

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

STATE OF TEXAS, <i>et al.</i>)	
)	
Plaintiffs,)	
)	No. 1:14-CV-254
v.)	
)	
UNITED STATES OF AMERICA, <i>et al.</i>)	
)	
Defendants.)	
)	

DECLARATION OF DONALD W. NEUFELD

I, Donald W. Neufeld, hereby make the following declaration with respect to the above captioned matter.

1. I am the Associate Director for Service Center Operations (SCOPS) for U.S. Citizenship and Immigration Services (USCIS), a component within the U.S. Department of Homeland Security (DHS or Department). I have held this position since January 2010. In this position, I oversee all policy, planning, management and execution functions of SCOPS. My current job duties include overseeing a workforce of more than 3,000 government employees and 1,500 contract employees at the four USCIS Service Centers located in California, Nebraska, Texas and Vermont. These four centers adjudicate about four million immigration-related applications and requests annually, including all requests for deferred action under the Deferred Action for Childhood Arrivals (DACA) process.

2. I was previously the Deputy/Acting Associate Director for USCIS Domestic Operations from June 2007 to January 2010 where I oversaw all immigration adjudication activities at USCIS's four Service Centers and 87 field offices throughout the United States, as well as 130

Application Support Centers, four Regional Offices, two Call Centers, the Card Production Facility and the National Benefits Center. From January 2006 to June 2007, I was Chief of USCIS Field Operations managing and overseeing the 87 field offices delivering immigration benefit services directly to applicants and petitioners in communities across the United States and the National Benefits Center (NBC) which performs centralized front-end processing of certain applications and petitions. My career with USCIS and the legacy Immigration and Naturalization Service spans more than 30 years, where I have held several leadership positions including Deputy Assistant District Director for the Los Angeles District, Assistant District Director and later District Director of the Miami District, and Service Center Director for the California and Nebraska Service Centers. I began my career in 1983, initially hired as a clerk in the Los Angeles District, then serving as an Information Officer, then an Immigration Examiner, conducting interviews and adjudicating applications for immigration benefits. I also performed inspections of arriving passengers at Los Angeles International Airport.

3. I make this declaration on the basis of my personal knowledge and information made available to me in the course of my official duties.

USCIS's Role in Immigration Enforcement

4. DHS has three components with responsibilities over the enforcement of the nation's immigration laws: (1) Immigration and Customs Enforcement (ICE); (2) Customs and Border Protection (CBP); and (3) USCIS. USCIS is the DHS component that administers a variety of immigration-related programs. Currently, USCIS adjudicates approximately seven million applications, petitions and requests per year, including applications for naturalization by lawful permanent residents (LPRs), immigrant visa petitions (including employment-based visa petitions filed by U.S. employers and family-based visa petitions filed by U.S. citizens and

LPRs), a variety of non-immigrant petitions (including temporary worker categories such as the H-1B), asylum and refugee status, other humanitarian protections under the Violence Against Women Act (VAWA) and for victims of trafficking and crimes, humanitarian parole, and deferred action, among others.

5. USCIS's current budget is approximately \$3.2 billion. This budget is funded overwhelmingly by user fees paid by individuals who file applications. Only approximately 5% of our budget is from Congressionally-appropriated taxpayer funds, and those appropriations are specifically designated for operation and maintenance of the employment verification system, known as E-Verify, and for limited citizenship-related services (none of which are related to requests for deferred action).

6. USCIS employs approximately 13,000 federal employees and an additional 5,000 contract employees housed in a range of facilities throughout the United States and overseas. USCIS maintains 87 Field Offices under its Field Operations Directorate (FOD) and four major Service Centers under SCOPS. These Service Centers are located in Dallas, Texas; Laguna Niguel, California; Lincoln, Nebraska; and St. Albans, Vermont. Altogether, the Service Centers employ approximately 3,000 federal workers. USCIS also operates the NBC, which is similar in size to a Service Center. The NBC performs some limited adjudications, although it was originally established to prepare cases for adjudication in other offices by conducting pre-interview case review.

7. The Field Offices and Service Centers adjudicate a wide range of immigration-related applications and requests. USCIS distributes the responsibility for processing and adjudicating various categories of applications and requests among the Field Offices and Service Centers

based on multiple considerations in order to achieve maximum efficiency, reliability, consistency, and accuracy.

8. The Service Centers are designed to adjudicate applications, petitions and requests of programs that have higher-volume caseloads, including non-immigrant visa petitions (such as H-1Bs), I-130 petitions establishing relationships between a U.S. citizen or LPR and a foreign national relative, employment-based applications for adjustment of status to lawful permanent residence, multiple forms of humanitarian protection (including temporary protected status, protection under the VAWA, non-immigrant status for victims of crimes and trafficking), and requests for deferred action under the DACA process.¹

9. In addition to the Field Offices and Service Centers, USCIS also uses three centralized “lockboxes” for the initial receipt and processing of most applications, requests, and fee payments received by the agency each year. At the lockbox, every application and request is opened, reviewed for basic filing requirements, then fees are collected, and data is captured. In order to ensure reliability and proper processing, each application and request must be logged into one of the USCIS computer systems, the paper applications and requests must be scanned, the payment must be processed, a receipt must be issued, and the hardcopy applications and requests must be distributed to the appropriate Field Office, Service Center, or the NBC for further processing.

¹ DACA is not the only deferred action program handled by USCIS Service Centers. For example, the Vermont Service Center (VSC) currently administers two programs through which individuals may be placed in deferred action, one related to relief under VAWA and one related to U nonimmigrant status. VAWA allows certain spouses, children, and parents to self-petition for family-based immigration benefits if they have been battered or subjected to extreme cruelty by the U.S. citizen or LPR spouse or parent, or U.S. citizen son or daughter. If the VAWA self-petition is approved by VSC, the self-petitioner can file an application for adjustment of status that is adjudicated by the appropriate field office. In addition, based on the approved self-petition, the self-petitioner is eligible for consideration for deferred action and for an employment authorization document. VSC adjudicates all VAWA self-petitions and also administers the deferred action and EAD component of the VAWA program.

The DACA Process

10. In 2012, then-Secretary of Homeland Security Napolitano “set[] forth how, in the exercise of our prosecutorial discretion, the Department of Homeland Security (DHS) should enforce the Nation’s immigration laws.” In doing so, USCIS was tasked with implementing the DACA process and adjudicating these requests for deferred action. As explained by then-Secretary Napolitano, the DACA process supports DHS-wide efforts to efficiently prioritize overall enforcement resources through the removal of criminals, recent border crossers, and aliens who pose a threat to national security and public safety, while recognizing humanitarian principles embedded within our immigration laws. The individuals who could be considered for DACA “lacked the intent to violate the law” because they were “young people brought to this country as children[.]” She further explained such children and young adults could be considered, on a case-by-case basis, for deferred action if they met the guidelines, passed a criminal background check, and lived in the U.S. continuously for five years. Secretary Napolitano explained that DACA was part of “additional measures to ensure that [DHS’s] enforcement resources [were] not expended on these low priority cases but [were] instead appropriately focused on people who meet [DHS’s] enforcement priorities.” *See* Exhibit A (June 15, 2012 Memorandum, “Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children,” (hereinafter “the Napolitano Memo”)).

11. Under DACA, aliens brought to the United States as children before the age of 16 and who are determined to meet other certain guidelines, including continuous residence in the United States since June 15, 2007, can be considered for deferred action on a case-by-case basis.²

² The guidelines for DACA under the Napolitano Memo include: 1) being under the age of 31 as of June 15, 2012; 2) entering the U.S. before reaching the age of 16; 3) continuously residing in the U.S. since June 15, 2007 to the present time; 4) being physically present in the U.S. on June 15, 2012 and at the time of making the request for

Requestors who meet the guidelines are not automatically granted deferred action under DACA. Rather, each initial DACA request is individually considered, wherein an adjudicator must determine whether a requestor meets the guidelines and whether there are other factors that might adversely impact the favorable exercise of discretion.

12. In addition to satisfying the DACA guidelines, requestors must submit to, and pay for, a background check. Information discovered in the background check process is also considered in the overall discretionary analysis. If granted, the period of deferred action under the existing DACA program is—depending on the date of the grant—two or three years.³ Requestors simultaneously apply for employment authorization, although the application for employment authorization is not adjudicated until a decision is made on the underlying DACA request.

13. Procedurally, the review and adjudication of an initial request for deferred action under DACA is a multi-step, case-specific process described in greater detail below. The process begins with the request being mailed to a USCIS lockbox, which then reviews requests for completeness. Following review at the lock-box stage, those requests that are not rejected (as briefly described below) are sent to one of the four USCIS Service Centers for further substantive processing. Once a case arrives at a Service Center, a specially trained USCIS adjudicator is assigned to determine whether the requestor satisfies the DACA guidelines and ultimately determine whether a request should be approved or denied.

consideration for DACA; 5) having no lawful status on June 15, 2012; 6) being currently in school, having graduated or obtained a certificate of completion from high school, having obtained a General Educational Development (GED) certificate, or being an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; and, 7) having not been convicted of a felony, a significant misdemeanor, three or more other misdemeanors, and not otherwise posing a threat to national security or public safety.

³ The 2012 Napolitano Memo directed USCIS to issue two-year periods of deferred action under DACA. Pursuant to the November, 20, 2014 memo issued by Secretary Johnson, as of November 24, 2014, all first-time DACA requests and requests for renewals now receive a three-year period of deferred action.

14. Unlike a “denial,” a DACA request is “rejected” when the lockbox determines upon intake that the request has a fatal flaw, such as failure to submit the required fee,⁴ failure to sign the request, illegible or missing required fields on the form, or it is clear that the requestor does not satisfy the age guidelines.

15. A DACA request is “denied” when a USCIS adjudicator, on a case-by-case basis, determines that the requestor has not demonstrated that they satisfy the guidelines for DACA or when an adjudicator determines that deferred action should be denied even though the threshold guidelines are met. Both scenarios necessarily involve the consideration of and exercise of USCIS’s discretion.

16. Adjudicators evaluate the evidence each requestor submits in conjunction with the relevant DACA guidelines, assess the appropriate weight to accord such evidence, and ultimately determine whether the evidence is sufficient to satisfy the guidelines. Adjudicators must utilize judgment in determining weight accorded to the submitted evidence.

17. Where a guideline is not prescriptive, USCIS must also exercise significant discretion in determining whether that guideline, and the requestor’s case in relation to that guideline, counsels for or against a grant of deferred action. For example, one of the DACA guidelines is that the requestor “has not been convicted of a felony offense, a significant misdemeanor offense, multiple misdemeanor offenses, or otherwise poses a threat to national security or public safety.” *See* Exhibit A, at 1. While determining whether a requestor has been convicted of a felony is straightforward, determining whether a requestor “poses a threat to national security or public safety” necessarily involves the exercise of the agency’s discretion.

⁴ Very limited fee exemptions are considered. *See* Exhibit B (FAQ 8).

18. Even if it is determined that a requestor has satisfied the threshold DACA guidelines, USCIS may exercise discretion to deny a request where other factors make the grant of deferred action inappropriate. For example, if the DACA requestor is believed to have submitted false statements or attempted to commit fraud in a prior application or petition, USCIS has denied DACA even when all the DACA guidelines, including public safety considerations, have been met. As another example, when USCIS learned that a DACA requestor falsely claimed to be a U.S. citizen and had prior removals, as an exercise of discretion, USCIS denied the request even though those issues are not specifically part of the DACA guidelines.

19. Under current DACA procedures, denials issued solely on discretionary grounds, including for national security and public safety reasons, are generally required to undergo review by USCIS headquarters. There is an exception to that requirement for cases involving gang affiliation—where such affiliation is confirmed by interview—and those cases may be denied without further guidance from USCIS headquarters. After an adjudicator in a USCIS Service Center determines that, in his or her discretion, a request should be denied for purely discretionary reasons, the adjudicator may send to USCIS headquarters a “Request for Adjudicative Guidance,” which summarizes the case, usually recommends a denial for discretionary reasons, and seeks concurrence or guidance before rendering a final decision. This process has been established to allow USCIS to ensure consistency and avoid arbitrary decisions regarding discretionary denials.

20. Adjudicators have the authority to verify documents, facts, and statements provided by the requestor by contacting educational institutions, other government agencies, employers, or other entities. *See* Exhibit B (USCIS Frequently Asked Questions for DACA Requestors (hereinafter DACA FAQs)), FAQ 21. In addition, adjudicators at the Service Centers may refer

a case for interview at a Field Office. *See* Exhibit C (redacted DACA interview notices).

Typically, an interview would be requested when the adjudicator determines, after careful review of the request and supporting documents, that a request is deniable, but potentially curable, with information that can best be received through an interview instead of requesting additional supporting documents. For example, where an adjudicator suspected a requestor was associated with a gang, an interview was conducted to question the requestor regarding this association.

21. An adjudicator may also issue a “Request for Evidence” (RFE) or a Notice of Intent to Deny (NOID) to require the requestor to submit additional evidence in support of the request for DACA. An RFE is issued when not all of the required initial evidence has been submitted or the adjudicator determines that the totality of the evidence submitted does not meet the DACA guidelines or other discretionary factors. A NOID is more appropriate than issuing an RFE when the officer intends to deny the request based on the evidence already submitted because the request does not appear to meet DACA guidelines or other discretionary factors, but the request is not necessarily incurable. Since August 15, 2012 through December 31, 2014, 188,767 RFEs and 6,496 NOIDs have been issued in the process of adjudicating DACA requests. Failure to respond may result in a denial. *See* Exhibit D (redacted DACA-related RFEs and NOIDs); Exhibit E. In addition, all DACA requestors must submit to background checks, and requests are denied if these background checks show that deferred action would be inappropriate. Information discovered in this process may be provided to ICE, CBP, and other law enforcement authorities for further action if appropriate. *See* Exhibit B (DACA FAQs 19 and 20).

22. If USCIS denies a DACA request, USCIS applies its policy guidance governing the referral of cases to ICE. Normally, if the case does not involve a criminal offense, fraud, or a threat to national security or public safety, the case is not referred to ICE for purposes of removal

proceedings. Many of the cases involving discretionary denials were referred to ICE due to public safety issues.

23. Since the inception of DACA through December 31, 2014, USCIS accepted as filed 727,164 initial requests for deferred action under DACA. An additional 43,174 requests were submitted to USCIS, but were rejected at the lockbox stage. Of the 727,164 initial requests that were accepted for filing, 638,897 were approved, 38,597 were ultimately denied, and the rest remain pending. All DACA requestors also submit applications for employment authorization. Of the 970,735 employment authorization applications received, 825,640 were approved.⁵ See Exhibit E.

24. The reasons for these 38,597 denials vary. Most were based on a determination that the requestor failed to meet certain threshold criteria, such as continuous residence in the United States. Other denials involved cases in which the deciding official exercised further judgment and discretion in applying the criteria set forth in the policy, including where individuals were determined to pose a public safety risk based on the individual circumstances of the case. For example, DACA requests have been denied for discretionary public safety reasons because the requestor was suspected of gang membership or gang-related activity, had a series of arrests without convictions, arrests resulting in pre-trial diversionary programs, or ongoing criminal investigations. Requests have also been denied on the basis that deferred action was not appropriate for other reasons not expressly set forth in 2012 DACA Memorandum, such as evidence of immigration fraud. See *supra* ¶ 18 (citing examples). Until very recently, USCIS

⁵ The total number of employment authorization document application receipts is higher than the number of DACA requests because USCIS systems do not distinguish between employment authorization document applications made by initial requestors, renewal requestors, or those seeking to replace an employment authorization document.

lacked any ability to automatically track and sort the reasons for DACA denials, and it still lacks the ability to do so for all DACA denials except for very recent ones.

25. DACA is funded exclusively through the fees requestors submit with their DACA request. No Congressional appropriations are used to administer DACA.

**2014 DACA Modifications and
Deferred Action for Parents of U.S. Citizens and LPRs (DAPA)**

26. On November 20, 2014, Secretary Johnson issued a memorandum directing DHS to implement certain modifications to DACA and to create a process for certain parents of U.S. Citizens and LPRs to apply for deferred action (DAPA). The DACA modifications include: (1) allowing individuals over 31 to request deferred action; (2) increasing the period of deferred action and work authorization from two to three years; and (3) adjusting the date regarding the beginning of the continuous residence period from June 15, 2007 to January 1, 2010. These modifications will not change the case-by-case process for reviewing DACA requests described above. USCIS is in the process of determining the procedures for reviewing requests under DAPA, and thus USCIS has not yet determined whether the process to adjudicate DAPA requests will be similar to the DACA process. However, as with DACA, DAPA will be funded through fees submitted by requestors, and USCIS will not use Congressional appropriations to administer DAPA.

27. The 2014 DACA modifications and DAPA do not restrict the longstanding authority of USCIS to grant deferred action in the exercise of its discretion. Accordingly, if a requestor is denied DACA or DAPA, USCIS may consider deferred action for the requestor if such action is considered appropriate in the agency's discretion. *See* Exhibit B (DACA FAQ 71).

28. USCIS has taken some steps to implement the expanded DACA and DAPA, such as securing adequate office space and beginning to develop a form, among others. In taking these

steps, USCIS has counted on receiving the fees that will be generated by requestors when submissions commence in February for DACA and May 2015 for DAPA. USCIS has carefully calibrated expenses incurred in light of anticipated revenues to ensure the continuing fiscal integrity of our budget. USCIS's budget contemplates that we will begin receiving fees from requestors soon to cover some of the expenses we have already incurred and fund the process as it continues to go forward.

29. Based on our experience implementing DACA in 2012, we anticipate that fewer than the total number of estimated persons who might meet the guidelines for DAPA would submit requests. The total estimated population for DACA was projected to be approximately 1.2 million individuals in 2012. To date, approximately 720,000 initial DACA requests, or roughly 60% of the total estimated population, have been received by the agency. The projected total population for DAPA is estimated at approximately 3.85 million. USCIS currently anticipates approximately 50% of this population will submit requests in the 18-month period after USCIS begins accepting requests.

30. As the foregoing paragraphs explain, the DACA program requires case-by-case consideration of each request and provides for individualized adjudicatory judgment and discretion. Each case is first reviewed by lockbox contractors who reject requests that are incomplete. All non-rejected cases are then forwarded to a USCIS Service Center for a case-by-case review. Upon careful review of the case, adjudicators regularly issue RFEs and NOIDs for additional evidence, where after initially reviewing the request, adjudicators determine the request is deniable, but also curable with additional evidence. In making a decision on each case, adjudicators must carefully evaluate the weight of the submitted evidence to ensure compliance with the discretionary guidelines broadly outlined by the Secretary when establishing DACA.

They must also make determinations on individual requests based on non-prescriptive guidelines such as “public safety” and “national security.” Finally, in DACA, USCIS exercises its discretion by otherwise denying a request where other factors not included in the guidelines would make the grant of deferred action inappropriate.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 30th day of January of 2015.



Donald W. Neufeld