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20 **THE UNITED STATES DISTRICT COURT**
21 **SOUTHERN DISTRICT OF CALIFORNIA**

22 WHITEWATER DRAW
23 NATURAL RESOURCE
24 CONSERVATION
25 DISTRICT, *et al.*,

26 Plaintiffs,

27 v.

28 KIRSTJEN NIELSEN, *et al.*,

Defendants.

Case No. 3:16-cv-2583

**PLAINTIFFS' MEMORANDUM
OF POINTS AND AUTHORITIES
OPPOSING DEFENDANTS'
PARTIAL MOTION TO DISMISS
COUNTS I AND II OF THE
AMENDED COMPLAINT**

Date: March 12, 2018
No Oral Argument Unless Requested by
the Court

Hon. M. James Lorenz

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I. Introduction

This case concerns neither the substance nor the wisdom of the nation's immigration policies, but whether the Defendants, Department of Homeland Security and Secretary of DHS Kristjen Nielsen (hereinafter referred to together as "DHS" or "Defendant"), can avoid their procedural obligations under the National Environmental Policy Act, 42 U.S.C. § 4331 *et. seq.* ("NEPA"). NEPA compliance is obligatory for all federal agencies. DHS maintains in its Memorandum in Support of Partial Motion to Dismiss Counts One and Two of the Amended Complaint at 1, ECF No. 47-1 ("Def. Memo") that, in the Amended Complaint, Plaintiffs seek an "overhaul" of the nation's immigration policies, which must be provided by legislative channels. DHS is mistaken. This lawsuit seeks only to compel DHS to comply with the informed decision procedures NEPA guarantees to the public.

Plaintiffs are individual environmentalists, environmental groups, southwest natural resource conservation groups, and members of the southwest cattle-ranching community. They bring this NEPA challenge in an effort to remedy DHS's ongoing institutional failure to recognize that its actions regulating the entry and settlement of foreign nationals result in multiple environmental impacts. The heart of DHS's failure is simple. Defendant has failed to recognize the obvious fact that migration, because it causes population growth and the relocation of masses of people into and within the country, impacts the environment. When DHS adopts and implements large-scale actions such as programs granting classes of foreign nationals the right to enter and settle in the United States, pursuant to either its statutory authority or executive directive, it is engaging in actions subject to NEPA.

Plaintiffs' Amended Complaint extensively documents the important and quantifiable environmental impacts of immigration-induced population growth in an expert report prepared by Dr. Philip Cafaro, entitled "The Environmental Impact of Immigration into the United States." ("Am Compl. Ex. 5") ECF No. 44-6. Dr. Cafaro

1 documents many population growth effects from immigration, such as urban sprawl,
2 loss of farmland, loss of habitat and biodiversity, increased greenhouse gas emissions,
3 and increased water demand and withdrawal from natural systems. Plaintiffs' affidavits
4 also document the extensive impacts of both immigration-related population growth
5 and border crossing on their own communities and lands. Am. Compl. Exs. 6-18,
6 ECF 44-7 to 44-19. NEPA requires that these impacts, as well as others, be reviewed
7 and evaluated by DHS before it undertakes discretionary actions relating to the entry
8 into and settlement of foreign nationals in the United States. But DHS has completely
9 avoided any effort to comply with NEPA.

10 At first blush, what may make this case seem complicated (and what makes the
11 Amended Complaint so "voluminous") is that the United States' immigration system
12 *itself* is a *very* intricate regulatory scheme. DHS's reluctance to apply NEPA to its
13 actions relating to the entry into and settlement of foreign nationals in the United
14 States is perhaps understandable. But, as the D.C. Circuit said in one of the earliest
15 cases involving agency obstruction over compliance with NEPA: the statute's
16 language does not provide an "escape hatch for footdragging agencies; it does not
17 make NEPA's procedural requirements somehow 'discretionary.' Congress did not
18 intend the Act to be a paper tiger." *Calvert Cliffs' Coordinating Comm., Inc. v. U.S. Atomic*
19 *Energy Comm'n*, 449 F. 2d 1109, 1114 (D.C. Cir. 1971).

20 Count I challenges DHS's final, published instruction manual establishing
21 DHS's NEPA procedures (the "Instruction Manual"), attached to the Amended
22 Complaint as Ex. 2. Am. Compl. Ex. 2, ECF 44-3. DHS acted arbitrarily and
23 capriciously by failing to incorporate any framework of NEPA review for
24 immigration-related actions into the Instruction Manual, despite their environmental
25 impacts.
26

27 By contrast, Count II addresses the downstream legal consequences of DHS's
28 original error in adopting binding NEPA procedures that arbitrarily and capriciously

1 ignore the environmental impacts of its immigration-related actions. Count II
2 encompasses a host of environmentally significant final actions adopted without
3 NEPA review. In only a handful does the agency even bother to reference NEPA
4 with a citation to a categorical exclusion. Since NEPA became law in 1970, the
5 entrance and settlement of tens of millions of foreign nationals in the country have
6 been facilitated by the federal government. Their environmental effects *en masse*
7 obviously have been significant. Yet DHS has never considered these effects, in
8 violation of NEPA.

9 Today, there are eight discrete methods by which DHS sets conditions allowing
10 foreign nationals to enter and stay in the country, or to stay after entry – seven
11 authorized by statute, and one by executive directive. Under NEPA, the concerted
12 actions DHS takes to implement each of these methods qualify as programs. All eight
13 programs are currently ongoing without NEPA compliance. Because of the
14 extraordinary complexity of the nation’s immigration programs (a complexity that is
15 no fault of Plaintiffs), Plaintiffs’ Count II must be read to include the Amended
16 Complaint’s Ex. 3, an expert report commissioned by Plaintiffs by immigration expert
17 Jessica Vaughan. Am. Compl. Ex. 3, ECF No. 44-4. Ms. Vaughan identified as many
18 of these concerted final actions as possible and found a total of 88 individual actions.
19 Am. Compl. Ex. 3 at 109-26, ECF No. 44-4. The report is an essential part of Count
20 II and explains the structure of each of these programs, what qualifies them as
21 programs under NEPA, and (to the extent possible) the specific occasions when each
22 one was adopted or substantively updated through discrete and final agency action.
23 Most of these instances were final regulations codified in the CFR, but five of them
24 were final and binding policy memoranda. At the time Plaintiffs filed their Amended
25 Complaint, none of these actions had been finally revoked, though the ultimate fate of
26 some was unclear. Though these 88 actions encapsulate a host of different types of
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1 revisions to DHS's programs relating to the entry and settlement of foreign nationals,
2 *all* were undertaken without NEPA review.

3 II. Standard of Review

4 A Rule 12 (b)(6) motion "tests the legal sufficiency of a claim. A claim may be
5 dismissed only if it appears beyond doubt that the plaintiff can prove no set of facts in
6 support of his claim which would entitle him to relief." *Navarro v. Block*, 250 F.3d 729,
7 732 (9th Cir. 2001) (internal citation and quotation marks omitted). The appropriate
8 procedural vehicle by which to move to dismiss a violation of NEPA and the APA is
9 Rule 12(b)(6) rather than Rule 12(b)(1). Both NEPA and the Administrative
10 Procedures Act ("APA") "raise a federal question covered by 28 U.S.C. § 1331." *Nat.*
11 *Res. Def. Council, Inc. ("NRDC"). v. U.S. Dep't. of State*, 658 F. Supp. 2d 105, 108
12 (D.D.C. 2009). If "the crux of defendants' various arguments is not whether the
13 [agency] has presented federal claims, but whether those claims are enforceable
14 against the [agency]," then "the court must assume jurisdiction before deciding
15 whether a cause of action exists." *Id.* at 108-09.

16 The APA provides the only avenue for judicial review of agency action, and
17 there is a "strong presumption" that Congress intends such judicial review. *Helgeson v.*
18 *Bureau of Indian Affairs*, 153 F.3d 1000, 1003 (9th Cir.1998) (citations omitted).
19 Challenges under NEPA are therefore brought under the APA.

20 Congress enacted NEPA to "promote environmentally sensitive decision-
21 making" *Protect Our Cmty's. Found. v Chu*, No. 12-cv-3062 L, 2014 U.S. Dist. LEXIS
22 42410 at *13 (Mar. 27, 2014) (quoting *Anderson v. Evans*, 314 F. 3d 1006, 1016 (9th Cir.
23 2002)). NEPA intends to guarantee that the "larger audience" that will play a role in
24 both the decision-making process itself and the implementation of the resulting
25 decisions will have access to all the relevant information. *Protect Our Cmty's. Found. v*
26 *Chu* at*13 (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989)).
27 This larger audience includes not just the public, but "the President, who is
28

1 responsible for the agency’s policy, and Congress, which has authorized the agency’s
2 actions.” *Protect Our Cmty’s Found. v Chu* at*13 (citations omitted). The information
3 provided by NEPA “is critical for decision-makers who must ‘decide whether they
4 will support or overrule the agency’s action...” *Id.* (citations omitted).

5 III. Argument

6 A. Count I

7 1) The Instruction Manual is a final agency action subject to APA review.

9 Count I asserts that the Instruction Manual adopted by DHS to govern its
10 compliance with NEPA is arbitrary and capricious under the APA because it fails to
11 incorporate NEPA review into its actions relating to the entry into and settlement of
12 foreign nationals in the United States. Defendant argues that 5 U.S.C. § 704, which
13 limits review under the APA to final agency action, prevents judicial review of the
14 Instruction Manual. Def. Memo at 8. ECF No. 47-1. Defendant asserts that the
15 Instruction Manual fails the two-prong test set out in *Bennett v. Spear* for determining
16 whether an agency action is final and thus subject to judicial review under the APA.
17 520 U.S. 154, 177-78 (1997). The first prong is that an agency action must “mark the
18 consummation of the agency’s decisionmaking process.” The second prong requires
19 that the action must be “one by which rights or obligations have been determined, or
20 from which legal consequences will flow.” *Id.* Contrary to Defendant’s implication,
21 such consequences need not be to a “third party” but may be to the agency itself. Def.
22 Memo at 8, ECF No. 47-1. *See, e.g., Gen. Elec. Co. v. Evntl. Prot. Agency*, 290 F.3d 377,
23 382 (D.C. Cir. 2002) (explaining that the question of APA review turns on whether
24 “the agency action binds private parties or *the agency itself* with the force of law”)
25 (citations omitted) (emphasis added). Defendant asserts that the Instruction Manual is
26 a “policy manual” and guide “for agency operations,” and as such, neither marks the
27 consummation of the agency’s decision making process nor constitutes an action by
28

1 which legal consequences flow. Def. Memo at 17, ECF No. 47-1. Defendant’s
2 assertions are erroneous because the Instruction Manual is both final and of legal
3 import, as an examination of both its promulgation history and its content reveals.

4 **a) The Instruction Manual’s promulgation history establishes that it is final**
5 **and binding on DHS.**

6 The Instruction Manual was not promulgated by DHS’s choice—its history
7 shows that it was a response to congressional and executive mandate. Both NEPA
8 itself, 42 U.S.C. § 4332(B), and the Council on Environmental Quality (“CEQ”), the
9 division of the Executive Office of the President established by the statute to ensure
10 that federal agencies meet their requirements under NEPA, require each federal
11 agency to adopt internal NEPA procedures. 40 C.F.R. § 1507.3. *See Public Citizen v.*
12 *U.S. Dep’t of Transp.*, 316 F.3d 1002, 1028 (9th Cir. 2003) (“Agencies are *required* to
13 develop guidelines as to which of their actions do or do not require the preparation of
14 an EA or an EIS”) (emphasis added).¹

15 DHS met its statutory obligation to adopt internal NEPA procedures through
16 its promulgation of the Instruction Manual in 2014, following public notice and
17 comment and review by CEQ. On Thursday, June 5, 2014, DHS provided a notice in
18 the Federal Register that it was submitting its draft NEPA procedures for the
19 purpose of soliciting comments from the public. National Environmental Policy Act
20 Implementing Procedures, 79 Fed. Reg. 32,563, 32,563 (June 5, 2014). After a notice
21 and comment period, DHS adopted its final policy and procedures for implementing
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23
24
25 ¹ NEPA procedures do vary among the federal agencies. *See*, D. Mandelker, NEPA
26 Law and Litigation, § 2.11 at 34-39 (2017). Some agencies publish in the Code of
27 Federal Regulations, while others publish departmental manuals. For a list of agency
28 NEPA procedures, *see* Federal Agency NEPA Procedures, Office of NEPA Policy
and Compliance, <https://energy.gov/nepa/downloads/federal-agency-nepa-procedures> (last visited Feb. 21, 2018)

1 the National Environmental Policy Act of 1969, and duly issued its “Notice of Final
2 National Environmental Policy Act Implementing Procedures” on November 26,
3 2014 (the “Notice”). Environmental Planning and Historic Preservation Program, 79
4 Fed. Reg. 70,538, 70,538 (Nov. 26, 2014). In its summary, DHS stated:

5 The purpose of this notice is to inform the public that the Department of
6 Homeland Security (DHS or the Department) is issuing the final update
7 to its policy and procedures for implementing the National
8 Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), as
9 amended, and the Council on Environmental Quality (CEQ) regulations
10 for implementing the procedural provisions of NEPA (40 CFR parts
11 1500-1508). The Department’s NEPA procedures are contained in
12 Directive 023-01, Rev. 01 and Instruction Manual 023-01-001-01, Rev.
13 01, Implementation of the National Environmental Policy Act

14 In the Notice, DHS explained that the revised Instruction Manual is final and
15 intended to bind the agency: “the revised Instruction establishes the procedures for
16 ensuring [DHS’s compliance with NEPA] is implemented in an effective and efficient
17 manner.” *Id.* DHS emphasized that the revised procedures including the Instruction
18 Manual were the consummation of a long process:

19 DHS invested over three years in developing the proposed revision to its
20 NEPA procedures. The draft revised Directive and Instruction were
21 provided to CEQ in the fall of 2013 for review and discussion prior to the
22 June 5, 2014 publication for public comment. DHS provided its proposed
23 final revised Directive and Instruction to CEQ in early September 2014;
24 CEQ responded with a letter dated November 10, 2014 prior to this
25 publication of the final Directive and Instruction as required under 40
26 CFR 1507.3(a), indicating that the Department's revised procedures
27 conform to NEPA and the CEQ regulations.

28 *Id.* at 70,539.

The Notice definitively establishes that the Instruction Manual, along with the
Directive, marked the “consummation of the agency’s decisionmaking process,” and
thus meets the first prong of *Bennett*. *Id.* at 70,538.

1 **b) The Instruction Manual’s content demonstrates its legal consequences.**

2 The Instruction Manual meets the second prong of *Bennett* because, by its own
3 language, legal consequences have flowed and continue to flow from its adoption.
4 The Instruction Manual “establishe[s] the policy and procedures DHS follows to
5 comply with [NEPA] and the [CEQ] Regulations for Implementing the Procedural
6 Provisions of NEPA (40 C.F.R. Parts 1500-1508). This Instruction Manual serves as
7 the DHS implementing procedures for NEPA.” Am. Compl. Ex. 2 at 19, ECF No.
8 44-3.
9

10 The adoption of the Instruction Manual has a profound, ongoing effect on
11 DHS’s NEPA compliance. The Instruction Manual itself itemizes those DHS
12 activities that “normally” require preparation of an Environmental Assessment or
13 Programmatic Assessment, including: construction projects in environmentally
14 sensitive areas, projects that impact wetlands and federal waters, regulations for
15 activities that impact environmentally sensitive areas, security measures that involve
16 reduced public access, and new law enforcement activities with undetermined
17 environmental impacts. *Id.* at 45. The Instruction Manual specifies when
18 Supplemental Environmental Assessments are to be prepared, and when an
19 Environmental Impact Statement or Programmatic Environmental Impact Statement
20 is to be prepared. *Id.* at 45, 50-51. Significantly, the Instruction Manual lists those
21 DHS actions that are categorically excluded from NEPA review. *Id.* at 65-93. The
22 document itself states: “The requirements of this Instruction Manual apply to the
23 execution of all NEPA activities across DHS.” *Id.* at 19. The Instruction Manual says
24 nothing about immigration-related actions.

25 The Instruction Manual constitutes DHS’s “definitive statement of the agency’s
26 position” on implementing NEPA. *Or. Nat. Desert Ass’n v. U.S. Forest. Serv.*, 465 F.3d
27 977, 982 (9th Cir. 2006). As noted in the last paragraph, “[t]he requirements of this
28 Instruction Manual apply to the execution of all NEPA activities across DHS.” Am.

1 Compl. Ex. 2 at 19, ECF No. 44-3. Thus, “immediate compliance [with the
2 Instruction Manual] is expected.” *Or. Nat. Desert Ass’n*, 465 F.3d at 982 (quoting
3 *Industrial Customers of Nw. Utils v. Bonneville Power Admin.*, 408 F.3d 638, 646 (9th Cir.
4 2004). “[A] document styled as a ‘guidance document’ may amount to a final agency
5 action when it ‘reflect[s] a settled agency position which has legal consequences.’”
6 *Columbia Riverkeeper v. U.S. Coast Guard*, 761 F.3d 1084, 1095 (9th Cir. 2014) (quoting
7 *Appalachian Power Co. v. Env’tl Prot. Agency*, 208 F.3d 1015, 1023 (D.C. Cir. 2000). Since
8 its promulgation, “legal consequences” have flowed and continue to flow from the
9 Instruction Manual because it determines which DHS activities receive NEPA
10 analysis, the scope of NEPA analysis to be accorded each action, and which DHS
11 activities are automatically excluded from NEPA analysis.

12 Contrary to Defendants’ assertion, the designation, title, or label placed on an
13 agency document is not dispositive of whether it is subject to judicial review. The
14 Ninth Circuit has made clear that “[i]t is the effect of the action and not its label that
15 must be considered.” *Or. Nat. Desert Ass’n*, 465 F.3d at 985 (quoting *Abramowitz v.*
16 *Env’tl. Prot. Agency*, 832 F.2d 1071, 1075 (9th Cir. 1987)). “Under the APA, for
17 instance, even if the agency does not label its decision or action as final, it may be
18 reviewable if it ‘has the status of law or comparable legal force’ or if ‘immediate
19 compliance with its terms is expected.’” *Columbia Riverkeeper*, 761 F.3d at 1095
20 (citations omitted). A final agency action subject to the requirements of the APA
21 exists when the action has “‘direct and appreciable legal consequences.’” *Id.* (quoting
22 *Bennett*, 520 U.S. at 177-78).

23 **c) DHS relies on analogies to agency manuals that are factually inapposite.**
24

25 Two of the three cases DHS relies upon for its assertion that “[p]olicy
26 memoranda and guides for agency operations do not constitute reviewable final
27 agency action[]” are not relevant to analysis of the Instruction Manual because they do
28 not involve the APA. Defendant seems only to be citing them to establish the false

1 proposition that any agency document labeled a “manual” does not bind an agency.
2 *See* Def. Memo at 9, ECF No. 47-1 (citing *Schweiker v. Hansen*, 450 U.S. (1981) and
3 *Kugel v. United States*, 947 F.2d 1504 (D.C. Cir. 1991)). The one opinion that does
4 involve the APA, *Cement Kiln Recycling Coal. v. Envtl. Prot. Agency*, 493 F.3d 207, 226
5 (D.C. Cir. 2007), concerned a challenge to an EPA regulation and accompanying
6 guidance document addressing the burning of hazardous waste as fuel. The guidance
7 document was attacked “because it was not promulgated pursuant to the notice-and-
8 comment procedures of the APA.” *Id.* at 226. Such is obviously not the case with the
9 Instruction Manual. Further, in contrast to DHS’s Instruction Manual, which declares
10 that “[t]he requirements of this Instruction Manual apply to the execution of all
11 NEPA activities across DHS[]” Am. Compl. Ex. 2 at 19, ECF No. 44-3, the guidance
12 document in *Cement Kiln* specifically declared that “this guidance does not impose
13 legally binding requirements on EPA...” 493 F.3d at 227. The plain language of the
14 Instruction Manual shows that it is intended to have the “force of law.” *Cement Kiln’s*
15 contested document is thus clearly distinguishable from the instant Instruction
16 Manual, which is binding and does command compliance by DHS and is, accordingly,
17 subject to judicial review under the APA.

18 **2) The Instruction Manual qualifies as a Rule under the APA.**

19
20 Secondly, Defendant erroneously claims that the Instruction Manual, which
21 clearly is the “whole or part of an agency statement of general or particular
22 applicability and future effect designed to implement, interpret, or prescribe law or
23 policy,” does not qualify as a rule under 5 U.S.C. 551(4) because it is merely a
24 document establishing “internal guidelines.” Def. Memo at 9, ECF No. 47-1. When
25 an agency argues that an action does not qualify as a rule under the APA because it is
26 labelled a guidance document, though courts might consider “the Agency’s own
27 characterization of its action” and “whether the action was published in the Federal
28 Register or the Code of Federal Regulations,” the “ultimate focus of the [court’s]

1 inquiry” is “whether the action has binding effects on third parties or on the agency.”
2 *Gen. Elec. Co.*, 290 F. 3d at 382 (internal quotations and citations omitted). It is the
3 third factor that demonstrates “whether the agency action partakes of the
4 fundamental characteristic of a regulation, i.e., that it has the force of law.’ *Id.* (quoting
5 *Molycorp, Inc. v. Envlt. Prot. Agency*, 197 F.3d 543, 545 (D.C. Cir. 1999)). DHS’s
6 characterization of the Instruction Manual as merely guidance and not a rule is
7 particularly unavailing here. The Instruction Manual *was* promulgated with notice and
8 comment, and is binding not only on its face, but also because DHS received
9 permission from another entity (CEQ) to implement it in its final form.

10 **a) The Instruction Manual was promulgated with Notice and Comment.**

11
12 As discussed *supra*, the Instruction Manual was promulgated pursuant to both
13 NEPA 42 U.S.C. § 4332(B) and CEQ 40 C.F.R. § 1507.3 in accordance with the APA
14 notice and comment requirements set forth in 5 U.S.C. § 553(c). A procedure,
15 protocol, regulation, or other rule promulgated pursuant to the notice and comment
16 requirements set forth in the APA is indisputably subject to judicial review under the
17 APA. The APA’s applicability adheres upon a rule’s announcement in the Federal
18 Register, because even the announcement itself is subject to judicial review under the
19 APA:

20 The “basis and purpose” statement required by Section 4(c) of the APA
21 must be sufficiently detailed and informative to allow a searching judicial
22 scrutiny of how and why the regulations were actually adopted. In
23 particular, the statement must advert to administrative determinations of
24 a factual sort to the extent required for a reviewing court to satisfy itself
25 that none of the regulatory provisions were framed in an “arbitrary” or
26 “capricious” manner.

27 *Amoco Oil Co. v. Envlt. Prot. Agency*, 501 F.2d 722, 739 (D.C. Cir. 1974) (citations
28 omitted). Defendant ignores the promulgation history of the Instruction Manual,
which clearly reveals that DHS followed the APA’s basic notice and comment

1 parameters while drafting and publishing it. The Instruction Manual's promulgation
2 history thus establishes that it is subject to the APA.

3 Defendant's claim that the Instructional Manual itself was not published in the
4 Code of Federal Regulations is not dispositive of this issue. Def. Memo at 12-13, ECF
5 No. 47-1. As discussed *supra*, the manner in which agencies publish their
6 implementing NEPA procedures varies from agency to agency, some publishing in
7 the Code of Federal Regulations and some "simply publish[ing] in the Federal
8 Register, without codifying the provisions in the Code." D. Mandelker, *NEPA Law
9 and Litigation* § 2:11 at 34 (2017). Agencies also commonly "supplement" codification
10 or publishing in the Federal Register "with the issuance of an agency manual or
11 handbook also containing the applicable NEPA requirements," as DHS has done. *Id.*
12 DHS even pushed back in the Notice on the idea that the procedure it followed was
13 somehow inadequate in making the adoption of the Instruction Manual a public
14 action. "Federal Register and www.regulations.gov," DHS claimed in the Notice, "are
15 widely recognized as appropriate sources for the public to learn about and comment
16 on Federal government initiatives." Environmental Planning and Historic
17 Preservation Program, 79 Fed. Reg. at 70,538.

18 **b) The Instruction Manual has the "force of law."**

19 Whether an agency action has the "force of law," and is deemed binding on the
20 agency, is an even more important factor in determining whether it qualifies as a rule.
21 *See Gen. Elec. Co.*, 290 F.3d at 382. This factor decidedly favors Plaintiffs. As discussed
22 *supra*, the Instruction Manual is binding on DHS on its face. The document itself
23 states: "The requirements of this Instruction Manual apply to the execution of all
24 NEPA activities across DHS." Am. Compl. Ex. 2 at 19, ECF No. 44-3. Not only does
25 the document itself state that it is binding, but DHS has no choice whether or not to
26 treat it as binding. DHS was required to submit it to CEQ for approval. That DHS
27 did not choose to codify it in the Code of Federal Regulations is immaterial. Agencies
28

1 that chose to codify their NEPA procedures as regulations are not more subject to
2 NEPA than agencies that do not. NEPA applies to all federal agencies. DHS stated
3 the Notice that CEQ agreed that “the Department's revised procedures [including the
4 Instruction Manual] conform to NEPA and the CEQ regulations.” Environmental
5 Planning and Historic Preservation Program, Fed. Reg. at 70,539.

6 Having received permission from CEQ to use its published NEPA procedures,
7 DHS cannot then deviate from them. Because DHS drafted its internal NEPA
8 procedures pursuant to its statutory and regulatory obligation to follow CEQ's
9 directives, the Instruction Manual is not akin to internal guidance documents adopted
10 pursuant to no law or executive directive. It is, of course, possible that, unbeknownst
11 to Plaintiffs, DHS does not in practice follow its own Instruction Manual. But, if that
12 is the case, that itself is a violation of NEPA. DHS cannot use its flouting of its
13 obligations under NEPA as a shield to prevent judicial review.

14 Furthermore, there is no hint within the Instruction Manual that DHS does not
15 intend that it have a binding effect on its regulatory practices. The Instruction Manual
16 qualifies as interpretive rule subject to judicial review under the APA because it
17 “spells out a duty fairly encompassed within the regulation that the interpretation
18 purports to construe.” *Def. of Wildlife v. Tuggle*, 607 F. Supp. 2d 1095, 1115 (D. Ariz.
19 2009) (quoting *Paralyzed Veterans of Am. v. D.C. Arena L.P.*, 117 F.3d 579, 588 (D.C.
20 Cir. 1997)). The Instruction Manual “spells out” DHS's “duty” to comply with NEPA
21 and the CEQ NEPA regulations. The *Tuggle* court noted that though an interpretive
22 rule “lacks the formal force of law, as a practical matter it affects the regulatory
23 practices of an agency... as to what a law or regulation means and how it will be
24 enforced.” *Tuggle*, 607 F. Supp. 2d at 1115. Therefore, “[w]hen it has a substantial
25 impact on the rights of individuals, its promulgation may constitute final agency
26 action for purposes of judicial review. *Id.* (citing *Am. Postal Workers Union v. U.S. Postal*
27 *Srv.*, 707 F.2d 548, 560 (D.C. Cir. 1983); *National Home Builders v. Norton*, 415 F.3d 8,
28

1 15 (D.C. Cir. 2005). While the action in *Tuggle* concerned procedures for endangered
2 wolf removals, the Instruction Manual governs how DHS implements NEPA. In
3 *Tuggle*, the U.S. Fish and Wildlife Service was statutorily obliged to implement binding
4 “wolf management procedures and protocols” to deal with wolf removal actions. *Id.*
5 The documents created did so with specificity and finality. Such is the case at bar.
6 DHS is statutorily obligated to draft and publish internal NEPA procedures. In
7 response, DHS produced the Instruction Manual, a 91-page document setting forth
8 detailed, binding instructions that govern DHS’s daily compliance with NEPA.

9 **B) Count II**

10 **1) Plaintiffs have identified eight distinct programs subject to NEPA.**

11 In Count II, Plaintiffs assert that DHS failed to engage in any NEPA review in
12 connection with eight programs it administers. Each of these eight programs, seven
13 established by the Immigration and Nationality Act (“INA”), Pub. L. No. 82-414, 66
14 Stat. 163 (1952) and one via Executive Directive, governs a different, discrete category
15 of DHS’s general statutory authority to regulate the entry into and settlement of
16 foreign nationals in the United States. That is, each program establishes its own
17 discrete policy goal of setting criteria for entry into or settlement of classes of foreign
18 nationals in the country, and each is further codified by a series of regulations found
19 in specific sections of the Code of Federal Regulations. The regulations and policy
20 memoranda that implement each program are compiled and exhaustively detailed in
21 Ex. 3 of the Amended Complaint by immigration expert Jessica Vaughan. Am.
22 Compl. Ex 3, ECF No 44-4.
23

24 Under NEPA these eight categories of DHS authority constitute “programs.”
25 A program is defined as “a group of concerted actions to implement a specific policy
26 or plan; systematic and connected agency decisions allocating agency resources to
27 implement a specific statutory program or executive directive.” 40 C.F.R. §
28 1508.18(b)(3). The eight programs at issue in this case are: employment based

1 immigration, family based immigration, long term nonimmigrant visas, parole,
2 Temporary Protective Status, refugees, asylum, and Deferred Action for Childhood
3 Arrivals. These programs, individually and collectively, have a significant cumulative
4 impact on population growth in the United States and particularly in California,² the
5 state where many Plaintiffs reside. Yet these programs have never received even
6 cursory NEPA compliance by DHS.

7 CEQ has developed regulations for determining whether concerted agency
8 activities qualify as a major federal action under NEPA. *Found. on Econ. Trends v. Lyng*,
9 817 F. 2d 882, 884 (D.C. Cir. 1987). Among the actions subject to NEPA listed by the
10 CEQ are the “[a]doption of programs, such as a group of concerted actions to
11 implement a specific policy or plan; systematic and connected agency decisions
12 allocating agency resources to implement a specific statutory program or executive
13 directive.” 40 C.F.R. § 1508.18(b)(3). A programmatic environmental impact
14 statement (“PEIS”) is utilized “where there are sufficiently ‘related’ actions [that] will
15 have ‘cumulative or synergistic environmental impact.’” *Lyng*, 817 F.2d at 885, quoting
16 *Kleppe v. Sierra Club*, 427 U.S. 390, 408-15 (1976). *See also*, *Sierra Club v. Watkins*, 808 F.
17 Supp. 852, 863 (D.D.C. 1991) (reasoning that programmatic review is proper under
18 NEPA when a related series of actions have cumulative effects); *Friends of the Earth,*
19 *Inc. v. Mosbacher*, 488 F. Supp. 2d 889, 911 (N.D. Cal 2007) (finding that “concerted or
20 connected” actions properly receive programmatic analysis).

21
22 Broadness of an action per se is no bar to compliance with NEPA: the CEQ
23 regulations state that environmental impact statements are “sometimes required for
24 broad Federal actions such as the adoption of new agency programs or regulations.”

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26
27
28 ² See “The Environmental Impact of Immigration into the United States,” by Dr.
Cafaro. (“Am Compl. Ex. 5”) ECF No. 44-6.

1 40 CFR § 1502.4 (b). CEQ promulgated a “Guidance for Effective Use of
2 Programmatic NEPA Reviews” on December 23, 2014, in which it stated that “the
3 analyses in a programmatic NEPA review are valuable in setting out the broad view of
4 environmental impacts and benefits for a proposed decision such as a rulemaking, or
5 establishing a policy, program, or plan.” Final Guidance for Effective Use of
6 Programmatic NEPA Reviews, Fed. Reg. 76,986, 76,986 (Dec. 23, 2014). CEQ also
7 explains how programmatic reviews provide an opportunity to engage the public in
8 federal decision making, a “key policy goal of NEPA and the CEQ regulations,” and
9 encourages agencies to support “early public participation.” *Id.* at 76,989. DHS’s own
10 NEPA guidelines mirror the CEQ’s. The Instruction Manual states, under the
11 subheading Programmatic EAs, that “[a] component may prepare a Programmatic EA
12 (PEA), for a broad Federal action, *such as a program*, plan, or actions of a similar type
13 ...” Am. Compl. Ex. 2 at 45, ECF No. 44-3 (emphasis added).

14 All programs, whether large or small, are subject to NEPA compliance.
15 “NEPA compliance is required even if the challenged actions are part of a broad
16 program.” *Friends of the River v. U.S. Army Corps of Eng’rs*, 870 F. Supp. 2d 966, 978
17 (E.D. Cal. 2012). Claims under NEPA are proper if the plaintiff challenges
18 “identifiable, final agency actions within the APA.” *Id.* “NEPA requires *some* type of
19 procedural due diligence – even in cases involving broad, programmatic changes.”
20 *Citizens for Better Forestry v. U.S. Dep’t. of Agric.*, 481 F. Supp. 2d 1059, 1085 (N.D. Cal.
21 2007) This quotation summarizes the heart of Plaintiffs’ argument: DHS has engaged
22 in zero NEPA compliance with respect to the actions at bar.

23 **2) DHS’s arguments ignore the detailed specificity of the programs set forth in**
24 **the Amended Complaint.**

25 Defendant argues that Count II must be dismissed because Plaintiffs have not
26 identified discrete programs or any discrete actions in their complaint, making the
27 challenge an impermissible broad attack on all of DHS’ statutory authority. See Def
28

1 Memo at 15, ECF 47-1. Defendant claims that therefore the Court must get involved
2 in DHS's day-to-day operations in order to review Count II. *Id.* Defendant also argues
3 that agencies have discretion over whether to use programmatic environmental impact
4 statements (PEISs) in their NEPA compliance, and so Plaintiffs cannot force DHS to
5 prepare one. *Id.* at 15-16.³

6 **a) Defendant relies on *Lujan* and *Norton*, but they are not applicable.**

7 DHS relies on *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871 (1990) and *Norton v. S.*
8 *Utah Wilderness All.*, 542, U.S. 55 (2004) in support of its argument that Plaintiffs have
9 failed to cite specific actions subject to NEPA review because “the APA does not
10 authorize suits seeking ‘wholesale improvement of [an agency] program by court
11 decree’” Def. Memo at 13, ECF No. 47-1 (quoting both *Lujan* and *Norton*). DHS
12 states that “Plaintiffs merely list the statutes that provide the parameters for DHS’
13 operation; they fail to identify any discrete, final agency action on the part of the
14 agency, and their claim fails.” Def. Memo at 15, ECF No. 47-1. Defendant’s assertion
15 is patently false: the seven programs arising from the cited statutory authority,
16 together with 86 specific regulations and policy memoranda that comprise the
17 statutory programs, are in fact detailed comprehensively in Ex. 3 to the Amended
18 Complaint, which is never acknowledged or recognized in Defendant’s memorandum.
19 *See* Am. Compl. Ex. 3, ECF No. 44-4. The body of the Amended Complaint refers to
20 Ex. 3 on eight separate pages. Am. Compl. at 6, 47, 49-51, and 53-55. ECF 44.
21
22
23
24

25 ³ Defendant also erroneously states that Count II fails to state a claim under 5 U.S.C.
26 § 706(1). Plaintiffs’ claim asserts that DHS acted in an arbitrary and capricious
27 fashion, in violation of 5 U.S.C. § 706(2)(A) for failing to undertake any NEPA
28 compliance with respect to its programs governing the entry and settlement of foreign
nationals into the U.S.

1 In *Lujan* and *Norton*, the Supreme Court rejected broad policy challenges to the
2 entire way agencies carry out their statutory mandate because the plaintiffs failed to
3 allege specific agency actions subject to NEPA. The challenges did not “refer to a
4 single [agency] order or regulation, or even to a completed universe of particular
5 [agency] orders and regulations.” *Lujan*, 497 U.S. at 890. If a plaintiff fails to specify
6 particular and discrete actions that were carried out in violation of the law, then the
7 plaintiff must be seeking “wholesale improvement” of a program by court decree,
8 which a court is not empowered to perform. *Id.* at 891. A court cannot permit a
9 “generic challenge to all aspects of a program” *Id.* at 890. A court also cannot
10 supervise the substance of the agency’s compliance with a broad statutory mandate
11 because to do so would be to “inject the judge into day-to-day agency management.”
12 *Norton*, 542 U.S. at 66-67.

13 Such is clearly not the case at bar.

14 **b) Count II is a viable challenge because it specifically identifies discrete**
15 **agency actions that violated NEPA for a single reason.**

16 For each of the eight programs at issue, Plaintiffs have identified (to the extent
17 reasonably possible) and listed the particular group of specific, discrete, and concerted
18 actions DHS has taken to implement each discrete policy goal of setting conditions
19 for granting eligibility to classes of foreign nationals to enter and/or remain in the
20 United States. A meticulous description of each program and a list of the specific
21 actions taken by DHS to implement each one is located in Ex. 3. Am. Compl. Ex. 3 at
22 106-26, ECF No. 44-4. For each program, Plaintiffs first identify the initial regulation
23 adopting the program pursuant to statutory authority (or in the case of DACA,
24 identify the date of the executive directive) and then list the updating regulations, or in
25 some cases, binding policy memoranda.
26
27
28

1 The first program is employment based immigration, authorized in 1990,
2 concerning the “specific policy plan”⁴ of admitting foreign nationals based on U.S.
3 employment needs. This program gives rise to five categories of immigrant visas. The
4 regulations implementing it are found in 8 C.F.R. §§ 204.5, 204.6. Exhibit 3 of the
5 Amended Complaint identifies five “concerted actions” DHS took in implementing,
6 creating, and refining the petition process through regulation between 1991 and 2016.
7 Am. Compl. Ex. 3 at 109-110, ECF No. 44-4. Approximately 3.3 million foreign
8 nationals have settled in the country through this program. *Id.* at 110.

9 The second program is family based immigration, authorized (in current form)
10 in 1990, concerning the specific policy plan of admitting foreign nationals based on
11 family ties to American citizens. The program gives rise to nine immigrant visa
12 categories. Regulations implementing it are found in 8 C.F.R. §§ 201.1, 204.2. Exhibit
13 3 of the Amended Complaint identifies nine “concerted actions” DHS took in
14 implementing this program between 1992 and 2016. Am. Compl. Ex. 3 at 111-112.
15 ECF No. 44-4. Approximately 14.6 million foreign nationals have settled in the
16 country through this program. *Id.* at 112.

17 The third program is the long-term Nonimmigrant Visa Program, authorized in
18 1990. The program gives rise to eight long-term nonimmigrant visa categories (as well
19 as a host of short term nonimmigrant visa categories that Plaintiffs are not challenging
20 under NEPA in this case). Regulations implementing it are found in 8 C.F.R. §§
21 214.1-4, 214.12-14. Exhibit 3 of the Amended Complaint identifies 47 “concerted
22 actions” DHS undertook in implementing this program between 1994 and 2017
23 through regulation or policy memoranda. Am. Compl. Ex. 3 at 114-117, ECF No. 44-
24

25
26
27 ⁴ 40 C.F.R. 1508.18(b)(3) specifies that a program is a group of “concerted actions” to
28 implement a “specific policy plan.”

1 4. Approximately 12.2 million foreign nationals have settled in the country through
2 this program. *Id.* at 117.

3 The fourth program is parole, authorized in its current form in 1996,
4 concerning the specific policy plan of allowing foreign nationals to enter the country
5 without a visa for urgent humanitarian reasons or significant public benefit.
6 Regulations implementing parole are found in 8 C.F.R. § 212.5. Exhibit 3 identifies 12
7 “concerted actions” DHS undertook in implementing the program by regulation or
8 policy memoranda between 1982 and 2017. Am. Compl. Ex. 3 at 117-120, ECF No.
9 44-4. Approximately 100,000 foreign nationals have entered into or settled in the
10 country through this program. *Id.* at 120.

11 The fifth program is Temporary Protected Status, authorized in 1990,
12 concerning the specific policy plan of allowing foreign nationals in the United States
13 without a valid visa to remain because of a natural disaster or civil violence in their
14 nation of origin. Regulations implementing this program are found in 8 C.F.R. §§
15 244.1-19. Exhibit 3 of the Amended Complaint identifies nine “concerted actions”
16 DHS undertook in implementing this program by regulation between 1991 and 2011.
17 Am. Compl. Ex. 3 at 121-122, ECF No. 44-4. Approximately 377,000 foreign
18 nationals have settled in the country through this program. *Id.* at 122.

19 The sixth program is refugees, authorized in its current form in 1980,
20 concerning the specific policy plan of admitting foreign nationals subject to
21 persecution at home. Regulations implementing the refugee program are found in 8
22 C.F.R. §§ 207.1-9, 209. Exhibit 3 of the Amended Complaint identifies eight
23 “concerted actions” DHS undertook in implementing this program by regulation
24 between 1981 and 2011. Am Compl. Ex. 3 at 122-123, ECF 44-4. Approximately 2.2
25 million foreign nationals have settled in the country through this program. *Id.* at 123.

26 The seventh program is asylum, authorized in 1980, concerning the specific
27 policy plan of allowing foreign nationals in the United States to stay because of
28

1 persecution at home. Regulations implementing asylum are found in 8 C.F.R. §§
2 208.1-23, 209. Exhibit 3 of the Amended Complaint identifies 14 “concerted actions”
3 DHS undertook in implementing this program by regulation between 1981 and 2012.
4 Am. Compl. Ex. 3 at 123-124, ECF. No. 44-4. Approximately 790,000 foreign
5 nationals have settled in the country through this program. *Id.* at 125.

6 The eighth program is DACA, authorized by executive directive in 2012,
7 concerning the specific policy plan of allowing foreign nationals to stay in United
8 States based on their age at entrance. Exhibit 3 of the Amended Complaint identifies
9 the two “concerted actions” in implementing the program by policy memoranda. Am.
10 Compl. Ex. 3 at 125-126, ECF. No. 44-4. Approximately 793,000 foreign nationals
11 have settled in the country through this program. *Id.* at 126.

12 The CEQ’s definition of a program thus justifies defining each specific area of
13 statutory authority, together with its implementing regulations, as a single program.
14 DHS could argue that organizing them as single programs is arbitrary, and that they
15 are properly seen as more than eight programs. For instance, one might say that the
16 regulations concerning long term nonimmigrant visas do not comprise a single
17 program because they authorize many different visa programs, such as the Student
18 and Exchange Visitor Program and the H-1B visa programs. Such semantics,
19 however, matter very little in terms of DHS’s failure to conduct *any* NEPA analysis of
20 them. DHS did no NEPA analysis of any of the environmental effects resulting from
21 the introduction of very large numbers of people into the country at any level.

22 These eight programs have “cumulative” and “synergistic” impacts because
23 they produce similar environmental impacts from ongoing population growth in
24 specific areas of the United States and the movement of large numbers of foreign
25 nationals into and within the country, particularly in the southwestern states and
26 Florida – the states where Plaintiffs’ affiants reside. *See Lyng*, 817 F. 2d at 885. As set
27 forth in their affidavits, the affiants have experienced profound environmental
28

1 impacts resulting from ongoing, large-scale migration of foreign nationals into their
2 communities, which has been induced by these DHS programs. *See* Am. Compl. Ex.
3 6-18, ECF Doc. 44-7 to 19. Because DHS adopted interrelated programs with
4 cumulative environmental impacts impacting the members of the Plaintiff
5 organizations, the manner in which these DHS programs are labeled should not be
6 dispositive of whether DHS can completely evade NEPA compliance with respect to
7 its actions governing the entry and settlement of foreign nationals.

8 **c) DHSs’ “framework” is a set of related programs by another name, and**
9 **NEPA *does* intend review whenever the environment is significantly affected.**

10 Defendant argues that its immigration-related actions are not programs but a
11 “Congressionally mandated framework under which DHS operates.” Def. Memo at
12 15, ECF No. 47-1. As such, Defendant argues that Count II must be dismissed
13 because it requires “general judicial review of an agency’s day-to-day-operations,”
14 which the Supreme Court in *Lujan* has precluded. Defendant is mistaken. Plaintiffs
15 merely seek compliance with NEPA. The reality is that this congressionally-mandated
16 framework established under the authority of a statute *is* the same as a program. Such a
17 framework creates “a group of concerted actions to implement a specific policy or
18 plan; systematic and connected agency decisions allocating agency resources to
19 implement a specific statutory program or executive directive.” Plaintiffs have indeed
20 identified those specific concerted actions and systematic and connected agency
21 decisions that are subject to NEPA compliance. Unlike the plaintiffs in *Lujan*,
22 Plaintiffs here have taken the trouble to identify the “completed universe of particular
23 [agency] orders and regulations” that make up these programs. 497 U.S. at 890.
24

25 Of course, Plaintiffs could have, in the alternative, listed all 88 actions
26 separately in the Amended Complaint as individual violations of NEPA. But to do so
27 would not only have rendered the complaint *less* manageable, it would also have meant
28 that the interconnectedness of each group of actions that implement a particular grant

1 of statutory authority (many actions, in fact, implemented more than one grant of
2 statutory authority), and how they actually constitute discrete programs, would have
3 been *less* apparent. Defendant would have then likely complained that Plaintiffs had
4 cited a host of random actions that had nothing to do with each other. That such a
5 situation should be avoided is precisely what the Ninth Circuit meant when it
6 reasoned that NEPA is not subject to the “tyranny of small decisions.” *Kern v. U.S.*
7 *Bureau of Land Mgmt.*, 284 F.3d 1062, 1078 (9th Cir. 2002).

8 Nothing in the Amended Complaint requires that the Court inject itself into
9 the decision-making process of the agency’s day-to-day operations that relate to
10 immigration. The immigration scheme of the United States is very complicated, and
11 injecting informed environmental decision-making into the decisions that carry it out
12 may seem daunting to DHS. However, injecting environmental awareness into this
13 agency’s decision making is no more daunting than the task *any* agency faces in
14 applying NEPA. The complexity of the task presented by the law is *precisely* why the
15 CEQ *mandated* in 1978 that all agency specifically adopt NEPA procedures to guide
16 them. 40 C.F.R. § 1500 *et seq.* Thus, if the agency’s NEPA guidelines themselves
17 arbitrarily and capriciously fail to notice a large part of the agency’s mandate, the
18 agency can expect the consequences of this failure to be felt in broad areas.

19 In this case, if this Court were to order proper compliance with the Instruction
20 Manual, such an order would in no way “inject” the court “into day-to-day agency
21 management.” Ignoring the environmental impacts of immigration is arbitrary and
22 capricious, but if DHS were to reissue its NEPA regulations without this error and
23 then properly apply that guidance, it would then be in compliance with NEPA. If this
24 Court ordered NEPA compliance, it would in no way rob DHS of its discretion in
25 carrying its NEPA procedures out, nor in carrying out its duties to implement
26 immigration law. NEPA’s mandate is strictly procedural. DHS needs to fix its NEPA
27 procedure, not its actions.
28

1 **d) Plaintiffs seek *some* form of NEPA review, not necessarily a PEIS.**

2 Defendants rely on *Kleppe v. Sierra Club* for the proposition that the decision to
3 prepare a PEIS rests within its discretion. 427 U.S. 390, 412 (1976). ” Def. Memo at
4 15, ECF No. 47-1. Defendant overlooks the fact that the Amended Complaint does
5 not seek a Court order compelling DHS to specifically prepare a PEIS. Rather,
6 Plaintiffs seek to compel DHS to initiate *some* form of NEPA review. Only upon
7 initiating NEPA compliance, will DHS be in a position to assess the appropriate
8 scope of its NEPA review regarding these programs.⁵

9 **C. DACA**

10 Finally, DHS asserts that the DACA program is exempt from NEPA as “a
11 judicial or administrative civil or criminal enforcement action.” Def. Memo at 17.
12 Such an exemption would indeed apply if Plaintiffs were challenging a particular
13 decision to grant an individual status under DACA. But Plaintiffs are only challenging
14 the adoption of the program itself without NEPA review. Like the seven statutory
15 programs, DACA grants permission to stay in the country for certain amounts of time
16 and under specific conditions to classes of individuals based on certain criteria.
17 DACA therefore also meets the definition of a program under the CEQ guidelines:
18 “concerted actions to implement a specific policy or plan; systematic and connected
19 agency decisions allocating agency resources to implement a specific statutory
20 program or *executive directive*.” (emphasis added).
21

22 Courts that have reviewed DACA have not disputed the “programmatic
23 nature” of this federal action. *See, e.g., Regents of the Univ. of Cal. v. United States, Dep’t. of*

24
25
26 ⁵ The proper scope of environmental review and the decision whether to prepare a
27 PEIS are then “initially” committed to agency discretion, and thus reviewed according
28 to the “rule of reason.” *National Wildlife Federation v. Appalachian Regional Com.*, 677
F.2d 883, 888-889 (D.C. Cir. 1981)

1 *Homeland Sec.*, No. C 17-05211, 2018 U.S. Dist. LEXIS 4036 (Jan. 9, 2018)
2 (“Programmatic deferred action has been in use since at least 1997, and other forms
3 of programmatic discretionary relief date back to at least 1956.”). Therefore, DACA is
4 reviewable under NEPA for the same reasons the other programs are reviewable
5 under NEPA, as specified *supra*. Under NEPA, it is immaterial whether the program
6 is adopted pursuant to statute or executive directive.

7 **V. Conclusion**

8 Both Counts I and II validly challenge agency actions under NEPA and the
9 APA and therefore survive Defendant’s Motion to Dismiss.

10
11 Dated February 21, 2018

Respectfully submitted,

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