



U.S. Citizenship
and Immigration
Services

November 19, 2018

COW2017001158

Joshua A Rosenthal
National Immigration Law Center
3450 Wilshire Blvd. #108-62
Los Angeles, CA 90010

Dear Joshua Rosenthal:

In accordance with the parties' agreement in *Make the Road New York et al v. DHS, et al*, 18-cv-02445 (MRNY), the United States Citizenship and Immigration Services (USCIS) is providing records as part of a rolling production in response to your Freedom of Information Act/Privacy Act (FOIA/PA) request received in this office on September 25, 2017, which sought records related to DACA. Specifically, your request sought the following:

- 1) Any records, including but not limited to reports, memoranda, analyses, or communications, developed regarding the decision to terminate the DACA program, including.
 - a. Any records related to or referring to the legality, lawfulness or perceived legal infirmities of the DACA program;
 - b. Any communication or analyses related to or referring to the OLC's November 19, 2014 Memorandum entitled "The Department of Homeland Security's Authority to Prioritize Removal of Certain Aliens Unlawfully Present in the United States and to Defer Removal of Others";
 - c. Any records relied on to support the statement that "while the DACA denial notice indicates the decision to deny is made in the unreviewable discretion of USCIS, USCIS has not been able to identify specific denial cases where an applicant appeared to satisfy the programmatic categorical criteria as outlined in the June 15, 2012 memorandum, but still had his or her application denied based solely upon discretion";
 - d. Any records relating to alternative proposals for the DACA program, other than rescission of the June 15, 2012 memorandum; and
 - e. Any records regarding the selection of specific dates for the "wind-down" period of the DACA program, including the October 5, 2017 deadline for renewal applications and the March 5, 2018 date for termination of the DACA program.
- 2) Any records regarding *Texas, et al., v. United States, et al.*, No. 1: 14-cv-00254 (S.D.Tex.), including but not limited to:
 - a. Any communications between DOJ, CIV, OAG, OSC, or DOJ-OLC and the state attorney general plaintiffs or their staff, offices, and affiliates regarding the *Texas v. U.S.* litigation, the DACA program, and the DAPA and expanded DACA programs.
- 3) Any communications relating to or referring to the DACA program sent to or received from any of the following individuals or organizations:
 - a. John Kelly; Elaine Duke; Claire M. Grady; Chad Wolf; Katharine Gorka; Thomas Homan; Peter Edge; Thomas Blank; Matthew Albence; James McAment; Tracy Renaud; Daniel Renaud; Kevin McAleenan; Ronald Vitiello; Jeff Sessions; Stephen Miller; Steve Bannon; Sebastian Gorka; Jon Feere; Julie Kircher; Brandon Judd; Brent Bombach; Kevin Carroll; Ben Cassidy; Kevin Chmielewski; Tiffany Cissna; Daniel Cox; Thomas Dinanno; Mario

Flores; Gene Hamilton; Harold Hanson; Matt Hayden; Jonathan Hoffman; Roman Jankowski; Elizabeth Johnson; James Johnson; Quinn Jones O'Brien; Julie Kirchner; Kathy Nuebel Kovarik; Scott Krause; David Lapan; Cora Mandy; Michael McKeown; Alan Metzler; Jayne Neumann; Emily Newman; Kirstjen Nielsen; Lora Ries; Dimple Shah; Tracy Short; Craig Symons; Thomas Szold; Kaitlin Vogt; Erin Waters; Chad Wolf; Frank Wuco; Kris Kobach; the National ICE Council; the Center for Immigration Studies; the National Border Patrol Council; the National CIS Council, or the Federation for American Immigration Reform.

- 4) Any records relating to or referring to the DACA program sent to or received from any member of Congress, Congressional committee, or Congressional staff, and any records created in preparation for or support of a communication with a member of Congress, Congressional committee, or Congressional staff.
- 5) Any records relating to or referring to the DACA program sent to or received from any governor of a United States state or territory, gubernatorial staff, or association of governors or state officials (e.g. the National Governors Association, National Conference of State Legislatures), and any records created in preparation for or support of such communication.
- 6) Any records relating to the standards or procedures for adjudicating DACA applications, including but not limited to:
 - a. Any proposed or actual changes to the National Standard Operating Procedures for DACA applications, including for renewal applications and applications where DACA status has already expired;
 - b. Any training, guidance, or other communications to USC' IS supervisors, officers, employers, contractors, or consultants regarding the adjudication of DACA applications, including initial applications, renewals, and applications by individuals whose DACA status had expired;
 - c. Any proposed or actual changes to adjudication standards for individual applications for deferred action or other forms of prosecutorial discretion; and
 - d. Any training, guidance, or other communications to USCIS, CBP or ICE supervisors, officers, employers, contractors, or consultants regarding the adjudication of individual applications for deferred action or other forms of prosecutorial discretion.
- 7) Any records relating to the sharing and retention of information from DACA and work authorization applications under DACA eligibility, including but not limited to:
 - a. Any records describing policies for sharing information from DACA and work authorization applications under DACA eligibility, whether received before or after September 5, 2017, with other components of DHS, such as CBP or ICE, or with other government agencies, including state, local, or tribal law enforcement agencies;
 - b. Any training, guidance, or other communications to USCIS supervisors officers employers, contractors, or consultants regarding policies for sharing information from DACA and work authorization applications under DACA eligibility with other components of DHS, such as CBP or ICE, or with other government agencies, including state, local, or tribal law enforcement agencies;
 - c. Any training, 'guidance or other communications to ICE or CBP supervisors, officers, employers, contractors, or consultants regarding the use of information from DACA and work authorization applications under DACA eligibility; and
 - d. Any USCIS policies concerning data retention for D'ACA applications or for visa or immigration relief programs that are no longer operational.
- 8) Any records relating to the processing of Advance Parole applications or Advance Parole benefits granted, including but not limited to:
 - a. Any records describing changes in eligibility requirements for Advance Parole applications filed by September 5, 2017; and

- b. Any training, guidance, or other communications to CBP officers regarding policies on how to treat DACA recipients entering the United States with Advance Parole.
- 9) Any records or communications relating to the following documents on DACA:
 - a. Talking Points - DACA Rescission and Talking Points - President Trump Directs Phased Ending of DACA;
 - b. Fact Sheet: Rescission of Deferred Action for Childhood Arrivals (DACA);
 - c. Frequently Asked Questions on the September 5, 2017 Rescission of the Deferred Action for Childhood Arrivals (DACA) Program; and
 - d. Top Five Messages.
- 10) Any records describing the process, procedures, channel of review, and allocations of responsibility for policy development, including for promulgating a legislative rule, interpretive rule, general statement of policy, or guidance that was in effect during the review period. For this item, Requestors seek policies that were in effect during the review period, even if they were created prior to the review period.
- 11) A list of all search terms used and databases accessed to respond to this FOIA request.

We have completed the search for responsive records and are currently reviewing and processing records responsive to your request. Records will be provided on a rolling basis in accordance with the parties' agreement. Enclosed is the fourth production of responsive records, which consists of 705 pages. We have reviewed and have determined to release all information except those portions that are exempt pursuant to 5 U.S.C. § 552 (b)(5) and (b)(6) of the FOIA.

Exemption (b)(5) provides protection for inter-agency or intra-agency memoranda or letters, which would not be available by law to a party other than an agency in litigation with the agency. The types of documents and/or information we have withheld under this exemption may consist of documents containing pre-decisional information, documents or other memoranda prepared in contemplation of litigation, or confidential communications between attorney and client.

Exemption (b)(6) permits the government to withhold all information about individuals in personnel, medical and similar files where the disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. The types of documents and/or information we have withheld may consist of birth certificates, naturalization certificates, drivers' licenses, social security numbers, home addresses, dates of birth, or various other documents and/or information belonging to a third party that are.

During our review, we also located records that originated with Department of Homeland Security and U.S. Immigration and Customs Enforcement. We have referred the records to these agencies for their direct response to you.

Sincerely,



Jill A. Eggleston
Director, FOIA Operations

Enclosure(s)