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12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 ISAI BALTEZAR & JULIE CHO,

15 *Plaintiffs,*

16 vs.

17 MIGUEL CARDONA, *in his official capacity*
18 *as Secretary of Education,* & UNITED
19 STATES DEPARTMENT OF EDUCATION,

20 *Defendants.*

Case No. 20-cv-00455-EJD

**PLAINTIFFS' REQUEST FOR
JUDICIAL NOTICE**

Date: March 24, 2022

Time: 9:00 am

Place: Courtroom 4, 5th Floor

Judge: Hon. Edward J. Davila

21 **REQUEST FOR JUDICIAL NOTICE**

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23 In connection with an ongoing rulemaking process, Defendants have released and
24 publicized two "Issue Paper[s]" related to their intent to re-regulate on the topic of "Gainful
25 Employment." *See generally* Dkt. 60 (describing, in their Notice of Supplemental Decision, the
26 Department's December 2021 decision to commence negotiated rulemaking); Dkt. 50 at 16 n.12.
27 True and correct copies of the Issue Papers are attached hereto as Exhibits A & B and are
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1 available on the Department’s website.¹

2 The Issue Papers are relevant to the vacatur issue before the Court for two reasons. First,
 3 the Issue Papers confirm that the Department “has demonstrated that it will not . . . adopt the
 4 same rule [*i.e.*, the Repeal] upon remand.” *In re Clean Water Act Rulemaking*, --- F. Supp. 3d ---
 5 , 2021 WL 4924844, at *8 (N.D. Cal., Oct. 21, 2021). Second, the papers confirm the seriousness
 6 of the errors in the Repeal insofar as the Department’s *current* legal interpretation (but *not* the
 7 erroneous interpretation espoused in the Repeal) is that Congress delegated it the authority to
 8 define what it means to “prepare students for gainful employment in a recognized occupation.”
 9 This issue is squarely raised in Count 1. *See generally* Compl. [Dkt. 1] ¶¶ 351–57; Dkt. 50 at 5–6
 10 (summarizing Count 1).

11 As set forth in prior briefing, *see* Dkt. 50 at 5, both issues are relevant to the Court’s
 12 application of *Allied-Signal, Inc. v. U.S. Nuclear Regul. Comm’n*, 988 F.2d 146 (D.C. Cir. 1993).
 13 Accordingly, plaintiffs request that the Court take judicial notice of the Issue Papers. *See*
 14 *Eidmann v. Walgreen Co.*, 522 F. Supp. 3d 634, 642 (N.D. Cal. 2021) (Davila, J.) (“Documents
 15 published on government-run websites are proper for judicial notice given their reliability.”)
 16 *appeal dismissed*, No. 21-15659, 2021 WL 4785889 (9th Cir. May 17, 2021).

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23 ¹ See U.S. Dep’t of Educ., Office of Postsecondary Education, Issue Paper 3: Gainful
 24 Employment (Session 1: January 18-21, 2022), *available at*
 25 <https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/3gainfulemployment.pdf> (Exhibit
 26 A); U.S. Dep’t of Educ., Office of Postsecondary Education, Issue Paper 3: Gainful Employment
 27 (Session 2: February 14-18, 2022), *available at*
 28 <https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/ip3ge.pdf> (Exhibit B). These
 documents may also be located by visiting the Department’s main page for 2021-2022
 Rulemaking, and clicking through to the materials for Session 1 or Session 2 (respectively) of the
 Institutional and Programmatic Eligibility Committee Rulemaking, available at:
<https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html?src=rn>.

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Respectfully submitted,
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By: /s/ Daniel A. Zibel
DANIEL A. ZIBEL

Date: February 14, 2022

Counsel for Plaintiffs