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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

CHRISTIAN GARCIA HERRERA,  
  
Plaintiff,

v.

KEVIN K. McALEENAN, Acting  
Secretary, Department of Homeland  
Security; LOREN MILLER, Director,  
Nebraska Service Center, U.S.  
Citizenship and Immigration Services;  
L. FRANCIS CISSNA, Director, U.S.  
Citizenship and Immigration Services;  
THOMAS D. HOMAN, Acting  
Director, U.S. Immigration and  
Customs Enforcement; CHRYSTA  
STOCK, Spokane Field Office Director,  
U.S. Citizenship and Immigration  
Services  
  
Defendants.

NO: 2:19-CV-0094-TOR

ORDER DENYING PLAINTIFF’S  
MOTION FOR TEMPORARY  
RESTRAINING ORDER AND/OR  
PRELIMINARY INJUNCTION

BEFORE THE COURT is Plaintiff’s Motion for Temporary Restraining  
Order and/or Preliminary Injunction (ECF No. 4) and Plaintiff’s Motion to  
Expedite Hearing (ECF No. 5). These matters were heard with oral argument on

1 May 7, 2019. Clayton Cook-Mowery appeared on behalf of Plaintiff. Jeffrey S.  
2 Robins and Rudolf J. Verschoor appeared on behalf of Defendants. The Court has  
3 reviewed the record and files herein and considered the parties' oral arguments,  
4 and is fully informed. For reasons discussed below, the Court **DENIES** Plaintiff's  
5 Motion for Temporary Restraining Order and/or Preliminary Injunction (ECF No.  
6 4) and **GRANTS** Plaintiff's Motion to Expedite Hearing (ECF No. 5).

### 7 **FACTS**

8 This case arises from the termination of Plaintiff Christian Garcia Herrera's  
9 deferred action status under Deferred Action for Childhood Arrivals ("DACA").

10 The following facts are drawn from Plaintiff's Complaint and are essentially  
11 undisputed as relevant and material to resolution of the instant motion. Plaintiff is  
12 21 years old and currently resides in Tonasket, Washington. ECF No. 1 at 6, ¶ 27.  
13 According to his Complaint, Plaintiff was brought to this country from Mexico in  
14 1998 when he was 1 year old. *Id.* Plaintiff completed junior high school, where he  
15 excelled academically, and graduated from high school in Tonasket in June 2016.  
16 *Id.* at 10, ¶ 43. Following graduation, Plaintiff began working as a firefighter for  
17 Washington's Department of Natural Resources ("DNR"). *Id.* at ¶ 44. Plaintiff  
18 hopes to one day work in law enforcement. *Id.* at 2, ¶ 3.

19 Plaintiff has been granted deferred action status under DACA for the past six  
20 years. Plaintiff first received deferred status under DACA in January 2013, and his

1 subsequent renewal applications were approved in 2015 and 2017. *Id.* at 11, ¶ 50.  
2 Plaintiff also applied for and received work authorization in conjunction with the  
3 grants of deferred action. Plaintiff’s most recently approved renewal application  
4 extended his deferred action status and work authorization through February 13,  
5 2019. *Id.*

6 On October 29, 2018, Plaintiff applied to renew his deferred action status  
7 and work authorization. *Id.* at 12, ¶ 51. Though Plaintiff’s circumstances  
8 regarding his eligibility for DACA remained unchanged, as he continued to satisfy  
9 the program’s educational and residency requirements and has no criminal history  
10 whatsoever, USCIS denied Plaintiff’s renewal application on November 30, 2018.  
11 *Id.* at 4, ¶ 19; 12, ¶ 51. The November 2018 denial letter did not identify the  
12 factors USCIS considered or provide a detailed account of the reasons for USCIS’s  
13 decision, aside from stating: “You have not established that you warrant a  
14 favorable exercise of prosecutorial discretion.” ECF No. 4-20.

15 On January 14, 2019, Plaintiff submitted another renewal application to  
16 USCIS, which included additional evidence regarding Plaintiff’s success in school  
17 and his work as a firefighter. ECF No. 1 at 12, ¶ 52. However, on February 5,  
18 2019, Plaintiff’s renewal application was again denied by USCIS. *Id.* According  
19 to Plaintiff, mirroring the November 2018 denial letter, the February 2019 denial  
20 letter simply stated that Plaintiff did not establish that he warranted a favorable

1 exercise of prosecutorial discretion, without noting any positive or negative factors  
2 considered in the decision-making process. *See* ECF No. 4-23. Following the  
3 denial of his renewal application, Plaintiff’s grants of deferred action status and  
4 employment authorization officially expired on February 13, 2019.

5 On March 25, 2019, Plaintiff initiated this action for declaratory and  
6 injunctive relief against the following Defendants: Loren Miller, in his official  
7 capacity as Director of USCIS, Nebraska Service Center; L. Francis Cissna, in his  
8 official capacity as Director of USCIS; Thomas D. Homan, in his official capacity  
9 as Acting Director of the U.S. Immigration and Customs Enforcement (“ICE”);  
10 Chrysta Stock, in her official capacity as Spokane Field Office Director, USCIS;  
11 and Kevin K. McAleenan<sup>1</sup>, in his official capacity as Acting Secretary of the  
12 Department of Homeland Security (“DHS”). ECF No. 1. Plaintiff contends that  
13 “[t]he government’s decisions to deny the renewal of Mr. Garcia Herrera’s DACA  
14 status, without meaningful explanation or process, and in violation of the  
15 program’s enumerated eligibility criteria, violate the [APA] . . . as well as the Due  
16 Process Clause of the Fifth Amendment to the U.S. Constitution.” *Id.* at 5, ¶ 22.

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18 <sup>1</sup> Pursuant to Federal Rule of Civil Procedure 25(d), the Court substitutes  
19 Acting Secretary of DHS, Kevin K. McAleenan, for his predecessor, former  
20 Secretary of DHS, Kristjen M. Nielsen.

1 As stated in his Complaint, Plaintiff specifically asks this Court to (1) “declare the  
2 government’s actions unlawful,” (2) “order that the government re-adjudicate his  
3 application for DACA under the program’s existing eligibility criteria using a fair  
4 procedure,” and (3) “comply with its own rules and restore his DACA, pending the  
5 outcome of the government’s decisions.” *Id.* at ¶ 23.

6 On April 18, 2019, Plaintiff filed a Motion for Temporary Restraining Order  
7 and/or Preliminary Injunction (ECF No. 4), which is presently before the Court. In  
8 the instant motion, Plaintiff seeks an order from this Court that temporarily enjoins  
9 the revocation of his deferred action status under the DACA program pending an  
10 eligibility determination that comports with the Administrative Procedure Act  
11 (“APA”), 5 U.S.C. § 706(2)(A), and the Due Process Clause of the Fifth  
12 Amendment. ECF No. 4. On May 2, 2019, Defendants collectively filed a  
13 response opposing Plaintiff’s motion (ECF No. 9), and Plaintiff timely replied  
14 (ECF No. 11).

## 15 DISCUSSION

### 16 A. The DACA Program

17 On June 15, 2012, former Secretary of Homeland Security Janet Napolitano  
18 announced the creation of the DACA program. ECF No. 4-4 (“Napolitano  
19 Memo”). In her memorandum, Ms. Napolitano provided DHS with guidelines  
20 regarding the exercise of its prosecutorial discretion in the enforcement of “the

1 Nation’s immigration laws against certain young people who came to this country  
2 as children and know only this country as a home.” *Id.* at 1. The Napolitano  
3 Memo lists the following five criteria that “should be satisfied before an individual  
4 is considered for an exercise of prosecutorial discretion pursuant to this  
5 memorandum”:

- 6 • came to the United States under the age of sixteen;
- 7 • has continuously resided in the United States for at least five years  
8 preceding the date of this memorandum and is present in the  
9 United States on the date of this memorandum;
- 10 • is currently in school, has graduated from high school, has  
11 obtained a general education development certificate, or is an  
12 honorably discharged veteran of the Coast Guard or Armed Forces  
13 of the United States;
- 14 • has not been convicted of a felony offense, a significant  
15 misdemeanor offense, multiple misdemeanor offenses, or  
16 otherwise poses a threat to national security or public safety; and
- 17 • is not above the age of thirty.

18 *Id.* Individuals must also pass a criminal background check to be eligible for  
19 DACA. *Id.* at 2. If a DACA applicant satisfies these eligibility criteria, USCIS  
20 may grant the applicant deferred action “on a case-by-case basis.” *See* ECF No. 4-  
8 at 3 (“DACA FAQs”). Under the DACA program, deferred action is provided  
for a renewable period of two years, and DACA recipients are eligible to apply for  
work authorization during periods of deferred action. *Id.* at 3.

1 The National Standard Operating Procedures (“SOP”) issued by DHS  
2 describe the procedures to be followed in adjudicating DACA requests and  
3 terminating DACA status. *See* ECF No. 4-24 at 2. The SOP is applicable to all  
4 personnel performing adjudicative functions that relate to DACA processing. *Id.*  
5 Particularly relevant here are the SOP procedures that apply to the adjudication of  
6 DACA renewal requests. Chapter 8 of the SOP, entitled “Adjudication of The  
7 DACA Request,” provides the following guidelines for adjudicators:

8 Officers will **NOT** deny a DACA request solely because the DACA  
9 requestor failed to submit sufficient evidence with the request (unless  
10 there is sufficient evidence in our records to support a denial). As a  
matter of policy, officers will issue an RFE or a Notice of Intent to  
Deny (NOID).

11 If additional evidence is needed, issue an RFE whenever possible.

12 When an RFE is issued, the response time given shall be 87 days.

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14 When a NOID is issued, the response time given shall be 33 days.

15 ECF No. 4-24 at 3. Currently, the DACA SOP applies to all requests to renew  
16 deferred action status under DACA.<sup>2</sup>

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18 <sup>2</sup> In September 2017, former Attorney General Jeff Sessions rescinded DACA  
19 based on his determination that the program was an unconstitutional exercise of  
20 authority by the Executive Branch. A wave of litigation followed, resulting in

1 Plaintiff contends that Chapter 8 of the SOP requires adjudicators to always  
2 issue an RFE or NOIP before denying a DACA renewal request. ECF No. 11 at 8.  
3 Plaintiff also asserts, and Defendants concede, that USCIS denied his renewal  
4 applications in November 2018 and February 2019 without first sending Plaintiff  
5 an RFE or NOID. Defendants, on the other hand, argue that these provisions only  
6 require “RFE or NOID issuance, rather than denial, where the requestor has  
7 generally failed to submit sufficient evidence, or additional evidence is needed.”  
8 ECF No. 9 at 9. Defendant maintains that the SOP guidelines do not require “RFE

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12 several nationwide preliminary injunctions issued by district courts around the  
13 country, including the Northern District of California. *See Regents of University of*  
14 *California v. United States Dept. of Homeland Security*, 279 F. Supp. 3d 1011  
15 (N.D. Cal. 2018). The Ninth Circuit affirmed the preliminary injunction issued in  
16 the Northern District of California on November 8, 2018. *See Regents of the*  
17 *University of California v. United States Dept. of Homeland Security*, 908 F.3d 476  
18 (9th Cir. 2018). Pursuant to the injunction, USCIS must “maintain the DACA  
19 program on a nationwide basis on the same terms and conditions as were in effect  
20 before the rescission on September 5, 2017, including allowing DACA enrollees to  
renew their enrollments . . . .” *Regents*, 279 F. Supp. 3d at 1048-49.



1 or NOID issuance in the case of a requestor who establishes that the guidelines are  
2 met but who may not warrant a favorable exercise of discretion.” *Id.* at 10.

### 3 **B. Motion for TRO and/or Preliminary Injunction**

4 In the pending motion, Plaintiff requests “a temporary restraining order  
5 and/or preliminary injunction temporarily enjoining Defendants’ denial of  
6 Plaintiff’s renewal application under [DACA].” ECF No. 4 at 1. Pursuant to  
7 Federal Rule of Civil Procedure 65, a court may (1) “issue a preliminary injunction  
8 only on notice to the adverse party” or (2) “issue a temporary restraining order  
9 without written or oral notice to the adverse party or its attorney.” Fed. R. Civ. P.  
10 65(a)-(b). Because Defendants received notice of this motion, submitted  
11 responsive pleadings, and participated in the motion hearing, the Court interprets  
12 Plaintiff’s motion as a request for a preliminary injunction, rather than a request for  
13 a TRO.

14 A preliminary injunction is an “extraordinary and drastic remedy.” *Munaf v.*  
15 *Geran*, 553 U.S. 674, 689 (2008). To obtain injunctive relief under Rule 65, a  
16 plaintiff must make a “clear showing” of: (1) a likelihood of success on the merits;  
17 (2) a likelihood of irreparable injury in the absence of preliminary relief; (3) that a  
18 balancing of the hardships weighs in plaintiff’s favor; and (4) that a preliminary  
19 injunction will advance the public interest. *Winter v. Nat. Res. Def. Council, Inc.*,  
20 555 U.S. 7, 20, 22 (2008); *M.R. v. Dreyfus*, 697 F.3d 706, 725 (9th Cir. 2012).

1 Under the *Winter* test, a plaintiff must satisfy each element for injunctive relief.  
2 Alternatively, the Ninth Circuit also permits a “sliding scale” approach under  
3 which an injunction may be issued if there are “serious questions going to the  
4 merits” and “the balance of hardships tips sharply in the plaintiff’s favor,”  
5 assuming the plaintiff also satisfies the two other *Winter* factors. *All. for the Wild*  
6 *Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (“[A] stronger showing of  
7 one element may offset a weaker showing of another.”); *see also Farris v.*  
8 *Seabrook*, 677 F.3d 858, 864 (9th Cir. 2012) (internal quotation marks and citation  
9 omitted).

### 10 **1. Subject Matter Jurisdiction**

11 As a threshold matter, Defendants challenge this Court’s ability to review  
12 the revocation of Plaintiff’s deferred action status based on both the Immigration  
13 and Nationality Act (“INA”), as amended by the REAL ID Act, 8 U.S.C. §  
14 1252(g), and the APA, 5 U.S.C. § 701(a)(2). ECF No. 9 at 13-18.

15 Section 1252(g) of the INA, as amended by the REAL ID Act, provides that  
16 “no court shall have jurisdiction to hear any cause or claim by or on behalf of any  
17 alien arising from the decision or action by the Attorney General to commence  
18 proceedings, adjudicate cases, or execute removal orders against any alien under  
19 this chapter.” 8 U.S.C. § 1252(g). The Supreme Court has explained that §  
20 1252(g) is “directed against a particular evil: attempts to impose judicial

1 constraints upon prosecutorial discretion.” *Reno v. American-Arab Anti-*  
2 *Discriminatory Committee*, 525 U.S. 471, 487 n.9 (1999). Accordingly,  
3 Defendants argue that Plaintiff’s claims are precluded by § 1252(g) because the  
4 decision to grant or deny DACA status is an exercise of the Government’s  
5 prosecutorial discretion. ECF No. 9 at 13-14.

6 The Court agrees with Defendants that, if Plaintiff was asking for review of  
7 the government’s ultimate discretionary decision to terminate his DACA status, §  
8 1252(g) would strip this Court of jurisdiction to review that determination. *See*  
9 *Reno*, 425 U.S. at 485 (“Section 1252(g) seems clearly designed to give some  
10 measure of protection to ‘no deferred action’ decisions and similar discretionary  
11 determinations . . . .”). However, the Court ultimately finds that § 1252(g) does  
12 not deprive the Court of jurisdiction to consider the narrower issue presented in  
13 this case; specifically, whether Defendants followed their own procedures in  
14 adjudicating Plaintiff’s DACA renewal application and terminating Plaintiff’s  
15 DACA status.

16 In *Reno*, the Supreme Court explicitly held that § 1252(g) “applies only to  
17 three discrete actions that the [Secretary] may take: her ‘decision or action’ to  
18 ‘commence proceedings, adjudicate cases, or execute removal orders.’” 525 U.S.  
19 at 482 (emphasis in original). Moreover, in so holding, the Supreme Court  
20 specifically rejected a broad reading of the three discrete actions listed in §

1 1252(g), clarifying that “many other decisions or actions that may be part of the  
2 deportation process,” including “the decisions to open an investigation, to surveil  
3 the suspected violator, to reschedule the deportation hearing, to include various  
4 provisions in the final order that is the product of the adjudication, and to refuse  
5 reconsideration of that order,” are not included in § 1252(g)’s jurisdictional bar.  
6 *Id.*; see also *Regents of University of California v. United States Department of*  
7 *Homeland Security*, 908 F.3d 476, 503-04 (9th Cir. 2018). In short, contrary to  
8 Defendants’ contentions, section 1252(g) does not apply to the entire universe of  
9 deportation-related claims.

10 Here, removal proceedings have not been commenced against Plaintiff and,  
11 more significantly, Plaintiff is not challenging the USCIS’s individual “no deferred  
12 action” decisions. Rather, Plaintiff’s claim relates to the process by which his  
13 DACA status was terminated. Because Plaintiff’s claim does not implicate any of  
14 the three specific discretionary actions mentioned in § 1252(g), the Court finds that  
15 § 1252(g) does not deprive the Court of jurisdiction to consider whether  
16 Defendants followed their own procedures in denying Plaintiff’s DACA renewal  
17 application and terminating Plaintiff’s DACA status.

18 Likewise, the Court rejects Defendants’ argument that § 701(a)(2) of the  
19 APA bars this Court from reviewing USCIS’s decision to revoke Plaintiff’s  
20 deferred action status. ECF No. 9 at 14-18. While the APA permits judicial

1 review of agency actions where “there is no other adequate remedy in a court,” 5  
2 U.S.C. § 704, the APA expressly precludes review of agency decisions that are  
3 “committed to agency discretion by law,” 5 U.S.C. § 701(a)(2). Because  
4 “individual DACA decisions fall squarely within the category of agency discretion  
5 for which judicial review is improper,” Defendants contend that the APA  
6 specifically precludes judicial review of the agency action that Plaintiff challenges  
7 here. ECF No. 9 at 17.

8       The Court disagrees. Again, the flaw in Defendants’ argument is their  
9 failure to acknowledge the distinct difference between challenges to an agency’s  
10 ultimate discretionary decision and challenges to an agency’s alleged failure to  
11 follow its own administrative procedures; unlike the former, the latter does not  
12 implicate agency discretion. To put it simply, the fact that USCIS has the ultimate  
13 discretionary authority to grant or deny an application for deferred action under  
14 DACA does not mean that every determination made by USCIS regarding the  
15 application, including the steps taken to review it, are necessarily discretionary and  
16 not subject to judicial review.

17       In this case, Defendants’ alleged failure to follow the procedures detailed in  
18 the SOP does not implicate agency discretion. Therefore, the jurisdiction-stripping  
19 provisions of 8 U.S.C. § 1252(g) and 5 U.S.C. § 701(a) are not applicable to  
20 prevent this Court from determining whether Defendants complied with their non-

1 discretionary procedures. Because the Court concludes that it has jurisdiction over  
2 this action, it now turns to the merits of Plaintiff's claims.

### 3 **2. Likelihood of Success on the Merits**

4 To obtain injunctive relief, Plaintiff must show that there are "serious  
5 questions going to the merits" of his claim, and that he is likely to succeed on those  
6 questions of merit. *Cottrell*, 632 F.3d at 1131; *Farris*, 677 F.3d at 865. Plaintiff  
7 advances three claims in his Complaint: first, Plaintiff alleges that the revocation of  
8 his DACA status and employment authorization without any explanation violated §  
9 706(a) of APA because the revocation did not comport with established  
10 procedures, and was therefore arbitrary and capricious; second, Plaintiff contends  
11 that, to the extent the revocation of his DACA status reflects a change in DACA  
12 eligibility criteria, such a change failed to satisfy the notice and comment  
13 requirements of the APA; and third, Plaintiff asserts that the revocation of his  
14 DACA status and employment authorization without notice or an opportunity to  
15 respond violated his rights under the Due Process Clause of the Fifth Amendment.  
16 ECF No. 1 at 13-14. The Court considers the merits of each claim in turn.

17 Regarding Plaintiff's first claim, Plaintiff contends that he is likely to  
18 succeed on the merits of his APA claim because the decision to deny his renewal  
19 application violated DHS's own procedures and, therefore, were arbitrary,  
20 capricious, and an abuse of discretion. ECF No. 4-1 at 12-13. According to

1 Plaintiff, the DACA SOP specifically details the procedures by which a person's  
2 DACA renewal application can be denied, including issuing an RFE and NOID  
3 before a denial is issued, and Defendants failed to follow the DACA SOP in their  
4 adjudication of Plaintiff's renewal applications. Defendants respond that there is  
5 no guidance in the DACA SOP that requires issuance of an RFE or NOID where  
6 an adjudicator establishes that the applicant satisfies the guidelines but may not  
7 warrant a favorable exercise of discretion. ECF No. 9 at 10.

8 Under the APA, "agency action must be based on non-arbitrary, 'relevant  
9 factors.'" *Judulang v. Holder*, 565 U.S. 42, 55 (2011) (quoting *Motor Vehicle*  
10 *Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42  
11 (1983)). "When reviewing an agency action, we must assess, among other matters,  
12 'whether the decision was based on a consideration of the relevant factors and  
13 whether there has been a clear error of judgment.'" *Id.* (quoting *State Farm*, 463  
14 U.S. at 43).

15 Based on the record before it, the Court is simply unable to conclude at this  
16 time that Plaintiff is likely to succeed on the merits of his first APA claim. During  
17 the hearing on Plaintiff's motion, Plaintiff's counsel conceded that there is no  
18 proof in the record that adjudicators did not give case-by-case consideration to  
19 Plaintiff's renewal application, as required by the DACA SOP and related policy  
20 documents. Counsel explained that he speculated they did not given the lack of

1 RFE and NOID and the quick decision that was issued. The record in this case  
2 supports this concession, as it is devoid of any evidence to sustain Plaintiff's  
3 allegation that Defendants deficiently processed Plaintiff's renewal applications.  
4 When asked to explain how Defendants processed Plaintiff's application, Counsel  
5 for Defendants stated that adjudicators considered the relevant eligibility factors,  
6 determined that more information was not needed to supplement Plaintiff's  
7 applications, and ultimately decided to exercise their discretion to deny the renewal  
8 requests on that basis. Considering the record and briefing in this case, the Court  
9 concludes that Plaintiff cannot succeed on the merits of his APA claim.

10 Turning to Plaintiff's second APA claim, Plaintiff made no argument in the  
11 motion papers or during the motion hearing that he is likely to succeed on the  
12 merits of this claim. Plaintiff has not advanced his APA notice and comment  
13 arguments, at least for purposes of the pending motion. Accordingly, Plaintiff  
14 cannot succeed on the merits of this claim.

15 Finally, regarding Plaintiff's third claim, Plaintiff contends that the denial of  
16 his renewal application violates his due process rights under the Fifth Amendment  
17 because Plaintiff "has a protected property interest in his DACA status . . . and  
18 therefore he has a right to a fair procedure to establish his continued eligibility to  
19 for the program." ECF No. 4-1 at 13. "A threshold requirement to a substantive or  
20 procedural due process claim is the plaintiff's showing of a liberty or property



1 interest protected by the Constitution.” *Wedges/Ledges of Cal., Inc. v. City of*  
2 *Phoenix*, 24 F.3d 56, 62 (9th Cir. 1994). Thus, to succeed on his due process  
3 claim, Plaintiff must establish that he has “a legitimate claim of entitlement” in the  
4 renewal of deferred action status under DACA.

5 The Court finds that Plaintiff cannot make this showing. As the Ninth  
6 Circuit has recognized, Plaintiff’s argument is undercut by the Napolitano Memo  
7 and the DACA FAQs. *See Regents*, 908 F.3d at 515. The Napolitano Memo  
8 expressly states that deferred action “confers no substantive right, immigration  
9 status or pathway to citizenship.” ECF No. 4-4 at 3. The FAQs clarify that  
10 “USCIS retains the ultimate discretion to determine whether deferred action is  
11 appropriate in any given case even if the guidelines are met,” and an individual’s  
12 “deferred action may be terminated at any time, with or without a Notice of Intent  
13 to Terminate, at DHS’s discretion.” ECF No. 4-8 at 7, 16. Accordingly, the Court  
14 finds that Plaintiff cannot succeed on the merits of his Due Process claim.

15 In sum, after thoroughly reviewing the parties’ briefing and the record, the  
16 Court is unable to conclude that Plaintiff is likely to succeed on the merits of his  
17 APA or Due Process claims. Because Plaintiff has not shown likely success on the  
18 merits of his claims, the Court does not address the remaining *Winter* factors.  
19 Accordingly, the Court denies Plaintiff’s Motion for Temporary Restraining Order  
20 and/or Preliminary Injunction (ECF No. 4).

1 **ACCORDINGLY, IT IS ORDERED:**

2 1. Plaintiff's Motion for Temporary Restraining Order and/or  
3 Preliminary Injunction (ECF No. 4) is **DENIED**.

4 2. Plaintiff's Motion to Expedite Hearing (ECF No. 5) is **GRANTED**.

5 3. The Clerk of Court shall amend the docket to substitute Acting  
6 Secretary of DHS, Kevin K. McAleenan, for his predecessor, former Secretary of  
7 DHS, Kristjen M. Nielsen.

8 4. The District Court Clerk is directed to enter this Order and provide  
9 copies to the parties.

10 DATED May 8, 2019.



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A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE

Chief United States District Judge