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COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

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June 23, 2015

VIA ELECTRONIC TRANSMISSION

The Honorable Jeh Johnson
Secretary
Department of Homeland Security
Washington, DC 20528

Mr. León Rodríguez
Director
U.S. Citizenship and Immigration Services
Washington, DC 20529

Dear Secretary Johnson and Director Rodríguez:

On April 27, 2015, I wrote you regarding your implementation of the President's recent executive actions on immigration and your attorneys' representations about that implementation in the *Texas v. United States* case. That letter sought a variety of relevant documents related to the implementation process and the more than 100,000 expanded DACA approvals USCIS granted between November of 2014 and the Court's issuance of a preliminary injunction on February 16, 2015. In a letter dated May 26, 2015, Director Rodríguez responded that USCIS "is working to respond to the document requests included" in my April letter, and that "[d]ocuments will be provided to you on a rolling basis, as soon as is reasonably possible." However, to date, I have not received a single document in response to my letter of April 27, nor has USCIS substantively responded to inquiries by my Committee staff about the schedule for the rolling productions or how USCIS is prioritizing the categories of documents requested in the letter. Please begin the rolling productions immediately and coordinate with my staff to ensure proper prioritization.

In light of recent developments, the Committee also requires additional documents relating to these issues. On June 17, 2015, Director Rodríguez provided sworn testimony at a hearing before the House Committee on Oversight and Government Reform. Congressman Jordan asked Director Rodríguez about the 100,000 three-year DACA authorizations,

specifically asking when USCIS first recognized the discrepancy between the judge's understanding that USCIS would not issue any three-year DACA approvals before February 18, 2015, and USCIS's actual approval of more than 100,000 before that date. Congressman Jordan asked Director Rodríguez: "When did you first learn that there may be a problem?" Director Rodríguez replied: "[i]mmediately after the injunction we discussed the existence of these 108,000 three year authorizations [. . .]. This would have been sometime in the few days after the injunction[.]"

However, as Congressman Jordan noted, despite the fact that the court issued the injunction on February 16, 2015, USCIS did not inform the court of the 100,000 three-year DACA approvals until March 3, 2015. Director Rodriguez stated: "We advised the court I believe at the beginning of March [. . .] our counsel took the initiative to advise the court[.]" Director Rodriguez also stated: "We told the court within a couple of weeks of the injunction, in an effort to be candid with the tribunal which our counsel felt that it was their obligation in which certainly had I been counsel, I would have had the same attitude as well."

As Congressman Jordan also pointed out in the hearing, during the weeks between USCIS's recognition of this problem and its eventual advisory to the court, Congress was debating funding for the Department of Homeland Security, and the deadline for that funding bill was February 27, 2015. In this context, USCIS's delay raises additional important questions. In order for the Committee to evaluate the circumstances under which USCIS learned of the problem and decided to inform the court, please provide the following:

1. All records relating to communications to or from DHS headquarters or USCIS relating to the agencies' acknowledgement that Judge Hanen believed that USCIS would not issue any three-year DACA approvals before February 18, 2015.
2. All records relating to communications to or from DHS headquarters or USCIS relating to the timing of the disclosure to the court of the 100,000 three-year DACA approvals issued before the court's injunction, including, but not limited to, any mention of the DHS funding bill that was pending before Congress.

Moreover, on May 7, 2015, your attorneys filed another Advisory stating that, in addition to the more than 100,000 expanded DACA approvals issued between November of 2014 and the court's issuance of a preliminary injunction on February 16, 2015, USCIS had further granted approximately 2000 expanded DACA approvals and work authorizations after the preliminary injunction.¹ On May 15, 2015, your attorneys filed a Supplement to your May 7 Advisory that contained declarations from Director Rodríguez and Donald Neufeld.² Director Rodríguez's declaration noted that Secretary Johnson had asked the DHS Office of Inspector General to investigate the circumstances of the issuance of three-year approvals after the issuance of the

¹ Defs' May 7 Advisory, *Texas, et al. v. United States, et al.*, 1:14-cv-00254 (TXSD), ECF No. 247.

² ECF No. 256.

Court's preliminary injunction order, and it listed a number of steps USCIS had taken in response to the preliminary injunction, as did Mr. Neufeld's declaration.³ In order to fulfill its oversight functions, the Committee needs additional documents relating to these steps, which, according to the declarations,⁴ included:

3. "Instructions from [Director Rodriguez] to USCIS leadership, communicated very early in the morning on February 17, 2015, less than two hours after the preliminary injunction ruling was issued, directing that USCIS should take no further action to implement the new DACA eligibility guidelines or DAPA."

Please provide copies of these instructions, as well as any questions, comments, or other responses to them received from USCIS leadership.

4. "Orders from USCIS leadership on February 17 directing that the agency immediately cease approval of deferred action or employment authorization under DACA, and cease issuance of notices or EADS, regardless of the authorized period of time."

Please provide copies of these orders, as well as any questions, comments, or other responses to them from agency personnel.

5. "Notification broadcast on February 17 to the entire USCIS workforce regarding the injunction and the need to suspend preparations for implementation of the new DACA and DAPA policies."

Please provide a copy of the notification, as well as any questions, comments, or other responses to the notification received from the USCIS workforce.

6. "Re-authorization on February 18 to approve requests and to issue notices and EADs under the 2012 DACA eligibility guidelines, but only for two-year periods, as provided by the 2012 DACA policy."

Please provide a copy of the authorization, as well as any questions, comments, or other responses to the re-authorization received from USCIS personnel.

7. "On the morning of February 17 [...] headquarters personnel sent instructions to personnel at the USCIS Service Centers – which are responsible for considering DACA requests and related applications for employment authorization – to immediately suspend the further approval of any DACA requests."

³ ECF No. 256-1; ECF No. 256-2.

⁴ *Id.*

Please provide copies of these instructions, as well as any questions, comments, or other responses to the instructions received from the USCIS Service Centers.

8. "Instructions were also sent to USCIS personnel at USCIS card-production facilities, and the information technology ('IT') staff that maintain the technology supporting the card production process, to immediately suspend the further printing and issuance of EADs for all DACA recipients."

Please provide copies of these instructions, as well as any questions, comments, or other responses to the instructions received from USCIS card-production facilities personnel or IT staff.

9. "USCIS personnel at the Service Centers and card-production facilities were also instructed to intercept and hold any printed approval notices or EADs related to three-year periods of deferred action or employment authorization until further notice."

Please provide copies of these instructions, as well as any questions, comments, or other responses to the instructions received from USCIS personnel at the Service Centers and card-production facilities.

Please provide the requested documents organized categorically by the numbers above and in searchable PDF format by July 7, 2015. Please also consult with Patrick Davis of my Committee staff, available at (202) 224-5225, to coordinate the timing and prioritization of the pending document production in response to my April 27, 2015, letter. Thank you for your attention to this important matter.

Sincerely,



Charles E. Grassley
Chairman
Senate Committee on the Judiciary