



**By First Class Mail & Email: [cheryl.whelan@ag.ks.gov](mailto:cheryl.whelan@ag.ks.gov)**

August 7, 2017

Cheryl L. Whelan  
Assistant Attorney General  
Kansas Attorney General's Office  
120 SW 10th Ave., 2nd Floor  
Topeka, KS 66612

Dear Ms. Whelan,

This is a records request pursuant to the Kansas Open Records Act, K.S.A. 45-215, *et seq.*, regarding any communications between the Kansas Attorney General's Office and the federal government about the Deferred Action for Childhood Arrivals ("DACA") program. I write to you as the designated records custodian for the Kansas Attorney General's Office.

The DACA program is a critical lifeline for nearly 800,000 young immigrants who came to this country as children and know the United States as their home. DACA provides individuals permission to live and work in the country on a renewable, two-year basis.<sup>1</sup> Since its creation five years ago, DACA has enabled hundreds of thousands of young men and women nationwide—including nearly 7000 immigrants in Kansas<sup>2</sup>—to attend school, support their families, buy homes, begin careers, contribute to their communities, and pursue their dreams.

On June 29, 2017, the Attorneys General of the States of Texas, Alabama, Arkansas, Idaho, Kansas, Louisiana, Nebraska, South Carolina, Tennessee, and West Virginia, along with the Governor of Idaho (hereinafter, "the States"), sent a letter to U.S. Attorney General Jeff Sessions, requesting that the Secretary of Homeland Security "phase out the DACA program by rescinding the June 15, 2012 DACA memorandum and ordering that the Executive Branch will not renew or issue any new DACA or Expanded DACA permits in the future."<sup>3</sup> Should the Secretary not rescind the program by September 5,

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

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

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

2017, the States intend to seek to amend the complaint in *Texas v. United States*, No. 1:14-cv-254 (S.D. Tex.) to challenge the lawfulness of the DACA program. The United States has repeatedly—and successfully—defended the legal validity of the DACA program. Indeed, every legal challenge to the DACA program has failed.<sup>4</sup> As the United States has argued in several cases,<sup>5</sup> DACA is a lawful exercise of the enforcement discretion that Congress delegated to the Executive Branch. The Secretary of Homeland Security’s authority to grant deferred action derives from the Immigration and Nationality Act (“INA”), which charges the Secretary with “the administration and enforcement” of the country’s immigration laws.<sup>6</sup> The United States has defended the Executive’s authority to establish national immigration enforcement policies and priorities as central to implementing—rather than violating—its constitutional obligation to “take Care that the Laws be faithfully executed.”<sup>7</sup> Thus, any refusal by the Sessions Justice Department to defend the DACA program would require a complete reversal of the United States’ own consistent legal positions.

However, it remains unclear whether the United States will maintain its defense of the DACA program. Attorney General Sessions has opposed the DACA program since its inception, testifying before the Senate Judiciary Committee in January 2017 that DACA is “very questionable, in my opinion, constitutionally.”<sup>8</sup> Responding to the States’ June 2017 letter, Attorney General Sessions remarked: “I like it that states and localities are holding the federal government to account and expecting us to do our responsibility to the state and locals, and that’s to enforce the law.”<sup>9</sup> Former DHS Secretary John Kelly reportedly told members of Congress earlier this month that “he can’t guarantee that the administration would defend [the DACA program] in court.”<sup>10</sup> These statements raise serious questions regarding the United States’ commitment to defending the legality of the DACA program against the States’ threatened litigation, as well as questions about possible communications regarding the *Texas* litigation between the States and members of the Trump administration.

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

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

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

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

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

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

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

This records request seeks records regarding any communications between personnel of the Kansas Attorney General's Office and the Sessions Justice Department and Trump administration regarding the DACA program. Specifically, we request:

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

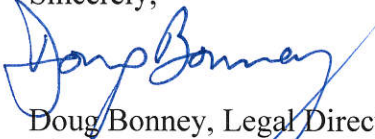
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<sup>11</sup> For the purposes of this request, "Records" are collectively defined to include, but are not limited to: text communications between phones or other electronic devices (including, but not limited to, communications sent via SMS or other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

Ms. Cheryl L. Whelan  
Assistant Attorney General  
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In accordance with the Kansas Open Records Act, I look forward to receiving a response to this request within three business days. I request that responsive records be sent to me in electronic format. The ACLU-KS is willing to pay reasonable copying fees associated with complying with this request, but I ask that you notify me if the cost will exceed \$100.00. If portions of the requested records are exempt from disclosure, I ask that you segregate those records and provide me with copies of the other responsive records. In the meantime, please do not hesitate to contact us if you have questions.

Sincerely,

A handwritten signature in blue ink that reads "Doug Bonney". The signature is fluid and cursive, with a long horizontal stroke at the end.

Doug Bonney, Legal Director  
Direct: (913) 490-4102  
[dbonney@aclukansas.org](mailto:dbonney@aclukansas.org)