



Monday, August 7, 2017

The Honorable C. L. Butch Otter  
Governor  
State of Idaho  
*By email only to:* [Governor@gov.idaho.gov](mailto:Governor@gov.idaho.gov) and  
[Delfina.Krakau@gov.idaho.gov](mailto:Delfina.Krakau@gov.idaho.gov)

The Honorable Lawrence Wasden  
Attorney General  
State of Idaho  
*By email only to:* [lawrence.wasden@ag.idaho.gov](mailto:lawrence.wasden@ag.idaho.gov) and  
[janet.carter@ag.idaho.gov](mailto:janet.carter@ag.idaho.gov)

**Re: Public Records Request**

Dear Governor Otter and Attorney General Wasden:

This is a records request under the Idaho Public Records Act regarding any communications between your offices and the federal government about the Deferred Action for Childhood Arrivals (“DACA”) program.

The DACA program is a critical lifeline for nearly 800,000 young immigrants who came to this country as children and know the United States as their home. DACA provides individuals with permission to live and work in the country on a renewable, two-year basis.<sup>1</sup> Since its creation five years ago, DACA has enabled hundreds of thousands of young men and women nationwide—including more than 3,000 in Idaho<sup>2</sup>—to attend school, support their families, buy homes, begin careers, contribute to their communities, and pursue their dreams.

On June 29, 2017, the Attorneys General of the States of Texas, Alabama, Arkansas, Idaho, Kansas, Louisiana, Nebraska, South Carolina, Tennessee, and West Virginia, along with the Governor of Idaho (“the States”), sent a letter to U.S. Attorney General Jeff Sessions, requesting that the Secretary of Homeland Security “phase out the DACA program by rescinding the June 15, 2012 DACA memorandum and ordering that the Executive Branch will not renew or issue any new DACA or Expanded

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<sup>1</sup> See generally, USCIS, Consideration of Deferred Action for Childhood Arrivals (DACA), <https://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-daca>.

<sup>2</sup> Nicole Prchal Svajlenka, Tom Jawetz, and Angie Bautista-Chavez, *A New Threat to DACA Could Cost States Billions of Dollars*, Ctr. for Amer. Progress (July 21, 2017), <https://www.americanprogress.org/issues/immigration/news/2017/07/21/436419/new-threat-daca-cost-states-billions-dollars/>.



DACA permits in the future.”<sup>3</sup> Should the Secretary not rescind the program by September 5, 2017, the States intend to seek to amend the complaint in *Texas v. United States*, No. 1:14-cv-254 (S.D. Tex.) to challenge the lawfulness of the DACA program.

The United States has repeatedly—and successfully—defended the legal validity of the DACA program. Indeed, every legal challenge to the DACA program has failed.<sup>4</sup> As the United States has argued in several cases,<sup>5</sup> DACA is a lawful exercise of the enforcement discretion that Congress delegated to the Executive Branch. The Secretary of Homeland Security’s authority to grant deferred action derives from the Immigration and Nationality Act (“INA”), which charges the Secretary with “the administration and enforcement” of the country’s immigration laws.<sup>6</sup> The United States has defended the Executive’s authority to establish national immigration enforcement policies and priorities as central to implementing—rather than violating—its constitutional obligation to “take Care that the Laws be faithfully executed.”<sup>7</sup> Thus, any refusal by the Sessions Justice Department to defend the DACA program would require a complete reversal of the United States’ own consistent legal positions.

However, it remains unclear whether the United States will maintain its defense of the DACA program. Attorney General Sessions has opposed the DACA program since its inception, testifying before the Senate Judiciary Committee in January 2017 that DACA is “very questionable, in my opinion, constitutionally.”<sup>8</sup> Responding to the States’ June 2017 letter, Attorney General Sessions remarked: “I like it that states and localities are holding the federal government to account and expecting us to do what is

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<sup>3</sup> Letter from Ken Paxton, Attorney General of Texas, et. al. to the Hon. Jeff Sessions, Attorney General of the United States, June 29, 2017, *available at* [https://www.texasattorneygeneral.gov/files/epress/DACA\\_letter\\_6\\_29\\_2017.pdf](https://www.texasattorneygeneral.gov/files/epress/DACA_letter_6_29_2017.pdf).

<sup>4</sup> *See Arpaio v. Obama*, 797 F.3d 11 (D.C. Cir. 2015) (affirming order dismissing suit for lack of standing); *Crane v. Johnson*, 783 F.3d 244 (5th Cir. 2015) (same).

<sup>5</sup> *See, e.g.*, Amicus Br. of the United States at 22-27, *Ariz. Dream Act Coalition v. Brewer*, No. 15-15307 (9th Cir. filed Aug. 28, 2015); Br. of the United States at 46-50, *Arpaio v. Obama*, No. 14-5325 (D.C. Cir. filed Mar. 2, 2015).

<sup>6</sup> 8 U.S.C. § 1103(a)(1); *see also id.* § 1103(a)(3).

<sup>7</sup> U.S. Const. art. II, § 3.

<sup>8</sup> Seung Min Kim & Josh Gerstein, *Sessions denies racism charges as Dems hold their fire*, POLITICO.com (Jan. 10, 2017), <http://www.politico.com/story/2017/01/jeff-sessions-confirmation-hearing-233394>.



our responsibility to the state and locals, and that's to enforce the law."<sup>9</sup> Former DHS Secretary John Kelly reportedly told members of Congress earlier this month that "he can't guarantee that the administration would defend [the DACA program] in court."<sup>10</sup> These statements raise serious questions regarding the United States' commitment to defending the legality of the DACA program against the States' threatened litigation, as well as questions about possible communications regarding the *Texas* litigation between the States and members of the Trump administration.

This records request seeks records regarding any communications between personnel of the Idaho Governor's and Attorney General's offices and the Sessions Justice Department, the Trump administration, and other state officials regarding the DACA program. Specifically, we request:

1. All records<sup>11</sup> related to communications between officials or employees of the Office of the Governor or the Office of the Attorney General of Idaho and officials or employees of the U.S. Department of Justice regarding the DACA program from January 20, 2017, to the date of the response to this request, including but not limited to the States' plans to challenge the legality of the DACA program in *Texas v. United States*, No. 1:14-cv-254 (S.D. Tex.).
2. All records related to communications between officials and employees of the Office of the Governor or the Office of the Attorney General of Idaho and officials or employees of the U.S. Department of Homeland Security regarding the DACA program from January 20, 2017, to the date of the response to this request, including but not limited to the States' plans to challenge the legality of the DACA program in *Texas v. United States*, No. 1:14-cv-254 (S.D. Tex.).
3. All records related to communications between officials and employees of the Office of the Governor or the Office of the Attorney General of Idaho and White House officials or employees regarding the DACA program from January 20,

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<sup>9</sup> Fox News, Fox & Friends, June 30, 2017, available at <https://www.youtube.com/watch?v=X0T9ZVH4lfk&feature=youtu.be>.

<sup>10</sup> Ted Hesson, *Kelly Won't Commit to Defending DACA in Court*, POLITICO.com (July 12, 2017), <http://www.politico.com/story/2017/07/12/john-kelly-daca-legal-challenge-240470>.

<sup>11</sup> For the purposes of this request, "records" include, but are not limited to: text communications between phones or other electronic devices (including, but not limited to, communications sent via SMS or other text, Blackberry Messenger, iMessage, WhatsApp, Signal, Gchat, or Twitter direct message); e-mails; images, video, and audio recorded on cell phones; voicemail messages; social-media posts; letters; instructions; directives; guidance documents; formal and informal presentations; training documents; bulletins; alerts; updates; advisories; reports; legal and policy memoranda; contracts or agreements; minutes or notes of meetings and phone calls; and memoranda of understanding.



2017, to the date of the response to this request, including but not limited to the States' plans to challenge the legality of the DACA program in *Texas v. United States*, No. 1:14-cv-254 (S.D. Tex.).

4. All records related to communications between officials or employees of the Office of the Governor or the Office of the Attorney General of Idaho and officials or employees of other state governments regarding the DACA program from January 20, 2017, to the date of the response to this request, including but not limited to the States' plans to challenge the legality of the DACA program in *Texas v. United States*, No. 1:14-cv-254 (S.D. Tex.).
5. All records related to communications between officials or employees of the Office of the Governor or the Office of the Attorney General of Idaho and members of the Trump administration transition team regarding the DACA program up to the date of the response to this request, including but not limited to the States' plans to challenge the legality of the DACA program in *Texas v. United States*, No. 1:14-cv-254 (S.D. Tex.).

AMERICAN CIVIL  
LIBERTIES UNION OF  
IDAHO  
P.O. BOX 1897  
BOISE, ID 83701  
T/(208) 344-9750  
F/(208) 344-7201  
WWW.ACLUIDAHO.ORG

If you have any questions about what materials I am requesting, please contact me. For any materials available in a commonly used electronic format, please email them in that format to [reppink@acluidaho.org](mailto:reppink@acluidaho.org). For any materials that you can't email to me, please phone me before you copy anything, because I am requesting to inspect the materials first to determine whether a record is relevant before it is copied. The ACLU of Idaho Foundation needs this information as soon as possible within the statutory time periods. If you have any questions, please contact me by email.

Yours sincerely,

ACLU OF IDAHO FOUNDATION

Richard Eppink  
Legal Director