



August 7, 2017

Via email [ConstituentServices@ag.louisiana.gov](mailto:ConstituentServices@ag.louisiana.gov) and regular mail  
Attorney General Jeff Landry  
Post Office Box 94005  
Baton Rouge, LA 70804

Re: Public Records Request

Dear Mr. Landry:

This is a records request pursuant to the Public Records Act of Louisiana, R.S. 44:1 et seq regarding any communications between the your office and the federal government about the Deferred Action for Childhood Arrivals (“DACA”) program.

The DACA program is a critical lifeline for nearly 800,000 young immigrants who came to this country as children and know the United States as their home. DACA provides individuals 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 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>2</sup> Should the Secretary not rescind the program by September 5, 2017, the States intend to seek to amend the complaint in *Texas v. United States*, No. 1:14-cv-254 (S.D. Tex.) to challenge the lawfulness of the DACA program.

The United States has repeatedly—and successfully—defended the legal validity of the DACA program. Indeed, every legal challenge to the DACA program has failed.<sup>3</sup> As the United States has argued in several cases,<sup>4</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>5</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

<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> 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/eypress/DACA\\_letter\\_6\\_29\\_2017.pdf](https://www.texasattorneygeneral.gov/files/eypress/DACA_letter_6_29_2017.pdf)

<sup>3</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>4</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>5</sup> 8 U.S.C. § 1103(a)(1); see also *id.* § 1103(a)(3).

Laws be faithfully executed.”<sup>6</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>7</sup> Responding to the States’ June 2017 letter, Attorney General Sessions remarked: “I like 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>8</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>9</sup> These statements raise serious questions regarding the United States’ commitment to defending the legality of 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.

We request copies of the public records described below.

- All records<sup>10</sup> related to communications between employees of the Louisiana Office of the Attorney General 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 Louisiana Office of the Attorney General 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 Louisiana Office of the Attorney General 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.).

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<sup>6</sup> U.S. Const. art. II, § 3.

<sup>7</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>8</sup> Fox News, Fox & Friends, June 30, 2017, *available at* <https://www.youtube.com/watch?v=X0T9ZVH4lfk&feature=youtu.be>.

<sup>9</sup> Ted Hesson, *Kelly Won’t Commit to Defending DACA in Court*, POLITICO.com (July 12, 2017), <http://www.politico.com/story/2017/07/12/john-kelly-daca-legal-challenge-240470>.

<sup>10</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.

- All records related to communications between employees of the Louisiana Office of the Attorney General 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 Louisiana Office of the Attorney General 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.).

Under the provisions of R.S. 44:32, if you raise a question as to whether any of the records requested is a public record, you are required to notify in writing the person making the request of your determination and the reasons, including the legal basis therefor. Notice shall be made within three days of the receipt of the request, exclusive of Saturdays, Sundays and legal public holidays. If you claim exemption for a record or records under the Public Records Act, or any other statute, include for each record the section of law under which exemption is claimed and your reasons for believing the statute is applicable to the record.

Under the provisions of R.S. 44:33, if the public record is not immediately available, you are required to certify this in writing promptly, and in your certificate fix a day and hour within three days, exclusive of Saturdays, Sundays and legal public holidays, for the exercise of the right granted in the Public Records Act.

Under R.S. 44:34, "If any public record applied for by any authorized person is not in the custody or control of the person to whom the application is made, such person shall promptly certify this in writing to the applicant, and shall in the certificate state in detail to the best of his knowledge and belief, the reason for the absence of the record from his custody or control, its location, what person has custody of the record and the manner and method in which, and the exact time at which it was taken from his custody and control. He shall include in the certificate ample and detailed answers to inquiries of the applicant which may facilitate the exercise of the right granted by this Chapter."

If you are invoking R.S. 44:34 to deny this request, please answer the following questions in detail.

1. Is a copy of the requested public record usually located in your office?
2. Why is your copy of the requested public record absent from your office?
3. Where is your copy of the requested public record?
4. Who has received a copy of the requested public record?
5. How and from whom did the present custodian gain control of your copy of the requested public record?
6. What was the exact time your copy of the public record was taken from your custody and control?
7. When will your copy of the requested public record be returned to your office?
8. Is there any other public official who has a copy of the requested record?
9. What is/are the name(s) of anyone who has a copy of the requested public record?
10. What is/are the location(s) where the public record can be viewed?
11. What are the hours and dates when the requested public record can be viewed?

Please contact us at the number above when the requested materials are ready to be mailed. We request that any and all documents that are available be made available in electronic form. This request includes any documents that are in paper form but that can be scanned to electronic form, as well as digital copies of any recordings. For those documents that cannot be produced in electronic form, if the cost of copies does not exceed \$50.00, proceed without further approval and send us an invoice with the records; otherwise, call to advise and gain approval to proceed. As you are aware, failure to abide by the Public Records Law may result in certain penalties and the award of attorney's fees. We trust that you will comply without the necessity of any further action on our part.

Sincerely,



Marjorie Esman  
Executive Director

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