Colotl's DACA pending Defendants' re-adjudication of her application under DACA's existing eligibility requirements;

- c. Enter an order requiring Defendants to comply with its own procedures and provide Ms. Colotl adequate notice, a reasoned basis for its decision, and an opportunity for her to respond, and to present arguments and evidence demonstrating her eligibility for DACA;
- d. Enter an order enjoining Defendants from arresting or detaining Ms. Colotl during the pendency of this action and until Ms. Colotl's DACA eligibility can be re-adjudicated;
- e. Award Plaintiff's counsel reasonable attorneys' fees under the Equal Access to Justice Act, and any other applicable statute or regulation; and
- f. Grant such further relief as the Court deems just, equitable, and appropriate.

Dated: May 18, 2017

Respectfully submitted,

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