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

STATE OF TEXAS, *et al.*,	
Plaintiffs,	
v.	No. 1:14-CV-254
UNITED STATES OF AMERICA, *et al.*	
Defendants.	

JOINT STATUS REPORT OF JULY 31, 2015

Plaintiffs and Defendants, through counsel, hereby jointly submit the following status report, pursuant to the Court's Order of July 7, 2015. *See* ECF No. 281; *see also* June 23 Tr. at 3-8, 42. Consistent with the Court's instructions, the parties have continued their meet-and-confer process, which has been ongoing for approximately two months. This process has resulted in significant communications between the parties, both in writing and via telephone conference. The major written communications are attached hereto. *See* Exhibit 1 (E-mails between Schwei and Colmenero, dated June 3, 2015); Exhibit 2 (Schwei Letter, dated June 19, 2015); Exhibit 3 (Colmenero Letter, dated July 6, 2015); Exhibit 4 (Schwei Letter, dated July 17, 2015); Exhibit 5 (Colmenero Letter, dated July 22, 2015).

As part of the meet-and-confer process, the parties have discussed the following topics, each of which is discussed in more detail below: (a) information related to the approximately 2100 post-injunction issuances of three-year instead of two-year EADs and the approximately 500 post-injunction re-mailings of three-year instead of two-year EADs; (b) information related to the approximately 108,000 pre-injunction three-year approvals; (c) any agreement regarding

the approximately 108,000 pre-injunction three-year approvals; and (d) any additional discovery requests by Plaintiffs.

A. Information Related to the Post-Injunction Issuances and Re-Mailings of Three-Year Instead of Two-Year EADs.

1. In response to Plaintiffs' requests, Defendants have provided information regarding the post-injunction issuances and re-mailings. For both universes of individuals—the 2128 previously identified post-injunction issuances, and the 484 previously identified post-injunction re-mailings—Defendants have now provided:

- A state-by-state breakdown of both universes of individuals, based on state of residence—covering the Plaintiff States with respect to the 2128 previously identified post-injunction issuances, and covering all states with respect to the 484 previously identified post-injunction re-mailings;

- A state-by-state breakdown of the number of previously identified individuals within each Plaintiff State who are part of the post-injunction issuance or re-mailing universes, and who were queried through SAVE for a driver's license, and in which the USCIS SAVE Program Office provided a response on or after February 16, 2015 based on a validity period of greater than two years;

- Confirmation that all 2612 previously identified individuals have had their three-year EADs invalidated, and were re-issued new two-year EADs;

- Confirmation that USCIS has updated its records and systems, including the systems that determine the responses to SAVE and E-Verify queries, to reflect two years (rather than three years) of deferred action and employment authorization for all 2612 previously identified individuals;

- Confirmation that all 2612 previously identified individuals were instructed that they must return their invalidated three-year EADs;

- Confirmation that, with respect to the now-invalidated three-year EADs, as of July 30, 2015, 2117 of the 2128 previously identified post-injunction issuances, and 473 of the 484 previously identified post-injunction re-mailings, have now been accounted for—meaning that an individual's invalid three-year EAD has been returned to DHS, the individual has certified that they are unable to return the three-year EAD for good cause (*e.g.*, it was lost, destroyed, etc.), or DHS has determined that the individual did not receive the three-year EAD (*e.g.*, it was returned as undeliverable, etc.);

- Confirmation that the remaining previously identified individuals—11 of the 2128 post-injunction issuances, and 11 of the 484 post-injunction re-mailings—have had their deferred action and work authorization terminated, effective as of July 31, 2015; and

- Confirmation that Defendants will provide certain Personally Identifiable Information (PII) regarding those individuals within the group of 2612 previously identified individuals who reside in the Plaintiff States—specifically, each individual's name, address, date of birth, alien registration number ("A Number"), EAD Receipt Number, Social Security Number, and certain SAVE query-related information for driver's license queries—pursuant to an appropriate Protective Order, *see* paragraph 3, *infra*.

2. Defendants have also provided other information to Plaintiffs regarding the post-injunction issuances and re-mailings—specifically, the Secretary's two directives that were previously filed with the Court. *See* ECF Nos. 283-1, 283-2.

3. As mentioned above, Defendants have agreed to provide certain types of PII regarding all individuals in both the post-injunction issuance and post-injunction re-mailing groups who reside in the Plaintiff States, pursuant to an appropriate Protective Order. The parties have agreed upon the terms of the Protective Order, and Defendants will provide Plaintiffs with the PII reasonably promptly after the Protective Order is entered. The parties anticipate filing the proposed Protective Order with the Court next week, once the Plaintiff States obtain all necessary signatures/authorizations.

4. The various Plaintiff States have not yet decided whether to undertake any potential corrective action(s) regarding state-issued licenses and/or benefits in light of the above information. The parties dispute whether, if any Plaintiff State decides to undertake corrective action, the Plaintiffs should notify Defendants about that corrective action:

a. Plaintiffs' Position: During the meet-and-confer process, the Plaintiff States and Defendants have engaged in negotiations in an effort to reach an agreement on an acceptable form of protective order. As part of that process, the Defendants requested that the

protective order include a provision stating that if the Plaintiff States decide to undertake any corrective action with respect to individuals who were erroneously issued three-year grants of deferred action and employment authorization after the Court's February 16 injunction, the Plaintiff States would "notify Defendants, within a reasonably prompt time, of the state agency and the particular type of corrective action that is being undertaken." As the Plaintiff States have explained to Defendants, this type of provision constitutes a reporting requirement and an unnecessary oversight by the Defendants into actions taken by the States in response to Defendants' failure to comply with the Court's injunction. Moreover, the Plaintiff States do not believe that the benefit that the Defendants suggest they would receive from this notice—furthering their interest in being aware of corrective actions taken by the States—justifies the burden that this requirement would impose on twenty-six states and their numerous agencies. To the extent that the Defendants are concerned that an individual's status may change between the time the disclosure of PII and the time that any corrective action is taken, that concern is addressed by the Plaintiff States' agreement in the protective order to "ensure that they are using the most up-to-date information to determine the immigration status of [an] individual prior to taking any corrective action." This concern is further addressed if the Defendants have correctly identified the three-year grantees and the immigration status for these individuals is appropriately reflected in Defendants' records and databases.

To be clear, if the Court requests that the Plaintiff States provide information regarding any corrective actions undertaken with respect to the post-injunction three-year grantees, the States are willing to provide such information. However, the States do not believe they are under any legal obligation to provide information regarding their corrective actions simply because the underlying personally identifiable data originated from the Defendants' records.

b. Defendants' Position: In connection with the Protective Order negotiations, Defendants proposed the following term to Plaintiffs: "In the event that any Plaintiff State decides to undertake any corrective action(s), Plaintiffs will notify Defendants, within a reasonably prompt time, of the state agency and the particular type of corrective action that is being undertaken." Plaintiffs resisted that term, and Defendants, in an effort to provide Plaintiffs with their requested information as soon as possible, agreed to enter into a Protective Order without such a term. Nonetheless, Defendants believe that Plaintiffs should be required to notify Defendants about the types of corrective action actually undertaken by Plaintiff States, which is information relevant to Defendants' interests, as well as information that Defendants assume the Court is interested in knowing.

Given that the sole basis for any Plaintiff State's corrective action would be information provided by Defendants, Defendants have an important interest in being aware of what corrective actions are being undertaken on the basis of their information. This interest is particularly acute given that Plaintiffs, during the protective order negotiations, insisted on the ability to undertake corrective action for state agencies that do not use the SAVE system and therefore would not re-query SAVE prior to undertaking corrective action. (Re-querying SAVE prior to undertaking corrective action would help ensure that the Plaintiff States are using the most accurate, up-to-date information regarding an individual's status.) Accordingly, Defendants have an important stake in being notified regarding corrective actions that are being undertaken on the basis of their information provided to Plaintiffs.

Defendants have requested notification in a manner that would impose the least burden on Plaintiffs. Defendants have not requested advance notification of any corrective action, nor have Defendants requested that Plaintiffs submit a list of every individual against whom

corrective action is taken. Rather, Defendants are merely requesting a simple notification from the Plaintiff States in the event they decide to undertake corrective action, which could be satisfied through a one-sentence e-mail: *e.g.*, "the Texas Department of Public Safety is now converting individuals' driver's licenses from three-year terms to two-year terms." Thus, Plaintiffs' objections to this proposed term are overwrought.

Even apart from the importance of providing this notification in connection with the Protective Order and potential corrective action, moreover, Plaintiffs' refusal to provide this information as part of the parties' ongoing meet-and-confer process is inexplicable. Defendants have now provided a significant amount of information to Plaintiffs, and will be providing additional sensitive PII. The ostensible purpose of Plaintiffs' requests for this information was to allow the Plaintiff States to "determine whether [they] need to take any corrective action as to the three-year grantees[.]" Exh. 5 at 2. In light of the significant amount of information provided to Plaintiffs, Defendants are posing a simple question to Plaintiffs, to be answered once they receive and review the PII: whether they do, in fact, intend to undertake any corrective action; and if so, what types of corrective action. Plaintiffs' wholesale refusal to answer this question—a question that Defendants assume the Court is also interested in knowing—is inconsistent with the notion of a joint meet-and-confer process.

5. During the process of Defendants' corrective actions on the post-injunction issuances and re-mailings, Defendants learned that some additional instances of post-injunction issuances and re-mailings may have occurred but may not have been captured in the prior queries (that provided the numbers of 2128 and 484, respectively). Based on the best information currently available, Defendants have currently identified these possible additional three-year EAD post-injunction issuances and re-mailings as approximately 50 and 1, respectively.

Defendants will provide the same above-described information to Plaintiffs regarding these additional individuals. Defendants continue to investigate the circumstances leading to these individuals not being captured in prior queries, are in the process of undertaking corrective action for those cases where USCIS has confirmed that a three-year EAD was issued or re-mailed post-injunction, and will continue to undertake corrective action as other cases are identified and confirmed.

6. The parties dispute whether, on the basis of the above information and commitments, Defendants have now resolved all of Plaintiffs' requests for information related to the post-injunction issuances and re-mailings.

a. Plaintiffs' Position: Plaintiffs are unable to agree that the Defendants "have now resolved all of Plaintiffs' requests for information related to the post-injunction issuances and re-mailings." As the Plaintiff States have made clear throughout the early discovery proceedings, they are seeking information regarding the provision of three-year grants of deferred action and employment authorization during the pendency of this litigation. Although the Plaintiff States appreciate the level of information that the Defendants have provided, or have committed to provide, the Defendants' representations regarding the extent to which such three-year grants were issued is constantly evolving. For example, as part of this status report, the Defendants have further refined their estimates of the number of individuals who were issued three-year EADs after the Court's February 16 injunction—now acknowledging an additional group of "approximately" 51 individuals who should have been captured in their previous calculations of post-injunction grantees. As a result, the Plaintiff States have suggested—and they reiterate the suggestion here—that the Court impose a compliance-assurance mechanism such as a periodic certification of compliance with the injunction or an

external compliance monitor. Moreover, the Defendants' privilege claims in response to the Court's April 7, 2015 Order—which may implicate information related to three-year grants issued before or after the Court's injunction—remain pending before the Court.

b. Defendants' Position: Based on the above provision of information, all of Plaintiffs' requests for information regarding the post-injunction issuances and re-mailings have now been satisfied in full, with the exception of the information regarding the additional individuals identified in paragraph 4, above, and the actual provision of the PII—both of which Defendants have committed to providing to Plaintiffs. Once that information is provided, therefore, Plaintiffs should not be permitted to belatedly request any additional information; they have had more than ample opportunity to do so during the past two months of meeting and conferring. Plaintiffs' assertions regarding compliance oversight and privilege issues (which are addressed in paragraph 13, *infra*) have no bearing whatsoever on whether Defendants have fully satisfied Plaintiffs' requests for information regarding the post-injunction three-year EAD issuances and re-mailings. On that question, Plaintiffs notably do not dispute that Defendants have satisfied (or committed to satisfy) all of the specific requests put forth by Plaintiffs during the past two months.

B. Information Related to the Pre-Injunction Approvals.

7. In response to Plaintiffs' requests, Defendants have also provided information regarding the identified 108,081 pre-injunction three-year approvals. Specifically, Defendants have now provided:

- A state-by-state breakdown of this universe of individuals for all states; and
- A state-by-state breakdown of the number of queries submitted through SAVE, or responded to by the SAVE Program Office, for state driver's licenses, between November 20, 2014 and July 17, 2015, for the 108,081 identified individuals.

8. Plaintiffs' Position: For the reasons stated above in paragraph 6(a), the Plaintiff States are unable to agree that "Plaintiffs' requests for information regarding the pre-injunction three-year approvals have now been satisfied in full."

9. Defendants' Position: Based on the above provision of information, and the reasons stated above in paragraph 6(b), all of Plaintiffs' requests for information regarding the pre-injunction three-year approvals have now been satisfied in full. Again, Plaintiffs do not dispute that Defendants have satisfied all of the specific requests put forth by Plaintiffs regarding the universe of approximately 108,000 pre-injunction three-year approvals.

C. Any Agreement Regarding the Pre-Injunction Approvals.

10. Plaintiffs' Position: In its February 16, 2015 Order of Temporary Injunction, this Court enjoined Defendants from "implementing any and all aspects or phases of the expansions (including any and all changes)" to the DACA program contained in the challenged DHS Directive. ECF No. 144 at 2. These expansions include, among other things, the increase in DACA's term of deferred action (and accompanying employment authorization) from two years to three years. DHS Directive at 3 (ECF No. 38-7). In the five-and-a-half months that have passed since the injunction was issued, Defendants have not committed to revise their databases and records so that any three-year terms of deferred action issued under DACA or corresponding three-year EADs are reflected to extend only for two years. Yet, any such three-year terms are authorized only by the now-enjoined DHS Directive.

Although the 108,081 three-year grants at issue here were conferred prior to the Court's February 16 injunction, Defendants' continuing maintenance of those three-year authorizations in their databases and records—which are used by state agencies and others when querying the federal government for information relating to an individual's immigration status—is contrary to

the February 16 injunction's provision barring implementation of "any and all aspects" of the DHS Directive's DACA expansions. ECF No. 144 at 2. Because the Defendants' awarding of three-year DACA and EAD terms can only be based on the now-enjoined DHS Directive, Defendants lack any authority to represent on an ongoing basis that three-year terms are, in fact, authorized. These representations also must be considered in light of Defendants' earlier failure to disclose that such three-year grants were being provided during the pendency of this litigation.

The proper course of action as to the 108,081 pre-injunction grants of three-year deferred action and EADs is for Defendants to cease implementing the three-year expansion aspect of the Directive by modifying their databases and records to reflect a two-year term of authorization for these individuals. By presenting documentation that they have received a three-year period of deferred action and employment authorization, these post-injunction grantees are representing that Defendants will continue to afford those benefits for the three-year term. However, Defendants' authority to act in that manner has been enjoined by this Court. As such, Defendants should take steps to retrieve and replace all three-year EADs issued before the injunction just as they are doing for the post-injunction grants.

11. Defendants' Position: Defendants disagree with Plaintiffs' theory of an injunction violation. Nothing about the Court's preliminary injunction indicates that it is meant to, in effect, operate retroactively—by requiring the agency to go back and undo three-year approvals that were fully completed prior to entry of the injunction. As the Court itself has noted on several occasions, there is a big difference between what occurred prior to the injunction and what occurred after the injunction. *See* June 23 Tr. at 17 (acknowledging "that there's a wildly vast difference between . . . the 108,000 and the 2,000"); *id.* at 20 (describing the 108,000 as "in

a whole different category"); *id.* at 30 ("I understand 108,000 is a completely different universe").

Furthermore, Plaintiffs articulated their theory for the first time on July 22, 2015, *see* Exh. 5 at 2-3. Plaintiffs criticize Defendants for not taking action "[i]n the five-and-a-half months that have passed since the injunction was issued," but Plaintiffs failed to request any such action—and indeed never mentioned the possibility of an ongoing injunction violation—until July 22, 2015, over four-and-a-half months after Defendants' March 3 Advisory. Even when directly questioned about the approximately 108,000 pre-injunction three-year approvals by the Court on June 23, Plaintiffs failed to mention the prospect of an injunction violation. *See* June 23 Tr. at 15-16 (identifying "two problems that exist with these pre-injunction 108 grants," neither of which was that their continued maintenance violates the Court's injunction). This broader context significantly undermines Plaintiffs' new theory.

Thus, the approximately 108,000 pre-injunction three-year approvals plainly do not constitute a violation of the preliminary injunction. To the extent the Court entertains Plaintiffs' new legal theory, however, Defendants respectfully request the opportunity for further briefing on that issue, as well as briefing on the proper scope of any available remedies. Additionally, Defendants note that whatever occurs next regarding Plaintiffs' new legal theory and the approximately 108,000 pre-injunction approvals, the legal issues are distinct from the Court's July 7 Order and the potential contempt hearing on August 19, which are focused on the post-injunction three-year EADs.

D. Any Additional Discovery and Further Relief.

12. Plaintiffs' Position: In response to the Court's April 7, 2015 Order granting in part the Plaintiff States' motion for early discovery, Defendants withheld over 1,163 pages of

documents along with lists of who knew that three-year terms of deferred action and EADs were being granted during the course of this litigation and when they knew it. As the Plaintiff States have maintained in their briefing, Defendants have not offered clear proof to substantiate their privilege claims, and the lack of detail in Defendants' privilege log prevents the Plaintiff States from assessing the merits of the privilege assertions. ECF No. 261. At the same time, the Plaintiff States have indicated that additional discovery—including communications referenced or relied on in declarations submitted by Defendants regarding their efforts to comply with this Court's February 16 injunction—may be appropriate depending on how the Court (or an appointed magistrate judge) rules on Defendants' privilege assertions. E.g., ECF No. 261 at 7. Defendants' privilege claims remain pending before the Court. Finally, in light of the additional information Defendants are providing to the Court regarding the extent of their compliance with the preliminary injunction, Plaintiffs suggest that, at a minimum, a compliance-assurance mechanism would be prudent.

13. Defendants' Position: There is no basis for any additional discovery, particularly given that Plaintiffs did not identify any such requested discovery as part of their May 20 response to the Court's April 7 Order—which directed Plaintiffs to file "a list of any further discovery that they may deem necessary," ECF No. 226 at 12—nor did Plaintiffs identify any such discovery at any point during the past two months, as part of the parties' ongoing meet-and-confer process. One of the central purposes of the meet-and-confer process was to address, and potentially resolve, any outstanding discovery requests by Plaintiffs.

Plaintiffs rely on "Defendants' privilege claims in response to the April 7, 2015 Order" as a potential hook for future discovery, because those privilege assertions purportedly "remain pending for the Court's determination." Exh. 5 at 3. For the reasons explained on May 27,

however, there is no need for adjudication of any of those privilege assertions vis-à-vis Plaintiffs: Plaintiffs themselves suggested that "verification" of Defendants' April 30 explanation could be done by this Court or a magistrate judge, without any role for Plaintiffs in that process. *See* ECF No. 261 at 6 (stating that Plaintiffs "are in no position to adequately verify this claim" but "[t]his Court . . . is in such a position"). (Defendants' position is that such verification is unnecessary, but any verification should be done by a magistrate judge. *See* ECF No. 265 at 11-12, 14-15.)

Moreover, even if resolution of Defendants' privilege assertions vis-à-vis Plaintiffs were necessary, that would be the end of the matter. Regardless of how the Court ruled, that would not open the door for Plaintiffs to request any additional discovery—particularly given Plaintiffs' failure over the past two months to articulate any specific discovery requests they wish to pursue. *See also* ECF No. 265 at 7-8 (discussing how Plaintiffs must demonstrate "good cause" for each specific item of requested discovery). Thus, any future discovery would be inappropriate.

Finally, Plaintiffs vaguely suggest that "a compliance-assurance mechanism would be prudent." For all of the reasons explained on May 27, however, any reporting requirement or external monitor would be inappropriate. *See* ECF No. 265 at 2-7. Indeed, with respect to the additional individuals recently identified, DHS's recent identification of those individuals—and commitment to undertake full corrective action for them—stands as testament to why such compliance oversight is unnecessary here. DHS has once again proven itself capable of self-monitoring and self-correcting any potential issues regarding compliance.

Dated: July 31, 2015

Respectfully submitted,

KENNETH MAGIDSON
United States Attorney

DANIEL DAVID HU
Assistant United States Attorney
Deputy Chief, Civil Division

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General

JOYCE R. BRANDA
Deputy Assistant Attorney General

AUGUST E. FLENTJE
Special Counsel

JENNIFER D. RICKETTS
Director, Federal Programs Branch
Attorney-in-Charge (VA Bar No. 29281)

JAMES J. GILLIGAN
Special Litigation Counsel

/s/ Daniel Schwei
DANIEL SCHWEI
Trial Attorney
Civil Division, Federal Programs Branch
U.S. Department of Justice
P.O. Box 883
Washington, D.C. 20044
Tel.: (202) 305-8693
Fax: (202) 616-8470
Daniel.S.Schwei@usdoj.gov

Counsel for Defendants

* * *

LUTHER STRANGE
Attorney General of Alabama

MARK BRNOVICH
Attorney General of Arizona

DUSTIN MCDANIEL
Attorney General of Arkansas

PAMELA JO BONDI
Attorney General of Florida

SAMUEL S. OLENS
Attorney General of Georgia

LAWRENCE G. WASDEN
Attorney General of Idaho

JOSEPH C. CHAPELLE
PETER J. RUSTHOVEN
Counsel for the State of Indiana

DEREK SCHMIDT
Attorney General of Kansas

JAMES D. "BUDDY" CALDWELL
Attorney General of Louisiana

TIMOTHY C. FOX
Attorney General of Montana

DOUGLAS J. PETERSON
Attorney General of Nebraska

ADAM PAUL LAXALT
Attorney General of Nevada

WAYNE STENEHJEM
Attorney General of North Dakota

KEN PAXTON
Attorney General of Texas

CHARLES E. ROY
First Assistant Attorney General

SCOTT A. KELLER
Solicitor General

/s/ Angela V. Colmenero
ANGELA V. COLMENERO
Assistant Attorney General
Attorney-in-Charge
State Bar No. 24048399

J. CAMPBELL BARKER
Deputy Solicitor General

ERIC A. HUDSON
ADAM N. BITTER
Assistant Attorneys General

Office of the Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548
512-936-1700

MICHAEL DEWINE
Attorney General of Ohio
ERIC E. MURPHY
Co-counsel for the State of Ohio

E. SCOTT PRUITT
Attorney General of Oklahoma

ALAN WILSON
Attorney General of South Carolina

MARTY J. JACKLEY
Attorney General of South Dakota

HERBERT SLATERY III
Attorney General and Reporter of Tennessee

SEAN D. REYES
Attorney General of Utah

PATRICK MORRISEY
Attorney General of West Virginia

BRAD D. SCHIMEL
Attorney General of Wisconsin

BILL SCHUETTE
Attorney General for the People of Michigan

DREW SNYDER
Counsel for the Governor of Mississippi

PAUL R. LEPAGE
Governor of Maine

ROBERT C. STEPHENS
Counsel for the Governor of North Carolina

TOM C. PERRY
CALLY YOUNGER
Counsel for the Governor of Idaho

CERTIFICATE OF CONFERRAL

Undersigned counsel hereby certifies that counsel for Plaintiffs, Adam Bitter, concurred in the filing of this Joint Status Report.

/s/ Daniel Schwei
Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Joint Status Report has been delivered electronically on July 31, 2015, to counsel of record via the District's ECF system.

/s/ Daniel Schwei
Counsel for Defendants

Schwei, Daniel S. (CIV)

From: Colmenero, Angela <angela.colmenero@texasattorneygeneral.gov>
Sent: Thursday, June 04, 2015 12:40 PM
To: Schwei, Daniel S. (CIV)
Cc: Ricketts, Jennifer D (CIV); Keller, Scott; Barker, Cam
Subject: RE: Texas v US: Summary of Yesterday's Call

Daniel,

Thank you for the email yesterday. We appreciated the opportunity to talk with you on Tuesday. The summary below reflects what we discussed and captures what Defendants agreed to look into, but we wish to make one clarification with respect to your comments regarding Plaintiffs' next steps. You asked the Plaintiff States to identify other databases and/or benefits used by state agencies that could be implicated by the issuance of 3-year work authorizations. We explained that we do not intend to conduct such a survey at this time because we believe that a phased examination of any responsive material Defendants provide would allow us to determine whether additional information is necessary, and to the extent to which remediation of Defendants' injunction violation is both practical and possible given the various resource constraints faced by the various Plaintiff States. We hope this clarification helps you better understand our position.

If you have any questions, please don't hesitate to contact me. We look forward to speaking with you again.

Thanks,
Angela

Angela V. Colmenero
Office of the Attorney General
P.O. Box 12548, Capitol Station
Austin, Texas 78711
512.475.4100 (direct)
512.320.0667 (facsimile)
angela.colmenero@texasattorneygeneral.gov

From: Schwei, Daniel S. (CIV) [mailto:Daniel.S.Schwei@usdoj.gov]
Sent: Wednesday, June 03, 2015 11:09 AM
To: Colmenero, Angela
Cc: Ricketts, Jennifer D (CIV)
Subject: Texas v US: Summary of Yesterday's Call

Angela,

Thanks again for the productive conversation yesterday afternoon. Following up on that conversation, I thought it would be useful to summarize where things stand.

In terms of next steps on my end, we are going to discuss with our clients whether there is any information that could voluntarily be provided based on your requests for information on pages 8-9 of your May 20 filing (ECF No. 261). Based on yesterday's conversation, your requested information falls into two general categories:

1. More information about the 3-year authorizations issued to the approximately 2000 individuals, potentially in the form of a spreadsheet. You would like to know how many of those approximately 2000 individuals reside in the Plaintiff States. For those individuals residing in the Plaintiff States, you would also like to know when their 3-year authorization was issued; whether they have been asked to return their 3-year authorization; whether the 3-year authorization has in fact been returned; and if so, when the 3-year authorization was returned.

2. Any information that can be provided from the SAVE system, specifically relating to the approximately 2000 individuals' past or present ability to obtain a three-year driver's license (instead of a two-year license).

To the extent any of the above information would involve the provision of personally identifiable information, you are amenable to further discussions on that issue, including the possibility of providing redacted (or some other type of anonymized) information about the individuals.

In terms of next steps on your end, we suggested that you identify any other databases and/or state benefits that, in your view, could be implicated by the issuance of 3-year work authorizations. By identifying those databases and/or benefits, that would allow us to explore whether we can provide information more directly relevant to your concerns—*i.e.*, the potential for an individual to have used in the past, or to use in the future, a 3-year authorization to obtain some benefit for three years instead of two years. (In our view, providing a list of returned 3-year authorizations would not accurately depict whether any 3-year authorizations may be used, or have been used, to obtain any benefits.) For purposes of this exchange of information, however, we understand your position to be that Plaintiffs do not intend, at least at this time, to identify any other specific databases or benefits beyond SAVE and driver's licenses.

Finally, we mutually agreed that nothing in our conversation should be construed as a substantive concession by the other party—*e.g.*, as a concession by you that your alleged harms can be fully remediated, or as a concession by us that your alleged harms exist or constitute irreparable harm.

As discussed, I will be in touch once I have talked to my clients about the information set forth above. In the meantime, please do not hesitate to contact me if you have any questions or would like to further discuss.

Thanks again for a productive conversation yesterday.

Best,
Daniel

Daniel Schwei
Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave. NW, Room 7340
Washington, DC 20530
Tel: 202-305-8693
Fax: 202-616-8470

U.S. Department of Justice

Civil Division

Washington, DC 20530

June 19, 2015

VIA E-MAIL

Angela V. Colmenero
Office of the Attorney General
P.O. Box 12548, Capitol Station
Austin, Texas 78711
angela.colmenero@texasattorneygeneral.gov

RE: *Texas v. United States*, Case No. 14-cv-254 (S.D. Tex.)

Dear Ms. Colmenero:

This letter follows our conversation of yesterday, June 18, 2015, as well as our prior conversation of June 2, 2015. As we discussed, Defendants are hereby voluntarily providing certain information, in connection with your request for information on pages 8-9 of your May 20 filing (ECF No. 261). Also as previously discussed, the provision of this information should not be construed as a concession or acknowledgment that Plaintiffs have suffered any injury and/or irreparable harm as a result of the three-year employment authorization documents (EADs) issued post-injunction to approximately 2000 individuals. Based on DHS analysis of its currently available data, DHS's best calculation of the number of such individuals is 2128.

DHS is taking corrective action for all 2128 currently identified individuals. That corrective action includes updating USCIS's records and systems, including the systems that determine the responses to SAVE queries, to reflect two years (rather than three years) of deferred action and employment authorization; issuing those individuals corrected two-year EADs; and instructing individuals to return their three-year EAD and that failure to do so may result in adverse action in their case.

Set forth below is more specific information based upon electronic queries of DHS systems on the 2128 individuals noted above:

1) The following table sets forth a state-by-state breakdown for the Plaintiff states, based on the state of residence in each individual's request:

Plaintiff State Total	**814**
AL	7
AR	10
AZ	66
FL	75
GA	70
ID	9
IN	15
KS	12
LA	7
ME	0
MI	10
MS	2
MT	0
NC	65
ND	1
NE	6
NV	24
OH	4
OK	15
SC	15
SD	3
TN	18
TX	341

UT	25
WI	13
WV	1

2) For the population identified in table (1), DHS has confirmed that as of June 17, 2015, at least 806 individuals (out of a total in the Plaintiff states of 814) have had 2-year EADs produced and sent. DHS is working expeditiously to produce the remaining two-year EADs. Furthermore, DHS has confirmed that all individuals identified in table (1) have been sent letters instructing them that they must return their three-year EAD upon receipt of their two-year EAD.

3) DHS has also verified that as of June 17, 2015, at least 793 of the 814 individuals in Plaintiff states have had their records updated so that future SAVE queries will reflect two-year validity periods (rather than three years). DHS is working expeditiously to update its system so that future SAVE queries for all of the 814 individuals will reflect the two-year validity periods.

4) DHS's current analysis of queries submitted to SAVE by the Texas Department of Public Safety (DPS) through June 17, 2015 about the individuals cited in table (1) as residing in Texas indicates 82 driver's license queries for 70 individuals in which the SAVE Program Office provided a response on or after February 16, 2015, based on an employment authorization validity period that was greater than two years. Those queries do not indicate whether they resulted in the issuance of driver's licenses by Texas DPS. Those numbers do not include SAVE queries from other Texas departments, or for other non-driver's license purposes (*e.g.*, state identification cards).

The above information should sufficiently respond to your request for information on pages 8-9 of your May 20 filing. The crux of Plaintiffs' injury held to be cognizable by the Court was the cost to Texas of issuing additional driver's licenses. The above information directly addresses your concerns with respect to driver's licenses: it provides the number of individuals in Texas who sought to obtain driver's licenses using post-injunction three-year EADs; and confirms that almost all individuals who seek to obtain Texas driver's licenses using a post-injunction three-year EAD will receive only a two-year validity period in response to a Texas DPS query of SAVE (with the remainder of those individuals to be updated very soon).

Furthermore, it bears emphasizing that the injury recognized by the Court—"costs associated with processing a wave of additional driver's licenses," ECF No. 145 at 22—is

inapplicable to the 341 individuals within Texas, all of whom would have otherwise received a two-year (rather than three-year) EAD. The potential for those individuals to obtain a driver's license valid for *three* years rather than *two* years does not increase the cost to Texas of processing the license; Texas would suffer the same alleged loss regardless of the term of the license. If anything, providing individuals with three-year licenses would only *save* Texas money. *Cf.* ECF No. 64-43 (Decl. of Joe Peters) ¶ 8 (discussing how license holders with longer terms cost Texas less money than license holders with shorter terms). Thus, there is no basis on which Plaintiffs require additional information related to the 341 identified individuals within Texas.

Nonetheless, we understand that you have requested additional information regarding the 814 individuals in the Plaintiff states—specifically, when each individual's 3-year EAD was issued; whether they have been asked to return their 3-year EAD; whether the 3-year EAD has in fact been returned; and if so, when the 3-year EAD was returned. DHS is currently assessing whether and when it may be feasible to provide the additional information that you have requested.

Given the practical constraints related to compiling your requested information, we continue to urge you to identify any other databases and/or state benefits that, in your view, could be implicated by the issuance of three-year EADs. By identifying those databases and/or benefits, that would allow us to explore whether we can provide information that more directly, and more accurately, addresses your concerns—*i.e.*, the potential for an individual to have used in the past, or to use in the future, a post-injunction three-year EAD to obtain some state benefit for three years instead of two years.

Going forward we suggest that Plaintiffs review the above information, and then let us know what additional information, if any, you believe is necessary to determine "the extent to which remediation . . . is both practical and possible[.]" (E-mail of June 4, 2015 from Ms. Colmenero to Mr. Schwei.) To the extent you believe additional information is necessary for that purpose, it would be helpful for us to understand why you believe that information is necessary—*i.e.*, what type of "remediation" you are considering, and how the requested information would affect the determination whether to undertake such potential remediation.

We look forward to hearing from you. Please do not hesitate to contact me if you have any questions or would like to further discuss.

Sincerely,

Daniel Schwei

KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 6, 2015

Daniel Schwei
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave. NW, Room 7340
Washington, DC 20530
Daniel.S.Schwei@usdoj.gov

Via Electronic Mail

RE: *State of Texas, et al. v. United States of America, et al.*, No. 14-cv-254 (S.D. Tex.)

Dear Mr. Schwei:

I am writing to follow up with you regarding certain issues addressed in your June 19, 2015 letter to me and at the Court's June 23, 2015 hearing.

As you know, in the four months since the Defendants first advised the Court and the Plaintiff States that the Department of Homeland Security (DHS) had issued more than 108,000 three-year terms of deferred action and employment authorization documents (EADs) after the November 2014 DHS Directive, the Plaintiff States have sought to obtain information from the Defendants regarding any such three-year grants. Through this process, the Plaintiff States' efforts have focused on several principal concerns: ensuring the reliability of information received from Defendants and their counsel in this case; assessing the Defendants' ongoing compliance with the Court's February 16, 2015 injunction; and determining whether the Plaintiff States needed to take any corrective action relating to recipients of three-year grants. Those concerns were only heightened by the Defendants' subsequent disclosure that DHS had issued thousands of three-year EADs—currently numbered at 2,128 according to your June 19 letter—after the February 16 injunction.

Your June 19 letter provides us with certain limited data relating to the 2,128 individuals who were issued three-year EADs after the Court's injunction. Specifically, the letter identifies (1) a state-by-state tally of the 814 individuals who received a three-year EAD after the Court's injunction and reside in one of the Plaintiff States; (2) the number of these 814 individuals who have since been sent a two-year EAD that is intended to replace the erroneously-issued three-year card ("at least 806," as of June 17); (3) the proportion of these 814 individuals for whom DHS has updated the SAVE system to reflect a two-year term of authorization ("at least 793," as of June 17); and (4) for Texas only, the number of driver's license queries submitted to the SAVE system by the State's Department of Public Safety for individuals who may have received three-year EADs after the injunction (82 queries for 70 individuals, as of June 17).

As I indicated at the June 23 hearing—and consistent with our telephone conference on June 18—we believe that the data contained in your June 19 letter is a first step to addressing the Plaintiff States' concerns about the implementation of the November 2014 DHS Directive. But it is only a first step. Our discussion of these issues with the Court at the June 23 hearing further confirms that Defendants must take further action to address DHS's issuance of three-year grants, including providing the Plaintiff States with more detailed information about the recipients of three-year grants.

Consistent with the Court's directive at the June 23 hearing, we expect the Defendants, at a minimum, to take the following actions with respect to the 2,128 individuals referenced in your June 19 letter as receiving three-year EADs after the Court's injunction:

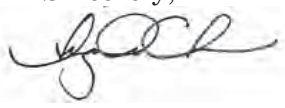
- Provide the Plaintiff States with some form of personally identifiable information for each of the 2,128 individuals (Hr'g Tr. 19-22);
- Update the SAVE system to reflect a two-year term of authorization for each of the 2,128 individuals (Hr'g Tr. 25);
- Notify each of the 2,128 individuals that they were erroneously issued a three-year EAD, provide them with a two-year EAD, and instruct them to return the three-year EAD (Hr'g Tr. 27-29);
- Obtain the erroneously-issued three-year EADs in return from each of the 2,128 individuals (Hr'g Tr. 28-29); and
- Provide the Plaintiff States with confirmation that the Defendants have completed the above steps (Hr'g Tr. 31).[1]

Pursuant to the June 23 hearing, these actions should be taken by July 31, 2015, when the parties' joint status report is due to the Court (Hr'g Tr. 28-29).

Separately, with respect to the 108,000 individuals who received three-year terms of deferred action or EADs before the Court's injunction, we expect to continue the meet-and-confer process with you in an effort to resolve our concerns regarding this category of individuals. At a minimum, we would request that you provide us with the same type of data contained in your June 19 letter relating to the 2,128 post-injunction grants.

We look forward to hearing from you. If you have any questions or would like to further discuss these issues, please do not hesitate to contact me.

Sincerely,



Angela V. Colmenero

[1] And, of course, these same steps should be taken for any other individuals who are determined through DHS's ongoing review to have received three-year EADs after the Court's February 16 injunction.

U.S. Department of Justice

Civil Division

Washington, DC 20530

July 17, 2015

VIA E-MAIL

Angela V. Colmenero
Office of the Attorney General
P.O. Box 12548, Capitol Station
Austin, Texas 78711
angela.colmenero@texasattorneygeneral.gov

RE: *Texas v. United States*, Case No. 14-cv-254 (S.D. Tex.)

Dear Ms. Colmenero:

This letter follows your letter of July 6, 2015, and our conversation of Wednesday, July 15, 2015. As we have previously discussed, Defendants are hereby providing certain information as part of our ongoing meet-and-confer process.

As discussed Wednesday and further described below, Defendants are willing to provide information to resolve all of Plaintiffs' outstanding discovery requests (with most of that information provided below). Based on that information, and the Court's July 7 Order requiring the parties to address any resolution of the 108,081 pre-injunction approvals in the July 31 joint status report, we believe the next step is for Plaintiffs to clearly set forth their position on what would constitute appropriate "resolution" of those 108,081 grants. As set forth below, we request that you provide us with your position no later than next Wednesday, July 22, 2015.

I. DHS Has Completed Its Internal Fixes.

DHS has identified and implemented aggressive plans for taking corrective action for both the 2128 previously identified post-injunction issuances (discussed in the May 7 Advisory), as well as the approximately 500 post-injunction re-mailings (discussed in the July 9 Advisory). Those plans are set forth in two Directives from the Department of Homeland Security to U.S. Citizenship and Immigration Services, which I provided to you on July 15, 2015, and which were filed with the Court on that same date. *See* ECF No. 283.

Your letter of July 6, 2015, requested confirmation that all 2128 individuals have been provided with a two-year EAD, instructed to return the invalid three-year EAD, and been updated in the SAVE system to reflect a two-year term. As described in the July 10 Directive, those steps have been completed for all 2128 individuals. Additionally, as a result of Defendants' actions both before and after the July 10 Directive, the latest daily report suggests that approximately 1500 invalid three-year EADs have been accounted for—meaning that the invalid three-year EAD has been returned to DHS, the individual has certified that they are

unable to return the three-year EAD for good cause (*e.g.*, it was lost, destroyed, etc.), or DHS has determined that the individual did not receive the three-year EAD (*e.g.*, it was returned as undeliverable, etc.). We will continue to provide updates of that number, including as part of the July 31 status report to the Court.

With respect to the approximately 500 post-injunction re-mailings, based on current data, DHS's best calculation indicates such number to be 484 post-injunction re-mailings. Pursuant to the July 14 Directive, DHS is undertaking an expedited, accelerated process of remediation. As of today, DHS has updated USCIS's records to reflect two years (rather than three years) of deferred action and employment authorization for all of these individuals; issued corrected two-year EADs to all of those individuals; and sent an initial notification to all of those individuals requiring the return of the invalidated three-year EADs. DHS continues to update USCIS's systems, including the systems that determine the responses to SAVE queries, to reflect two years (rather than three years) of deferred action and employment authorization. DHS anticipates that the USCIS systems that determine the responses to SAVE queries will be updated within the next week.

We will continue to update you on the progress of these corrective actions during this meet-and-confer process, and in connection with the parties' July 31 joint status report.

II. Defendants Will Provide Information to Resolve All of Plaintiffs' Outstanding Discovery Requests.

In my letter of June 19, 2015, we provided a state-by-state breakdown of the 2128 individuals residing in Plaintiff states, and information regarding the number of SAVE queries for those individuals residing within Texas. Following our discussion of Wednesday afternoon, set forth below is additional information you have requested. In short, we are providing, or are willing to provide, information in response to all of your outstanding discovery requests.

a) SAVE Queries for Plaintiff States for 2128 Post-Injunction Issuances

The following table sets forth, on a state-by-state basis for the Plaintiff States, DHS's current analysis of queries submitted to SAVE by each state's driver's license office, through July 13, 2015, for the 2128 individuals previously identified. The numbers include results where the SAVE Program Office provided a response on or after February 16, 2015, based on an employment authorization validity period that was greater than two years. These queries do not indicate whether they resulted in the issuance of driver's licenses by a state. The below numbers do not include SAVE queries from other state agencies, or for other non-driver's license purposes (*e.g.*, state identification cards).

State	Total Queries	Individuals Queried
AL	6	3
AR	5	4
AZ	0	0

FL	31	31
GA	67	39
ID	0	0
IN	7	6
KS	2	2
LA	2	1
ME	0	0
MI	5	5
MS	2	2
MT	0	0
NC	22	17
ND	1	1
NV	10	7
OH	5	4
OK	0	0
SC	1	1
SD	7	4
TN	9	9
TX	81*	69*
UT	14	12
WI	10	8
WV	2	1
Total	**289**	**226**

* These numbers have been reduced by 1 from the numbers provided in the June 19, 2015 letter (which were 82 and 70). At the time of that letter, it was unclear whether one individual had been queried in SAVE by the Texas Department of Public Safety, and thus the individual was included in both counts out of an abundance of caution. It has since been determined that no SAVE query occurred for this individual when the individual had an employment authorization validity period that was greater than two years, and thus the numbers have been reduced to 81 and 69.

Page 4 of 12

b) State-by-State Breakdown for 484 Post-Injunction Re-Mailings

The following table sets forth a state-by-state breakdown for the currently identified 484 post-injunction re-mailings, based on the individual's state of residence:

State	Individuals
AL	2
AR	3
AZ	20
CA	111
CO	9
CT	3
DE	1
FL	24
GA	14
ID	1
IL	39
KS	9
KY	1
LA	2
MA	5
MD	7
MI	4
MN	2
MO	1
NC	15
NE	5
NH	1

NJ	10
NM	5
NV	7
NY	20
OH	6
OK	2
OR	13
PA	2
PR	3
RI	2
SC	4
SD	1
TN	3
TX	96
UT	5
VA	6
WA	10
WI	10
Total	**484**

c) SAVE Queries for 484 Post-Injunction Re-Mailings

The following table sets forth, on a state-by-state basis for the Plaintiff States, DHS's current analysis of queries submitted to SAVE by each state's driver's license office, through July 13, 2015, for the 484 currently identified individuals who were re-mailed a three-year EAD post-injunction. The numbers include results where the SAVE Program Office provided a response on or after February 16, 2015, based on an employment authorization validity period that was greater than two years. These queries do not indicate whether they resulted in the issuance of driver's licenses by a state. The below numbers do not include SAVE queries from other state agencies, or for other non-driver's license purposes (*e.g.*, state identification cards).

State	Total Queries	Individuals Queried
AL	2	1
AR	4	3
AZ	0	0
FL	14	13
GA	16	11
ID	0	0
IN	0	0
KS	8	6
LA	0	0
ME	0	0
MI	3	3
MS	0	0
MT	0	0
NC	26	9
ND	0	0
NE	1	1
NV	5	4
OH	3	3
OK	0	0
SC	5	5
SD	0	0
TN	1	1
TX	49	44
UT	5	4
WI	9	7

WV	0	0
Total	**151**	**115**

d) State-by-State Breakdown for 108,081 Pre-Injunction Approvals

The following table sets forth a state-by-state breakdown for the currently identified 108,081 pre-injunction approvals,[*] based on the individual's state of residence:

State	Total
AA	8
AK	10
AL	603
AR	921
AZ	4,096
CA	28,347
CO	2,621
CT	701
DC	77
DE	217
FL	3,747
FM	1
GA	3,534
GU	3
HI	52
IA	412

[*] Because the 108,081 figure is based on *approvals*, the vast majority of the 2128 previously identified individuals are encompassed within the 108,081 figure (*i.e.*, because the vast majority of the 2128 individuals were approved for three-year terms of deferred action and employment authorization prior to the injunction, but their EADs were issued and mailed after the injunction, *see* Neufeld Decl. (ECF No. 256-2) ¶ 19). The same is true of all of the 484 individuals who were approved prior to the injunction, but whose EADs were re-mailed after the injunction.

ID	512
IL	6,214
IN	1,185
KS	1,046
KY	524
LA	320
MA	891
MD	1,705
ME	5
MI	948
MN	921
MO	461
MP	3
MS	228
MT	13
NC	2,936
ND	15
NE	524
NH	52
NJ	2,963
NM	795
NV	1,193
NY	5,011
OH	607
OK	880
OR	1,865

PA	780
PR	23
RI	170
SC	1,065
SD	36
TN	881
TX	21,282
UT	1,447
VA	1,473
VI	2
VT	2
WA	2,528
WI	1,105
WV	17
WY	103
Total	108,081

e) SAVE Queries for 108,081 Pre-Injunction Approvals

Your letter of July 6, 2015 also requested SAVE query information for the 108,081 pre-injunction approvals. As discussed on Wednesday, compiling this SAVE information for such a large universe could impose a significant burden on DHS. Specifically, obtaining exact numbers can require some case-by-case review of individual files in order to determine whether an individual was queried through SAVE at a time when the individual possessed an EAD with a validity period of greater than two years.

Nonetheless, DHS is willing to provide approximate SAVE query information for the 108,081 pre-injunction approvals in each of the Plaintiff States. These approximations will significantly decrease the burden on DHS, but will still provide the Plaintiff States with sufficient information to estimate the cost of potential corrective actions being considered. DHS will provide this information as soon as possible, but no later than July 29, 2015.

f) Personally Identifiable Information.

In your letter of July 6, 2015, you requested "some form of personally identifiable information" for the post-injunction individuals. As discussed Wednesday afternoon, Defendants are willing to provide the Plaintiff States with personally identifiable information, subject to an appropriate protective order, with regard to the 2128 and 484 individuals identified above.

During our phone call Wednesday afternoon, you suggested two potential types of personally identifiable information: (1) an EAD number, or other input used for querying the SAVE system, to allow the Plaintiff States to evaluate the cost of potentially correcting driver's licenses; and (2) individuals' names and addresses, to allow the Plaintiff States to evaluate the cost of potentially correcting any other professional licenses or other state benefits that individuals may have received. Defendants are willing to provide both sets of requested information, subject to an appropriate protective order, and notwithstanding our concern that Plaintiffs still have not articulated the rationale for why this sensitive information is necessary.

First, with respect to EAD numbers, each individual's EAD contains two different numbers—the alien registration number (or "A Number"), and a card number that corresponds to the I-765 form submitted by an individual (what we will refer to as the "Receipt Number"). For purposes of fulfilling your discovery request as soon as possible, Defendants are willing to provide both the A Number and the Receipt Number for these approximately 2600 individuals, subject to an appropriate protective order. We believe this information should provide Plaintiffs with all necessary information to decide whether to undertake corrective action with respect to driver's licenses.

Second, with respect to your request for names and addresses, Defendants are likewise willing to provide this information subject to an appropriate protective order. As discussed on Wednesday's phone call, however, we continue to believe that Plaintiffs have not established any basis for requesting this information. Specifically, aside from driver's licenses, Plaintiffs have not identified (a) any other licenses or other state benefits at issue; and (b) the potential corrective action being considered by Plaintiffs based upon an individual's EAD being converted from three years down to only two years.

We understand your position to be that you do not intend to expend the resources necessary to identify all of the potential licenses or other state benefits that could be affected by issuance of a three-year EAD. If Plaintiffs are unwilling even to *identify* those licenses and other state benefits, then *a fortiori* you do not intend to undertake any corrective actions with respect to those licenses or state benefits (and thus do not require any additional personally identifiable information for purposes of evaluating potential corrective actions).

Nonetheless, for purposes of resolving all of your outstanding discovery requests, Defendants are willing to provide the requested names and addresses for the approximately 2600 individuals, subject to an appropriate protective order. In short, DHS is willing to provide, subject to an appropriate protective order, for the approximately 2600 individuals (1) those individuals' A Numbers and Receipt Numbers; and (2) names and addresses.

We will be in touch with you early next week to discuss the specific terms of the necessary protective order. In general, however, the protective order would prohibit the information from being publicly disclosed, or used in any way except in accordance with Plaintiffs' stated rationale for needing this information—*i.e.*, to evaluate the cost of potential corrective actions being considered. In the event that any of the Plaintiff States decide that they wish to undertake such corrective action, negotiation of a separate protective order would be necessary. We look forward to discussing with you next week the specific terms of this initial protective order.

III. Next Step for the July 31 Status Report: Discussion of Potential Resolution of the 108,081 Pre-Injunction Three-Year Terms.

Based on the above provision of information, we believe that Defendants have now satisfied all of Plaintiffs' outstanding discovery requests (or have pledged to satisfy those requests). *See* Plaintiffs' Letter of July 6, 2015 at 2. During our conversation on Wednesday, you agreed that the above issues were the only outstanding requests. We look forward to finalizing these issues and reporting on them in the July 31 joint status report to the Court.

Also in connection with the July 31 joint status report, and as discussed on our phone call Wednesday afternoon, we believe that the Court's July 7 Order requires the parties to file on July 31 a statement regarding potential resolution of the 108,081 pre-injunction grants. *See* ECF No. 281 at 1 ("The parties are to file a status report with the Court describing . . . any resolution with regard to the approximately 108,800 individuals who were granted benefits pursuant to the 2014 DHS Memorandum between the date of that Memorandum and this Court's injunction.").

As stated on Wednesday's phone call, Defendants are actively considering this issue. To inform our consideration and decisionmaking, we would like to know Plaintiffs' views on what an appropriate resolution would be for the 108,081 pre-injunction grants.

On Wednesday, you stated that you needed to discuss further with your co-counsel before providing Plaintiffs' position on an appropriate resolution. For purposes of making our meet-and-confer process as efficient as possible, particularly given the July 31 deadline for our joint status report, we would like to know the following:

(a) Whether Plaintiffs intend to request that the Court order Defendants to convert the 108,081 pre-injunction three-year terms to two-year terms;

(b) Whether Plaintiffs believe that any alternative actions would constitute an appropriate resolution; and

(c) The rationale underlying any proposals for resolution of the 108,081.

In order to have time to consider any such proposals in advance of the July 31 filing deadline, we request that you provide us answers to these questions by next Wednesday, July 22, 2015 (one week after we raised this issue with you on our telephone call of July 15, 2015).

We look forward to hearing from you on the above issues, and we will continue to discuss on our end as well. Please do not hesitate to contact me if you have any questions.

Page 12 of 12

Sincerely,

Daniel Schwei

KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 22, 2015

Daniel Schwei
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave. NW, Room 7340
Washington, DC 20530
Daniel.S.Schwei@usdoj.gov

Via Electronic Mail

RE: *State of Texas, et al. v. United States of America, et al.*, No. 14-cv-254 (S.D. Tex.)

Dear Mr. Schwei:

I am writing to follow up on our conversation on July 15, 2015 and your July 17, 2015 letter to me. We appreciate the information that you provided in the July 17 letter, and we continue to seek resolution on the early discovery and remedial matters.

This letter addresses three areas of focus relating to those matters: (1) Defendants' efforts to remedy the issuance of approximately 2,600 three-year employment authorization documents (EADs) after the Court's February 16, 2015 injunction; (2) the parties' ongoing meet-and-confer process regarding approximately 108,000 three-year EADs issued before the February 16 injunction; and (3) Defendants' assertions of privilege in response to the Court's April 7, 2015 Order.

Defendants' Remedial Efforts Pertaining to Post-Injunction Issuances of Three-Year EADs

Your July 17 letter provides us with updated information and data relating to Defendants' efforts to remedy the issuance of three-year EADs after the Court's February 16, 2015 injunction. This includes the 2,128 individuals whom you previously identified in your June 19 letter as being issued three-year grants after the injunction, as well as the additional 484 individuals that Defendants first disclosed in a July 9 advisory as receiving three-year grants (ECF No. 282).

With respect to both of these groups, your letter reflects that Defendants' remedial efforts remain in progress. In particular, you acknowledge that for the group of 2,128 previously-identified individuals, DHS is still working to obtain over 600 of the invalid three-year EADs (June 23, 2015 Hr'g Tr. 28-29). Likewise, for the group of 484 "post-injunction re-mailings," you state that DHS "is undertaking an expedited, accelerated process of remediation" (July 17 Letter at 2). You do not indicate how many of these three-year EADs have been returned to, or otherwise accounted for by, DHS.

Additionally, your letter addresses the scope of personally identifiable information that Defendants are willing to provide for the recipients of post-injunction three-year EADs. As an

initial matter, we reiterate that we have requested personally identifiable information in an effort to help determine whether the Plaintiff States need to take any corrective action as to the three-year grantees—an interest we have repeatedly expressed since Defendants first disclosed over four months ago that three-year EADs had been issued while this lawsuit was ongoing. Our request also is consistent with the Court's statements at the June 23, 2015 hearing indicating that Defendants should provide the Plaintiff States "some kind of way for them to identify these people" (Hr'g Tr. 19). Thus, we disagree with your contention that the Plaintiff States "have not articulated the rationale for why this sensitive information is necessary" or that the Plaintiff States "do not require any additional personally identifiable information for purposes of evaluating potential corrective actions" (July 17 Letter at 10).

That said, we appreciate Defendants' agreement to provide certain personal information—specifically, alien registration number, EAD card number, full name, and address—for the post-injunction grantees. Since our July 15 telephone conference, we have contacted several state agencies and Plaintiff States to identify any other information that would be needed for the Plaintiff States to adequately assess whether to themselves take any corrective action. Based on these efforts, we request that Defendants also provide the Plaintiff States with dates of birth, social security numbers (if applicable), and certain SAVE-related information (Document Type ID and SAVE case number) for post-injunction grantees residing in the Plaintiff States. We are amenable to discussing with you the specific terms of any protective order addressing the disclosure of personally identifiable information.

Resolution of Pre-Injunction Issuances of Three-Year EADs

Your July 17 letter provides less information for the 108,081 three-year EADs issued before the Court's February 16 injunction. As to this group, you have supplied a breakdown of the number of individuals residing in each State. You have not provided, however, any of the SAVE query data that is included for the post-injunction grantees; instead, you offer to provide, by July 29, "approximate SAVE query information" for those individuals residing in the Plaintiff States (July 17 Letter at 9). We will await receipt of that information before determining whether it provides the Plaintiff States with a level of information corresponding to that given for the post-injunction grantees.

Putting aside the issue of information relevant to potential corrective action by the Plaintiff States, the issue remains of whether Defendants will take any action to remedy their continuing recognition of three-year terms of deferred action and employment authorization under the DACA-expansion portion of the enjoined DHS Directive. The district court has enjoined Defendants from implementation of "any and all aspects" of the DACA expansions in the challenged DHS Directive. Feb. 16, 2015 Order of Temporary Injunction at 2. Nonetheless, Defendants have not committed to revise their databases and records so that deferred action under DACA and the EADs are for two-year terms, rather than the three-year terms authorized only by the now-enjoined DHS Directive. Indeed, as Plaintiffs understand it, those databases are the ones queried by states and private employers on an ongoing basis.

Although Defendants may not have been subject to an injunction when they initially granted those three-year terms, Defendants' continuing maintenance of those three-year authorizations in their databases and records is contrary to the district court's February 16 injunction against "implementing any and all aspects or phases of the expansions (including any and all changes) to the Deferred Action for Childhood Arrivals ('DACA') program as outlined in

the DAPA Memorandum." Feb. 16, 2015 Order of Temporary Injunction at 2. Because the Directive purporting to authorize three-year DACA and EAD terms is enjoined, Defendants should not be representing on an ongoing basis that three-year terms are, in fact, authorized. That continued, post-injunction implementation of the Directive is especially troubling given that even the pre-injunction implementation of this aspect of the Directive was not disclosed to the Court and that Defendants represented to the Court and to Plaintiffs that the Directive was not being implemented.

For those reasons, the Plaintiff States believe that the proper course of action as to the 108,081 pre-injunction grants of three-year DACA and EADs is for Defendants to cease implementing the three-year expansion aspect of the Directive by modifying their databases and records to reflect only two-year terms in any ongoing queries. Moreover, because DACA recipients presenting documentation reflecting a three-year period of deferred action or employment authorization are representing that Defendants will continue to afford those benefits for the three-year term—and because Defendants' authority to act in that manner has been enjoined—Defendants should take the same steps to retrieve and replace all three-year cards as are appropriate for post-injunction three-year cards.

With those steps, with the early discovery described above, and with resolution of the issue noted below regarding Defendants' withholding of documents responsive to the Court's April 7, 2015 Order, Plaintiffs' requests for early discovery and for specific corrective action would be satisfied. Of course, there is no way to fully identify all derivative uses of three-year cards and remediate all of the consequences of those uses, much less to do so without additional costs and burden. But such is the nature of irreparable injury.

Defendants' Response to the Court's April 7, 2015 Order

Finally, we want to remind you that Defendants' privilege claims in response to the April 7, 2015 Order remain pending for the Court's determination. As the Plaintiff States have maintained in their briefing, Defendants have not offered clear proof to substantiate their privilege claims, and the lack of detail in Defendants' privilege log prevents the Plaintiff States from assessing the merits of the privilege assertions. Depending on how the Court rules with respect to Defendants' privilege claims, that ruling may impact or resolve some of the pending discovery matters.

****

On our telephone conference tomorrow, we are prepared to discuss issues addressed in this letter and the preparation of the status report due July 31. We also would like to receive an additional update regarding the status of Defendants' remedial efforts regarding the post-injunction issuance of three-year EADs.

Sincerely,

Angela V. Colmenero

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

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

DEFENDANTS' UNOPPOSED MOTION TO FILE EXCESS PAGES

In connection with the Court's Order of July 7, 2015, *see* ECF No. 281, Defendants hereby move for, and respectfully request, leave to file an Expedited, Unopposed Motion to Cancel August 19 Hearing Or, In the Alternative, to Excuse Secretary Johnson and Other Defendants and to Substitute Witnesses, and Memorandum in Support that is fifty (50) pages in length. Plaintiffs have indicated that they do not object to the relief requested in this motion.

The Court's July 7 Order requires the parties to file a Joint Status Report by July 31, schedules a hearing for August 19, and requires each individual Defendant, which includes the Secretary of the Department of Homeland Security, a cabinet-level agency, to "attend and be prepared to show why he or she should not be held in contempt of Court." ECF No. 281 at 2. In addition to the Joint Status Report, Defendants are filing in response an Expedited, Unopposed Motion to Cancel August 19 Hearing Or, In the Alternative, to Excuse Secretary Johnson and Other Defendants and to Substitute Witnesses, and Memorandum in Support that is thirty (30) pages in excess of that

permitted by the Court's Civil Procedures 6(H)(1). These additional pages are necessary for Defendants to fully address the important issues raised by the Court's July 7 Order.

For the foregoing reasons, and without objection from Plaintiffs, Defendants respectfully request leave to file a fifty-page Expedited, Unopposed Motion to Cancel August 19 Hearing Or, In the Alternative, to Excuse Secretary Johnson and Other Defendants and to Substitute Witnesses, and Memorandum in Support.

Dated: July 31, 2015

Respectfully submitted,

KENNETH MAGIDSON
United States Attorney

DANIEL DAVID HU
Assistant United States Attorney
Deputy Chief, Civil Division

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General

JENNIFER D. RICKETTS
Director, Federal Programs Branch
Attorney-in-Charge (VA Bar No. 29281)

/s/ Daniel Schwei

DANIEL SCHWEI
Trial Attorney
Civil Division, Federal Programs Branch
U.S. Department of Justice
P.O. Box 883
Washington, D.C. 20044
Tel.: (202) 305-8693
Fax: (202) 616-8470
Daniel.S.Schwei@usdoj.gov

Counsel for Defendants

CERTIFICATE OF CONFERRAL

Pursuant to Local Civil Rule 7.1.D, undersigned counsel hereby certifies that counsel for Plaintiffs, Angela Colmenero, was contacted regarding Plaintiffs' position on the foregoing Motion to File Excess Pages, and indicated that Plaintiffs do not object to the relief sought in this Motion.

/s/ Daniel Schwei
Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion to File Excess Pages has been delivered electronically on July 31, 2015, to counsel of record via the District's ECF system.

/s/ Daniel Schwei
Counsel for Defendants

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

STATE OF TEXAS, *et al.*, Plaintiffs, v. UNITED STATES OF AMERICA, *et al.* Defendants.	No. 1:14-CV-254

Order

Upon consideration of Defendants' Motion to File Excess Pages, it is

HEREBY ORDERED that Defendants' Motion to File Excess Pages is GRANTED.

It is FURTHER ORDERED that Defendants may file an Expedited, Unopposed Motion to Cancel August 19 Hearing Or, In the Alternative, to Excuse Secretary Johnson and Other Defendants and to Substitute Witnesses, and Memorandum in Support of up to fifty pages.

Signed on _____ _____, 2015.

_____
The Honorable Andrew S. Hanen
United States District Judge

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

STATE OF TEXAS, *et al.*, Plaintiffs, v. UNITED STATES OF AMERICA, *et al.* Defendants.	No. 1:14-CV-254

DEFENDANTS' EXPEDITED, UNOPPOSED MOTION TO CANCEL AUGUST 19 HEARING OR, IN THE ALTERNATIVE, TO EXCUSE SECRETARY JOHNSON AND OTHER DEFENDANTS AND TO SUBSTITUTE WITNESSES, AND MEMORANDUM IN SUPPORT

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

CASES **PAGE(S)**

STATUTES

RULES

MISCELLANEOUS

INTRODUCTION AND SUMMARY OF THE ARGUMENT

The Court's Order of July 7, 2015 (ECF No. 281) directs the Secretary of Homeland Security and four other senior Department of Homeland Security (DHS) officials to appear on August 19, 2015, to show cause why they should not be held in contempt of Court. It further provides, however, that the Court will cancel the August 19 hearing if, by July 31, the Government reports that it has "remedie[d] [the] situation" concerning the Employment Authorization Documents (EADs) with three-year terms that the Government issued to approximately 2100 Deferred Action for Childhood Arrivals (DACA) recipients after the Court handed down its February 16 preliminary injunction. The Government fully appreciates the seriousness of the Court's concern and has taken extraordinary measures to address that concern. The Government, including the five named Defendants, attaches utmost importance to the responsibility to comply with court orders and the need to take corrective action, when necessary, to ensure such compliance.

The Government reports here, and in the parties' Joint Status Report also filed today, that it stands in compliance with the Court's preliminary injunction, including compliance as to the approximately 2100 individuals who received the EADs at issue in the Court's July 7 Order. The terms of deferred action and employment authorization of all 2128 individuals have been converted by U.S. Citizenship and Immigration Services (USCIS) from three years to two, or terminated altogether in the cases of those individuals who failed to comply with USCIS's requirement to return their three-year EADs. Likewise, the SAVE and E-Verify systems have been updated to reflect these changes, so that state agencies and employers can verify that these individuals have been granted two, rather than three, years of deferred action and employment authorization. Each of these 2128 individuals has been issued a replacement two-year EAD, and, through a series of extensive efforts—including visits by teams of USCIS officers to recipients'

homes—USCIS has retrieved or otherwise accounted for 2117 of the previously identified 2128 three-year EADs issued after the injunction (thus representing 99.5 percent accounted for). And as of today, the deferred action and employment authorization of the remaining 11 individuals in these cases have been terminated. Similar corrective steps have been completed with regard to the approximately 500 individuals noted in the Government's July 9 Advisory, to whom three-year EADs were issued and mailed before the injunction, but returned as undeliverable, and then re-mailed after the injunction. As of July 30, USCIS has retrieved or accounted for 473 of the 484 previously identified three-year EADs (thus representing 97.7 percent accounted for), and as of today the recipients' deferred action and employment authorization in the remaining 11 cases have been terminated as well. These efforts are described in more detail in the attached declaration of USCIS Director León Rodríguez, filed herewith as Exhibit 1, and the circumstances surrounding the re-mailed three-year EADs are described in more detail in the attached declaration of USCIS Associate Director Donald W. Neufeld, filed herewith as Exhibit 2.

Because the Government has "remedie[d] [the] situation" that led to the Court's July 7 Order, the Government respectfully submits that, in accordance with the terms of the Order itself, the August 19 hearing should be canceled. The Government has achieved full compliance, or at a minimum substantial compliance, with the Court's February 16 injunction. This removes any need or justification for contempt proceedings, the purpose of which (as the July 7 Order acknowledges) is to compel a party's compliance with a prior court order. As the record before the Court now confirms, no such compulsion is necessary here; the Government is in compliance and has demonstrated its commitment to remaining so. Indeed, even if the Government were not yet in compliance with the February 16 injunction, the reasonable, diligent, and extensive efforts

that it has made to retrieve the outstanding post-injunction three-year EADs also render contempt proceedings inappropriate.

In any event, even if there were a basis on the current record to conduct contempt proceedings (which there is not), such proceedings should be directed against the United States; no justification lies for issuing contempt citations against the named Government officials. Secretary Johnson and USCIS Director Rodríguez have consistently directed, supported, and overseen not only compliance with the injunction on a massive scale, but also the successful implementation of corrective measures to address the relatively small number of cases involving post-injunction issuances and re-mailings of three-year EADs.[1] The remaining three defendants—the Commissioner of U.S. Customs and Border Protection (CBP), the Director of U.S. Immigration and Customs Enforcement (ICE), and the Deputy Chief of the U.S. Border Patrol—have no responsibility for, authority over, or personal knowledge about the actions taken by USCIS that gave rise to these circumstances, or the actions taken by USCIS to correct them. Therefore these three Defendants could not be the proper subjects of contempt.

Contempt is also legally precluded under the circumstances here, because Plaintiffs have not moved for contempt or shown the requisite harm. As numerous courts have held, in the absence of a motion by a complaining party, courts lack authority to initiate civil contempt proceedings *sua sponte*. For these reasons, the August 19 hearing should be canceled.

Even if the Court concluded, however, that the August 19 hearing remains necessary, it should excuse the Secretary and all of the other named Defendants, with the exception of

[1] In addition, on May 8, 2015, Secretary Johnson asked the DHS Inspector General to investigate the issuance of the post-injunction EADs discussed in Defendants' May 7 Advisory. *See* May 15 Rodríguez Decl. ¶ 14. The Inspector General's report of his investigation is expected in the coming days, and Defendants will share the report with Plaintiffs, and file the report with the Court, when a public version is available.

Director Rodríguez. It is settled law that high-ranking Government officials, such as the Secretary, and the other named Defendants in this case, cannot be compelled to appear or give testimony in judicial proceedings absent extraordinary circumstances, which are present only when a high-ranking official has personal knowledge of information that is essential to a case and cannot be obtained from another source. As the record reflects, Secretary Johnson had no personal involvement with or advance knowledge of the events leading to the post-injunction issuance and re-mailing of the three-year EADs, and he placed responsibility for the implementation and oversight of corrective measures with Director Rodríguez. Notwithstanding his role in directing that remedial efforts take place, the Secretary possesses no unique personal knowledge of these matters that would justify compelling the attendance or testimony of a Cabinet-level official. The remaining Defendants had no involvement with or knowledge of the matters raised by the Court's July 7 Order at all, as confirmed by their declarations filed herewith. *See* Kerlikowske Decl. (Exh. 3); Saldaña Decl. (Exh. 4); Vitiello Decl. (Exh. 5). Moreover, the information pertinent to those matters can be obtained from the four other witnesses that the Government intends to bring to the August 19 hearing, should it take place. These include Director Rodríguez and the heads of involved USCIS Directorates, who can testify in particular to the part each Directorate played (if any) in the issuance and re-mailing of the three-year EADs, and the role each has undertaken in correcting the situation.

Given the importance of the interests implicated by the Court's Order to Secretary Johnson and these other senior officials—interests including the separation of powers and the proper relationship between co-equal branches of the Federal Government—the Government respectfully requests a ruling on its motion to excuse the Secretary and the other high-ranking officials by no later than Monday, August 10, so that it may have a reasonable opportunity to seek appellate review, if necessary. In the event the Court denies the Government's motion to

excuse these officials, the Government also respectfully requests a stay of the August 19 hearing pending any appellate review, to ensure that the Secretary and other Defendants are not compelled to appear before the Court of Appeals can provide meaningful relief, if such relief is sought. Plaintiffs have authorized Defendants to represent that Plaintiffs take no position on the relief requested in Defendants' motion. Plaintiffs reserve the right to file any response or advisory in connection to Defendants' motion and agree to submit such filing no later than Thursday, August 6, 2015.

Finally, the Government addresses below issues raised in the Court's Order of April 7, 2015 (ECF No. 226), discussed at the hearing held on June 23, 2015, and mentioned as well in the Court's July 7 Order. The Government has sincerely apologized for the miscommunications regarding the implementation dates of the changes made to DACA by the Secretary's 2014 Deferred Action Guidance. The Government reiterates that apology. In addition, as discussed below, the record contains more than sufficient evidence, on which this Court may rely, showing that these miscommunications were inadvertent, without intent to mislead or deceive. There is also plentiful evidence showing that the Government did not delay filing its March 3 Advisory after the Court issued its preliminary injunction on February 16. Therefore, in addition to canceling the August 19 hearing, the Government respectfully submits that the Court should also conclude its inquiry into the matters raised by the April 7 Order.

NATURE AND STAGE OF THE PROCEEDING

Immediate Steps Taken to Comply With the Court's Preliminary Injunction

On February 16, 2015, the Court issued its preliminary injunction prohibiting the Government "from implementing any and all aspects or phases" of Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), and of "the expansions (including any and all changes)" to DACA, as set out in Secretary Johnson's November 20, 2014 memorandum,

Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Residents (the 2014 Deferred Action Guidance). Order of Temporary Injunction (ECF No. 144) at 1, 2.

Within two hours after the Court's preliminary injunction was issued, Defendant León Rodríguez, Director of USCIS, had already set in motion a series of steps intended to ensure that USCIS complied with the Court's Order. May 15 Rodríguez Decl. (ECF No. 256-1) ¶ 7; May 15 Neufeld Decl. (ECF No. 256-2) ¶ 15. Per instructions from Director Rodríguez, USCIS implemented a "broad freeze," suspending the anticipated processing of applications under the expanded DACA eligibility guidelines (then scheduled to begin on February 18, 2015) and ceasing further action as well to prepare for DAPA. May 15 Neufeld Decl. ¶¶ 15-16.[2]

USCIS also took immediate steps to ensure that it ceased approving and issuing three-year terms of deferred action and employment authorization under the existing 2012 DACA eligibility guidelines, and three-year EADs, so that following the injunction, individuals found to meet the criteria under the 2012 DACA guidelines would receive only two years of deferred action and employment authorization instead of three. May 15 Rodríguez Decl. ¶ 7; May 15 Neufeld Decl. ¶ 15. These included steps to prevent the issuance of three-year approval notices

[2] Notification of the Director's instructions to halt the anticipated implementation of the changes to DACA and preparations for implementing DAPA was broadcast to the USCIS workforce. The steps taken to halt implementation of the new DACA guidelines and of DAPA included, but were not limited to: (i) halting the planned February 17, 2015 posting of the new DACA application on USCIS's public website; (ii) removing instructions for and other guidance pertaining to applications under the expanded DACA eligibility guidelines that had been posted on February 14, 2015; (iii) ceasing policy and operational discussions to develop guidelines, procedures, and forms to implement DAPA; and (iv) suspending hiring actions to bring new staff on to support DAPA implementation. May 15 Rodríguez Decl. ¶ 7; May 15 Neufeld Decl. ¶ 16.

and EADs even in those cases where applicants had already been approved under the 2012 DACA guidelines prior to the Court's injunction. May 15 Rodríguez Decl. ¶ 8.

Thus, on February 17, USCIS leadership directed that:

- USCIS Service Centers immediately suspend further approval of all requests for deferred action and employment authorization;
- USCIS Service Centers immediately suspend issuance of DACA approval notices;
- USCIS card-production facilities (the separate locations where EADs are printed and mailed) immediately suspend issuance of all DACA-based EADs, all regardless of the associated terms of validity. (Approval of DACA requests and issuance of notices and EADs for two-year terms was allowed to resume on February 18.); and
- The card-production facilities immediately intercept and hold any three-year EADs that had been printed but not yet mailed to DACA recipients.

May 15 Neufeld Decl. ¶¶ 15-20. Personnel at USCIS Service Centers and card-production facilities took immediate action to execute these instructions, and manually destroyed some of the three-year EADs that had been printed but not yet mailed.[3] *Id.* ¶¶ 18, 20 n. 2. These actions were taken notwithstanding the numerous other duties that USCIS employees have, many of which are wholly unrelated to deferred action requests. *Cf.* May 15 Rodríguez Decl. ¶ 4 (explaining that in fiscal year 2014, USCIS processed approximately 7 million cases under a broad variety of immigration programs, including petitions for refugee status, for family-sponsored and employment-based visas issued in the United States, and naturalization).

USCIS was also aware on February 17 that there were a number of cases in which three-year terms of deferred action and employment authorization had already been approved prior to

[3] USCIS personnel at one facility did not, however, intercept a box of EADs, most of which did not concern DACA recipients, that was awaiting pickup by the U.S. Postal Service on the morning of February 17 (and, due to a snowstorm, was not picked up until February 18). These EADs had already been printed and packaged for mailing before the injunction. May 15 Neufeld Decl. ¶ 20 n.2.

the injunction, but in which the recipients' EADs had not yet been printed and still remained in the production queues at the card-production facilities. On February 17, USCIS decided to place a "hold" on these cards, as well. *See generally* May 15 Rodríguez Decl. ¶ 7; May 15 Neufeld Decl. ¶¶ 17-21. The intent of all these actions was "to stop the approval or issuance of three-year approval notices or EADs under DACA once the injunction had issued." May 15 Rodríguez Decl. ¶ 9.

On February 17, 2015, after setting these steps in motion, Director Rodríguez informed Secretary Johnson of the measures USCIS had undertaken to comply with the Court's injunction. July 31 Rodríguez Decl. ¶ 10. The Secretary approved of these measures and instructed Director Rodríguez that he should closely oversee USCIS's compliance efforts. *Id.* The Secretary followed this instruction with a February 20, 2015 memorandum to senior DHS officials directing that the Department and its components continue to suspend implementation of both the modifications to DACA, and preparations for DAPA, and that they ensure compliance with the Court's order. *Id.* & Attachment A thereto.

Although the bulk of the Secretary's 2014 Deferred Action Guidance provided direction to USCIS regarding implementation of the new DACA guidelines and DAPA, the Secretary also placed limited responsibilities on ICE and CBP (and by extension, the Border Patrol, a CBP component) in connection with both policies. ICE and CBP were directed to begin identifying persons in their custody as well as newly encountered individuals who may be eligible for deferred action under DACA or DAPA (whom USCIS could then consider for deferred action). 2014 Deferred Action Guidance at 5. ICE was also instructed (i) to seek administrative closure or termination in the pending removal cases of individuals who may be eligible for deferred action under DACA or DAPA, and refer them to USCIS; and (ii) to establish a process allowing individuals in removal proceedings to identify themselves as candidates for deferred action. *Id.*

When the Court issued its injunction on February 16, Director Saldaña, Commissioner Kerlikowske, and Deputy Chief Vitiello directed that ICE, CBP, and the Border Patrol, respectively, implement steps to comply with the injunction, including that they not refer individuals newly eligible under the 2014 Guidance to USCIS. Kerlikowske Decl. ¶ 11; Saldaña Decl. ¶ 13; Vitiello Decl. ¶ 9.

Discovery of the Post-Injunction Issuances of Three-Year EADs, and the Initiation of Corrective Action

Prior to the March 19 hearing on Plaintiffs' motion for discovery into the Government's pre-injunction issuance of three-year EADs to approximately 108,000 individuals, USCIS conducted a review of its records to determine the precise number of cases involved. May 15 Neufeld Decl. ¶¶ 25-26. In the course of this review it discovered a small number of cases in which requests for deferred action and employment authorization had been approved after the injunction, but, due to manual errors, they had been granted for three years instead of two. *Id.* During the March 19 hearing, defendants informed the Court that post-injunction three-year EADs had been issued in these manual-error cases. March 19 Tr. at 35. USCIS converted the terms of deferred action and employment authorization in these cases from three years to two, and prepared to issue letters to the recipients advising them of the change, and, in cases where they had been issued three-year EADs, informing them that the cards must be returned to USCIS. May 15 Neufeld Decl. ¶ 27.

As also discussed at the March 19 hearing, after placing a hold on all pending EADs in which three years of deferred action and employment authorization had been approved prior to the injunction, USCIS decided to convert the authorized terms in these cases from three years to two. *Id.* ¶ 19. The agency also prepared letters to send to these individuals afterward advising them that their approved terms of deferred action and employment authorization had been

converted to two years from three, that USCIS was issuing them two-year EADs, and that they should return any three-year notices of approval in their possession. *Id.* ¶ 27.

On Friday May 1 and Monday May 4, 2015, as USCIS personnel began the process of converting recipients' terms and issuing the approved letters, they discovered that the pending three-year EADs that had been placed on hold following the injunction—and which were still believed to be on hold—had in fact been printed and mailed. *Id.* ¶¶ 29-31. Service Center personnel immediately alerted USCIS headquarters, which after a series of inquiries determined that approximately 2100 three-year EADs had been issued after the injunction.[4] *Id.* ¶¶ 28-33.

The agency's inquiries also revealed how the unintended post-injunction issuance of these approximately 2100 pending three-year EADs had occurred. Ordinarily, when a hold is placed on an individual case, a pending EAD is withdrawn from the production queue, requiring that Service Center adjudicators take action in the case to return the card to the queue before it can be printed and mailed by the card-production facility. This is the procedure that Service Center personnel believed had been followed when, immediately following the injunction, a hold was placed on all pending EADs. *Id.* ¶ 23. However, unknown to these Service Center personnel, personnel in the Office of Information Technology had implemented the hold by placing a system-wide "pause" on all the DACA-related EADs in the production queue, but did not remove them from the queue altogether. *Id.* ¶ 24. As a result, when approvals of two-year terms of deferred action and employment authorization resumed on February 18, and the initial post-injunction hold on all pending two-year EADs was lifted on February 20, the three-year EADs still pending in the queue moved forward, together with the newly authorized two-year

[4] For ease of reference, although a small number of the EADs discussed herein were issued for terms greater than two years but not exactly three years, the term "three-year EADs" will be used rather than "EADs with validity periods of greater than two years."

EADs in the production queue. *Id.* ¶¶ 18, 22, 24. The Government informed the Court of these approximately 2100 post-injunction issuances of pending three-year EADs in its May 7 Advisory, and provided further information to the Court about them in the supplement filed on May 15. ECF Nos. 247, 256.

Upon discovering that these approximately 2100 pending three-year EADs had been released after the injunction, USCIS, at the instruction of Director Rodríguez, began immediate corrective action. USCIS determined that it would: (i) convert the authorized period of deferred action and employment authorization in each case from three to two years; (ii) issue replacement two-year EADs; (iii) update the SAVE[5] and E-Verify[6] systems to reflect each individual's two-year terms of deferred action and employment authorization; and (iv) retrieve the three-year EADs. July 31 Rodríguez Decl. ¶ 12. (Discussed herein are the essential facts surrounding USCIS's corrective action and the success achieved. The declarations filed herewith provide a fuller picture of the time, effort, and resources required to carry out these corrective measures, and the difficulties the agency encountered. *See generally* July 31 Rodríguez Decl.; July 31 Neufeld Decl.)

Within days after the discovery of the approximately 2100 post-injunction three-year EADs, USCIS service center adjudicators began converting the cases in the agency's records systems to two-year (rather than three-year) terms of deferred action and employment authorization. Concurrent with this conversion process, USCIS began to send letters to the recipients advising them that (i) USCIS had converted their terms of deferred action and

---

[5] The SAVE Program is a service that helps federal, state, and local benefit-issuing agencies, institutions, and licensing agencies obtain immigration information about benefit applicants so only those entitled to benefits receive them. July 31 Rodríguez Decl. ¶ 6 n.4.

[6] E-Verify is an Internet-based system that allows businesses to determine the eligibility of their employees to work in the United States. July 31 Rodríguez Decl. ¶ 6 n.5.

employment authorization from three to two years; (ii) that USCIS would be sending them replacement two-year EADs; (iii) that they must return the three-year EADs upon receipt of the replacement EADs; and, (iv) that failure to do so may result in adverse action.[7] *Id.* ¶ 20.

As the term of deferred action and employment authorization in each of the 2128 cases was converted to two years, USCIS began in mid-May to mail the replacement two-year EADs. *Id.* ¶ 17. By June 22, 2114 of the 2128 replacement cards were issued. *Id.* ¶ 17. Following the resolution of a small number of cases in which the two-year EADs were repeatedly rejected for quality-control reasons, the last of the replacement two-year EADs in these cases were issued on July 8. *Id*. Once the replacement two-year EAD was issued in each case, the recipient's employment authorization data (including the updated two-year term) could be transmitted to the underlying system that supports SAVE and E-Verify. *Id.* ¶ 18. By July 9, after resolution of a number of anomalies requiring case-by-case review, all 2128 cases were updated in SAVE and E-Verify. *Id*.

By July 2, as a result of its corrective action efforts that began in May, USCIS had obtained three-year EADs issued after the injunction in 1135 of the 2128 cases. *Id.* ¶ 21. On July 6, 2015, USCIS began sending follow-up warning letters to the remaining individuals who had not yet returned their three-year cards, instructing them that they must return their three-year EADs by July 17, 2015, or certify good cause for no longer possessing them (e.g., because they had been lost, stolen, destroyed, or never received), and advising them that failure to return the

[7] To facilitate and encourage recipients' compliance, USCIS did not require the return of the three-year EADs until the individuals received the two-year EADs. It also enclosed self-addressed, postage-paid envelopes in which to return the three-year EADs. July 31 Rodríguez Decl. ¶ 20.

three-year EADs (or failure to certify good cause for not doing so) may affect their deferred action and employment authorization. *Id.* ¶ 21.[8]

On July 6 USCIS also began gathering additional contact information, including telephone numbers and email addresses, to conduct further outreach to those who had not yet returned their three-year EADs. *Id.* ¶ 23. On July 9 and 10, USCIS customer-service representatives placed calls to those individuals for whom contact information could be found, and informed those whom they reached that they must return their three-year EADS (or certify good cause for not doing so) and that failure to comply may affect their deferred action and employment authorization. *Id.* ¶ 24.

Secretary Johnson's July 10 Directive

On July 10, 2015, Secretary Johnson issued a memorandum directing USCIS, by July 31, to take still further actions to retrieve the remaining three-year EADs. July 31 Rodríguez Decl. ¶ 25. Specifically, Secretary Johnson directed that USCIS:

- By July 17, mail Notices of Intent to Terminate individuals' deferred action and employment authorization if they did not return their three-year EADs by July 30;
- Dispatch USCIS personnel to visit recipients' homes to retrieve their three-year EADs; and
- On July 31 terminate the deferred action and employment authorization of recipients who had not returned their three-year EADs, certified good cause for not doing so, or whose cards were not otherwise accounted for.

Id. ¶ 26.

[8] To facilitate return of the three-year EADs, USCIS again enclosed postage-paid envelopes with the letters in which to return individuals' three-year EADs (or submit their good-cause certifications), and included in the letters the toll-free number of USCIS's National Customer Service Center, which recipients could call any with questions they might have about the letters. July 31 Rodríguez Decl. ¶¶ 20, 22.

In accordance with the Secretary's instructions, on July 13, USCIS sent Notices of Intent to Terminate to the 887 remaining DACA recipients who had not yet returned their three-year cards, again informing them, *inter alia*, that they must return their three-year EADs to USCIS (or certify good cause for not doing so), that failure to comply would result in termination of their deferred action and employment authorization effective July 31, 2015 and (as still further incentive to return the cards) that failure to return their 3-year EADs, and subsequent termination of their deferred action and employment authorization, may be considered negative factors in weighing whether to grant any future requests they might make for deferred action or any other discretionary action. *Id.* ¶ 27.

On July 16, as directed by Secretary Johnson, USCIS initiated an unprecedented residential site visit program to facilitate the return of outstanding post-injunction three-year EADs nationwide. *Id.*¶ 29. Residential site visits initially began in Chicago, Los Angeles, Dallas, and Houston, the metropolitan areas with the highest concentration of unreturned three-year EADs, and focused further on contacting DACA recipients for whom USCIS did not have a current telephone number. *Id.* Each site visit was conducted by a team of two USCIS officers who regularly conduct site visits as part of their daily duties, and are specifically trained in outreach to USCIS customers (and officer safety). In some cases, these site visits required officers to travel to remote locations requiring hours of travel to reach. *Id.* & Attachment F thereto (map of United States showing locations of outstanding post-injunction three-year EADs).[9]

[9] Although not instructed to do so by the Secretary's July 10 directive, USCIS on July 16 also began sending text messages and on July 21 began sending emails to DACA recipients who had not yet returned their three-year EADs, as still further means of alerting recipients that they needed to return their three-year EADs. *Id.* ¶¶ 30, 32. In total, USCIS sent over 2990 text messages, and 1627 e-mails. *Id.* ¶ 6.

As a result of all of the efforts described above, USCIS succeeded by July 30 in retrieving 1906 of the 2128 three-year cards, and obtaining certifications in another 98 cases that the cards had been lost, stolen, destroyed, or never received. *Id.* ¶ 33. Another 11 three-year cards had been returned as undeliverable, and USCIS determined that another 102 of the 2128 post-injunction three-year EADs were in fact never sent. *Id.* In total 2117 cards were retrieved or otherwise accounted for by July 30. *Id.* On July 31, as directed by the Secretary, USCIS terminated the deferred action and employment authorization of the remaining 11 DACA recipients who did not return their three-year EADs, or otherwise certify good cause for not doing so, and is currently in the process of preparing and mailing Termination Notices to the 11 individuals. *Id.* ¶ 34.

Notwithstanding that USCIS has terminated the deferred action and employment authorization for these 11 individuals, USCIS will continue efforts to retrieve their outstanding three-year cards, as well as the replacement two-year EADs sent to them prior to their termination on July 31. *Id.* ¶ 35.[10]

---

[10] USCIS has recently identified another small number of three-year EADs that were issued after the injunction. An individual recently visiting a USCIS field office turned in a three-year EAD that had been issued post-injunction; however, this EAD was on neither the list of 2128 post-injunction three-year EADs, nor the list of re-mailed EADs. In addition, this individual's term of deferred action and employment authorization recorded in CLAIMS 3 was only two years. USCIS immediately conducted research into this case and has preliminarily determined that, in the midst of the aggressive compliance efforts undertaken shortly after the injunction was issued, one information-technology specialist located at a service center converted the terms of deferred action and employment authorization for a group of cases, approved prior to the injunction, to two-year instead of three-year terms. Although this action successfully prevented three-year EADs from being produced in some cases, because CLAIMS 3 had not yet ordered their EAD card production, the EADs in the remaining cases, approximately 50, were already in the print queue, and were printed and mailed. Because CLAIMS 3 was already updated to show two-year terms in these cases, the query that USCIS ran in May to identify the number of post-injunction three-year EAD issuances failed to identify this group of cases. USCIS continues to research the situation to understand why it occurred. USCIS has also begun to take corrective action, including issuing two-year EADs, ensuring that SAVE and E-

The Approximately 500 Re-Mailed Three-Year EADs

In early July 2015, USCIS discovered a different group of approximately 500 cases—all approved under the 2012 DACA guidelines—in which three-year EADs had originally been mailed prior to the Court's injunction, but were returned to USCIS by the U.S. Postal Service (USPS) as undeliverable, and then re-mailed by USCIS to their intended recipients after the injunction had issued. July 31 Neufeld Decl. ¶ 4 & n.2. The Government informed the Court of the discovery of these re-mailed EADs in its July 9 Advisory. ECF No. 282.

The post-injunction re-mailing of these approximately 500 three-year EADs, like the post-injunction issuance of approximately 2100 three-year EADs, was inadvertent. July 31 Neufeld Decl. ¶ 15. While all EADs are printed and mailed at USCIS card-production facilities, the return address on each envelope is the address of the USCIS Service Center that approved the underlying application for employment authorization. *Id.* ¶ 8. Therefore, if the USPS is unable to deliver an EAD, it is returned to the originating service center. *Id.* ¶ 9. All mail returned to USCIS Service Centers is opened and sorted by contract personnel, and cards, such as EADs and Permanent Resident Cards, are conveyed to USCIS Records Management personnel. *Id.* ¶ 10. Records Management personnel are not Service Center adjudicators and have no role in the process of adjudicating requests for deferred action or employment authorization, whether under DACA or otherwise. *Id.* ¶ 13.

Upon receipt of an undeliverable EAD, USCIS Records Management personnel attempt to locate a current address for the recipient. *Id.* ¶ 11. In some cases, the USPS will have a forwarding address for the recipient, or a current address can be found in USCIS databases. *Id.*

Verify are appropriately updated, and retrieving any three-year EADs that were in fact issued after the injunction. July 31 Rodríguez Decl. ¶ 36.

If Records Management personnel can locate a current address for the recipient, the EAD is re-mailed, usually within one or two business days, and the recipient's case record in USCIS databases is updated to reflect that the EAD was re-mailed. *Id.* If a return address for the recipient cannot be located, however, Records Management personnel will place the EAD in secure storage at the Service Center, where it will remain for up to a year. *Id.* ¶ 12. If, during that time, Records Management personnel obtain or are provided with the recipient's current address, they will re-mail the EAD; otherwise, if the card remains in secure storage after one year, it will be destroyed. *Id.*

As discussed above, in the early hours of February 17, immediately after the Court issued its injunction, Director Rodríguez instructed that USCIS take a series of actions intended to halt further approvals of deferred action and employment authorization, three-year approval notices and EADs, for three-year terms. *Id.* ¶ 14. These instructions were conveyed to Service Center adjudicators (and their supervisors) responsible for processing deferred action requests and applications for employment authorization, and to personnel at USCIS card-production facilities responsible for printing and mailing EADs. *Id.* In the flurry of communications and activity to ensure that new three-year EADs were not issued after the injunction, the scenario in which three-year EADs that had already been issued and mailed before the injunction could be returned as undeliverable, and then re-mailed afterward, did not occur to (nor was it raised with) USCIS leadership. Because of this oversight, instructions were never provided to Records Management personnel to suspend re-mailing of DACA-related three-year EADs. *Id.* ¶ 15. As a result, following the injunction, three-year EADs were re-mailed to DACA recipients in 484 identified cases. *Id.*

This group of 484 re-mailed EADs was discovered as a result of continuing efforts by USCIS to identify all cases in which individuals may have been issued documentation reflecting

three-year terms of deferred action or employment authorization after the injunction, for any reason. *Id.* ¶¶ 16-18; *see also* May 15 Neufeld Decl. ¶ 37. After USCIS discovered in May 2015 (and reported to the Court) that approximately 2100 three-year EADs had been issued after the injunction, it began efforts to verify that all such cases had been identified. July 31 Neufeld Decl. ¶¶ 16-18. Among these efforts, in June 2015 USCIS requested its Office of Performance and Quality (OPQ)—which, among other functions, collects and validates agency data for purposes of internal and external reporting—to audit the data and queries employed by USCIS in determining that three-year EADs had been issued after the injunction in approximately 2100 cases, and to verify that these cases represented the entire universe of such cases. *Id.*

In the course of its audit, OPQ designed its own queries of USCIS databases that included a history action code indicating whether an EAD had been re-mailed after being returned to USCIS as undeliverable, not just the date when it was originally issued and/or mailed. *Id.* ¶ 18. On June 29, these queries revealed that three-year EADs that had been approved, issued, and mailed prior to the injunction, but which were then returned as undeliverable, were subsequently re-mailed after February 16. *Id.* As of July 9, analysis of the available data revealed 484 such cases. *Id.* ¶¶ 4 n.2, 18.[11]

Corrective Action Regarding the 484 Re-Mailed EADs

Once the re-mailing of these 484 three-year EADs was discovered, USCIS began prompt corrective action. On July 6, per instructions from Director Rodríguez, USCIS Service Centers temporarily suspended re-mailings of all undeliverable mail that might contain three-year

[11] USCIS recently became aware of one additional case in which an individual's three-year EAD had been re-mailed after the February 16 injunction, but which was not identified by prior queries. *See* July 31 Neufeld Decl. ¶ 4 n.2. USCIS has retrieved that individual's three-year EAD and is also taking additional corrective steps to convert the newly-identified individual's term of deferred action and employment authorization to two years in USCIS's databases, including the SAVE and E-verify systems.

DACA-related EADs while it reviewed measures to prevent the re-mailing of such three-year EADs in the future. July 31 Neufeld Decl. ¶ 19. All returned-undeliverable EADs with three-year terms that still remained at USCIS Service Centers were sequestered to ensure they are not re-mailed. *Id.* ¶ 21. (If current addresses are found for the intended recipients of any of these EADs, they will be issued replacement two-year EADs in lieu of the three-year cards.) And, in order to prevent the re-mailing of pre-injunction three-year EADs that may be returned as undeliverable in the future, USCIS has placed supervisory holds in its systems in all cases in which three-year EADs were issued before the injunction. *Id.* ¶ 20. Supervisory holds prevent any action from being taken in these cases without the permission of supervisory adjudicators, who have been instructed that the returned three-year EADs cannot be re-mailed. *Id.*

In addition, USCIS determined that it should implement the same type of corrective action to recover the re-mailed three-year EADs in these 484 cases as it had taken in the cases of the 2128 three-year EADs issued after the injunction: converting each individual's term of deferred action and employment authorization from three to two years; issuing each individual an updated two-year EAD; updating SAVE and E-Verify to reflect two-year authorizations; and retrieving each individual's three-year EAD. July 31 Rodríguez Decl. ¶ 39. On July 14, Secretary Johnson issued another directive that likewise instructed USCIS to take corrective measures similar to those he had ordered in the cases of the 2128 post-injunction EADs. *Id.* ¶ 41. These measures included:

- Immediately issuing new two-year approval notices and EADs to the recipients in all 484 cases;
- Immediately updating the SAVE and E-Verify systems to reflect their two-year terms of work authorization;
- By July 17, mailing notices of intent to terminate to all 484 recipients informing them that their deferred action and employment authorization would be

terminated on July 31 if they had not returned their three-year EADs (or certified good cause for failing to do so);

- Contacting them by telephone by no later than July 17;
- Dispatching USCIS personnel to visit their homes in order to retrieve their three-year cards; and
- On July 31 terminating the deferred action and work authorization of those individuals whose three-year EADs had not been returned or otherwise accounted for.

July 31 Rodríguez Decl. ¶ 41.

By July 13 USCIS had converted the terms of deferred action and employment authorization of all identified 484 individuals from three to two years. *Id.* ¶ 40. In accordance with the Secretary's July 14 directive, on July 15 USCIS sent them Notices of Intent to Terminate, informing them that their terms of deferred action and employment authorization had been converted from three to two years; that USCIS had issued them updated two-year EADs; that they must either return their three-year EADs or certify good cause for not doing so; that failure to comply would result in termination of their deferred action and employment authorization effective July 31, 2015; and that failure to return their three-year EADs, and subsequent termination of their deferred action and employment authorization, may be considered negative factors in weighing whether to grant any future requests they might make for deferred action or any other discretionary action. *Id.* ¶ 42.

As also directed by the Secretary, USCIS issued replacement two-year EADs to all 484 identified individuals by July 17, and by July 27 had updated the SAVE and E-Verify systems to reflect their two-year terms of deferred action and work authorization. *Id.* ¶¶ 43, 44. On July 16 and 17, in accordance with the Secretary's instructions, USCIS made in-person telephone calls to 334 individuals in the re-mailing cases, advising them, *inter alia*, that they must return their three-year EADs to USCIS (or certify good cause for not doing so); and that failure to comply

would result in termination of their deferred action and employment authorization effective July 31, 2015. *Id.* ¶ 45. And on July 20, as also instructed by the Secretary, USCIS extended the nationwide residential site visit program to include individuals in the 484 identified re-mailing cases who had not yet returned their three-year EADs, for the purpose of either retrieving their EADs or obtaining written good-cause certifications for their failure to do so. *Id.* ¶ 48. In total, for both the post-injunction issuances and re-mailings, USCIS conducted 721 home visits by 306 USCIS officers from over 50 field office locations. *Id.* ¶ 6.

As a result of these corrective efforts, and despite the very compressed time frame in which the agency conducted them, by July 30 USCIS retrieved or had otherwise accounted for 473 of the 484 identified re-mailed EADs. *Id.* ¶ 50. On July 31, as directed by the Secretary, USCIS terminated the deferred action and employment authorization of the remaining 11 individuals who had not returned their three-year EADs or certified good cause for not doing so. *Id.* ¶ 51.

As in the cases of the three-year EADs issued after the injunction, USCIS will continue efforts to retrieve the outstanding three-year cards in the re-mailing cases, as well as the replacement two-year EADs sent to these individuals prior to their termination on July 31. *Id.* ¶ 52.

STATEMENT OF THE ISSUES TO BE RULED ON BY THE COURT

The Government requests that the scheduled August 19 hearing be canceled because contempt is neither necessary nor warranted here. Civil contempt is not available where a party is in substantial compliance with a court order, *U.S. Steel Corp. v. United Mine Workers of Am.*, 598 F.2d 363, 368 (5th Cir. 1979), or where a party is taking reasonable and diligent steps toward compliance. *Am. Airlines, Inc., v. Allied Pilots Ass'n*, 228 F.3d 574, 582 n.12 (5th Cir. 2000). Even if grounds were present here at all for consideration of contempt sanctions, they

should be considered solely against the United States and not the Defendant Government officials. *Spallone v. United States*, 493 U.S. 265 (1990). Civil contempt is also precluded in the absence of a motion by an injured party. *E.g., Wash. Metro. Area Transit Auth. v. Amalgamated Transit Union*, 531 F.2d 617, 622 (D.C. Cir. 1976).

If the August 19 hearing is not canceled, Defendants respectfully request that Secretary Johnson, Director Saldaña, Commissioner Kerlikowske, and Deputy Chief Vitiello, be excused from appearing, and that the Government be permitted to substitute other witnesses who are better positioned to address the matters raised in the Court's July 7 Order. High-ranking officials such as the Secretary and these other three Defendants cannot be compelled to appear and testify in judicial proceedings absent a showing of "extraordinary circumstances," meaning that they possess unique personal knowledge, unavailable from other sources, that is essential to the resolution of the case. *In re FDIC*, 58 F.3d 1055, 1060 (5th Cir. 1995).

ARGUMENT

I. THE COURT SHOULD CANCEL THE AUGUST 19 HEARING BECAUSE CONTEMPT PROCEEDINGS ARE UNNECESSARY AND UNWARRANTED.

The Government stands in compliance with the Court's preliminary injunction, and has made reasonable and diligent efforts to secure the return of the three-year EADs that were issued or re-mailed post-injunction. Indeed, the Government has taken robust and comprehensive steps to comply with the Court's injunction and to rectify the unintended post-injunction issuance and re-mailing of three-year EADs. At a minimum, the Government is in substantial compliance with the injunction. The Court, therefore, should cancel the hearing currently scheduled for August 19, 2015.

The circumstances of this case present no basis for pursuing contempt against the Government, and no grounds for contemplating contempt citations against the named DHS

officials. Secretary Johnson and Director Rodríguez have consistently directed and supported efforts by USCIS (and other DHS components) to comply with the Court's injunction, and efforts by USCIS to retrieve the post-injunction three-year EADs. The remaining Defendants have no responsibility for, authority over, or even personal knowledge about the USCIS activities that led to the post-injunction issuance and re-mailing of three-year EADs, or the corrective actions USCIS has undertaken. Moreover, imposition of contempt sanctions is legally precluded because Plaintiffs have not moved for contempt, let alone established any harm from the post-injunction issuance and re-mailing of three-year (as opposed to two-year) EADs, especially now that all three-year grants of deferred action and work authorization have been converted to two years and DHS's systems have been updated to reflect those conversions. For all of these reasons, the proper course is to cancel the August 19 hearing; initiation of contempt proceedings is unnecessary and unwarranted here.

A. Legal Standards Governing Contempt Proceedings.

"A contempt proceeding is either civil or criminal by virtue of its 'character and purpose.'" *Cobell v. Norton*, 334 F.3d 1128, 1145 (D.C. Cir. 2003) (quoting *United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 827 (1994)). The Court's July 7 Order states that "[i]f the Government remedies this situation and comes into compliance with this Court's injunction by July 31, 2015 . . . it will cancel the August 19, 2015 hearing," but "[o]therwise . . . intends to utilize all available powers to compel compliance." July 7 Order at 2. Thus, the Order contemplates contempt to coerce compliance with a prior court order, the hallmark of civil contempt. *See Bagwell*, 512 U.S. at 827; *Lamar Fin. Corp. v. Adams*, 918 F.2d 564, 566 (5th Cir. 1990) ("If the purpose of the sanction is to coerce the contemnor into compliance with a

court order, or to compensate another party for the contemnor's violation, the order is considered purely civil.").[12]

Civil contempt occurs when a party "violates a definite and specific order of the court requiring him to perform or refrain from performing a particular act or acts with knowledge of the court's order." *Hornbeck Offshore Servs., LLC v. Salazar*, 713 F.3d 787, 792 (5th Cir. 2013) (citation and internal quotation marks omitted).[13] Civil contempt cannot be imposed when a party has substantially complied with a court's injunction. *See U.S. Steel Corp. v. United Mine Workers of Am.*, 598 F.2d 363, 368 (5th Cir. 1979) ("Traditional defenses of substantial compliance or inability to comply are, of course, available."); *Vertex Distrib., Inc. v. Falcon Foam Plastics, Inc.*, 689 F.2d 885, 891-92 (9th Cir. 1982). That is so because "[c]ontempt represents more than a delay in performance or lack of perfection; it is, instead, the failure to accomplish what was ordered in meaningful respects." *Ruiz v. McCotter*, 661 F. Supp. 112, 117 (S.D. Tex. 1986); *see Consol. Coal Co. v. United Mineworkers of Am.*, 683 F.2d 827, 832 (4th Cir. 1982). Similarly, contempt is inappropriate if a party has "diligently attempted to comply in a reasonable manner." *Marcel Fashions Grp., Inc. v. Lucky Brand Dungarees, Inc.*, 779 F.3d 102, 111 (2d Cir. 2015) (citation and internal quotation marks omitted); *United States v. Berg*, 20

---

[12] The purpose of criminal contempt "is to punish the contemnor and vindicate the authority of the court." *Lamar Fin. Corp.*, 918 F.2d at 566. Institution of criminal contempt proceedings would require various procedural protections that have not been provided here, including proper notice of potential criminal contempt. *See, e.g.*, Fed. R. Crim. P. 42; *Bagwell*, 512 U.S. at 826-27.

[13] Civil contempt "must be established by clear and convincing evidence." *Id.* This standard "is higher than the 'preponderance of the evidence' standard, common in civil cases, but not as high as 'beyond a reasonable doubt.'" *Travelhost, Inc. v. Blandford*, 68 F.3d 958, 961 (5th Cir. 1995) (citation omitted); *see also Hornbeck Offshore Servs.*, 713 F.3d at 792. The burden of proof rests with the petitioner seeking to impose the contempt sanction. *Travelhost*, 68 F.3d at 961.

F.3d 304, 311 (7th Cir. 1994); *In re Dual-Deck Video Cassette Recorder Antitrust Litig.*, 10 F.3d 693, 695 (9th Cir. 1993).

B. Contempt Proceedings Are Unnecessary and Unwarranted Because the Government Is In Full Compliance, Or at a Minimum Substantial Compliance, with the Court's Injunction.

In light of the Government's reasonable and diligent efforts to comply with the Court's injunction when it was first issued, and the extraordinary lengths to which the Government has gone to correct the terms of deferred action and work authorization of the individuals who received the unintended issuances and re-mailing of post-injunction three-year EADs, no contempt proceedings are necessary or justifiable here. The Government's efforts have achieved compliance, or at the very least substantial compliance, with the Court's injunction, thus meeting the standard the Court itself set out for canceling the August 19 hearing, *see* July 7 Order at 2, and, more fundamentally, eliminating any justification for exercising the Court's coercive powers, *see U.S. Steel Corp.*, 598 F.2d at 368.

As noted above, civil contempt proceedings are subject to the "[t]raditional defense[ ] of substantial compliance[.]" *U.S. Steel Corp.*, 598 F.2d at 368; *see also Lelsz v. Kavanagh*, 673 F. Supp. 828, 839 (N.D. Tex. 1987). Here, there is no dispute that when the Court issued its order enjoining implementation of any and all aspects of the Secretary's 2014 Deferred Action Guidance, the Government immediately took steps to comply. Within hours after receiving the preliminary injunction order, USCIS initiated a series of steps to ensure that it suspended the imminent processing of applications under the new DACA eligibility guidelines, and ceased any further preparations for DAPA. May 15 Rodríguez Decl. ¶ 7. USCIS also took immediate steps to prevent further issuances of three-year (rather than two-year) notices of deferred action and employment authorization, and three-year EADs, even in cases that had already been adjudicated (under the 2012 DACA eligibility guidelines) prior to the injunction. *Id.*¶ 8; *see also* May 15

Neufeld Decl. ¶¶ 14-20. Other agencies within DHS also took immediate steps to ensure that they complied with the Court's injunction, to the extent that they had been tasked by the Secretary's 2014 Deferred Action Guidance with responsibility for any aspect of the modifications to DACA, or for DAPA. Kerlikowske Decl. ¶ 11; Saldaña Decl. ¶ 13; Vitiello Decl. ¶ 9. Secretary Johnson not only approved of these efforts but reinforced the imperative of complying with the Court's order in his statement issued on February 17, 2015, and in a February 20, 2015 memorandum to senior DHS officials, in which he directed that all DHS components continue to suspend implementation of the changes made to DACA in the 2014 Deferred Action Guidance, and of DAPA, and to comply with the terms of the Court's injunction. July 31 Rodríguez Decl. ¶ 10.

As the Government has further explained, the actions resulting in the post-injunction issuance of the approximately 2100 three-year EADs were inadvertent. Most of these EADs were issued beginning on February 20, 2015, because (unknown to USCIS operational personnel) they had not been removed from the automated production queue, but only "paused," and thus they moved forward to production and mailing once post-injunction production of two-year EADs began, and the automated production queue resumed. *Id.* ¶ 11; May 15 Neufeld Decl. ¶¶ 21-24. An additional small number were issued due to manual errors. Rodríguez Decl. ¶ 9; May 15 Neufeld Decl. ¶ 36. Finally, the re-mailing of approximately 500 three-year EADs following the injunction was, at most, an oversight, not a deliberate decision by the agency. July 31 Neufeld Decl. ¶¶ 15-16. The backdrop of overall compliance against which these unintended issuances and re-mailings of three-year EADs occurred makes the "potent weapon" of contempt inappropriate. *Int'l Longshoremen's Ass'n v. Phila. Marine Trade Ass'n*, 389 U.S. 64, 76 (1967); *see Gen. Signal Corp. v. Donallco, Inc.*, 787 F.2d 1376, 1379 (9th Cir. 1986) ("If a

violating party has taken 'all reasonable steps' to comply with the court order, technical or inadvertent violations of the order will not support a finding of civil contempt.").

Moreover, the Government has not only substantially complied with the Court's injunction on the whole—halting implementation of the changes to the DACA eligibility guidelines, implementation of DAPA, and further three-year approvals under the 2012 DACA guidelines—it has also ensured compliance, or at least ensured substantial compliance, in the cases involving post-injunction three-year EADs. Regarding the 2128 three-year EADs issued after the injunction, USCIS has converted the recipients' terms of deferred action and employment authorization in the agency's official records from three years to two; issued them new two-year approval notices and replacement two-year EADs; and updated the SAVE and E-Verify systems to reflect the changes to the recipients' records, so that state agencies and employers can accurately verify their two-year terms of deferred action and employment authorization. In addition, as a result of the extensive efforts discussed above, by July 2 USCIS had already recovered 1135 three-year EADs, and by July 30 succeeded in either retrieving or otherwise accounting for 2117 of the 2128 three-year EADs issued post-injunction. July 31 Rodríguez Decl. ¶¶ 21, 33. On July 31, USCIS terminated altogether deferred action and employment authorization of the remaining 11 individuals who failed to return, or otherwise account for, their three-year EADs. *Id.* ¶ 34.

Similarly, in the 484 previously identified re-mailing cases, USCIS has converted the recipients' terms of deferred action and employment authorization from three to two years, issued them two-year notices and replacement two-year EADs, and updated the SAVE and E-Verify systems. *Id.* ¶ 5. USCIS also made similar efforts, on a compressed timeframe, to retrieve the 484 previously identified re-mailed EADs, and by July 30 had received or otherwise accounted for 473 of them. *Id.* ¶ 7. On July 31, USCIS terminated altogether deferred action

and employment authorization of the remaining 11 individuals who failed to return, or otherwise account for, their three-year EADs. *Id.* USCIS has also instituted prophylactic measures to prevent the inadvertent issuance or re-mailing of three-year approval notices or EADs in the future. *Id.* ¶ 9; May 15 Neufeld Decl. ¶ 36; July 31 Neufeld Decl. ¶¶ 5, 20-21.

The Government submits that these significant actions have brought it into full compliance with the Court's injunction. Although approximately 22 post-injunction three-year EADs have not been returned or otherwise accounted for—notwithstanding the exceptional lengths to which the Government has gone to retrieve them—the deferred action and employment authorization for all such individuals have been terminated. As a result, those individuals' three-year EADs no longer have any force or effect. Particularly given the absence of any demonstrated harm to Plaintiffs flowing from these unaccounted for but now terminated EADs, DHS has thus fully cured any injunction violations that may have occurred here, and there is no basis for pursuing contempt proceedings on August 19.

Under any standard, however, the completion of the steps described above constitutes substantial compliance, sufficient to remove any need or justification for potential contempt sanctions, or for the August 19 hearing.

C. The Government's Diligence in Complying with the Court's Injunction and Comprehensive Efforts To Cure Any Violations That May Have Occurred Also Preclude Contempt Sanctions.

Even where a party is not yet in substantial compliance with a court's order (contrary to the situation here), contempt sanctions, and, by extension, contempt proceedings are unwarranted if a party is taking reasonable and diligent steps towards compliance. *See Am. Airlines, Inc. v. Allied Pilots Ass'n*, 228 F.3d 574, 581, 585 (5th Cir. 2000) (upholding contempt sanctions against union officers because they "did little if anything to halt" an illegal "sick-out" that grew in scope after the court ordered them to halt it); *U.S. Steel Corp.*, 598 F.2d at 368 (upholding

contempt because "[n]o significant effort was made" to comply with the court's order). The record now before the Court demonstrates that the Government has made extensive efforts to comply with this Court's preliminary injunction and, through its extraordinary efforts, has rectified the post-injunction issuance and re-mailing of three-year EADs.

To rectify that situation, USCIS devoted significant personnel, time, and resources to converting each individual's term of deferred action and employment authorization from three to two years, issuing replacement two-year EADs, and updating the SAVE and E-Verify systems. July 31 Rodríguez Decl. ¶¶ 12-19. USCIS completed these tasks in the approximately 2600 identified cases despite various quality-control and fraud-prevention protocols embedded in USCIS's data-processing and records-management systems that in some cases prolonged the process. *Id.* ¶ 17.

USCIS has also gone to extraordinary lengths to retrieve or otherwise account for both groups of three-year EADs. In the cases of the approximately 2100 EADs issued after the injunction, the agency issued two rounds of letters warning recipients that they must return their three-year EADs, and that failure to do so (or to certify good cause for not doing so) could adversely affect their deferred action and employment authorization. As a result, USCIS had recovered at least 1135 of these three-year EADs even prior to the Court's July 7 Order, and the Secretary's July 10 directive. *Id.* ¶ 21. In the remaining cases, USCIS issued notices of intent to terminate informing recipients (i) that their deferred action and employment authorization would be terminated if they did not return their three-year EADs, or certify good cause for not doing so, and (ii) that failure to return their three-year EADs (or certify good cause for not doing so) may be considered a negative factor in considering future requests they may make for deferred action or other discretionary action. Where additional contact information was available, USCIS made personal (not automated) telephone calls to those who had not yet returned their cards, contacted

them by e-mail, and/or sent them text messages, to urge them to comply, assist them in doing so, and impress upon them the consequences if they did not. And, in accordance with Secretary Johnson's express instruction, USCIS initiated an unprecedented nationwide residential site-visit program, specifically for purposes of collecting these documents: teams of trained USCIS officers fanned out nationwide, including to remote locations, to visit the homes and attempt to retrieve the three-year EADs of those individuals who had not yet returned their cards to USCIS (or certified their inability to do so). *Id.* ¶ 29. Equally extraordinary efforts were made to retrieve the 484 identified three-year EADs issued in the re-mailing cases, on an even more urgent timeline. *Id.* ¶¶ 37-49. As a result of these efforts, USCIS has to date succeeded in retrieving or otherwise accounting for 2117 of the 2128 post-injunction three-year EADs, 473 of the 484 re-mailed three-year EADs, and has terminated the deferred action and employment authorization of the remaining 22 individuals.

These robust measures represent complete compliance or, at minimum, reasonable and diligent attempts to correct USCIS's post-injunction issuances and re-mailings of three-year EADs.[14] Thus, the Court should cancel the scheduled August 19 hearing.

---

[14] The Court's July 7 Order expressed concern about the pace of the Government's corrective actions. *See* July 7 Order at 3 ("[A]t some point, when a non-compliant party refuses to bring its conduct into compliance, one must conclude that the conduct is not accidental, but deliberate."). The factual record demonstrates that the Government was at the time proceeding expeditiously to correct matters since first discovering that in some cases where deferred action and work authorization were granted before the injunction, three-year EADs were not issued until after the injunction. By that time USCIS had already updated its records systems, including SAVE and E-Verify, for more than 2000 of the cases, and retrieved or accounted for at least 1135 of the 2128 cards at issue. July 31 Rodríguez Decl. ¶¶ 18, 21. In any event, such past conduct is not at issue here. The question in a civil contempt proceeding is whether a party is *currently* taking reasonable and diligent steps to comply the court's order. *See Boylan v. Detrio*, 187 F.2d 375, 378 (5th Cir. 1951) ("Civil contempt proceedings . . . look only to the future. They are not instituted as punishment for past offenses[.]"). And on that score the record is not debatable.

D. There is No Basis to Pursue Contempt Against Secretary Johnson or the Other Named Defendants.

Even if any basis appeared on this record for consideration of contempt sanctions, contempt citations directed at Secretary Johnson or the other individual Defendants (whether in their individual or official capacities) would be unjustified.[15] Any potential contempt sanctions must first be directed at the United States, not at any of the named Defendants.

The Supreme Court endorsed this principle in *Spallone v. United States*, 493 U.S. 265 (1990), in which the district court imposed civil contempt sanctions on individual councilmembers (in their official capacities) if they failed to vote a certain way. *Id.* at 274. The Court reversed the sanctions, holding that "the District Court, in view of the 'extraordinary' nature of the imposition of sanctions against the individual councilmembers, should have proceeded with such contempt sanctions first against the city alone in order to secure compliance with the remedial order." *Id.* at 280. This holding was based in part on the fundamental principle that "in selecting contempt sanctions, a court is obliged to use the least possible power adequate to the end proposed," *id*. at 276 (internal quotation marks omitted), and in part in recognition that personalized sanctions create a conflict of interest for public officials—they are encouraged to act "not with a view to the interest of their constituents or of the city, but with a view solely to their own personal interests." *Id.* at 279. That same conflict would exist here if any sanction were directed at the named Defendants, and there is no reason to question that contempt sanctions against the United States would be sufficient to secure compliance with the

[15] The Government understands the Court's July 7 Order to be directed at the named Defendants exclusively in their official capacities, since that is the sole capacity in which they have been sued, *see* Am. Compl. (ECF No. 14) ¶¶ 9-13, and the Court's Order does not indicate otherwise. Thus, notice has not properly been given with respect to any potential personal-capacity sanctions. *See McGuire v. Sigma Coatings, Inc.*, 48 F.3d 902, 907 (5th Cir. 1995).

Court's injunction. Thus, the proper focus for any contempt citation here, if any, would be the United States—not any of the individual officials, even in their official capacities.

That is all the more true because none of the individual Defendants has taken (or failed to take) any action him or herself (in an official or personal capacity) that would merit a finding of contempt, nor is responsible for any conduct by others that would merit a finding of contempt. Secretary Johnson has consistently directed and endorsed efforts by USCIS (and other DHS components) to comply with the Court's preliminary injunction, and on February 20 issued an express written directive to the heads of all affected DHS components to ensure that they remained in compliance. July 31 Rodríguez Decl. ¶ 10; *see also* Kerlikowske Decl. ¶ 11; Saldaña Decl. ¶ 13. Secretary Johnson also fully endorsed the corrective actions begun by USCIS once the post-injunction issuances of three-year EADs were discovered. July 31 Rodríguez Decl. ¶ 11. And when the Court expressed concern with the degree to which USCIS had succeeded in correcting the situation involving the individuals who were issued three-year EADs after the injunction, Secretary Johnson personally directed that USCIS institute extraordinary measures, including home visits, and termination of recipients' deferred action and work authorization, in order to retrieve the outstanding three-year EADs by July 31. *Id.* ¶¶ 25, 26. Far from directing that USCIS take any action contrary to the terms of the Court's injunction, or frustrating efforts by USCIS to take corrective action regarding the post-injunction three-year EADs, the Secretary has exerted his authority to promote compliance with the injunction and ensure that USCIS made utmost efforts to complete the remedial steps it had begun. A contempt citation would be irreconcilable with the Secretary's actions in this matter.

The same is true for Director Rodríguez. Within two hours after the Court issued its injunction on the evening of February 16—which is to say, during the midnight hours of February 17—Director Rodríguez contacted senior USCIS leadership and instructed them to

bring all implementation of the expanded DACA guidelines, and preparation for implementation of DAPA, to a halt. May 15 Rodríguez Decl. ¶ 7. He also expressly directed that USCIS cease approving requests for three-year terms of deferred action and/or employment authorization under the 2012 DACA guidelines, and that the agency cease issuing three-year notices of approval and EADs, even in cases where individuals' applications had already been approved before the injunction was issued. May 15 Neufeld Decl. ¶ 15. When it was later discovered that, notwithstanding these measures, approximately 2100 three-year EADs had been inadvertently printed and mailed after the injunction, and later still that approximately 500 had been re-mailed post-injunction, Director Rodríguez implemented prophylactic measures to prevent the recurrence of similar incidents, and he instituted corrective measures not only to convert the terms of deferred action and employment authorization in these cases from three to two years, but also to retrieve the erroneously issued and re-mailed three-year EADs. July 31 Neufeld Decl. ¶¶ 5, 20-21; July 31 Rodríguez Decl. ¶ 4-51. Director Rodríguez was also responsible for the successful implementation of the even more extraordinary measures directed by Secretary Johnson to recover the post-injunction three-year EADs, which, together with the measures the Director had already instituted, have resulted to date in the retrieval of (or accounting for) 2117 of the 2128 EADs issued after the injunction, and 473 of the 484 that were re-mailed. July 31 Rodríguez Decl. ¶ 7. The Director's consistent and effective efforts to ensure compliance with the Court's injunction, and to correct the erroneous post-injunction issuance and re-mailing of three-year EADs, should dispel any question of contempt in his case, as well.

Likewise, there is no justification for issuing contempt sanctions against Defendants Kerlikowske, Saldaña, and Vitiello. Defendant Kerlikowske is the Commissioner of U.S. Customs and Border Protection (CBP). Kerlikowske Decl. ¶ 1. Defendant Saldaña is the Assistance Secretary and Director of U.S. Immigration and Customs Enforcement (ICE), Saldaña

Decl. ¶ 1, and Defendant Vitiello is the Deputy Chief of the U.S. Border Patrol, Vitiello Decl. ¶ 1. None of these agencies was responsible under the Secretary's 2014 Deferred Action Guidance for the receipt or consideration of requests for deferred action and employment authorization under DACA or DAPA. None was responsible for issuing notices of approval or EADs under DACA or DAPA. Those functions are performed by USCIS. Therefore, neither Commissioner Kerlikowske, nor Director Saldaña, nor Chief Vitiello has any responsibility for, authority over, or even personal knowledge about the activities that resulted in the post-injunction issuance and re-mailing, by USCIS, of three-year EADs. Kerlikowske Decl. ¶ 14; Saldaña Decl. ¶ 17; Vitiello Decl. ¶ 12. Similarly, neither CBP, nor ICE, nor the Border Patrol has had any responsibility for the actions taken by USCIS to correct the post-injunction issuances and re-mailings of three-year EADs. Therefore, Defendants Kerlikowske, Saldaña, and Vitiello likewise have no responsibility for, authority over, or even personal knowledge regarding the corrective actions taken by USCIS. Kerlikowske Decl. ¶ 15; Saldaña Decl. ¶ 17; Vitiello Decl. ¶ 13. Thus, as these officials bear no responsibility for the actions that led to the post-injunction issuances and re-mailings of three-year EADs, and they have no authority to direct or oversee corrective actions taken by USCIS, issuing contempt citations against them could do nothing to advance the objective of compelling compliance with the Court's injunction. That being the case, holding these officials in contempt would also be legally unsupportable.[16]

[16] To be sure, ICE and CBP both have important equities in DACA and DAPA unrelated to the matters raised in the Court's July 7 Order. As explained in the Declarations of Director Saldaña and Commissioner Kerlikowske submitted in support of Defendants' motion to stay the injunction, when ICE and CBP (including Border Patrol) agents encounter individuals who have received deferred action, they rely on the determinations made by USCIS that the encountered individuals are not a priority for immigration enforcement action, thereby allowing agents to concentrate their attention and limited resources on others who may pose a threat to national security, border security, and public safety. ECF Nos. 150-1, 150-2. But ICE's and CBP's

E. Imposition of Contempt is Legally Precluded.

The August 19 hearing should also be cancelled because Plaintiffs have not requested contempt, nor have they demonstrated any harm from the post-injunction issuance and re-mailing of three-year EADs.

Given the remedial purpose of civil contempt, such proceedings are initiated by the opposing party. *See La. Educ. Ass'n v. Richland Parish Sch. Bd.*, 421 F. Supp. 973, 975 (W.D. La. 1976) *aff'd*, 585 F.2d 518 (5th Cir. 1978); Wright & Miller, Fed. Prac. & Proc. § 2960 (3d ed. 1998). Indeed, courts lack the authority to initiate such proceedings *sua sponte*. *See Wash. Metro. Area Transit Auth. v. Amalgamated Transit Union*, 531 F.2d 617, 622 (D.C. Cir. 1976) ("[T]he district court had no jurisdiction to enter a final contempt judgment . . . in the absence of a motion to that effect by the plaintiff. . . . In the civil contempt setting, the court has no independent interest in vindicating its authority should its orders be violated."); *Spangler v. Pasadena City Bd. of Educ.*, 537 F.2d 1031, 1032 (9th Cir. 1976); *MacNeil v. United States*, 236 F.2d 149, 153-54 (1st Cir. 1956); *Williams v. Iberville Parish Sch. Bd.*, 273 F. Supp. 542, 545 (E.D. La. 1967). Similarly, in light of civil contempt's remedial purpose, sanctions are available only if the complaining party establishes some harm from the alleged contempt. *See Boylan v. Detrio*, 187 F.2d 375, 379 (5th Cir. 1951); *Ashcraft v. Conoco, Inc.*, 218 F.3d 288, 301 (4th Cir. 2000); *Iberville Parish Sch. Bd.*, 273 F. Supp. at 545.

Here, Plaintiffs have not filed a motion seeking imposition of civil contempt sanctions. Indeed, Plaintiffs do not take a position on the Government's present motion to cancel the August 19 contempt hearing. Plaintiffs also have not demonstrated any harm resulting from the

---

equities in DACA and DAPA are distinct from, and do not bear on, issues raised in the July 7 Order.

Government's alleged injunction violations. If anything, the record evidence suggests that Texas will be *better off* due to individuals obtaining three-year driver's licenses rather than two-year licenses. *See* Decl. of Joe Peters (ECF No. 64-43) ¶ 8 (explaining that driver's licenses with longer terms cost Texas less money than licenses with shorter terms). Given this absence of demonstrated harm, as well as the fact that Plaintiffs themselves have not sought civil contempt remedies, initiating possible contempt proceedings on August 19 would be inappropriate.[17]

* * *

For the foregoing reasons, the August 19 hearing should be cancelled. As the record confirms, there is no factual or legal basis for contempt proceedings here.[18]

III. IN THE ALTERNATIVE, THE COURT SHOULD EXCUSE THE ATTENDANCE OF SECRETARY JOHNSON AND MOST OF THE REMAINING NAMED DEFENDANTS.

High-ranking government officials cannot be compelled to appear and testify in judicial proceedings absent extraordinary circumstances, which exist only when those officials can provide essential testimony that cannot be obtained from other witnesses. This heightened

---

[17] The Court's July 7 Order appears to conclude that the post-injunction issuances violated the Court's injunction, *see* July 7 Order at 1-2, and also construes the Government's May 7 Advisory as "conced[ing] that [the Government] has directly violated this Court's Order[.]" *Id.* at 2. The Court made similar statements at the June 23 hearing. As explained at that hearing, however, the Government has not conceded that it has violated the Court's injunction. *See* June 23 Tr. at 30. But even with the Court's apparent conclusion, more is required to support imposition of contempt sanctions: "the court's order must set forth in specific detail an unequivocal command" that the action in question expressly violated. *Matter of Baum*, 606 F.2d 592, 593 (5th Cir. 1979) (citation and internal quotation marks omitted); *see also United States v. Saccoccia*, 433 F.3d 19, 28 (1st Cir. 2005). Here, the ministerial processes of issuing and re-mailing EADs that were approved prior to the injunction do not rise to that standard.

[18] To the extent the Court intends to pursue contempt proceedings, DHS is entitled to additional procedural protections—at a minimum, notice of the type of sanctions being considered by the Court. *See Cole v. U.S. Dist. Court for Dist. of Idaho*, 366 F.3d 813, 821 (9th Cir. 2004); *see also Bagwell*, 512 U.S. at 833-34.

standard applies even when the testimony of a high-ranking official is sought for purposes of a contempt hearing. *In re United States (Jackson)*, 624 F.3d 1368, 1372 (11th Cir. 2010).

Here, all of the named defendants are high-ranking officials—including a member of the President's Cabinet—and most of them lack relevant, much less essential, knowledge regarding USCIS's compliance with the Court's injunction. Even to the extent they possess relevant information, that information is obtainable from other witnesses, identified below, that the Government intends to bring to the August 19 hearing, should it take place. Thus, even if the Court determines that it is necessary to proceed with the August 19 hearing, it should excuse the personal attendance of the Secretary and all other named Defendants except USCIS Director Rodríguez, and allow the Government to present the below-named witnesses (including Director Rodríguez) who are better suited by virtue of their duties and responsibilities and personal knowledge to address the matters raised by the Court's July 7 Order.

A. High-Level Executive Branch Officials Can Be Compelled to Testify Only in Extraordinary Circumstances.

"It is a settled rule in this circuit that 'exceptional circumstances must exist before the involuntary depositions of high agency officials are permitted.'" *In re FDIC*, 58 F.3d 1055, 1060 (5th Cir. 1995) (quoting *In re Office of Inspector General*, 933 F.2d 276, 278 (5th Cir. 1991) (per curiam)). This rule applies as well where the testimony of a high-ranking official is sought at trial or other evidentiary proceedings. *See In re United States (Jackson)*, 624 F.3d at 1372.

One of the rationales for this heightened standard is that "'[h]igh ranking government officials have greater duties and time constraints than other witnesses.'" *In re FDIC*, 58 F.3d at 1060 (quoting *In re United States*, 985 F.2d 510, 512 (11th Cir. 1993) (per curiam) *cert. denied* 510 U.S. 989 (1993)). The rule also rests in part on principles of separation of powers and the proper relationship between executive agencies and reviewing courts. *See In re United States*

(Jackson), 624 F.3d at 1372 ("[T]he compelled appearance of a high-ranking officer of the executive branch in a judicial proceeding implicates the separation of powers[.]"). Indeed, the court in that case observed that "compelling [a high-ranking official's] testimony by telephone for 30 minutes disrespected the separation of powers. By contrast, compelling the personal appearance of [a high-ranking official] in a distant judicial district for interrogation by the court for an indefinite period is a far more serious encroachment on the separation of powers." *Id.* at 1373–74 (internal citations omitted).

The duties and responsibilities of high-ranking DHS officials, especially Secretary Johnson, are vast, and the demands on their time unremitting. DHS is the third-largest cabinet-level agency in the Federal Government. Secretary Johnson and his leadership oversee the activities of more than 240,000 federal employees. They hold ultimate responsibility for the successful execution of DHS's mission, which includes preventing terrorism, enhancing national security, managing the international borders of the United States, administering the immigration laws, protecting the lives of the President and his family, and ensuring disaster resilience. *See generally* U.S. Dep't of Homeland Sec., About DHS, http://www.dhs.gov/about-dhs.

If high-ranking governmental officials, such as the leadership of DHS, were compelled to testify in even a fraction of the civil cases in which their decisions may be relevant, they would have time for little else. *See Bogan v. City of Boston*, 489 F.3d 417, 423 (1st Cir. 2007) ("Without appropriate limitations, [high-ranking] officials will spend an inordinate amount of time tending to pending litigation."). The Government takes extremely seriously the concerns raised in the Court's July 7 Order—as shown by the extraordinary efforts that DHS has undertaken to rectify the situation involving the post-injunction issuances and re-mailings of three-year EADs. However, DHS and its leadership are named defendants in hundreds of federal cases pending in the 94 district courts, 13 courts of appeals, and the Supreme Court. Many of

them (as here) name the Secretary as a defendant in his official capacity; and many of them (as here) involve urgent issues of national significance and priority. The Secretary and his leadership could not faithfully execute their roles as high-ranking executive officials, if they could be compelled to personally appear in court or in depositions.

Because of their numerous and important public duties and the resulting constraints on their time, and the multitude of cases in which the leadership of agencies could otherwise be ordered to testify, high-ranking government officials cannot be compelled to appear unless extraordinary circumstances exist. *In re FDIC*, 58 F.3d at 1060. These "extraordinary circumstances" are present only when high-ranking officials can give testimony that is essential to a case and the information cannot be obtained from another source. *See id.* at 1062 ("We think it will be the rarest of cases—and the present action is not one [of them]—in which exceptional circumstances can be shown where the testimony is available from an alternate witness.") (citing *In re United States*, 985 F.2d at 512). *See also In re United States (Reno and Holder)*, 197 F.3d 310, 314 (8th Cir. 1999) (explaining that a movant seeking to depose high-level government officials must establish that the officials "possess information essential to [the] case which is not obtainable from another source. This means both that the discovery sought is relevant and necessary and that it cannot otherwise be obtained.") (internal citations omitted); *Alexander v. FBI*, 186 F.R.D. 1, 4 (D.D.C. 1998) ("There is substantial case law standing for the proposition that high ranking government officials are generally not subject to depositions unless they have *some* personal knowledge about the matter and the party seeking the deposition makes a showing that the information cannot be obtained elsewhere.").

Indeed, the Fifth Circuit and other appellate courts have repeatedly issued writs of mandamus to prevent the compulsion of testimony by high-level governmental officials. *See In re United States (Jackson)*, 624 F.3d at 1372-73; *In re Cheney*, 544 F.3d 311, 314 (D.C. Cir.

2008); *In re Sec. Exch. Comm'n*, 374 F.3d 184, 187-88 (2d Cir. 2004); *In re United States (Holder and Reno)*, 197 F.3d at 316; *In re FDIC*, 58 F.3d at 1060; *In re United States (Kessler)*, 985 F.2d 510, 513 (11th Cir. 1993); *see also In re United States (Bernanke)*, 542 F. App'x 944, 947 (Fed Cir. 2013). Given the "extraordinary" nature of mandamus as a remedy, *see In re Cheney*, 544 F.3d at 312, these decisions underscore the disfavor in which the compelled testimony of senior officials is held.

In a comparable case, the Eleventh Circuit granted a petition for a writ of mandamus where the district court ordered the EPA Administrator to appear at a hearing to determine whether agency officials should be held in contempt for failing to comply with court orders in a dispute over protection of the Everglades. *In re United States (Jackson)*, 624 F.3d at 1371. The Eleventh Circuit concluded that the district court should have accepted the EPA's proffer of an Assistant Administrator as a substitute witness. *Id.* at 1373. Although the district court asserted that "the Administrator had adequate time to prepare for the hearing, the protection of the Everglades is an issue of national importance, and the Agency has not complied with the earlier orders of the court," the Eleventh Circuit held that "none of those assertions explains why the Assistant Administrator is an inadequate substitute." *Id.* The same reasoning applies here, especially where USCIS Director Rodríguez and other officials with direct knowledge of the relevant facts will be available to testify if necessary.

B. No Extraordinary Circumstances Exist to Compel the Attendance of the Secretary and Three of the Remaining, High-Ranking Officials, Who Lack Any Relevant Evidence, Much Less Essential Evidence.

The burden of establishing extraordinary circumstances typically rests with the party seeking to compel the officials' testimony. *In re United States (Holder and Reno)*, 197 F.3d at 314. Here, there is no record, or even an articulation, of extraordinary circumstances that could warrant compelling Secretary Johnson, Commissioner Kerlikowske, Director Saldaña, or

Deputy Chief Vitiello to testify, particularly when Director Rodríguez and others will be available if necessary. To the contrary, the attached declarations demonstrate that these high-ranking officials lack unique personal knowledge (in some cases, any knowledge) that is essential to resolving the matters raised in the Court's July 7 Order. Kerlikowske Decl. ¶¶ 14, 15; Saldaña Decl. ¶¶ 16,17; Vitiello Decl. ¶¶ 12, 13.

Secretary Johnson, a member of the President's cabinet and head of the third-largest federal agency, is a high-level official whose appearance cannot be required absent a showing of exceptional circumstances. *See United States v. Morgan*, 313 U.S. 409, 422 (1941) (explaining in hindsight that the Secretary of Agriculture "should never have been subjected to [deposition]"); *In re United States (Jackson)*, 624 F.3d at 1372 (granting mandamus to prevent compelled testimony of the EPA Administrator—a member of the President's cabinet); *In re United States (Reno and Holder)*, 197 F.3d at 314 (granting mandamus to prevent compelled testimony by the Attorney General); *Peoples v. Dep't of Agric.*, 427 F.2d 561, 567 (D.C. Cir. 1970) ("[S]ubjecting a cabinet officer to oral deposition is not normally countenanced."). *See also* Order, *Kelley v. FBI*, Civ. No. 13-0825 (ABJ) (D.D.C. July 16, 2015) (ECF No. 63) (granting a motion to quash the deposition of Secretary Johnson).

Director Saldaña, as the Assistant Secretary and head of ICE, also qualifies as a high-level government official who cannot be compelled to appear and testify absent extraordinary circumstances. As the Assistant Secretary and Director of ICE, she leads the largest investigative agency within DHS, overseeing nearly 20,000 employees in 400 offices across the country. Saldaña Decl. ¶ 6. ICE's primary mission is to promote homeland security and public safety through criminal and civil enforcement of federal laws governing border control, customs, trade, and immigration. *Id.* Director Saldaña is also a Level IV Presidential Appointee. *Id.* ¶ 5; 5 U.S.C. § 5315. The Fifth Circuit has held that the heightened standard requiring a

demonstration of extraordinary circumstances before a high-level official may be compelled to testify applies to Level III and Level IV Presidential Appointees. *In re FDIC*, 58 F.3d at 1059; *see* 5 U.S.C. §§ 5314 & 5315.

Likewise, Commissioner Kerlikowske, as Commissioner of CBP, is a high-level government official entitled to the same protection. As CBP Commissioner he oversees approximately 60,000 employees. Kerlikowske Decl. ¶ 8. He is responsible, among other things, for the protection of our Nation's borders and safeguarding national security by keeping criminal organizations, terrorists, and their weapons out of the United States, while at the same time facilitating lawful international travel and trade. *Id.* ¶ 7. He is a Level III Presidential Appointee and as such qualifies under Fifth Circuit precedent as a high-ranking official. *See In re FDIC*, 58 F.3d at 1059; 5 U.S.C. § 5314.

Ronald D. Vitiello is the Deputy Chief of U.S. Border Patrol, CBP. Vitiello Decl. ¶ 1. In this capacity he is responsible for planning and directing the Border Patrol's nationwide enforcement and administrative operations, which include patrolling nearly 6,000 miles of U.S. international land borders and thousands of miles of coastal waters surrounding the Florida Peninsula and Puerto Rico; detecting and apprehending individuals seeking to enter the country unlawfully; and preventing illegal trafficking in contraband. *Id.* ¶¶ 5, 6. His responsibilities extend to oversight of nearly 21,000 Border Patrol agents. *Id.* ¶ 4. Although Deputy Chief Vitiello is not a Presidential Appointee, and in this respect stands on a different footing than the other named defendants, the heightened standard for requiring his appearance and testimony still applies. *Cf. Church of Scientology v. IRS*, 138 F.R.D. 9, 12 (D. Mass. 1990) (applying heightened standard to IRS's Director of Exempt Organizations Technical Division); *see also, e.g.*, *Simplex Time Recorder Co. v. Sec'y of Labor*, 766 F.2d 575, 586 (D.C. Cir. 1985) (same, Department of Labor's Administration's Area Director); *Bogan*, 489 F.3d at 423-24 (mayor of

Boston); *New York v. Nat'l R.R. Passenger Corp.*, No. 04-962, 2007 WL 4377721, at *2 (N.D.N.Y. Dec. 12, 2007) (former State Comptroller); *Robinson v. City of Phila.*, No. 04-3948, 2006 WL 1147250, at *2 (E.D. Pa. Apr. 26, 2006) (mayor of Philadelphia); *Gibson v. Carmody*, No. 89-civ-5358, 1991 WL 161087, at *1 (S.D.N.Y. Aug. 14, 1991) (New York County District Attorney); *Warzon v. Drew*, 155 F.R.D. 183, 185 (E.D. Wis. 1994) (Wisconsin Secretary of Administration); *Cmty. Fed. Sav. & Loan Ass'n v. Fed. Home Loan Bank Bd.*, 96 F.R.D. 619, 620 (D.D.C. 1983) (two members—out of eleven—of the Federal Home Loan Bank Board). In any event, even if Deputy Chief Vitiello did not fully qualify as "high-ranking," he still should not be compelled to appear and testify in light of his numerous important duties and responsibilities and his lack of personal knowledge of any information pertinent to the current compliance issues. Vitiello Decl. ¶¶ 4-6, 12-13.

Because Secretary Johnson, Director Saldaña, Commissioner Kerlikowske, and Deputy Chief Vitiello are all high-ranking officials, extraordinary circumstances—including that they have essential testimony that cannot be obtained from another source—must be shown before they can be compelled to attend. That standard cannot be met here, particularly when Director Rodríguez and other knowledgeable officials are available. For his part, Secretary Johnson had no direct involvement with the events that led to the post-injunction issuance and re-mailing of three-year EADs. While the Secretary was apprised by Director Rodríguez of these events, and of USCIS's initial plans to rectify the situation, and while the Secretary later directed that additional, extraordinary steps be taken, he placed responsibility for implementing the necessary corrective measures with Director Rodríguez and the officials and employees working at USCIS under Director Rodríguez's direction. July 31 Rodríguez Decl. ¶¶ 11, 25-26. Commissioner Kerlikowske, Director Saldaña, and Deputy Chief Vitiello had even less involvement—indeed none. As discussed above, the DHS components they oversee do not accept, process, review, or

grant requests for deferred action under DACA, employment authorization, or renewals thereof. Neither CBP, nor ICE, nor the Border Patrol authorizes, issues, or mails approval notices or EADs, or administers the SAVE or E-Verify systems. Accordingly, their agencies had no responsibility for or involvement with any of the activities that resulted in the issuance of the post-injunction three-year EADs, or efforts by USCIS to address the situation. By the same token, these senior officials lack any personal knowledge regarding the post-injunction issuances or re-mailings of three-year EADs, or the subsequent corrective actions taken by USCIS. Kerlikowske Decl. ¶¶ 14, 15; Saldaña Decl. ¶¶ 16, 17; Vitiello Decl. ¶¶ 12, 13. Secretary Johnson, Commissioner Kerlikowske, Director Saldaña, and Deputy Chief Vitiello should therefore be excused from testifying at the August 19 hearing, because none of them has unique personal knowledge, unavailable from other sources, of matters that are essential to the issues raised in the Court's July 7 Order.[19]

C. The Relevant Evidence is Available from Alternative Witnesses.

In the event that the August 19 hearing is not cancelled, the Government intends to bring the below-named witnesses who will be prepared to testify regarding the topics listed below. The availability of these witnesses is yet another reason why Secretary Johnson, and the remaining high-ranking defendants (other than Director Rodríguez), should not be compelled to appear or testify on August 19. *See In re FDIC*, 58 F.3d at 1062 ("We think it will be the rarest

[19] Even if the Court's July 7 Order could be construed as requiring only the attendance, but not testimony, of Secretary Johnson and the three other senior officials, the same considerations would apply: preparation for, and attendance at, a judicial proceeding still involves a significant imposition on these officials' time and duties. *See United States v. U.S. Dist. Court for Northern Mariana Islands*, 694 F.3d 1051, 1053 (9th Cir. 2012) (granting a writ of mandamus vacating the district court's orders requiring the Assistant Attorney General for the Tax Division to appear at a settlement conference).

of cases . . . in which exceptional circumstances can be shown where the testimony is available from an alternate witness.").

The witnesses who would attend the August 19 hearing on behalf of the Government, were it held, and the subjects on which they would be prepared to testify, are as follows:

- León Rodríguez, Director of USCIS: Corrective action taken, and the results of the corrective action, regarding the post-injunction issuances of three-year EADs and the re-mailed three-year EADs.

- Donald Neufeld, USCIS, Associate Director for Service Center Operations: Circumstances that led to the post-injunction issuances of three-year EADs and the re-mailing of three-year EADs; details relating to corrective action taken by Service Centers for those individuals.

- Daniel Renaud, USCIS, Associate Director for Field Operations: Details relating to corrective action taken by USCIS related to field operations, especially residential site visits.

- Tracy Renaud, USCIS, Associate Director for Management: Details relating to corrective action taken in USCIS systems including SAVE and E-Verify.

The Government believes that these are the relevant topics the Court may wish to address at the August 19 hearing, and that these are the witnesses best situated, by virtue of their positions and involvement in the events in question, to address those topics. No extraordinary circumstances exist, therefore, to justify compelling other, high-ranking and less knowledgeable officials, including Secretary Johnson, to attend or give testimony on August 19.[20]

---

[20] The Court's July 7 Order directs that "the Government shall bring all relevant witnesses on [the topic of why Defendants should not be held in contempt] as the Court will not continue this matter to a later date." July 7 Order at 2. The Government intends to bring the above-described witnesses to any contempt hearing on August 19, to address the above-described topics. To the extent the Court believes that additional witnesses are necessary, or that the Government should be prepared to address additional topics, the Government respectfully requests such notice as part of the Court's resolution of this motion no later than August 10, 2015. Otherwise, the Court's instruction to "bring all relevant witnesses" would be inconsistent with the due process requirement that a party be permitted to prepare and present a meaningful defense. *See* Fed. R. Crim. P. 42(a)(1)(C) (requiring statement of "the essential facts constituting" the alleged contempt); *Remington Rand Corp.-Delaware v. Bus. Sys., Inc.*, 830 F.2d

Given the importance of this issue, the Government respectfully requests a decision on this motion—in particular, whether Secretary Johnson and the others will be excused from appearing, either because the August 19 hearing will be canceled, or the Court will not require their testimony—by no later than August 10, 2015. It is necessary that the Government make this exceptional request of the Court for a decision no later than August 10 to preserve as a practical matter the option of seeking appellate relief before any hearing occurring on August 19. Plaintiffs do not object to this schedule.

In the event the Court denies the Government's request to excuse the Secretary and Defendants Kerlikowske, Saldaña, and Vitiello from appearing on August 19, then the Government alternatively requests a stay of the hearing to provide an opportunity to seek appellate review. If the hearing is not stayed, and these high-ranking Government officials are compelled to appear and testify, then the important interests the Government seeks to protect could not be vindicated on appeal.

IV. THE COURT SHOULD CONCLUDE ITS INQUIRY INTO THE ISSUES RELATED TO ITS APRIL 7 ORDER.

The Court's July 7 Order states, with respect to the issues addressed in the Court's April 7 Order, that "[t]he Court will resolve any and all questions regarding future discovery and/or sanctions once it reviews the parties' [July 31] report." July 7 Order at 1. As discussed in prior filings, the Government fully appreciates the significance of the Court's concerns expressed

---

1256, 1258 (3d Cir. 1987) (applying Rule 42's notice requirements in a proceeding for civil contempt); *see also Waste Mgmt. of Washington, Inc. v. Kattler*, 776 F.3d 336, 339-40 (5th Cir. 2015). It would also be inconsistent with due process for the Court to pre-emptively deny a continuance of the August 19 hearing if one is necessitated by an unanticipated question arising at the hearing. C*f. Ungar v. Sarafite*, 376 U.S. 575, 589 (1964) ("There are no mechanical tests for deciding when a denial of a continuance is so arbitrary as to violate due process. The answer must be found in the circumstances present in every case, particularly in the reasons presented to the trial judge at the time the request is denied.").

in its April 7 Order, and the Government genuinely regrets the miscommunication that led to that Order. But there has been no misconduct here, as documented in the Government's submission on April 30. *See* ECF No. 242.

At the June 23 hearing, the Court expressed concern that the Government had not sufficiently apologized for the miscommunication leading to the Court's April 7 Order. *See* June 23 Tr. at 32-33. The Government intended to convey its sincere apologies in prior filings and proceedings, however, and reaffirms that message today: undersigned counsel, on behalf of the entire Government as well as the attorneys who have appeared in this matter, sincerely and genuinely apologize for the unintentional miscommunication that occurred in this case. The Government fully understands that this case is one of national importance, and that the Court and everyone involved worked diligently throughout December 2014, January 2015, and February 2015 to reach a preliminary resolution before the February 18 date that the Government had understood and represented to the Court as the first significant date for purposes of Plaintiffs' claims of irreparable harm. The Government sincerely regrets that it did not recognize and identify for the Court the potential relevance of the ongoing three-year deferrals, and apologizes for not doing so.

The Government respectfully submits that it has consistently apologized for the miscommunication, both on behalf of the Government as a whole, as well as the attorneys involved in this matter:

- "On behalf of the government, I would like to first of all apologize for any confusion that our representations created in the case," Mar. 19th Tr. at 13-14;
- "we apologize for the confusion," *id.* at 18;
- offering "full respect and apologies for the confusion that we have caused," *id.* at 21-22;
- "Defendants also reiterate, as they explained at that hearing, that they apologize for any confusion that may have resulted," ECF No. 207 at 1;

- "DOJ and Defendants . . . regret and apologize for the misunderstanding that inadvertently resulted from their statements," ECF No. 242 at 1;
- "The Government deeply regrets not only the confusion that these statements created, but that it did not recognize the prospect of confusion earlier." *Id.* at 3;
- "The Government again apologizes for causing confusion." *Id.* at 15.
- "We now understand in hindsight what the disconnect was. We are truly sorry for that." June 23 Tr. at 12; and
- "I do want to make very clear that we apologize on behalf of the entire United States Government for how this has played out." *Id.* at 38.

Throughout this proceeding, the Government has fully intended to convey its sincere apologies to the Court.

At the June 23 hearing, the Court also expressed concern about the lack of evidence to assist in resolving the issues related to its April 7 Order. *See* June 23 Tr. at 9-10. As explained at that hearing, however, no additional evidence is necessary. First, for the post-injunction time period that the Court is particularly concerned about, there is in fact record evidence—of contemporaneous court filings, as well as Director Rodríguez's May 15 declaration, *see* ECF No. 256-1—that explains the numerous fast-moving events occurring at that time to which the attention of the Defendants and their counsel were necessarily drawn. *See* June 23 Tr. at 10-12.

Second, the metadata chart and the privilege log—both of which were unprivileged, and produced to both Plaintiffs and the Court—confirm that there was no improper delay with respect to the filing of the March 3 Advisory. The metadata chart shows that the first draft of the March 3 Advisory was created on Monday, March 2, 2015 at 7:36 p.m., approximately 24 hours before the March 3 Advisory was filed. *See* Metadata Chart, entries for document Bates numbered TX_A00000017–0021. The privilege log similarly reflects that all of the drafts of the March 3 Advisory were created or transmitted on Monday, March 2 or Tuesday, March 3—thus further confirming that the Advisory was created, drafted, reviewed, and then filed in a very short period of time (just over 24 hours). *See generally* Privilege Log (containing hundreds of

entries, none of which involved a document sent or created earlier than 7:36 p.m. on March 2, 2015). Indeed, the privilege log and metadata chart confirm that attorneys were working on the draft Advisory literally overnight. *See, e.g.*, Privilege Log and Metadata Chart entries for documents TX_A00000036–0038 (e-mails between attorneys, sent at 10:48 p.m. on March 2); TX_A00000044–0045 (same, sent at 1:35 a.m. on March 3); TX_A00000046–0047 (same, sent at 1:51 a.m.); TX_A00000048–0050 (same, sent at 5:38 a.m.). Thus, there is already concrete, unchallenged evidence before the Court demonstrating the speed with which the Government acted to file the March 3 Advisory.

Finally, the Court also has evidence before it in the form of the Government's unredacted April 30 filing. *See* ECF No. 242. Plaintiffs have not challenged the Court's ability to rely on the Government's filing for purposes of resolving the issues related to the April 7 Order.[21] *Cf. Tillman v. Bd. of Pub. Instruction*, 430 F.2d 309, 310-11 (5th Cir. 1970) (per curiam) ("adopt[ing]" the district court's factual findings, which were based in part on "[e]vidence . . . taken without objection in the form of factual representations by counsel"); *Burgin v. Broglin*, 900 F.2d 990, 993 n.3 (7th Cir. 1990). The Government's April 30 submission was prepared by a team of attorneys, different from the team involved in the underlying merits litigation, and signed by a number of those attorneys—thereby certifying that the factual statements were supported "to the best of [those attorneys'] knowledge, information, and belief, formed after an inquiry reasonable under the circumstances[.]" Fed. R. Civ. P. 11(b). This Court is entitled to

[21] Plaintiffs have argued that the Government's filing, and its explanation of an "inadvertent miscommunication and misunderstanding," should be subject to "verif[ication]." ECF No. 261 at 6. But they have not challenged the filing as containing inadmissible factual representations that the Court should not consider. And with respect to Plaintiffs' requested "verification," although the Government believes that such verification is unnecessary, *see* ECF No. 265 at 11-12, both parties have agreed that referral to a magistrate judge would be appropriate for such purposes. *See* ECF No. 261 at 6; ECF No. 265 at 14.

rely on the statements of those attorneys, as officers of the court, set forth in the written April 30 submission. *Cf. Johnson v. Gen. Tel. Co.*, No. CA-6-78-2, 1982 WL 200, at *2 (N.D. Tex. Feb. 4, 1982).

For all of these reasons, as well as those set forth in prior filings, *see* ECF Nos. 242, 265, the Court should conclude its inquiry into the issues related to its April 7 Order and determine that no misconduct occurred, and that no further proceedings are warranted.[22]

CONCLUSION

For the foregoing reasons, the Court should cancel the currently scheduled August 19 hearing. In the alternative, the Court should excuse the attendance of Secretary Johnson and the other high-ranking officials except Director Rodríguez, and permit the above-described substitution of witnesses. In any event, the Government respectfully requests a ruling on this motion no later than August 10, 2015, and a stay of the hearing pending appellate review should the request for substitution of witnesses be denied.

[22] As discussed in prior filings, imposing sanctions would be impermissible absent additional procedural protections—including notice to the entities and/or individuals against whom sanctions are contemplated, the basis for such potential sanctions, the type of sanctions being contemplated (including whether the potential sanctions are personal in nature), and an opportunity for the entity and/or individual to respond to the specific sanctions being contemplated. *See* ECF No. 242 at 1-21; ECF No. 265 at 14-15.

Dated: July 31, 2015

Respectfully submitted,

KENNETH MAGIDSON
United States Attorney

DANIEL DAVID HU
Assistant United States Attorney
Deputy Chief, Civil Division

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General

JOYCE R. BRANDA
Deputy Assistant Attorney General

AUGUST E. FLENTJE
Special Counsel

JENNIFER D. RICKETTS
Director, Federal Programs Branch
Attorney-in-Charge (VA Bar No. 29281)

JAMES J. GILLIGAN
Special Litigation Counsel

/s/ Daniel Schwei
DANIEL SCHWEI
Trial Attorney
Civil Division, Federal Programs Branch
U.S. Department of Justice
P.O. Box 883
Washington, D.C. 20044
Tel.: (202) 305-8693
Fax: (202) 616-8470
Daniel.S.Schwei@usdoj.gov

Counsel for Defendants

CERTIFICATE OF CONFERRAL

Undersigned counsel hereby certifies that counsel for Plaintiffs, Angela Colmenero, authorized Defendants to represent Plaintiffs' position as follows: "Plaintiffs have authorized Defendants to represent that Plaintiffs take no position on the relief requested in Defendants' motion. Plaintiffs reserve the right to file any response or advisory in connection to Defendants' motion and agree to submit such filing no later than Thursday, August 6, 2015."

/s/ Daniel Schwei
Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Joint Status Report has been delivered electronically on July 31, 2015, to counsel of record via the District's ECF system.

/s/ Daniel Schwei
Counsel for Defendants

EXHIBIT 1

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

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

DECLARATION OF LEÓN RODRÍGUEZ

I, León Rodríguez, hereby make the following declaration with respect to the above captioned matter.

1) I am the Director of United States Citizenship and Immigration Services ("USCIS"). I was confirmed by the United States Senate on June 24, 2014, and began serving on July 9, 2014. USCIS has a workforce of approximately 18,500 people, including both federal employees and contractors, and handles approximately 8 million matters each year.

2) I have spent a large portion of my professional career as a state and Federal prosecutor. Throughout my career I have also served in a number of leadership positions in Federal and local government.

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. This declaration supplements the representations and commitments made in my declaration of May 15, 2015, and is also intended to be responsive to the Court's order of July 7, 2015. The statements made in this declaration are based on USCIS's current understanding of information available at this time.

Introduction

4) As I will further describe below, USCIS has taken corrective action regarding (1) the approximately 2100 three-year Employment Authorization Documents[1] ("EADs") described in the Defendants' May 7 Advisory that were inadvertently issued, instead of two-year EADs, following the Court's February 16, 2015, preliminary injunction (hereinafter, "post-injunction three-year EADs")[2] and (2) the approximately 500 *re-mailed* three-year EADs described in the July 9 Advisory (hereafter "re-mailed EADs") that were originally mailed prior to the injunction, but returned to USCIS as undeliverable, and then re-mailed following the injunction.[3] All of the individuals in these cases were approved for deferred action and employment authorization under the eligibility guidelines of the 2012 DACA policy. The May 15, 2015, declaration of Donald W. Neufeld describes the circumstances surrounding the issuance of the post-injunction three-year EADs, and his declaration of July 31 describes the circumstances surrounding the re-mailed EADs. This declaration describes the corrective actions undertaken by USCIS with respect to both sets of three-year EADs, and the results of those actions as of this date.

5) In both the cases involving post-injunction three-year EADs and the cases in which three-year EADs were re-mailed, USCIS has taken the following actions:

---

[1] A sample EAD is attached as Attachment L.

[2] For ease of reference, although a small number of the EADs discussed in this declaration were issued for terms greater than two years but not exactly three years, the term "three-year EADs" will be used rather than "EADs with validity periods of greater than two years." Determining the exact number of the group of approximately 2100 EADs issued after the injunction is not a straightforward task, but USCIS's best calculation of the number at this time is 2128.

[3] As of July 9, USCIS's calculation of the number of three-year re-mailed EADs was 484. However, as a result of its ongoing checks and corrective action, USCIS has recently identified an additional three-year re-mailed EAD which was turned in by the recipient at a USCIS field office. USCIS is taking additional corrective action to convert the newly-identified individual's term of deferred action and employment authorization to two years in USCIS's databases, including the SAVE and E-Verify systems.

- Converted each individual's term of deferred action and employment authorization, as reflected in the official records system used to track and update the actions taken in individual cases, from three years to two years.
- Issued new two-year approval notices (for deferred action and employment authorization) to each of these individuals.
- Issued replacement two-year EADs to each of these individuals.
- Updated the electronic system used by SAVE[4] and E-Verify[5] to reflect the updates to each of these individuals' records, so that state agencies and employers can accurately verify their two-year terms of deferred action and employment authorization.

6) USCIS also has taken steps not ordinarily used in its operations to seek return of the three-year EADs in these cases. Specifically, USCIS has mobilized agency personnel across the country, including at all four USCIS service centers, all 83 field office locations, and all 70 stand-alone application support centers. USCIS has taken the following actions to contact individuals in order to secure the return of all the post-injunction and re-mailed three-year EADs:

- Made 4674 phone calls to 1511 individuals and their representatives.
- Responded to 20,197 phone calls to a "hotline" established for purposes of this effort at the USCIS National Customer Service Center.
- Sent more than 2990 text messages to individuals and their representatives.
- Sent 1627 emails to individuals and their representatives.
- Hosted 13 stakeholder engagements with over 1300 participants to raise community awareness regarding return of the three-year EADs.

[4] The SAVE Program is a service that helps federal, state and local benefit-issuing agencies, institutions, and licensing agencies to obtain immigration information about benefit applicants so only those entitled to benefits receive them.

[5] E-Verify is an Internet-based system that allows businesses to determine the eligibility of their employees to work in the United States.

- Conducted 721 home visits by 306 USCIS officers from over 50 field office locations.
- Issued notices that USCIS intended to terminate individuals' deferred action and employment authorization if they did not return their three-year EADs.

7) As a result of these efforts, by July 30, 2015, 2117 individuals in the 2128 identified cases involving post-injunction three-year EADs, and 473 individuals in the 484 identified cases involving re-mailed EADs returned their three-year EADs, attested to their inability to do so for good cause, or their EADs were otherwise accounted for by USCIS. On July 31, 2015, USCIS terminated the deferred action and employment authorization of the remaining 11 individuals in the cases involving post-injunction three-year EADs, and the remaining 11 individuals in the cases involving re-mailed EADs. The deferred action and employment authorization of these individuals were terminated even though they remained eligible for two-year terms. USCIS also has updated its records in the CLAIMS 3 system, discussed below, and is currently doing so for systems used by SAVE and E-Verify, to reflect that those individuals' deferred action and employment authorization has been terminated.

Corrective Action Regarding the Approximately 2100 Post-Injunction EADs

8) In its May 7 Advisory, the Government informed the Court that approximately 2100 individuals had been issued three-year EADs after the Court issued the preliminary injunction. Based on its best analysis, USCIS identified 2128 cases in which post-injunction three-year EADs were issued and took the actions described below in those cases.

9) As discussed in the Government's May 7 Advisory and further explained in the Government's supplement thereto on May 15, the cases involving post-injunction three-year EADs included both "EAD-pending" cases and "manual error" cases. As explained in the May 15 Declaration of Donald Neufeld, the EAD-pending cases are those in which three-year terms of deferred action and employment authorization had been approved (under the 2012

DACA guidelines) before entry of the preliminary injunction, but for which EADs had not yet been printed and prepared for mailing by that time; those three-year EADs were inadvertently issued notwithstanding USCIS's intention to hold them pending conversion of the authorized terms from three to two years. The manual error cases are a group in which deferred action and/or employment authorization was approved after the injunction (under the 2012 DACA guidelines), but due to manual errors, USCIS systems indicated approved terms of three years, not two, resulting in the issuance of three-year EADs. To prevent human errors of this kind in the future, USCIS technically modified the relevant system, known as CLAIMS 3, to prevent USCIS employees (effective June 1, 2015) from entering terms of deferred action or employment authorization greater than two years.

10) As detailed in my May 15 declaration, when the Court issued its February 16, 2015 injunction prohibiting implementation of any and all aspects of the Secretary's 2014 Deferred Action Guidance, I immediately directed that USCIS take a series of steps (beginning less than two hours after the injunction was issued) to ensure that the agency complied with the Court's order. On February 17, 2015, I informed Secretary of Homeland Security Jeh Johnson of the steps USCIS had taken. The Secretary approved of these measures and directed that I continue to closely oversee USCIS's compliance efforts. On February 20, the Secretary followed this instruction with a memorandum to senior DHS officials directing that the Department and its components continue to suspend implementation of both DAPA and modifications to DACA, and to ensure compliance with the Court's order. See Attachment A.

11) Among the steps taken at my direction, USCIS put a hold on still-pending EADs where three-year terms of deferred action and employment authorization had already been approved prior to the injunction. However, as described in Mr. Neufeld's May 15 declaration, these pending three-year EADs were inadvertently released beginning on February 20, 2015 because

(unknown to USCIS operational personnel) they had not been removed from but only "paused" in the automated production queue. Once post-injunction approval of two-year EADs began again, the production queue also resumed and the three-year EADs pending in the queue were printed and mailed. When USCIS discovered the unintended issuance of these three-year EADs in early May 2015, I informed the Secretary, who agreed that the situation must be addressed and directed me to ensure that USCIS took prompt corrective action. The Secretary—who also requested the DHS Inspector General to investigate and report on the circumstances under which these three-year EADs were issued—has consistently supported the corrective measures (discussed below) that USCIS undertook at my direction.

12) USCIS determined that it would take the following actions to correct the post-injunction issuance of these approximately 2100 three-year EADs: (i) convert the term of deferred action and employment authorization in each individual's official paper case file, and in each individual's electronic case record in CLAIMS 3, from three to two years; (ii) issue each individual a replacement two-year EAD; (iii) update the electronic systems used by SAVE and E-Verify to reflect each individual's two-year term of deferred action and employment authorization; and (iv) retrieve the three-year EADs. To understand the time and effort required to complete a number of these tasks, a brief description of the process by which USCIS's records are updated, EADs are produced, and the relationship between the production of EADs and updates to the systems that support SAVE and E-Verify is helpful.

13) CLAIMS 3 is an electronic records system used by USCIS service centers to track and update the actions taken in individuals' cases. CLAIMS 3 reflects USCIS's official decisions, documented in individuals' paper files (known as "A-Files"), on individuals' requests for deferred action under DACA and any associated applications for employment authorization. All other databases, systems, or documentation that reflect an individual's deferred action or

employment authorization, including the approved term, are based on the data contained in CLAIMS 3. Regardless of any prior documentation or notifications an individual may have received, USCIS considers CLAIMS 3 to be the authoritative system of records documenting individuals' deferred action and/or work authorization. An EAD, by contrast, is evidence of an individual's work authorization but does not itself confer such authorization.

14) To update the authorized term of an individual's deferred action or employment authorization in USCIS records, a USCIS service center adjudicator—an Immigration Service Officer ("ISO")—must re-open the individual's case in the CLAIMS 3 system and make the necessary change. Once the term of an individual's deferred action and employment authorization is updated by an ISO, a separate notice of action is generated for each by the CLAIMS 3 system and mailed to the individual to inform him or her of the change. These notices are generated at and mailed from USCIS service centers.

15) When an update is made in CLAIMS 3 to an individual's term of employment authorization, an EAD reflecting the change is also produced and mailed to the individual. EADs are produced at USCIS card-production facilities, which are separately located from USCIS service centers. The process begins with the electronic transfer of approval data and relevant biometric and biographic information from the CLAIMS 3 system to one of USCIS's card-production facilities, for actual production and mailing via the Integrated Card Production System ("ICPS"). The CLAIMS 3 system sends an order to print an EAD, along with data relevant for production of the EAD, through the ICPS interface to the National Production System ("NPS"). To allow time for the service centers to conduct quality-control checks and provide time to make any associated corrections, the NPS holds the order for a 48-hour period (excluding holidays and weekends) prior to moving to physical production. After the 48-hour hold, the card production request is transmitted to the Card Personalization System Tech Refresh

("CPSTR") system, the automated print queue that manages card printing at the USCIS card-production facility. The card is then printed, checked for quality, and packaged for mailing to the individual. CLAIMS 3 and the card-production systems (e.g., NPS, CPSTR) indicate whether an EAD has been issued (that is, physically produced), but do not indicate whether the EAD has actually been mailed.

16) Once an EAD is issued, that information is electronically transmitted via the CPSTR, NPS, and ICPS systems to the CLAIMS 3 system, which electronically updates the individual's record to reflect that a new EAD has been produced. Once the update in CLAIMS 3 occurs, the system then transfers information regarding the individual's employment authorization, including the approved term, to other systems that interface (as noted below) with the electronic system used by the SAVE Program and E-Verify, the Verification Information System ("VIS"). VIS, a composite information system incorporating data from various DHS and other Government databases, is the underlying information technology platform that supports SAVE and E-Verify. With respect to SAVE, the relevant information is first electronically transferred from CLAIMS 3 to the USCIS Central Index System ("CIS"), after which a copy of select data fields are transferred to VIS. With respect to E-Verify, the relevant information is electronically transferred from CLAIMS 3, to NPS, to the Customer Profile Management System ("CPMS"), and to VIS. Because of the time required for these systems to complete the electronic transfer of data from CLAIMS 3 to VIS, it may take up to a week before updates to records in the CLAIMS 3 system are reflected in VIS. In the event that information about an individual is not available in CIS or CPMS, USCIS employees will reference other DHS systems, and if necessary will check the official paper file, the A-File, thus increasing the time required to complete an update.

17) Within days of learning that three-year EADs had been issued after the injunction, USCIS began updating the records of these cases in CLAIMS 3 to reflect two-year (rather than three-

year) terms of deferred action and employment authorization. The process of re-opening and updating the EAD-pending cases was completed by June 29. (The manual-error cases that were identified on March 18 were updated on that very same day in March.) As the term of deferred action and employment authorization in each of the post-injunction cases was converted to two years, CLAIMS 3 automatically ordered production of an EAD reflecting the same two-year term. Because of the multi-step production process explained in paragraphs 14-15, above, it takes approximately three to five days following a production order before an EAD is mailed. USCIS began issuing and mailing the replacement two-year EADs in mid-May. While the majority of updated two-year EADs were produced with no incident, a small number of EADs took more time to produce because, for example, they were rejected for quality-control issues (e.g., poor image quality). When an EAD is rejected, that information is sent back from CPSTR through NPS and ICPS to CLAIMS 3. Only then can an ISO resolve the issue that led to rejection of the EAD, upon which CLAIMS 3 re-orders the EAD for production, thereby restarting the multi-step EAD production process. Furthermore, because of fraud-prevention protocols embedded in NPS, that system will not process multiple card-production requests for a single individual within a 72-hour span, thus further extending the time required to produce an EAD when it has been initially rejected for quality-control reasons. Among the post-injunction cases, a small number of replacement two-year EADs were rejected on multiple occasions, thus significantly extending the time required to produce and mail them. The last updated two-year EAD for the post-injunction three-year EAD cases was issued on July 8, although 2114 of the 2128 had been issued by June 22.

18) Once an updated two-year EAD was issued in each case, notification was electronically transferred to CLAIMS 3, which then transferred the individual's employment authorization data (including the updated term) to the VIS system that supports SAVE and E-Verify (see paragraph

16, above). By June 22, at least 2085 individuals' information in SAVE, and 2113 individuals' information in E-Verify, had been updated to reflect two years of deferred action and employment authorization instead of three. Some anomalies required case-by-case review and resolution by service center, information technology, and Enterprise Services Directorate ("ESD") Verification Division.[6] By July 9, all post-injunction three-year EAD cases had been updated in the VIS system used by SAVE and E-Verify. Thus, by this date, all pertinent electronic records maintained by USCIS, including all of those relied on by state agencies and employers for verification purposes, reflected two-year terms of deferred action and employment authorization for the individuals in this entire group of cases.

19) USCIS also undertook extensive efforts to retrieve the invalid three-year EADs even though the individuals' records had been updated. As noted above, in USCIS's view, the EAD is only evidence of someone's work authorization, whereas the information contained in USCIS records systems and files are the official records of the agency's decisions and individuals' work authorization, on which information contained in or provided by other systems, such as SAVE and E-Verify, is based. Therefore, in the normal course, when an EAD has been erroneously issued, USCIS typically requests that the individual return the erroneously issued card to USCIS, but there is no precedent, in recent memory, of USCIS taking steps to physically retrieve a card, such as through a home visit upon an individual's failure to return an EAD.

20) In this instance, to begin the process of collecting EADs, following updates to the CLAIMS 3 system, USCIS sent letters to individuals tailored to the circumstances of their cases. The letters generally advised them that USCIS had re-opened their cases and approved them for

[6] ESD provides identity, immigration status and employment authorization information to appropriate customers and stakeholders, for example, among others, federal, state and local benefit-issuing agencies, institutions, and licensing agencies that use SAVE and employers that use E-Verify.

two years of deferred action and employment authorization rather than the previously approved three-year terms, and that the individuals should return any three-year approval notices still in their possession. Because individuals accorded deferred action are not required to keep such notices, and because notices of employment authorization do not constitute proof of employment authorization, USCIS did not require the return of such approval notices. Further, the letters advised the individuals that USCIS would be sending them replacement two-year EADs, that the individuals must return the three-year EADs upon receipt of the replacement EADs, and that failure to do so may result in adverse action. To encourage individuals' compliance, USCIS did not require the return of the three-year EADs until the individuals received their replacement two-year EADs. USCIS also enclosed self-addressed, postage-paid envelopes in which to return the three-year EADs to facilitate their return, another step USCIS does not normally take. USCIS completed mailing these notices in June. An example of these letters is attached as Attachment B.

21) By July 2, 2015, USCIS had received 1135 of the post-injunction three-year EADs. Starting on July 6, 2015, USCIS sent follow-up warning letters to the remaining individuals who had not returned their three-year EADs. These letters instructed individuals that they must return their three-year EADs by July 17, 2015, or certify good cause for not possessing their EADs (e.g., because they had been lost, stolen, destroyed, or never received). The follow-up letters also emphasized that failure to return the three-year EADs (or to certify good cause for not doing so) may affect the individuals' deferred action and employment authorization. USCIS again enclosed postage-paid envelopes with these letters in which individuals could return their three-year EADs or submit their good-cause certifications. An example of these follow-up letters is attached as Attachment C.

22) To facilitate return of the three-year EADs, the follow-up warning letters also included the toll-free number of USCIS's National Customer Service Center ("NCSC") and advised individuals that they could call this number with any questions they had about the instructions in the letters. Beginning on July 7, the calls were routed to customer-service representatives who had been prepared specifically to provide callers with accurate information and responses to their questions. While the NCSC is usually closed on weekends, USCIS staffed the NCSC on Saturday, July 25 specifically to handle calls from this population. Between July 7 and July 30, USCIS received 20,197 calls related to the return of three-year EADs.

23) On July 6, concurrent with sending out the follow-up warning letters and as a further means of contacting individuals to urge return of their three-year EADs, USCIS began gathering additional contact information for those individuals who had not yet returned their three-year EADs, including telephone numbers and email addresses,[7] as well as telephone numbers and email addresses for representatives of those individuals where applicable. While much of this additional contact information could be retrieved electronically from CLAIMS 3, USCIS devoted considerable resources –22 USCIS employees spent over 290 hours – to obtain the remaining contact information by manually reviewing over 1350 Enterprise Document Management System ("EDMS") files. EDMS is the electronic records system that stores scanned images of deferred action requests and employment authorization applications.

24) Based on the process initiated on July 6, as discussed in paragraph 23, above, USCIS made in-person (not automated) telephone calls on July 9 and 10 to individuals who had not yet returned their three-year EADs.[8] Representatives informed the contacted individuals that USCIS had issued them three-year EADs after the Court's injunction and had subsequently issued them

[7] The submission of a telephone number and an email address is not required when applying for deferred action or employment authorization.
[8] Telephone calls were made to individuals for whom a telephone number was available.

replacement two-year EADs. The customer service representatives also informed these individuals that they must return their three-year EADs (or certify good cause for not doing so) by mail. Further, representatives informed individuals that failure to return their three-year EADs (or to certify good cause for not doing so) may affect their deferred action and employment authorization. Between July 9 and 10, USCIS made calls to 1026 individuals who had not yet returned their three-year EADs and their designated representatives.

25) On July 10, 2015, Secretary Johnson issued a Directive requiring still further actions to be taken to retrieve the remaining three-year EADS, which he instructed USCIS to complete by July 31. A copy of the Directive previously filed with the Court is attached as Attachment D.

26) Specifically, Secretary Johnson directed USCIS to take the following steps, without intending to preclude other actions USCIS might lawfully take to retrieve the outstanding three-year cards, or to impact the ongoing meet-and-confer process with the States: (1) by July 17 mail Notices of Intent to Terminate individuals' deferred action and employment authorization if they did not return their three-year EADs by July 30; (2) dispatch USCIS personnel to visit individuals' homes to retrieve their three-year EADs, or, in the alternative issue them notices with scheduled appointments to appear at USCIS field offices to surrender their EADs, but, in every case, by July 30 either (i) retrieve the three-year EAD; (ii) visit the individual's home address (as listed in USCIS records) for purposes of retrieving the three-year EAD; or (iii) receive from the individual a written certification that he or she does not have the three-year EAD in his or her possession because it was lost, stolen, destroyed, or due to other good cause; and (3) on July 31 terminate the deferred action and employment authorization of individuals whose three-year EADs had not been returned or otherwise accounted for. The Secretary also directed USCIS to communicate with immigrant advocacy organizations and other suitable representatives about its plan of action for compliance with the Secretary's Directive in an effort

to ensure as many individuals as possible were provided clear and accurate information on compliance by July 31.

27) On July 13, USCIS sent Notices of Intent to Terminate deferred action and employment authorization to the 887 remaining individuals from whom USCIS had not yet received their three-year cards, as well as to 381 representatives of those individuals. The notices informed the individuals and their representatives that: (i) USCIS had issued them three-year EADs after the Court issued its injunction; (ii) USCIS had sent them two previous notices instructing them to return their three-year EADs; (iii) USCIS had not received their three-year EAD or a response certifying good cause for not doing so; (iv) they must either return their three-year EAD or certify good cause for not doing so by visiting the nearest USCIS field office; (v) failure to return their three-year EADs (or to certify good cause for not doing so) would result in termination of their deferred action and employment authorization effective July 31, 2015; and (vi) failure to return their 3-year EADs, and subsequent termination of their deferred action and employment authorization, may be considered negative factors in weighing whether to approve any future requests they might make for deferred action or any other discretionary action. A copy of the notice is attached as Attachment E.

28) In an effort to secure the cooperation and/or assistance in collecting post-injunction three-year EADs from stakeholders, USCIS began on July 14 hosting regular stakeholder engagements to discuss USCIS's effort to secure the return of these three-year EADs. Participating stakeholders included immigrant advocacy organizations, state and local government agencies, congressional staffers, and immigration law firms. USCIS hosted thirteen stakeholder engagements with approximately 1300 participants.

29) On July 16, in another unprecedented action for USCIS and in accordance with Secretary Johnson's directive, the USCIS Field Operations Directorate initiated a home visit program for

the purposes of facilitating the return of outstanding three-year EADs from the EAD-pending and manual error cases nationwide.[9] A map showing the locations of the outstanding post-injunction three-year EADs as of July 16, some of which required hours of travel to reach, is attached as Attachment F. Because of the unprecedented nature of this undertaking, USCIS had to immediately develop and implement a plan to visit hundreds of homes nationwide to collect EADs, without an existing cadre of personnel sufficient to meet the geographic coverage required for this nationwide level of effort. Residential site visits initially began in Chicago, Los Angeles, Dallas, and Houston, the metropolitan areas with the highest concentration of unreturned three-year EADs. To ensure efficiency and timely receipt of outstanding EADs, initial priority was further given to contacting individuals for whom USCIS did not have a current telephone number. Each site visit was conducted by a team of two USCIS officers who regularly conduct site visits as part of their daily duties and are specifically trained in outreach to USCIS customers and officer safety. To the extent possible, each team had at least one bilingual officer. USCIS officers conducting the home visits emphasized the possibility of termination of deferred action and employment authorization for failure to return an individual's three-year EAD (or to provide a good-cause certification). Further, USCIS Field Operations Directorate established an internal hotline to address any questions that arose while USCIS officers were conducting site visits. USCIS officers conducting the visits recorded the results of each site visit, including whether contact was made with the holder of the three-year EAD, whether the EAD was returned, and, if applicable, whether the individual provided written certification of good cause for not returning the EAD.

[9] Although USCIS has a well-staffed Fraud Detection and National Security directorate, USCIS is not specifically authorized to have sworn law enforcement officers as part of its staff. The primary area in which USCIS conducts home visits is to verify marriages in family-based visa cases. USCIS does not ordinarily utilize home visits for the purpose of document retrieval.

30) USCIS on July 16 sent text messages to individuals from whom USCIS had not yet received their returned three-year EADs, as well as their designated representatives, as still another means of alerting individuals that they needed to return their three-year EADs. The text message alerted them that they needed to call the USCIS NCSC or visit a field office to obtain urgent information about their work authorization and DACA. USCIS also began sending daily text messages on July 23 to the individuals from whom USCIS had not yet received their three-year EADs, as well as their designated representatives.

31) Beginning on July 17, USCIS field offices in 83 locations provided special walk-in service between the hours of 9:00 am and 3:00 pm for DACA recipients to appear and return their invalid EAD or submit a certification that they are unable to return the invalid EAD for good cause.

32) On July 21, as another method of alerting individuals that they needed to return their three-year EADs, USCIS sent emails[10] to the individuals from whom USCIS had not yet received their three-year EADs, as well their designated representatives. The email alerted them that they needed to immediately return their three-year EADs or their deferred action and employment authorization would terminate effective July 31. The email further provided instructions for returning their three-year EADs or certification of good cause by visiting a USCIS field office or by mail. USCIS continued to send follow-up emails through July 29. An example of these emails is attached as Attachment G.

33) As a result of these efforts, USCIS succeeded by July 30 in retrieving 1906 of the 2128 three-year cards. In addition, USCIS received certifications in another 98 cases that the cards had been lost, stolen, destroyed, or never received. Based on certifications received, USCIS reviewed its records and verified that in 102of the post-injunction three-year EADs were in fact

[10] Emails were sent to individuals for whom an email address was available.

never sent to the intended individuals. Another 11 three-year EADs had been returned as undeliverable by the U.S. Postal Service; USCIS will send two-year replacement cards to those individuals for whom it may obtain current addresses. In total, 2117 cards were retrieved or otherwise accounted for by July 30, representing 99.5 percent of the three-year post-injunction EADs.

34) On July 31, as directed by the Secretary, USCIS terminated the deferred action and employment authorization of the remaining 11 individuals who did not return their three-year EADs or otherwise certify good cause for not doing so. On July 31, USCIS mailed Termination Notices to the 11 individuals informing them that: (i) effective July 31, their deferred action and all associated employment authorizations (including their recently issued two-year terms) were terminated because USCIS had received neither their three-year EAD nor a certification from them providing good cause for not doing so, (ii) they must return their two- and three-year EADs to USCIS immediately; (iii) fraudulent use of their EADs could result in referral to law enforcement authorities; and (iv) failure to return their two- and three-year EADs may be considered a negative factor in weighing whether to approve any future requests for deferred action or any other discretionary requests.

35) Notwithstanding that USCIS has terminated deferred action and employment authorization for these 11 individuals, USCIS plans to take the following actions after July 31: (i) continue to receive outstanding EADs; (ii) establish a committee to determine targeted additional efforts to effect collection of outstanding EADs; and, (iii) determine on a case-by-case basis whether to restore deferred action and employment authorization for certain individuals who return their three-year EAD late.

36) As a result of these extraordinary efforts, outlined above, to motivate individuals to return their three-year EADs, as well as aggressive efforts by USCIS to continue monitoring the DACA

caseload for any additional three-year EADs issued post-injunction, USCIS has preliminarily identified another small number of three-year EADs that were issued after the injunction. An individual seeking to comply with our instructions to return invalid EADs recently visited a USCIS field office to turn in a three-year EAD that had been issued post-injunction; however, this EAD was on neither the list of post-injunction three-year EADs, nor the list of re-mailed EADs. In addition, this individual's term of deferred action and employment authorization recorded in CLAIMS 3 was only two years. USCIS immediately conducted research into this case and has preliminarily determined that, in the midst of the aggressive compliance efforts undertaken shortly after the injunction was issued, one information-technology specialist located at a service center converted the terms of deferred action and employment authorization for a group of cases, approved prior to the injunction, to two-year instead of three-year terms. Although this action successfully prevented three-year EADs from being produced in some cases, because CLAIMS 3 had not yet ordered their EAD card production, the EADs in the remaining cases, approximately 50, were already in the print queue, and were printed and mailed. Because CLAIMS 3 was already updated to show two-year terms in these cases, the query that was run in May to identify the number of three-year EADs produced post-injunction failed to identify this group of cases. USCIS continues to research the situation to more fully understand why it occurred and to identify any other cases. Nonetheless, where USCIS has confirmed that a three-year card was issued, USCIS has begun to take corrective action, including issuing two-year EADs, ensuring that SAVE and E-Verify are appropriately updated, and retrieving any three-year EADs that were in fact issued after the injunction. As other cases are identified and confirmed, USCIS will take similar corrective action.

Corrective Action Regarding the Re-Mailed EAD Cases

37) As discussed in the Government's July 9 Advisory, USCIS discovered a group of cases in which individuals had been approved for three-year terms of deferred action and employment authorization, their three-year EADs had been mailed prior to the injunction but returned by the U.S. Postal Service as undeliverable, and the EADs were then re-mailed after the injunction had issued. Based on its best analysis on July 9, USCIS identified 484 re-mailed EADs. The circumstances surrounding the post-injunction re-mailing of these three-year EADs are described in more detail in the July 31 declaration of Donald Neufeld. This declaration describes the corrective actions USCIS has undertaken regarding these cases.

38) Once it was discovered that these three-year EADs had been re-mailed after the injunction, USCIS took prompt corrective action. First, as discussed in Mr. Neufeld's July 31 declaration, a supervisory hold was placed in CLAIMS 3 on cases in which three-year EADs had been issued prior to the injunction, as a preventive measure against their being re-mailed should any of them be returned as undeliverable at some future point. To prevent the re-mailing of undeliverable three-year EADs that have already been returned and are currently in storage, USCIS has identified, sequestered, and (to render them unusable) clipped the corners of all such EADs.

39) In addition, USCIS determined that it should implement corrective action in these re-mailing cases similar to the action it had taken in the cases of the post-injunction three-year EADs. These actions included converting each individual's term of deferred action and employment authorization in CLAIMS 3 from three to two years; issuing each individual an updated two-year EAD; updating the VIS system that supports SAVE and E-Verify to reflect two-year authorizations; issuing notices of intent to terminate individuals' deferred action and associated employment authorization; and retrieving each individual's three-year EAD.

40) As with the cases involving post-injunction three-year EADs, USCIS service centers started by individually converting the terms of deferred action and employment authorization in each of the cases of re-mailed EADs, as reflected in CLAIMS 3, from three years to two. All 484 re-mailed EAD cases were updated in CLAIMS 3 by July 13.

41) On July 14, Secretary Johnson issued a directive instructing USCIS to take the following additional corrective measures: (1) immediately issue new approval notices and EADs to these individuals reflecting two years of deferred action and work authorization; (2) immediately update the SAVE and E-Verify systems to reflect their two-year terms of work authorization; (3) by July 17 mail Notices of Intent to Terminate to all individuals informing them that their deferred action and employment authorization would be terminated on July 31 if they had not returned their three-year EADs (or certified good cause for failing to do so) either by mail or by appearing at a USCIS field office; (4) make telephone calls to these individuals by no later than July 17 informing them that they had been sent Notices of Intent to Terminate; (5) dispatch USCIS personnel to visit the homes of these individuals to retrieve their cards, or, in the alternative, issue them notices with scheduled appointments to appear at a USCIS field office to surrender their cards, but, in every case, by July 30 (i) retrieve the three-year EAD; (ii) visit the individual's home address (as listed in USCIS records) for purposes of retrieving the three-year EAD; or (iii) receive from the individual a written certification that he or she does not have the three-year EAD in his or her possession because it was lost, stolen, destroyed or for other good cause; and (6) on July 31 terminate the deferred action and work authorization of those individuals whose three-year EADs have not been returned or otherwise accounted for. The Secretary also directed USCIS to communicate with immigrant advocacy organizations and other suitable representatives its plan of action for compliance with this Directive to ensure their assistance and cooperation. A copy of the Directive is attached as Attachment H.

42) On July 15, USCIS sent Notices of Intent to Terminate deferred action and employment authorization to all the individuals in the 484 re-mailing cases, as well as to 286 representatives of those individuals. The notices informed the individuals and their representatives that: (i) USCIS had sent them EADs valid for longer than two years after the Court issued its injunction; (ii) their deferred action requests and employment authorization applications had been re-opened and approved for two years instead of three; (iii) USCIS had issued them updated two-year EADs; (iv) their three-year EADs were no longer valid and they must either return them or certify good cause for not doing so by visiting the nearest USCIS field office or by mailing their EADs or good-cause certifications to USCIS; (v) failure to return their three-year EADs (or to certify good cause for not doing so) would result in termination of their deferred action and employment authorization effective July 31, 2015; and (vi) failure to return their three-year EADs, and subsequent termination of their deferred action and employment authorization, may be considered negative factors in weighing whether to approve any future requests they might make for deferred action or any other discretionary action. In an effort to retrieve as many three-year EADs as possible before July 31, USCIS sent these notices before the issuance of the updated two-year approval notices for deferred action and employment authorization and two-year EADs in order to give individuals adequate time to comply with the notice. A copy of the notice is attached as Attachment I.

43) As directed by the Secretary, USCIS issued updated two-year EADs to all individuals in the 484 re-mailing cases by July 17.

44) Once an updated two-year EAD was issued in each case, notification was electronically transferred to CLAIMS 3, which then transferred the individual's employment authorization data (including the updated term) to the VIS system that supports SAVE and E-Verify (see paragraph 15, above). As of July 20, 470 of the 484 re-mailed EAD cases had been updated in the VIS

system used by SAVE and E-Verify. The remaining 14 cases involved anomalies that had to be reviewed and resolved by ISOs, IT personnel, and ESD. By July 27, USCIS had updated the VIS system supporting SAVE and E-Verify to reflect two-year terms of deferred action and work authorization for all 484 individuals.

45) On July 16 and 17, in accordance with the Secretary's instructions, USCIS made in-person telephone calls to 334 individuals in the re-mailing cases. USCIS representatives informed the contacted individuals that: (i) USCIS had sent them EADs valid for longer than two years after the Court issued its injunction; (ii) their deferred action requests and employment authorization applications had been re-opened and approved for two-years instead of three; (iii) USCIS had issued them updated two-year EADs; (iv) their three-year EADs were no longer valid and they must return them (or certify good cause for not doing so) by visiting the nearest USCIS field office or by mailing the EADs (or good-cause certifications) to USCIS; and (v) failure to return their three-year EADs or to certify good cause for not doing so would result in termination of their deferred action and employment authorization effective July 31, 2015.

46) USCIS's engagement with immigrant advocacy organizations and other stakeholders, as discussed in paragraph 28 above, also addressed the effort to secure the return of the re-mailed three-year EADs, as well as the post-injunction three-year EADs.

47) On July 16, USCIS also sent text messages to individuals, as well as their designated representatives, in the re-mailing cases for whom contact information could be located to alert them that they needed to call the NCSC or visit a field office to obtain urgent information about their work authorization and DACA. USCIS continued sending text messages every weekday to the individuals from whom USCIS had not yet received their three-year EADs, as well as their designated representatives.

48) On July 20, in accordance with Secretary Johnson's directive, USCIS extended the nationwide residential site visit program to include individuals in the re-mailing cases who had not yet returned their three-year EADs, for the purpose of either retrieving their EADs or obtaining written good-cause certifications for the failure to return them. A map showing the locations of the re-mailed three-year EADs that remained outstanding as of July 20, some of which required hours of travel to reach, is attached as Attachment J.

49) On July 21, as another method of alerting individuals that they needed to return their three-year EADs, USCIS sent emails to the individuals from whom USCIS had not yet received their three-year EADs and their designated representatives, where email addresses were identified. The emails alerted them that they needed to immediately return their three-year EADs or their deferred action and employment authorization would terminate effective July 31. USCIS continued to send follow-up emails through July 29. An example of these emails is attached as Attachment K.

50) As a result of these efforts, USCIS succeeded by July 30 in retrieving 420 of the 484 re-mailed EADs, and received certifications from the individuals in another 39 cases that the cards had been lost, stolen, destroyed, or never received. Another 14 three-year cards were returned as undeliverable by the U.S. Postal Service; USCIS will send two-year replacement cards to those individuals for whom it may obtain current addresses. In total, 473 cards were retrieved or otherwise accounted for by July 30, representing 97.7 percent of the 484 re-mailed EADs.

51) On July 31, as directed by the Secretary, USCIS terminated the deferred action and employment authorization of the remaining 11 individuals in the re-mailing cases who had not returned their three-year EADs or certified good cause for not doing so. On July 31, USCIS mailed Termination Notices to the 11 individuals providing them notice that: (i) effective July 31, their deferred action and all associated employment authorizations (including their recently

issued two-year terms) were terminated because USCIS had not received their invalid three-year EADs nor certifications of good cause for being unable to do so; (ii) they must return all EADs (including their recently issued two-year EADs) to USCIS immediately; (iii) fraudulent use of their EADs could result in referral to law enforcement authorities; and, (iv) failure to return their invalid EADs may be considered a negative factor in weighing whether to approve any future requests for deferred action or any other discretionary requests.

52) As in the cases involving post-injunction three-year EADs, notwithstanding that USCIS has terminated deferred action and employment authorization for these 11 individuals in the re-mailing cases, , USCIS plans to take the following actions after July 31: (i) continue to receive outstanding EADs; (ii) establish a committee to determine targeted additional efforts to effect collection of outstanding EADs; and, (iii) determine on a case-by-case basis whether to restore deferred action and employment authorization for certain individuals who return their three-year EAD late.

Conclusion

53) USCIS is continuing its efforts to make sure that it has identified all cases in which individuals may have been erroneously approved for three-year terms of deferred action or employment authorization, and/or mailed EADs reflecting three-year terms of work authorization, after the Court's injunction was issued. These efforts remain ongoing, and USCIS understands that ongoing verification is required to ensure that it has identified all cases that may require corrective action. To the extent USCIS identifies additional cases in which three-year terms of deferred action and employment authorization were erroneously approved and EADs were erroneously issued or sent, after the injunction, it will take corrective action similar to that described above.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 31st day of July of 2015.

LEÓN RODRÍGUEZ

ATTACHMENT A

Office of the Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

February 20, 2015

MEMORANDUM FOR: Sarah Saldaña
Director
U.S. Immigration and Customs Enforcement

R. Gil Kerlikowske
Commissioner
U.S. Customs and Border Protection

León Rodríguez
Director
U.S. Citizenship and Immigration Services

Alan D. Bersin
Acting Assistant Secretary for Policy

FROM: Jeh Charles Johnson
Secretary

SUBJECT: **Immediate Suspension of Any and All Actions to Implement the Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) and Expanded Deferred Action for Childhood Arrivals (DACA) Policies**

On November 20, 2014, I issued guidance on the Department's prosecutorial discretion authority in a memorandum entitled *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Residents*. This memorandum expanded the guidelines for Deferred Action for Childhood Arrivals (DACA) and established new guidelines for Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA).

In an order issued on February 16, 2015, the U.S. District Court for the Southern District of Texas issued a temporary injunction in *Texas et al. v. United States et al.*, Civ. No. B-14-254. The order enjoins DHS and its components "from implementing any and all aspects or phases" of DAPA or expanded DACA "pending a final resolution of the merits of [the *Texas*] case or until a further order of th[e] Court, the United States Court of Appeals for the Fifth Circuit or the United States Supreme Court."

Upon receiving the court's order, I issued a public statement making clear that the Department will fully comply with it.

I am now reiterating that instruction and directing the Department and its components to continue to suspend implementation of the DAPA and expanded DACA policies as described in my November 20, 2014 memorandum on deferred action. The Department is taking these steps to ensure compliance with the district court's order as we continue to assess the order and its implications in consultation with the Department of Justice.

Importantly, the district court's order does not enjoin implementation of the existing DACA guidance. The Department will continue to consider requests for an initial grant of DACA or a renewal of DACA under the guidelines established in 2012. Nor does the order affect the Department's ability to set and implement enforcement priorities. The priorities established in my November 20, 2014 memorandum, *Policies for the Apprehension, Detention and Removal of Undocumented Immigrants*, remain in full force and effect.

A copy of the district court's February 16, 2015 temporary injunction order is attached. If you have any questions concerning this memorandum or the district court's order, please contact the Office of the General Counsel.

Enclosure

cc: Alejandro Mayorkas, Deputy Secretary
Stevan Bunnell, General Counsel

ATTACHMENT B

May 1, 2015

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
P.O. Box 82521
Lincoln, NE 68501-2521

U.S. Citizenship and Immigration Services

[redacted]

RE: [redacted]
I-765, Application for Employment Authorization

CORRESPONDENCE

Dear DACA Recipient,

USCIS records indicate that you received a 3-year Employment Authorization Document (EAD), a 3-year approval notice for your Form I-765 (Application for Employment Authorization) and may also have received a 3-year approval notice for your Form I-821D (Consideration of Deferred Action for Childhood Arrivals), all of which were issued by USCIS after February 16, 2015. The authorized period should have been for 2 years, not 3 years.

Your case has been re-opened and approved with a validity period of 2 years. USCIS records have been updated to reflect this 2-year approval. Your updated 2-year approval notice(s) and updated EAD reflecting a 2-year validity period will be mailed to the same address as this notice.

NOTE: When you receive your updated 2-year EAD, you must immediately return to USCIS the EAD that has a 3-year validity period listed. Failure to do so may result in adverse action in your case. Please also return any 3-year approval notices for Form I-821D and for Form I-765 that you received. To return the EAD and any 3-year approval notices, please send the document(s) along with a copy of this letter in the enclosed postage-paid envelope to:

UNITED STATES DEPARTMENT OF HOMELAND SECURITY
CITIZENSHIP AND IMMIGRATION SERVICES
ATTN ACD DACA
PO BOX 87730
LINCOLN NE 68501-7730

The reason for this action is that, after a court order in Texas v. United States, No. B-14-254 (S.D. Tex), USCIS erroneously issued you a 3-year instead of 2-year approval notice or notices and a 3-year instead of 2-year EAD.

For additional information on DACA, please visit www.uscis.gov/childhoodarrivals.

Sincerely,

[redacted]

May 1, 2015

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
P.O. Box 82521
Lincoln, NE 68501-2521

U.S. Citizenship and Immigration Services

[redacted]

RE: [redacted]
I-765, Application for Employment Authorization

CORRESPONDENCE

Dear DACA Recipient,

USCIS records indicate that you received a 3-year Employment Authorization Document (EAD), a 3-year approval notice for your Form I-765 (Application for Employment Authorization) and may also have received a 3-year approval notice for your Form I-821D (Consideration of Deferred Action for Childhood Arrivals), all of which were issued by USCIS after February 16, 2015. The authorized period should have been for 2 years, not 3 years.

Your case has been re-opened and approved with a validity period of 2 years. USCIS records have been updated to reflect this 2-year approval. Your updated 2-year approval notice(s) and updated EAD reflecting a 2-year validity period will be mailed to the same address as this notice.

NOTE: When you receive your updated 2-year EAD, you must immediately return to USCIS the EAD that has a 3-year validity period listed. Failure to do so may result in adverse action in your case. Please also return any 3-year approval notices for Form I-821D and for Form I-765 that you received. To return the EAD and any 3-year approval notices, please send the document(s) along with a copy of this letter in the enclosed postage-paid envelope to:

UNITED STATES DEPARTMENT OF HOMELAND SECURITY
CITIZENSHIP AND IMMIGRATION SERVICES
ATTN ACD DACA
PO BOX 87730
LINCOLN NE 68501-7730

The reason for this action is that, after a court order in Texas v. United States, No. B-14-254 (S.D. Tex), USCIS erroneously issued you a 3-year instead of 2-year approval notice or notices and a 3-year instead of 2-year EAD.

For additional information on DACA, please visit www.uscis.gov/childhoodarrivals.

Sincerely,

[redacted]

U.S. Department of Homeland Security
P.O. Box 852381
Mesquite, Texas 75185-2381

U.S. Citizenship and Immigration Services

[redacted]

DATE: May 13, 2015

Application: Form I-821D/I-765

File Number: [redacted]

Requestor's Name: [redacted]

Letter to DACA Recipients

Dear DACA Recipient,

USCIS records indicate that you received a 3-year Employment Authorization Document (EAD), a 3-year approval notice for your Form I-765 (Application for Employment Authorization) and may also have received a 3-year approval notice for your Form I-821D (Consideration of Deferred Action for Childhood Arrivals). The authorized period for deferred action should be 2 years, not 3 years, and the employment authorization and EAD also should be for 2 years instead of 3 years.

Your case has been re-opened and approved for 2-year periods of deferred action and employment authorization. USCIS records have been updated to reflect these 2-year approvals. Your updated 2-year approval notice(s) and updated EAD reflecting a 2-year validity period will be mailed to the same address as this notice.

NOTE: When you receive your updated 2-year EAD, you must immediately return to USCIS the EAD that has a 3-year validity period listed. Failure to do so may result in adverse action in your case. Please also return any 3-year approval notices for Form I-821D and for Form I-765 that you received. To return the EAD and any 3-year approval notices, please send the document(s) along with a copy of this letter in the enclosed postage-paid envelope to:

Texas Service Center
Attn: Malethea Holmes-Okeawolam
8001 N. Stemmons Freeway
Dallas, Texas 75247

The reason for this action is that, after a court order in *Texas v. United States*, No. B-14-254 (S.D. Tex.), USCIS erroneously issued you a 3-year instead of 2-year EAD.

For additional information on DACA, please visit www.uscis.gov/childhoodarrivals.

Officer #[redacted]

cc:

May 13, 2015

U.S. Department of Homeland Security
U S Citizenship and Immigration Services
P O Box 82521
Lincoln, NE 68501-2521

U.S. Citizenship and Immigration Services

[redacted]

[redacted]

[redacted]

RE: I-765, Application for Employment Authorization

Dear DACA Recipient,

USCIS records indicate that you received a 3-year Employment Authorization Document (EAD), a 3-year approval notice for your Form I-765 (Application for Employment Authorization) and may also have received a 3-year approval notice for your Form I-821D (Consideration of Deferred Action for Childhood Arrivals). The authorized period for deferred action should be 2 years, not 3 years, and the employment authorization and EAD also should be for 2 years instead of 3 years.

Your case has been re-opened and approved for 2-year periods of deferred action and employment authorization. USCIS records have been updated to reflect these 2-year approvals. Your updated 2-year approval notice(s) and updated EAD reflecting a 2-year validity period will be mailed to the same address as this notice.

NOTE: When you receive your updated 2-year EAD, you must immediately return to USCIS the EAD that has a 3-year validity period listed. Failure to do so may result in adverse action in your case. Please also return any 3-year approval notices for Form I-821D and for Form I-765 that you received. To return the EAD and any 3-year approval notices, please send the document(s) along with a copy of this letter in the enclosed postage-paid envelope to:

USCIS
ATTN ACD DACA
PO BOX 87730
Lincoln NE 68501-7730

The reason for this action is that, after a court order in *Texas v. United States*, No. B-14-254 (S.D. Tex.), USCIS erroneously issued you a 3-year instead of 2-year EAD.

For additional information on DACA, please visit www.uscis.gov/childhoodarrivals.

June 12, 2015

U.S. Department of Homeland Security
U S Citizenship and Immigration Services
P O Box 82521
Lincoln, NE 68501-2521

U.S. Citizenship and Immigration Services

[redacted]

[redacted]

[redacted]

RE: I-765, Application for Employment Authorization

CORRESPONDENCE

USCIS records indicate that you were issued a replacement Employment Authorization Document (EAD) along with an approval notice for your Form I-765 (Application for Employment Authorization) after February 16, 2015, that is valid for longer than 2 years based on an earlier approval of a request for Deferred Action for Childhood Arrivals (DACA). Because the replacement EAD was issued after February 16, 2015, the authorized period should have been for 2 years, not longer.

Your case has been re-opened and approved for a 2-year period of deferred action and employment authorization. USCIS records have been updated to reflect these 2-year approvals. Your updated 2-year Form I-821D and Form I-765 approval notices and replacement EAD reflecting a 2-year validity period will be mailed to the same address as this notice.

NOTE: When you receive your updated 2-year EAD, you must immediately return to USCIS the EAD that has a validity period longer than 2 years. Failure to do so may result in adverse action in your case. Please also return any earlier Form I-821D and Form I-765 approval notices that you received with a validity period longer than 2 years. To return the EAD and any approval notices, please send the document(s) along with a copy of this letter in the enclosed postage-paid envelope to:

USCIS
ATTN: ACD DACA
PO BOX 87730
LINCOLN NE 68501-7730

The reason for this action is that, after a court order in Texas v. United States, No. B-14-254 (S.D. Tex.), USCIS approves deferred action requests and related employment authorization applications based upon DACA only for 2-year periods.

U.S. Department of Homeland Security
P.O. Box 852381
Mesquite, Texas 75185-2381

U.S. Citizenship and Immigration Services

TO: [redacted]

DATE: June 12, 2015

Application: Form I-821D/I-765

File Number: [redacted]

Requestor's Name: [redacted]

Letter to DACA Recipients

Dear DACA Recipient,

USCIS records indicate that you were issued an Employment Authorization Document (EAD) and approval notice for your Form I-765 (Application for Employment Authorization) by USCIS with incorrect dates for when your EAD period commenced.

Your case has been re-opened and approved with the correct validity period. USCIS records have been updated to reflect this change. Your corrected EAD and approval notice will be mailed to the same address as this notice.

NOTE: When you receive your corrected EAD, you must immediately return to USCIS the EAD that was issued with the incorrect validity period. Failure to do so may result in adverse action in your case. Please also return the original approval notice for Form I-765 that you received. To return the EAD and approval notice, please send the documents along with a copy of this letter in the enclosed postage-paid envelope to:

Texas Service Center
Attn: Malethea Holmes-Okeawolam
8001 N. Stemmons Freeway
Dallas, Texas 75247

For additional information on DACA, please visit www.uscis.gov/childhoodarrivals.

Officer # [redacted]

cc:

The reason for this action is that, after a court order in *Texas v. United States*, No. B-14-254 (S.D. Tex.), USCIS approves deferred action requests and related employment authorization applications based upon DACA only for 2-year periods.

For additional information on DACA, please visit www.uscis.gov/childhoodarrivals.

ATTACHMENT C

July 6, 2015

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
P.O. Box 82521
Lincoln, NE 68501-2521

U.S. Citizenship and Immigration Services

[redacted]

[redacted]

RE: [redacted]
I-765, Application for Employment Authorization

REMINDER NOTICE: WARNING

Dear DACA Recipient,

USCIS records show that you were instructed to return an Employment Authorization Document (EAD) with a validity period of longer than two years and have not done so. This EAD is no longer valid. You were recently issued a *new* 2-year EAD. This new 2-year EAD replaced your invalid EAD.

You must IMMEDIATELY RETURN the previous EAD that is now invalid. USCIS must receive your EAD by July 17, 2015. Failure to return the invalid EAD without good cause (see below) may affect your deferred action and employment authorization.

You may also have received a Form I-765 (Application for Employment Authorization) approval notice and/or a Form I-821D (Consideration of Deferred Action for Childhood Arrivals) approval notice with a validity period greater than two years. **Any approval notice with a period of *longer than two years* should also be returned.**

Please send the documents along with a copy of this letter in the enclosed postage-paid envelope to:

USCIS
ATTN: ACD DACA
PO BOX 87730
LINCOLN NE 68501-7730

Do NOT return your *new* 2-year EAD. Recipients of this letter who need additional information or wish to speak with a Customer Service Representative, may call our National Customer Service Center at **1-800-375-5283 and select Option #8. USCIS may also take additional actions to contact you.**

If your EAD with a validity period of longer than 2 years is no longer in your possession, please sign and certify below that you have good cause for your not possessing any such EAD, and then return this signed letter in the enclosed postage-paid envelope to the address listed above.

( ) I do not have an EAD with a validity period of longer than 2 years in my possession because the EAD was:

____lost

____stolen,

____destroyed, or

_____(briefly explain other good cause)

_____ _____

Signature Date

ATTACHMENT D

Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

July 10, 2015

MEMORANDUM FOR: Leon Rodriguez
Director
U.S. Citizenship and Immigration Services

From: Jeh Charles Johnson
Secretary

Subject: *Texas et al* v. *United States of America, et al*, Civil Action No. B-14-254 (S.D. Tex.)

As you know, and as we notified the District Court in this case on May 7, USCIS sent approximately 2100 DACA recipients three-year Employment Authorization Documents ("EADs") after the Court's injunction was issued on February 16, 2015. This Department, including U.S. Citizenship and Immigration Services, must finish rectifying that situation, and promptly. There is little doubt about what the Court expects of us to fully rectify the situation of which we advised the Court on May 7.

In recent days it has also come to my attention that approximately 500 three-year EADs were sent to DACA recipients prior to the injunction, were returned to sender (USCIS), and then re-sent to DACA recipients after the injunction. This too must be rectified.

As I understand it, to date, the following corrective actions have been completed or undertaken:

First, in May-June USCIS sent letters to all of the approximately 2100 DACA recipients requiring the return of the three-year EADs. A second wave of letters was sent by USCIS on July 6-9.

Second, USCIS's SAVE system has been updated to reflect, with respect to the approximately 2100 DACA recipients, that their authorizations are for a period of two years, not three. Those states that use the SAVE database are now able to verify, in the case of the 2100 DACA recipients, the proper, two-year time period for DACA and the work authorization, for purposes of issuing drivers' licenses and other benefits.

Third, USCIS has updated its E-Verify system to ensure that any queries by employers indicate with respect to the approximately 2100 DACA recipients a two-year term of work authorization, not three.

Fourth, USCIS has updated all of its internal systems to reflect that the approximately 2100 DACA recipients are recorded as having two-year DACA approvals and work authorizations, not three.

Fifth, all USCIS internal systems have been updated to ensure that any grant of DACA, or the accompanying work authorization, cannot be issued for a term greater than two years.

Sixth, USCIS has undertaken to make in-person telephone calls to any of the approximately 2100 DACA recipients who have not yet returned their three-year EADs. As I understand it, these DACA recipients were advised that they must return their three-year EADs by July 17. I am also informed that 700 such calls were made on July 9 alone, and that these calls will be completed today, July 10.

As I understand it, as of today 922 of the approximately 2100 DACA recipients have not returned their three-year EADs to USCIS.

I hereby direct the following:

First, with respect to those of the approximately 2100 DACA recipients who have not returned their three-year EADs as of July 17, USCIS shall, by close of business on July 17, mail a Notice of Intent to Terminate, informing the recipient that his or her deferred action status and associated employment authorization will be terminated by July 30 if USCIS does not receive the three-year EAD by that time. The Notice of Termination should explain that to prevent the termination, the DACA recipient must appear at a USCIS field office.

Second, USCIS shall dispatch its personnel to visit the homes of those DACA recipients who have not yet returned their three-year EADs, for the purpose of retrieving the three-year EADs. USCIS personnel shall do this at a reasonable hour, and in a

respectful and appropriate manner. Alternatively, USCIS should send an INFOPASS Notice advising these DACA recipients to appear at a USCIS field office at a specific time and location and be prepared to surrender their three-year EADs, or contact the attorney of record for the DACA recipient. USCIS shall exercise its judgment as to whether, in the first instance, a home visit is most appropriate and effective, but in every case USCIS shall have, by July 30, either (i) retrieved the three-year EAD, (ii) visited the home of the DACA recipient listed in USCIS records for purposes of retrieving the three-year EAD, or (iii) received from the DACA recipient a written certification that he or she does not have a three-year EAD in his or her possession because it was lost, stolen, destroyed or for other good cause.

Third, USCIS shall communicate with immigrant advocacy organizations and other suitable representatives its plan of action for compliance with this directive -- specifically that meetings and home visits are solely for the purposes of compliance with the Court's order and this directive.

Fourth, USCIS shall inform relevant state officials that they may contact USCIS if they wish to establish a process, consistent with privacy and other laws and policy, by which USCIS notifies state governments of DACA recipients in their state who have invalid three-year EADs, for the purposes of the issuance of drivers' licenses and other benefits.

Fifth, with respect to those of the approximately 2100 DACA recipients from whom USCIS has not received a three-year EAD by close of business on July 30, those recipients' deferred action shall be terminated on July 31.

Sixth, by July 13, USCIS shall present to me a plan, consistent with the terms of this directive, to retrieve the approximately 500 three-year EADs that were first sent prior to the injunction, returned to sender, and re-sent after the issuance of the injunction.

Seventh, USCIS shall advise me on July 13, July 17, July 20, July 24 and July 27 on the status of its compliance with this directive.

This directive is not intended to preclude other appropriate and lawful actions by USCIS to accomplish the objectives set forth herein. Also, this directive should not be read to impact or alter the ongoing meet and confer process being engaged in by the defendants, through the Department of Justice, in the Texas litigation.

ATTACHMENT E

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Field Operations Directorate
111 Massachusetts Avenue NW
Washington, DC 20529-2030

U.S. Citizenship and Immigration Services

July 13, 2015

[redacted]

NOTICE OF INTENT TO TERMINATE DEFERRED ACTION
AND EMPLOYMENT AUTHORIZATION

Dear [redacted], A[redacted]:

Please read this entire letter and make sure you understand it. USCIS is sending this notice to certain DACA recipients who were mistakenly sent 3-year work authorization cards **after** a court order was in place prohibiting issuing cards valid for longer than 2 years. Other 3-year work authorization cards issued and mailed **before** the February 16, 2015, court order are not affected and need not be returned.

In May 2015, USCIS sent you a notice that:

1. The Employment Authorization Document (EAD) you received with a validity period of longer than 2 years ("3-year EAD") was no longer valid;
2. You must return the invalid 3-year EAD; and
3. You were being issued a valid 2-year EAD.

USCIS sent you a second notice in early July 2015, entitled **REMINDER NOTICE: WARNING**. That notice again indicated that your 3-year EAD was now invalid, instructed you to immediately return the invalid 3-year EAD, and notified you that failure to return the invalid EAD may affect your deferred action and employment authorization.

To date, **USCIS has not received your invalid 3-year EAD or a response from you** stating the specific reason(s) why you cannot return it.

Due to your failure to return the invalid 3-year EAD, or to articulate good cause for not returning it, USCIS is notifying you of its intent to terminate your deferred action and all associated employment authorizations. **Your deferred action and all associated EADs (including your recently issued 2-year EAD) will terminate if USCIS has not received your invalid 3-year EAD by July 30, 2015.** If that happens, failure to return your invalid 3-year EAD, and subsequent termination of your DACA and employment authorization, may be considered a negative factor in weighing whether to grant any future requests for deferred action or any other discretionary requests.

To prevent this from happening, **you must appear** at a USCIS field office location **on or before July 21, 2015**, between 9:00am and 3:00pm. To find your nearest field office, please visit

www.uscis.gov

[redacted]

www.uscis.gov/fieldoffices. At that appointment, you must either return your invalid 3-year EAD or certify that your invalid 3-year EAD either cannot be returned or has already been mailed back to USCIS.

You must bring the following materials with you to this appointment:

1. This notice;
2. Your invalid 3-year EAD (if you still have it);
3. Any 3-year approval notices received for Form I-821D (Consideration of Deferred Action for Childhood Arrivals) and/or Form I-765 (Application for Employment Authorization) that are still in your possession; and,
4. If you are not in possession of your 3-year EAD, you must bring a valid form of photo identification (such as a passport, driver's license).

If you have questions about this notice or need assistance locating your nearest field office, you may call the USCIS National Customer Service Center (NCSC) at **1-800-375-5283**. (If you are hearing impaired, you may call the NCSC's TDD number at **1-800-767-1833**.)

NOTE: You are still required to appear at this appointment even if you never received an EAD with a validity period of longer than 2 years, you have not yet received your reissued 2-year EAD, you cannot return the invalid EAD for good cause (for example, it was lost, stolen, or destroyed), or you have already mailed your invalid EAD back to USCIS.

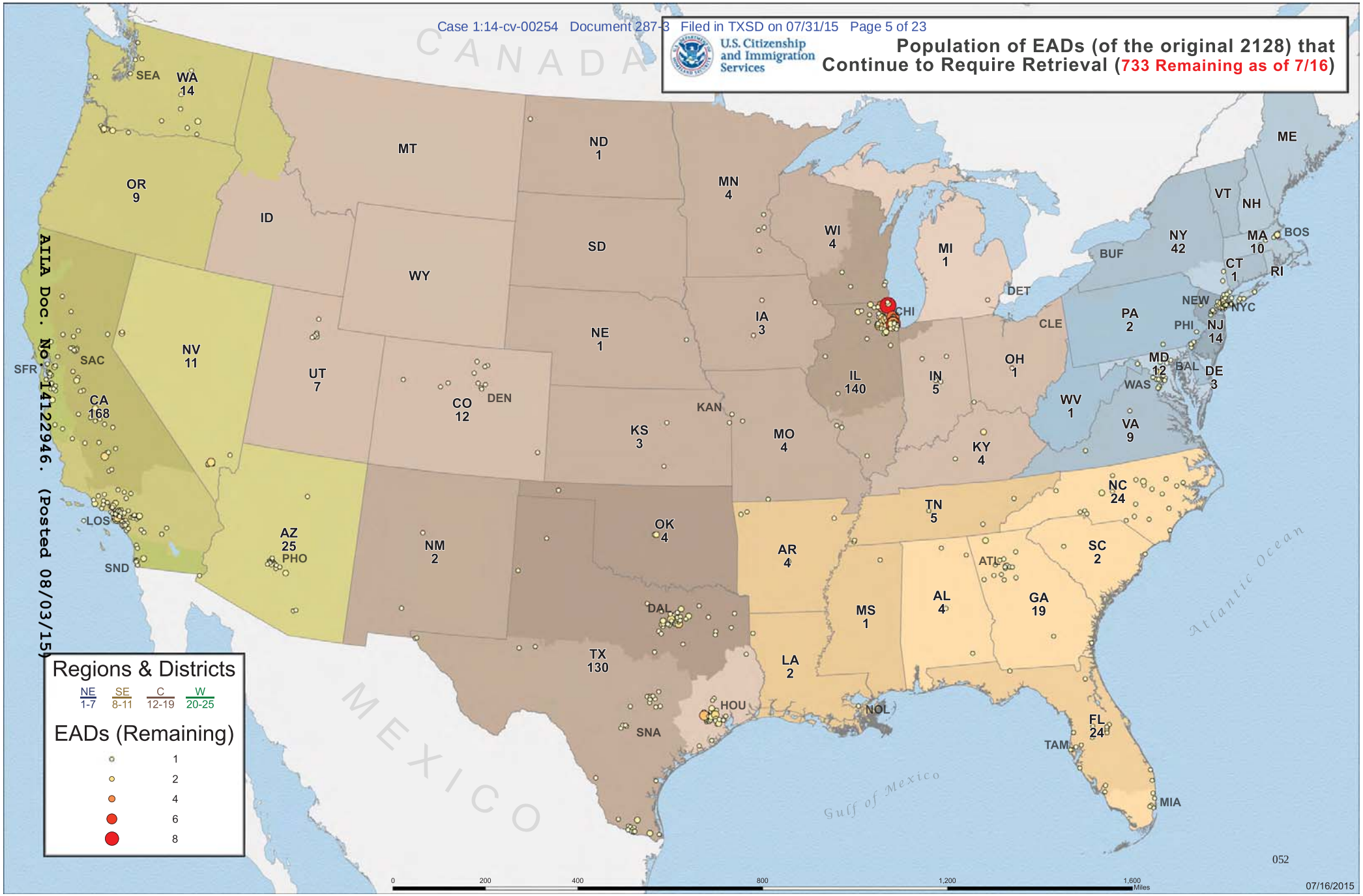
You **must appear at this appointment** where you will either return the invalid 3-year EAD or sign a certification attesting that you do not have an invalid 3-year EAD in your possession.

FAILURE TO RETURN YOUR INVALID 3-YEAR EAD, OR TO CERTIFY GOOD CAUSE FOR NOT RETURNING IT, WILL RESULT IN TERMINATION OF YOUR DEFERRED ACTION AND EMPLOYMENT AUTHORIZATION EFFECTIVE JULY 31, 2015.

ATTACHMENT F

U.S. Citizenship and Immigration Services

Population of EADs (of the original 2128) that Continue to Require Retrieval (733 Remaining as of 7/16)



Regions & Districts

NE	SE	C	W
1-7	8-11	12-19	20-25

EADs (Remaining)

- 1
- 2
- 4
- 6
- 8

ATTACHMENT G

Dear ,

We are writing to you with critical information regarding your **DACA deferred action and employment authorization** issued by U.S. Citizenship and Immigration Services.

USCIS records show that you **must immediately return your Employment Authorization Document (EAD) with a validity period of longer than two years** and you have not done so. This EAD with a validity period of longer than two years is no longer valid. You should also return any approval notices received for deferred action and/or employment authorization with a validity period of longer than two years that are still in your possession.

If we do not receive your invalid EAD, your deferred action and employment authorization will terminate as of July 31, 2015.

We recently sent you a new, two-year EAD. That two-year EAD is still valid. Do NOT return that new, valid two-year EAD.

Please follow the instructions in the notice that you should have received to either return the invalid EAD or certify that you have good cause for being unable to do so. If you have not received or if you have lost the USCIS notice, you still must return your invalid EAD and must do so by appearing at a USCIS field office or by mail.

If you have any questions, please call our National Customer Service Center at **1-800-375-5283 (select Option 8).**

Option 1: To visit a field office:

- Find a local USCIS field office.
- You must appear between 9 a.m. and 3 p.m., Monday through Friday. No appointment is necessary.
- During your visit, you must either return your invalid EAD or certify that you have good cause for being unable to do so.
- You should bring the following materials with you:
  - ✓ Your invalid EAD;
  - ✓ If possible and still in your possession, any approval notices received for deferred action and/or employment authorization with a validity period of longer than two years; and,
  - ✓ If you do not have your invalid EAD, you must bring a valid form of photo identification (such as a passport, driver's license, or school identification card).

Option 2: To return your invalid EAD by mail, send it to:

UNITED STATES DEPARTMENT OF HOMELAND SECURITY
CITIZENSHIP AND IMMIGRATION SERVICES
ATTN ACD DACA
PO BOX 87730
LINCOLN, NE 68501-7730

- If your invalid EAD with a validity period of longer than 2 years is no longer in your possession, print this email and sign and certify below that you have good cause for being unable to do so, and then return this signed email to the address listed above.

☐ I do not have an EAD with a validity period of longer than 2 years in my possession because the EAD was:
____lost
____stolen,
____destroyed,
____never received,
____already returned, or

_____
(briefly explain

_____ _____
Signature Date

- If possible and still in your possession, you should also include any approval notices received for deferred action and/or employment authorization with a validity period of longer than two years.

USCIS is taking additional actions to contact you about the return of your invalid EAD, including sending a Notice of Intent to Terminate Deferred Action and Employment Authorization by mail. We appreciate your cooperation and apologize for any inconvenience.
Sincerely,

USCIS Customer Contact Center
DCM

ATTACHMENT H

Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

July 14, 2015

MEMORANDUM FOR: Leon Rodriguez
Director
U.S. Citizenship and Immigration Services

From: Jeh Charles Johnson
Secretary

Subject: *Texas et al* v. *United States of America, et al*, Civil Action No. B-14-254 (S.D. Tex.)

As you know, on July 9 we notified the District Court of the existence of approximately 500 three-year EADs that were first sent prior to the injunction, returned to sender, and re-sent after the issuance of the injunction. As I have with my directive of July 10, I am directing U.S. Citizenship and Immigration Services (USCIS) to undertake a series of actions to immediately rectify this situation. As I understand it, USCIS has already begun updating its internal systems to reflect that these approximately 500 DACA recipients are recorded as having two-year, rather than three-year, DACA approvals and work authorizations.

In addition, USCIS has updated its system to ensure that no further three-year EAD's that are (or have been) returned to sender are re-mailed to the recipient as a three-year EAD.

I hereby direct the following:

First, USCIS shall immediately issue new approval notices and EADs reflecting two-year validity for the approximately 500 DACA recipients.

Second, USCIS's SAVE system shall immediately be updated to reflect that the authorizations for these approximately 500 DACA recipients are for a period of two years, not three. When this update is complete, all states that use the SAVE database will be able to verify the proper, two-year time period for DACA and work authorization, for purposes of issuing drivers' licenses and other benefits.

Third, USCIS shall immediately update its E-Verify system to ensure that any queries by employers indicate, with respect to these DACA recipients, a two-year, rather than three-year, term of work authorization.

Fourth, USCIS shall, with respect to these DACA recipients, no later than close of business on July 17, mail a Notice of Intent to Terminate, informing the recipient that his or her deferred action status and associated employment authorization will be terminated by no later than July 31 if he or she has not returned the three-year EAD. The Notice should explain that to prevent the termination, the DACA recipient must mail, and USCIS must receive by July 27, the invalid EAD *or* appear at a USCIS field office to return their three-year EAD. The Notice will explain that failure to return the card or to certify good cause for failing to do so will result in termination.

Fifth, by no later than July 17, USCIS shall also make in-person telephone calls to these DACA recipients to inform them that they have been issued a Notice of Intent to Terminate and provide them appropriate direction to appear at a USCIS field office to return their three-year EADs or to immediately mail their invalid EAD.

Sixth, USCIS shall dispatch its personnel to visit the homes of these DACA recipients, for the purpose of retrieving the three-year EADs. USCIS personnel shall do this at a reasonable hour, and in a respectful and appropriate manner. Alternatively, USCIS should send an INFOPASS Notice advising these DACA recipients to appear at a USCIS field office at a specific time and location and be prepared to surrender their three-year EADs, or contact the attorney of record for the DACA recipient. USCIS shall exercise its judgment as to whether, in the first instance, a home visit is most appropriate and effective, but in every case USCIS shall have, by July 30, either (i) retrieved the three-year EAD, (ii) visited the home of the DACA recipient listed in USCIS records for purposes of retrieving the three-year EAD, or (iii) received from the DACA recipient a written certification that he or she does not have a three-year EAD in his or her possession because it was lost, stolen, destroyed, or for other good cause.

Seventh, USCIS shall communicate with immigrant advocacy organizations and other suitable representatives its plan of action for compliance with this directive -- specifically that meetings and home visits are solely for the purposes of compliance with this directive.

Eighth, with respect to those of the approximately 500 DACA recipients from whom USCIS has not received a three-year EAD by close of business on July 30, those recipients' deferred action and employment authorization shall be terminated on July 31.

Ninth, USCIS shall advise me on July 17, July 20, July 24, and July 27 on the status of its compliance with this directive.

This directive is not intended to preclude other appropriate and lawful actions by USCIS to accomplish the objectives set forth herein. Also, this directive should not be read to impact or alter the ongoing meet and confer process being engaged in by the defendants, through the Department of Justice, in the Texas litigation.

ATTACHMENT I

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Field Operations Directorate
111 Massachusetts Avenue NW
Washington, DC 20529-2030

U.S. Citizenship and Immigration Services

July 14, 2015

[redacted]

NOTICE OF INTENT TO TERMINATE DEFERRED ACTION
AND EMPLOYMENT AUTHORIZATION

Dear [redacted], A[redacted]:

Please read this entire letter and make sure you understand it.

USCIS is sending this notice to certain DACA recipients who were sent a work authorization card valid for longer than two years **after** a court order was in place prohibiting USCIS from conferring DACA deferred action for longer than 2 years. The reason for this action is that, after a court order in *Texas v. United States*, No. B-14-254 (S.D. Tex.), USCIS approves deferred action requests and related employment authorization applications based upon DACA only for 2-year periods.

Your case has been re-opened and approved for a 2-year period of deferred action and employment authorization. USCIS records have been updated to reflect these 2-year approvals. Thus, **the 3-year Employment Authorization Document (EAD) you received is no longer valid and must returned by July 27, 2015.** USCIS has recently issued you *new* 2-year approval notices and a *new* EAD reflecting a 2-year validity period. This *new* 2-year EAD has been mailed to the same address as this notice and replaces your invalid 3-year EAD. If you have not already received your new 2-year EAD, it should arrive within the next few days.

You must IMMEDIATELY RETURN the invalid 3-year EAD to USCIS even if you have not yet received your new 2-year EAD.

USCIS is notifying you of its intent to terminate your deferred action and all associated employment authorizations if you do not return the invalid 3-year EAD. Failure to return your invalid 3-year EAD, and subsequent termination of your DACA and employment authorization, may be considered a negative factor in weighing whether to grant any future requests for deferred action or any other discretionary requests.
To prevent this from happening, **you must return your invalid EAD through one of the following options:**

1. **Appear at a USCIS field office location ON OR BEFORE JULY 27, 2015**, between 9:00am and 3:00pm.

   To find your nearest field office, please visit www.uscis.gov/fieldoffices. At that appointment, you must either return your invalid 3-year EAD or certify that your invalid 3-year EAD cannot be returned.

   You must bring the following materials with you to this appointment:
   - this notice;
   - your invalid 3-year EAD (if you still have it);
   - any 3-year approval notices received for Form I-821D (Consideration of Deferred Action for Childhood Arrivals) and/or Form I-765 (Application for Employment Authorization) that are still in your possession; and,
   - if you are not in possession of your 3-year EAD, you must bring a valid form of photo identification (such as a passport, driver's license).

2. **Mail your invalid 3-year EAD to USCIS.**

   YOUR INVALID EAD MUST BE RETURNED TO USCIS AND RECEIVED NO LATER THAN JULY 27, 2015. Send your invalid EAD along with a copy of this notice to:

   UNITED STATES DEPARTMENT OF HOMELAND SECURITY
   CITIZENSHIP AND IMMIGRATION SERVICES
   ATTN ACD DACA
   PO BX 87730
   LINCOLN, NE 68501-7730

If your EAD with a validity period of longer than 2 years is no longer in your possession, sign and certify below that you have good cause for your not possessing any such EAD, and then return this signed notice either at your field office appointment or to the address listed above. YOUR CERTIFICATION MUST BE RETURNED TO USCIS AND RECEIVED NO LATER THAN JULY 27, 2015.

☐ I do not have an EAD with a validity period of longer than 2 years in my possession because the EAD was:
____lost
____stolen,
____destroyed,
____never received, or
_____(briefly explain other good cause)

_____ _____
Signature Date

If you have questions about this notice, you may call the USCIS National Customer Service Center (NCSC) at **1-800-375-5283 and press #8**. (If you are hearing impaired, you may call the NCSC's TDD number at **1-800-767-1833**.)

NOTE: You are still required to take one of the above actions even if:

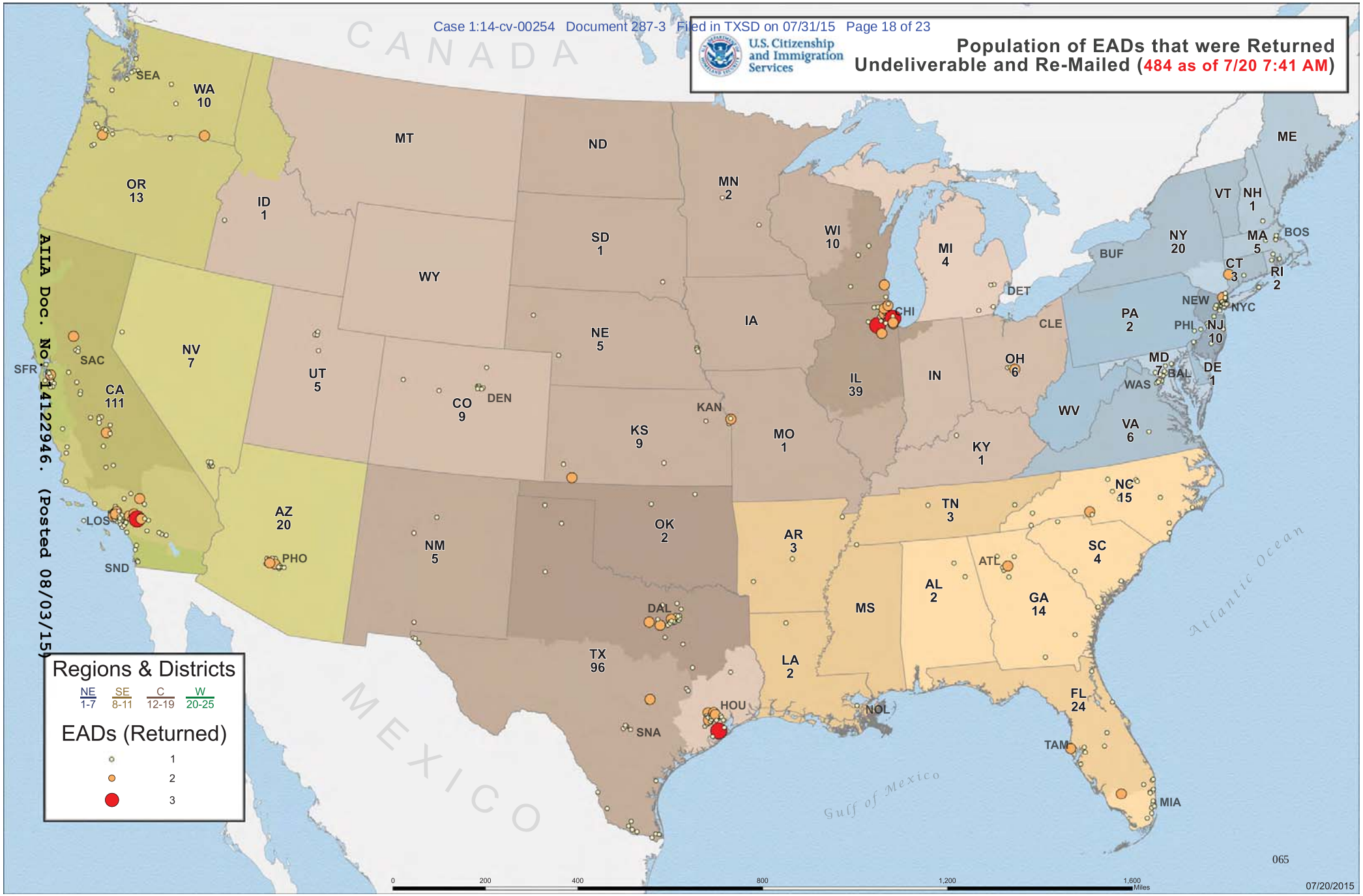
1. **you never received an EAD with a validity period of longer than 2 years;**
2. **you have not yet received your reissued 2-year EAD; or,**
3. **you cannot return the invalid EAD for good cause (for example, it was lost, stolen, or destroyed).**

FAILURE TO RETURN YOUR INVALID 3-YEAR EAD, OR TO CERTIFY GOOD CAUSE FOR NOT RETURNING IT, WILL RESULT IN TERMINATION OF YOUR DEFERRED ACTION AND EMPLOYMENT AUTHORIZATION EFFECTIVE *JULY 31, 2015.*

ATTACHMENT J

U.S. Citizenship and Immigration Services

Population of EADs that were Returned Undeliverable and Re-Mailed (484 as of 7/20 7:41 AM)



ATTACHMENT K

Dear ,

We are writing to you with critical information regarding your **DACA deferred action and employment authorization** issued by U.S. Citizenship and Immigration Services.

USCIS records show that you **must immediately return your Employment Authorization Document (EAD) with a validity period of longer than two years** and you have not done so. This EAD with a validity period of longer than two years is no longer valid. You should also return any approval notices received for deferred action and/or employment authorization with a validity period of longer than two years that are still in your possession.

If we do not receive your invalid EAD, your deferred action and employment authorization will terminate as of July 31, 2015.

We recently sent you a new, two-year EAD. That two-year EAD is still valid. Do NOT return that new, valid two-year EAD.

Please follow the instructions in the notice that you should have received to either return the invalid EAD or certify that you have good cause for being unable to do so. If you have not received or if you have lost the USCIS notice, you still must return your invalid EAD and must do so by appearing at a USCIS field office or by mail.

If you have any questions, please call our National Customer Service Center at **1-800-375-5283 (select Option 8).**

Option 1: To visit a field office:

- Find a local USCIS field office.
- You must appear between 9 a.m. and 3 p.m., Monday through Friday. No appointment is necessary.
- During your visit, you must either return your invalid EAD or certify that you have good cause for being unable to do so.
- You should bring the following materials with you:
  - ✓ Your invalid EAD;
  - ✓ If possible and still in your possession, any approval notices received for deferred action and/or employment authorization with a validity period of longer than two years; and,
  - ✓ If you do not have your invalid EAD, you must bring a valid form of photo identification (such as a passport, driver's license, or school identification card).

Option 2: To return your invalid EAD by mail, send it to:

UNITED STATES DEPARTMENT OF HOMELAND SECURITY
CITIZENSHIP AND IMMIGRATION SERVICES
ATTN ACD DACA
PO BOX 87730
LINCOLN, NE 68501-7730

- If your invalid EAD with a validity period of longer than 2 years is no longer in your possession, print this email and sign and certify below that you have good cause for being unable to do so, and then return this signed email to the address listed above.

☐ I do not have an EAD with a validity period of longer than 2 years in my possession because the EAD was:
____lost
____stolen,
____destroyed,
____never received,
____already returned, or

_____
(briefly explain

_____ _____
Signature Date

- If possible and still in your possession, you should also include any approval notices received for deferred action and/or employment authorization with a validity period of longer than two years.

USCIS is taking additional actions to contact you about the return of your invalid EAD, including sending a Notice of Intent to Terminate Deferred Action and Employment Authorization by mail. We appreciate your cooperation and apologize for any inconvenience.
Sincerely,

USCIS Customer Contact Center
DCM

ATTACHMENT L

DACA EAD
Category is C33

Validity Period

EXHIBIT 2

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

STATE OF TEXAS, *et al.*	)	
Plaintiffs,	)	
	)	No. 1:14-CV-254
v.	)	
UNITED STATES OF AMERICA, *et al.*	)	
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"). 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 4,500 government and contract employees at the USCIS service centers. These service centers handle about four million immigration-related applications and requests annually, including all requests for deferred action under the Deferred Action for Childhood Arrivals ("DACA") process. I previously submitted declarations in this case on January 30, 2015, and May 15, 2015.

2. I make this declaration on the basis of my personal knowledge and information made available to me in the course of my official duties. The statements made in this declaration are based on USCIS's current understanding of information available at this time.

Introduction

3. This declaration describes the circumstances surrounding the approximately 500 three-year[1] Employment Authorization Documents ("EADs"), described in Defendants' July 9 Advisory, that were originally mailed prior to the Court's February 16, 2015 preliminary injunction, but returned to USCIS as undeliverable, and then re-mailed following the injunction (hereinafter "re-mailed EADs"). All of the individuals in these cases were granted deferred action and employment authorization before the Court's preliminary injunction, under the existing 2012 DACA eligibility guidelines.

4. After USCIS discovered in May 2015 that approximately 2100 individuals had been sent three-year EADs after the preliminary injunction, USCIS continued to undertake efforts to verify that all such cases had been identified. With that purpose in mind, in June 2015, the USCIS Office of Performance and Quality ("OPQ") was asked to review the data and confirm whether the approximately 2100 identified cases represented all cases in which three-year EADs had been sent after the injunction. During the course of its review, OPQ identified approximately 500 cases[2] in which three-year EADs had been *re-mailed* after the injunction. In each case, the EAD had been approved, printed, and mailed prior to the injunction, but was returned to USCIS as undeliverable and subsequently re-mailed to a different address after February 16, 2015.

[1] For ease of reference, although a small number of the Employment Authorization Documents ("EADs") discussed in this declaration were issued for terms greater than two years but not exactly three years, the term "three-year EADs" will be used rather than "EADs with validity periods of greater than two years."

[2] As of July 9, USCIS's calculation of the number of three-year EADs re-mailed was 484. However, as a result of its ongoing checks and corrective action, USCIS has recently identified an additional three-year re-mailed EAD which was turned in by the recipient at a USCIS field office. USCIS is taking additional corrective action to convert the newly-identified individual's term of deferred action and employment authorization to two years in USCIS's databases, including the SAVE and E-verify systems.

5. After discovering these re-mailed EADs, USCIS took a number of steps to prevent additional three-year EADs from being re-mailed in the future. USCIS service centers have identified and sequestered all other three-year EADs in their possession that were returned as undeliverable, clipped their corners, which is standard practice to identify EADs as invalidated, and placed them in locked storage in order to prevent re-mailing. Additionally, USCIS's Office of Information Technology ("OIT") has placed a "supervisory hold" on the electronic records of all cases in which three-year EADs were issued prior to the injunction, which prevents any action being taken in these cases without approval of a CLAIMS 3 user with supervisory permissions, who have been instructed that three-year EADs cannot be re-mailed.

6. As described in the July 31 Declaration of USCIS Director León Rodríguez, USCIS has also taken prompt corrective action with respect to recovering the re-mailed EADs.

Background on the Processing of Returned Undeliverable Mail

7. In order to understand how these post-injunction re-mailings of three-year EADs occurred, it is necessary to understand generally how USCIS service centers process mail that is returned as undeliverable. This process applies to all EADs, issued on any basis, and thus is not specific to DACA or deferred action. This same process also applies to other cards issued by USCIS, such as Permanent Resident Cards.

8. To ensure consistency and maintain security, EADs and other cards issued by USCIS are printed and mailed at USCIS's two card-production facilities. EADs are not produced at, or by personnel located at, USCIS service centers. Nevertheless, while all EADs are printed at, and mailed from, USCIS card-production facilities, the return addresses printed on the envelopes are the addresses of the service centers that approved the underlying applications for employment authorization. For example, if the United States Postal Service ("USPS") is unable to deliver an EAD that was approved at the Nebraska Service Center, but printed and mailed from the card-

production facility in Corbin, Kentucky, the USCIS parcel containing the EAD will be returned to the Nebraska Service Center.

9. USCIS envelopes are marked "Do Not Forward." Thus, even when USPS has a forwarding address for the intended recipient, USPS does not forward the USCIS parcel directly to that new address. Rather, it is returned to USCIS affixed with a yellow label that bears the intended recipient's forwarding address. This procedure is another safeguard intended to enhance the security and protect the integrity of cards produced by USCIS, and also allows USCIS to capture the individual's current address.

10. All mail returned to USCIS service centers is opened and sorted by contract employees working under USCIS direction. The contractors record the receipt of returned cards (including each returned card's identifying information) on a manifest, and convey both the received cards and the manifest to USCIS Records Management personnel at the service center.

11. Upon receipt of the cards, USCIS Records Management personnel ensure that all cards noted on the manifest have been accounted for. They then make an entry in each recipient's record in CLAIMS 3, noting that the recipient's card had been returned as undeliverable. CLAIMS 3 is the system used by USCIS service centers to electronically track and update the status of DACA recipients' cases, as well as many other types of cases that USCIS handles. The CLAIMS 3 system reflects the agency's official adjudication decision, whereas the EAD is merely evidence of that decision. Next, Records Management personnel at the service center attempt to locate a current address for the recipient. As noted above, in some cases USPS places a yellow label on the envelope with the recipient's forwarding address. If USPS has not included a forwarding address, Records Management personnel will search USCIS databases to determine if the recipient has notified USCIS of his or her new address. Once they have obtained a current address, Records Management personnel will place the EAD in a new envelope, and make

entries in CLAIMS 3 noting the recipient's new address and the fact that the card will be re-mailed. The card is then re-mailed to the recipient at the updated address, usually within one or two business days.

12. In cases where no forwarding addresses can be found, Records Management personnel will secure the cards in a locked cabinet, where they will be stored for up to one year. If during that time a current address for the recipient is obtained, Records Management personnel will place the EAD in a new envelope, make the appropriate updates in CLAIMS 3, and then re-mail the card. If at the end of one year the card is still in secure storage, Records Management personnel will conduct a final check within USCIS databases for a current address. If a new address is located, the card will be re-mailed and the recipient's record in CLAIMS 3 will be updated, as outlined above. If not, the card will be destroyed.

13. While Records Management personnel, who are responsible for re-mailing EADs and other secure documents, are located at USCIS service centers, they are not adjudicators and have no role in adjudicating applications for employment authorization or requests for relief of any kind, including deferred action, nor do they have authority to determine or adjust the validity periods of deferred action or work authorization.

USCIS's Actions Following the Preliminary Injunction

14. On February 17, 2015, hours after the Court issued the preliminary injunction, Director Rodríguez issued an order that the agency take no further action to implement the enjoined policies. Among other specific instructions, USCIS leadership directed that the service centers suspend the approval of deferred action and/or employment authorization under DACA until further notice. Immediate steps were also taken after the injunction to prevent the issuance of three-year approval notices or EADs, even in cases where deferred action and employment authorization had already been approved prior to the injunction. The intent of these actions was

to halt new approvals of three-year terms of deferred action and employment authorization (and any associated three-year approval notices and EADs). These instructions were conveyed, therefore, to service center adjudicators (and their supervisors) responsible for processing deferred action requests and applications for employment authorization, and to personnel at USCIS card-production facilities responsible for printing and mailing EADs.

15. As discussed above, the Records Management personnel responsible for handling the process of re-mailing EADs are a separate group of employees who have nothing to do with the adjudication of requests for deferred action or employment authorization, or with the initial printing and/or mailing of newly produced EADs. Thus, they did not receive the instructions given to service center adjudicators to stop DACA approvals, or to personnel at the card-production facilities to cease printing and mailing new three-year EADs. Moreover, in the press of business to ensure that new three-year EADs were not issued after the injunction, USCIS leadership did not contemplate the scenario in which three-year EADs, which had already been issued and mailed before the injunction, could be returned as undeliverable, and then re-mailed after the injunction. Nor was this issue raised to them by personnel who are closer to the performance of that activity. Because of this oversight, Records Management personnel at the service centers were not issued an instruction directing them not to re-mail DACA-related three-year EADs.

Discovery of the Re-Mailed Pre-Injunction Three-Year EADs

16. After USCIS discovered that some number of three-year EADs had inadvertently been printed and mailed after the injunction, notwithstanding USCIS's intention to hold them (as described in my May 15 Declaration), SCOPS identified approximately 2100 cases in which this had occurred. SCOPS made this determination by querying CLAIMS 3 for cases with a history action code indicating that an EAD had been issued, or that production of the EAD had been

stopped, after February 16, 2015. Using these two history action codes, SCOPS identified the universe of cases in which CLAIMS 3 indicated that three-year EADs were issued (that is, physically produced) after the injunction.

17. In June 2015, as a part of the agency's ongoing efforts to verify that it had identified all three-year EADs issued after the injunction, USCIS requested OPQ—which, among other functions, collects and validates agency data for internal and external reporting—to review the data and queries relied on by SCOPS, and verify whether the cases identified by SCOPS represented the entirety of the cases in which three-year EADs were issued after the injunction.

18. In the course of its audit, OPQ designed its own electronic queries of CLAIMS 3 that included an additional history action code, indicating whether a card had been re-mailed after being returned as undeliverable, not simply the date when it was originally issued. On June 29, OPQ determined that there were cases in which three-year EADs had been approved, issued, and mailed prior to the injunction, but were then returned to USCIS as undeliverable and subsequently re-mailed to a new address after February 16, 2015. On July 9, USCIS's analysis of its then-available data indicated that there were 484 such EADs.

19. Once the post-injunction re-mailing of these three-year EADs was discovered, USCIS began prompt corrective action. Specifically, on Sunday, July 5, 2015, the Director issued an order to halt all re-mailings of undeliverable mail that may contain three-year EADs, and to begin reviewing measures to prevent re-mailings of three-year EADs in the future. On the morning of Monday, July 6, 2015, the service centers confirmed that they had received the Director's order and had suspended re-mailings until further notice. USCIS leadership subsequently narrowed the hold and instructed the service centers to resume re-mailing returned-as-undeliverable mail, with the exception of three-year DACA-related EADs.

20. In order to prevent three-year EADs that may be returned as undeliverable in the future from being re-mailed, on July 8, OIT placed "supervisory holds" on all cases in CLAIMS 3 where three-year EADs were issued before the injunction. The supervisory holds will prevent any action from being taken in the system for these cases unless the hold in a particular circumstance has been released by a CLAIMS 3 user with supervisory permissions; Records Management personnel with supervisory access have been instructed that three-year EADs cannot be re-mailed. In addition, SCOPS leadership has issued instructions that three-year EADs cannot be re-mailed.

21. To prevent the re-mailing of undeliverable three-year EADs that are currently in secure storage, Records Management personnel have identified, sequestered, and (to identify them as invalidated) clipped the corners of all such EADs. In those cases where new addresses for the recipients can be obtained before a year in storage has passed, the recipients' terms of deferred action and employment authorization will be converted from three to two years, and they will be issued replacement two-year EADs.

22. On July 9, 2015, Defendants filed an Advisory with the Court, reporting, *inter alia*, that approximately 500 three-year EADs that had been approved, issued, and mailed prior to the injunction were then returned as undeliverable and subsequently re-mailed to an updated address after the Court's entry of its injunction. As discussed further in the July 31 Declaration of Director Rodríguez, by July 9, DHS had already begun an expedited process of corrective action to retrieve these three-year EADs.

23. USCIS is continuing its efforts to identify all cases in which individuals were issued or mailed three-year EADs after the injunction. These efforts remain ongoing, and USCIS understands that ongoing verification is necessary to ensure that it has identified all cases that may require corrective action. To the extent USCIS identifies additional cases in which three-

year EADs were re-mailed after the injunction, it will take prompt corrective action similar to the actions described in the July 31 Declaration of Director Rodríguez.

[Remainder of page intentionally left blank.]

I declare under penalty of perjury that the foregoing is true and correct. Executed this 31 day of July of 2015.

DONALD W. NEUFELD

EXHIBIT 3

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

STATE OF TEXAS, et al. Plaintiffs, v. UNITED STATES OF AMERICA, et al. Defendants.	)	No. 1:14-cv-254

DECLARATION OF R. GIL KERLIKOWSKE

I, R. Gil Kerlikowske, hereby make the following declaration with respect to the above-captioned matter:

1. I am the Commissioner of U.S. Customs and Border Protection (CBP),which is a component within the U.S. Department of Homeland Security (DHS). I have held this position since March 7, 2014. My current work address is 1300 Pennsylvania Ave., N.W., Washington, D.C.

2. I am submitting this declaration in connection with the Court's Order of July 7, which directs me and the other individual defendants to appear at a hearing on August 19 concerning the Government's compliance with the Court's February 16 preliminary injunction. As explained in more detail below, as Commissioner of CBP, I have no responsibility for the compliance/remedial efforts at issue in the Court's Order, which involve U.S. Citizenship and Immigration Services (USCIS), and no first-hand knowledge of those

efforts. In addition, requiring my personal attendance at the hearing would take me away from my performance of my duties as the Commissioner of CBP.

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

4. The President appointed me as Commissioner on August 1, 2013, and I was confirmed by the U.S. Senate on March 6, 2014. Under 5 U.S.C. § 5314, the Commissioner of CBP is a Level III Presidential appointment.

5. Prior to my tenure as CBP Commissioner, I had approximately four decades of experience with law enforcement and drug policy. From 2009 to 2014, I served as the Director of the Office of National Drug Control Policy. From 2000 to 2009, I served as the Chief of Police for Seattle, Washington, and from 1998 to 2000 I served as Deputy Director for the U.S. Department of Justice Office of Community Oriented Policing Services. In addition, I served as the Police Commissioner of Buffalo, New York, from 1994 to 1998. I began my law enforcement career as a police officer in St. Petersburg, Florida, in 1972.

6. Following the creation of DHS by the Homeland Security Act of 2002, CBP was established by merging the legacy organizations of the U.S. Customs Service; major elements of the U.S. Immigration and Naturalization Service, including the Immigration Inspections Program; the U.S. Border Patrol; and the U.S. Department of Agriculture's Animal and Plant Health Inspection Service. Later, CBP added the Air and Marine Operations Division of U.S. Immigration and Customs Enforcement, and most recently, select elements of DHS's former U.S. Visitor and Immigrant Status Indicator Technology (US-VISIT).

7. The resulting unified Federal law enforcement agency now called CBP has become the Nation's first comprehensive border-security agency focused on securing our

country's borders while facilitating legal trade and travel. CBP secures the borders at and between ports of entry, preventing the admission of inadmissible aliens, removing aliens who are in the country unlawfully, and preventing the entry of illicit goods. CBP officers also protect our Nation's borders and safeguard national security by keeping criminal organizations, terrorists, and their weapons out of the United States while facilitating lawful international travel and trade.

8. By statute, my responsibilities as Commissioner of CBP include, among other things, preventing the entry of terrorists and the instruments of terrorism into the United States; securing the borders, territorial waters, ports, terminals, waterways, and air, land, and sea transportation systems of the United States, including managing and coordinating those functions at and between ports of entry; administering customs laws of the United States; and conducting the inspection of agricultural products entering the United States. To carry out these duties and responsibilities, as CBP Commissioner I oversee approximately 60,000 CBP employees.

9. I am familiar with the November 20, 2014, memorandum by the Secretary of Homeland Security, entitled *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who are the Parents of U.S. Citizens or Permanent Residents* ("November 2014 memorandum"). The bulk of that memorandum provides instruction to U.S. Citizenship and Immigration Services (USCIS), another component within DHS, for the implementation of new policies regarding Deferred Action for Childhood Arrivals (DACA), and implementation of a new initiative, Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA). The sole responsibility placed on CBP by the Secretary's November 2014 memorandum is to identify persons in CBP custody, as well as recently encountered individuals, who might be eligible for deferred action under the new DACA or DAPA guidelines (whom USCIS may then consider for deferred

action). The Secretary tasked USCIS, not CBP, with responsibility for the approval or denial of requests for deferred action and employment authorization under the two policies. USCIS, not CBP, was made responsible for issuing notices of approval of deferred action to individuals found to merit deferred action under the revised DACA and DAPA policies, and for issuing employment authorization documents (EADs) to those who qualify for and are approved by USCIS for employment authorization.

10. In sum, CBP was not tasked with adjudicating requests for deferred action under the new DACA or DAPA guidelines, nor was CBP tasked with adjudicating requests under the DACA guidelines announced in 2012. It is also not CBP's practice to issue notices of approval under DACA, and CBP does not determine the length of time for which deferred action under DACA will be accorded. Further, even outside of the context of DACA, CBP does not issue notices of approval for employment authorization, does not determine the length of any employment authorization, and does not issue EADs.

11. When the Court issued its February 16, 2015 injunction prohibiting implementation of the Secretary's November 2014 memorandum, I directed that CBP take a series of steps to ensure that the agency complied with the Court's order. On February 18, 2015, I issued an agency-wide directive advising the entire agency of the injunction and directing immediate compliance. The directive instructed all relevant personnel immediately (i) to cease any consideration of the new DAPA and the expanded DACA guidelines when processing individuals, (ii) not to attempt to determine whether individuals could request deferred action under the November 20, 2014 memorandum, and (iii) not to refer such individuals to USCIS. The Secretary also issued a February 20, 2015 memorandum to senior DHS officials directing that the Department and its components continue to suspend implementation of both DAPA and

the November 2014 changes to DACA, and to ensure compliance with the Court's order. CBP further responded to the injunction by revising its training materials, website, and other publicly-available resources to bring them into conformity with the injunction.

12. I am familiar with the Defendants' May 7 Advisory, in which the Government notified the Court that USCIS had issued approximately 2,000 three-year EADs instead of two-year EADs, to DACA recipients after the February 16 preliminary injunction was issued. I am also familiar with the Court's July 7, 2015 Order, in which the Court expressed concern that this situation had not yet been fully rectified, and instructed each of the DHS officials named as defendants in this case, including myself, to attend a hearing on August 19, 2015, and to be prepared to show why he or she should not be held in contempt of Court. As discussed below, as CBP Commissioner I do not have responsibility for, authority over, or personal knowledge about the matters raised in the Court's July 7 Order.

13. I am also familiar with the Defendants' July 9 Advisory, in which the Government notified the Court that USCIS had re-mailed after the injunction approximately 500 three-year EADs that had previously been issued before the injunction but had been returned as undeliverable. As discussed below, as CBP Commissioner I do not have responsibility for, authority over, or personal knowledge about this matter.

14. With the exception of identifying persons in CBP custody and other encountered individuals who may be eligible to request that they be considered for DACA or DAPA, CBP was assigned no role in the administration of the Secretary's November 2014 memorandum. Likewise, CBP does not accept, review, grant, deny, or otherwise process requests for deferred action or employment authorization under 2012 DACA (or renewals thereof). CBP does not issue notices of approval or EADs to DACA recipients. CBP does not create, maintain, or

update records systems under the control of USCIS that reflect or relate to recipients' deferred action or employment authorization. To my knowledge, those functions are exclusively performed by USCIS. Therefore, in my capacity as Commissioner of CBP, I did not have responsibility for, authority over, or personal knowledge about any of the activities that resulted in the issuance of the three-year EADs discussed in Defendants' May 7 Advisory or the re-mailings discussed in Defendants' July 9 Advisory.

15. I am familiar with the July 10, 2015 and the July 14, 2015 memoranda from the Secretary to Director Rodríguez of USCIS regarding USCIS's efforts to address the post-injunction issuance and/or re-mailing of three-year EADs to DACA recipients, which were filed with the Court on July 15, 2015. In my capacity as Commissioner of CBP I have had no responsibility for, authority over, or personal knowledge about the activities involved in correcting those three-year EADs that were issued or re-mailed after the injunction.

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

Executed this 30TH day of July of 2015.

R. Gil Kerlikowske
Commissioner

EXHIBIT 4

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

STATE OF TEXAS, et al. Plaintiffs, v. UNITED STATES OF AMERICA, et al. Defendants.	No. 1:14-cv-254

DECLARATION OF SARAH R. SALDAÑA

I, Sarah R. Saldaña, hereby make the following declaration with respect to the above-captioned matter:

1. I am the Assistant Secretary and Director of U.S. Immigration and Customs Enforcement (ICE), a component of the Department of Homeland Security (DHS or Department). I have held this position since December 18, 2014. My current work address is: 500 12th Street Southwest, Washington, D.C.

2. I am submitting this declaration in connection with the Court's Order of July 7, which directs me and the other individual defendants to appear at a hearing on August 19 concerning the Government's compliance with the Court's February 16 preliminary injunction. As explained in more detail below, as Director of ICE, I have no responsibility for the compliance/remedial efforts at issue in the Court's Order, which involve U.S. Citizenship and Immigration Services (USCIS), and have no first-hand knowledge of those efforts. Accordingly, my personal attendance at the hearing would add nothing to the issues before the Court and

would only serve to take me away from the performance of my duties and responsibilities as the Director of ICE.

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

4. I am a graduate of Texas A&I University, now Texas A&M University, and hold a Bachelor of Science degree. I hold a Juris Doctorate from Southern Methodist University. Before becoming ICE Director, I served as United States Attorney for the Northern District of Texas for more than three years. I was previously an Assistant United States Attorney in the Northern District of Texas and a partner in the trial department of a law firm in Dallas, Texas.

5. I was confirmed to my position by the U.S. Senate on December 16, 2014, and began my service as Assistant Secretary and Director shortly thereafter. Under 5 U.S.C. § 5315, my position is a Level IV Presidential appointment.

6. In my current position as Director of ICE, I lead the largest investigative agency within DHS, overseeing nearly 20,000 employees in 400 offices across the country. ICE's primary mission is to promote homeland security and public safety through the criminal and civil enforcement of federal laws governing border control, customs, trade, and immigration. ICE carries out its mission by enforcing more than 400 federal statutes, preventing terrorism, and combating the illegal movement of people and goods. The agency has an annual budget of approximately $6 billion, which is primarily dedicated to two operational sub-components—Homeland Security Investigations (HSI) and Enforcement and Removal Operations (ERO). HSI is an investigative arm of DHS, which has broad legal authority to enforce a wide variety of federal statutes. It operates both domestically and internationally; in fact, HSI is DHS's largest investigative presence abroad, and it has one of the largest international footprints in U.S. law

enforcement. ERO identifies and apprehends removable aliens, detains removable aliens when necessary, and removes illegal aliens from the United States.

7. I am familiar with the November 20, 2014, memorandum by the Secretary of Homeland Security, entitled *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Residents* ("November 2014 memorandum"). The bulk of that memorandum provides instructions to USCIS, another component within DHS, for the implementation of new policies regarding Deferred Action for Childhood Arrivals (DACA), and implementation of a new initiative, Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA). The responsibilities placed on ICE by the Secretary's November 2014 memorandum were (1) to identify persons in ICE custody, as well as recently encountered individuals, who appear to meet the 2014 DACA or DAPA guidelines and may be eligible for deferred action under those programs; (2) to review pending removal cases, and to refer to USCIS for case-by-case determinations those individuals who appear to meet the 2014 DACA or DAPA guidelines; and (3) to establish a process to allow individuals in removal proceedings to identify themselves as candidates for 2014 DACA or DAPA. The Secretary tasked USCIS, not ICE, with responsibility for the receipt and approval or denial of requests for deferred action and employment authorization. USCIS, not ICE, was made responsible for issuing notices of approval of deferred action and employment authorization DACA and DAPA applicants, and for issuing employment authorization documents (EADs) to them as well.

8. In sum, ICE was not tasked with approving or denying requests for deferred action under the new DACA or DAPA guidelines, nor is it responsible for issuing notices of approval for these initiatives. Additionally, ICE does not determine the length of time for which

deferred action under the new DACA or DAPA guidelines will be accorded. Further, even outside of the context of DACA, ICE does not issue notices of approval for employment authorization, does not determine the length of any employment authorization, and does not issue EADs.

9. I am also familiar with the June 15, 2012, memorandum by the former Secretary of Homeland Security, Janet Napolitano, entitled *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children* ("June 2012 DACA memorandum"). That memo provides instruction to USCIS, U.S. Customs and Border Protection (CBP), and ICE as to how, in the exercise of prosecutorial discretion, and on a case-by-case basis, DHS should enforce the Nation's immigration laws with respect to certain young people.

10. Under the June 2012 DACA memorandum, if an alien encountered by ICE appears to meet the 2012 DACA guidelines, ICE may exercise prosecutorial discretion, on a case-by-case basis, by releasing the alien from custody, declining to initiate removal proceedings, or administratively closing or terminating already pending removal proceedings. However, ICE does not exercise such prosecutorial discretion by granting deferred action to aliens pursuant to the June 2012 DACA memorandum.[1] Instead, ICE will refer the alien to USCIS, which approves or denies, exercising prosecutorial discretion on a case-by-case basis, the alien's request for deferred action and employment authorization under the 2012 DACA eligibility guidelines. USCIS is also responsible for issuing notices of approval of deferred

[1] While the language of the June 2012 DACA memorandum appears to give ICE the authority to grant deferred action as part of its (rather than another component's) responsibilities for exercising prosecutorial discretion, the June 2012 memorandum was not implemented in that way. Rather, as noted above, USCIS has exercised sole responsibility for considering requests for deferred action under the 2012 guidelines.

action and employment authorization to 2012 DACA applicants, and for issuing EADs to them as well.

11. In sum, ICE does not approve or deny requests for deferred action under either the 2012 DACA or 2014 DACA/DAPA guidelines, nor is it responsible for determining the length of time for which such deferred action is granted, nor is it responsible for issuing notices of approval for that program. Moreover, ICE does not determine the length of time for which deferred action under the 2012 DACA guidelines will be granted.

12. Further, even outside of the context of DACA, ICE does not issue notices of approval for employment authorization, does not determine the length of any employment authorization, and does not issue EADs. Its highly limited role, as described above, is peripheral, at best.

13. When the Court issued its February 16, 2015 injunction prohibiting implementation of the Secretary's November 2014 memorandum, I promptly directed that ICE take a series of steps to ensure that the agency complied with the Court's order. On February 18, 2015, I disseminated a message to all ICE officers, agents, and attorneys directing them not to consider the new DAPA and 2014 expanded DACA guidelines as the basis for exercising prosecutorial discretion, not to use these guidelines to determine whether individuals may request deferred action, and not to refer individuals to USCIS for the purposes of seeking deferred action or employment authorization under DAPA or the 2014 DACA guidelines, unless and until further guidance is given. The Secretary also issued a February 20, 2015 memorandum to senior DHS officials directing that the Department and its components continue to suspend implementation of both DAPA and the 2014 changes to DACA, and to ensure compliance with

the Court's order. ICE further responded to the injunction by revising its website and other publicly-available resources to bring them into conformity with the injunction.

14. I am familiar with the Defendants' May 7 Advisory, in which the Government notified the Court that USCIS had issued approximately 2,000 three-year EADs instead of two-year EADs to DACA recipients after the February 16 preliminary injunction was issued. I am also familiar with the Court's July 7, 2015 Order, in which the Court expressed concern that this situation had not yet been fully rectified, and instructed each of the DHS officials named as defendants in this case, including myself, to attend a hearing on August 19, 2015, and to be prepared to show why he or she should not be held in contempt of Court. As discussed herein, as ICE Director, I do not have responsibility for, authority over, or personal knowledge about the matters raised in the Court's July 7 Order.

15. I am generally aware of the Defendants' July 9 Advisory, in which the Government notified the Court that USCIS had re-mailed, after the injunction approximately 500 three-year EADs that had previously been issued before the injunction but had been returned as undeliverable. As discussed below, as ICE Director I do not have responsibility for, authority over, or personal knowledge about this matter.

16. With the exception of identifying persons in ICE custody and other encountered individuals who may be eligible to request that they be considered for DACA, reviewing pending removal cases, and referring possibly eligible individuals to USCIS, ICE was assigned no role in the administration of the Secretary's November 2014 memorandum. Likewise, ICE does not accept, review, grant, deny, or otherwise process applications for deferred action or employment authorization under the 2012 DACA guidelines (or renewals thereof). ICE does not issue notices of approval or EADs to DACA recipients. ICE does not create, maintain, or update the records

systems under the control of USCIS that reflect or relate to recipients' deferred action or employment authorization. To my knowledge, those functions are exclusively performed by USCIS. Therefore, in my capacity as Director of ICE, I did not have responsibility for, authority over, or personal knowledge about any of the activities that resulted in the issuance of the three-year EADs discussed in Defendants' May 7 Advisory or the re-mailings discussed in Defendants' July 9 Advisory.

17. I am generally aware of the July 10, 2015 and the July 14, 2015 memoranda from the Secretary to Director Rodríguez of USCIS regarding USCIS's efforts to address the post-injunction issuance and/or re-mailing of three-year EADs to DACA recipients, which were filed with the Court on July 15, 2015. In my capacity as Director of ICE, I have had no responsibility for, authority over, or personal knowledge about the activities involved in correcting those three-year EADs that were issued or re-mailed after the injunction.

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

Executed this 31st day of July of 2015.

Sarah R. Saldaña
Director
U.S. Immigration and Customs Enforcement

EXHIBIT 5

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

STATE OF TEXAS, *et al.* Plaintiffs, v. UNITED STATES OF AMERICA, *et al.* Defendants.	No. 1:14-cv-254

DECLARATION OF RONALD VITIELLO

I, Ronald Vitiello, hereby make the following declaration with respect to the above-captioned matter:

1. I am the Deputy Chief of the U.S. Border Patrol, a component of U.S. Customs and Border Protection (CBP) within the U.S. Department of Homeland Security (DHS). I have been employed in this capacity since 2010, and I have been a Border Patrol agent for 30 years.

2. I am submitting this declaration in connection with the Court's Order of July 7, which directs me and the other individual defendants to appear at a hearing on August 19 concerning the Government's compliance with the Court's February 16 preliminary injunction. As explained in more detail below, as Deputy Chief of the Border Patrol, I have no responsibility for the compliance/remedial efforts at issue in the Court's Order, which involve U.S. Citizenship and Immigration Services (USCIS), and no first-hand knowledge of those efforts. In addition, requiring my personal attendance at the hearing would take me away from my performance of my duties as the Deputy Chief of the Border Patrol.

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

4. In my capacity as Deputy Chief, I am responsible for the daily operations of the Border Patrol, and I assist the Chief of the Border Patrol in planning and directing nationwide enforcement and administrative operations. These responsibilities extend to oversight of the nearly 21,000 Border Patrol Agents employed by CBP.

5. BP is the mobile, uniformed law enforcement arm of CBP responsible for securing U.S. borders between ports of entry. The Border Patrol is specifically responsible for patrolling nearly 6,000 miles of Mexican and Canadian international land borders and over 2,000 miles of coastal waters surrounding the Florida Peninsula, as well as the island of Puerto Rico.

6. One of the primary duties of a Border Patrol agent is to prevent, detect and apprehend individuals seeking to enter the country unlawfully. Together with other law enforcement officers, the Border Patrol facilitates the flow of legal immigration and goods while preventing the illegal trafficking of people and contraband.

7. I am familiar with the November 20, 2014, memorandum by the Secretary of Homeland Security, entitled *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who are the Parents of U.S. Citizens or Permanent Residents* ("November 2014 memorandum"). The bulk of that memorandum provides instruction to USCIS, another component within DHS, for the implementation of new policies regarding Deferred Action for Childhood Arrivals (DACA), and implementation of a new initiative, Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA). The sole responsibility placed on CBP—and by extension the Border Patrol—by the Secretary's November 2014 memorandum is to identify persons in CBP

and/or Border Patrol custody, as well as recently encountered individuals, who might be eligible for deferred action under the new DACA or DAPA guidelines (whom USCIS may then consider for deferred action). The Secretary tasked USCIS, not CBP or the Border Patrol, with responsibility for the approval or denial of requests for deferred action under the two policies. USCIS, not CBP or the Border Patrol, was made responsible for issuing notices of approval of deferred action and employment authorization to individuals found to merit deferred action under the revised DACA and DAPA policies, and for issuing employment authorization documents (EADs) to those who qualify for and are approved by USCIS for employment authorization.

8. In sum, CBP and the Border Patrol were not tasked with adjudicating requests for deferred action under the new DACA or DAPA guidelines, nor were CBP and the Border Patrol tasked with adjudicating requests under the DACA guidelines announced in 2012. It is also not the Border Patrol's practice to issue notices of approval under DACA, and the Border Patrol does not determine the length of time for which deferred action under DACA will be accorded. Further, even outside of the context of DACA, the Border Patrol does not issue notices of approval for employment authorization, does not determine the length of any employment authorization, and does not issue EADs.

9. When the Court issued its February 16, 2015 injunction prohibiting implementation of the Secretary's November 2014 memorandum, the Border Patrol immediately took steps to ensure that the agency complied with the Court's order. Based on instructions received from CBP, including a February 18, 2015 directive from Commissioner R. Gil Kerlikowske, Border Patrol agents were directed to (i) to cease any consideration of the new DAPA and the expanded DACA guidelines when processing individuals, (ii) not to attempt to

determine whether individuals could request deferred action under the November 20, 2014 memorandum, and (iii) not to refer such individuals to USCIS.

10. I am familiar with the Defendants' May 7 Advisory, in which the Government notified the Court that USCIS had issued approximately 2,000 three-year EADs instead of two-year EADs to DACA recipients after the February 16 preliminary injunction was issued. I am also familiar with the Court's July 7, 2015 Order, in which the Court expressed concern that this situation had not yet been fully rectified, and instructed each of the DHS officials named as defendants in this case, including myself, to attend a hearing on August 19, 2015, and to be prepared to show why he or she should not be held in contempt of Court. As discussed below, as Deputy Chief of the Border Patrol I do not have responsibility for, authority over, or personal knowledge about the matters raised in the Court's July 7 Order.

11. I am also familiar with the Defendants' July 9 Advisory, in which the Government notified the Court that USCIS had re-mailed after the injunction approximately 500 three-year EADs that had previously been issued before the injunction but had been returned as undeliverable. As discussed below, as Deputy Chief of the Border Patrol I do not have responsibility for, authority over, or personal knowledge about this matter.

12. With the exception of identifying persons in Border Patrol custody and other encountered individuals who may be eligible to request that they be considered for DACA, the Border Patrol was assigned no role in the administration of the Secretary's November 2014 memorandum. Likewise, the Border Patrol does not accept, review, grant, deny, or otherwise process requests for deferred action or employment authorization under 2012 DACA (or renewals thereof). The Border Patrol does not issue notices of approval or EADs to DACA recipients. The Border Patrol does not create, maintain, or update records systems under the

control of USCIS that reflect or relate to recipients' deferred action or employment authorization. To my knowledge, those functions are exclusively performed by USCIS. Therefore, in my capacity as Deputy Chief of the Border Patrol, I did not have responsibility for, authority over, or personal knowledge about any of the activities that resulted in the issuance of the three-year EADs discussed in Defendants' May 7 Advisory or the re-mailings discussed in Defendants' July 9 Advisory.

13. I am familiar with the July 10, 2015 and the July 14, 2015 memoranda from the Secretary to Director Rodríguez of USCIS regarding USCIS's efforts to address the post-injunction issuance and/or re-mailing of three-year EADs to DACA recipients, which were filed with the Court on July 15, 2015. In my capacity as Deputy Chief of the Border Patrol I have had no responsibility for, authority over, or personal knowledge about the activities involved in correcting those three-year EADs that were issued or re-mailed after the injunction.

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

Executed this 30th day of July of 2015.

Ronald Vitiello
Deputy Chief

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

STATE OF TEXAS, *et al.*, Plaintiffs, v. UNITED STATES OF AMERICA, *et al.* Defendants.	No. 1:14-CV-254

Order

Upon consideration of Defendants' Expedited, Unopposed Motion to Cancel August 19 Hearing Or, In the Alternative, to Excuse Secretary Johnson and Other Defendants and to Substitute Witnesses, and Memorandum in Support, it is

HEREBY ORDERED that the Defendants' Expedited, Unopposed Motion to Cancel August 19 Hearing Or, In the Alternative, to Excuse Secretary Johnson and Other Defendants and to Substitute Witnesses, and Memorandum in Support is GRANTED.

It is FURTHER ORDERED that the August 19 Hearing is canceled.

Signed on _____ _____, 2015.

_____
The Honorable Andrew S. Hanen
United States District Judge

State of Texas, et al. v. United States of America, et al.
No. 1:14-CV-254