

**Penn State Law**

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**From the Selected Works of Shoba Sivaprasad Wadhia**

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2012

# FOIA Request to DHS on DACA Program

Shoba S Wadhia



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October 15, 2012

U.S. Citizenship and Immigration Services  
National Records Center (NRC)  
FOIA/PA Office  
P.O. Box 648010  
Lee's Summit, MO 64064-8010

Re: Freedom of Information Act (FOIA) Request

Dear FOIA Officer:

Professor Shoba Sivaprasad Wadhia ("requester") submits this letter as a request for information under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, *et seq.*

Requester seeks information pertaining to two groups of individuals: (1) Applicants for deferred action since June 17, 2011, and (2) Applicants Consideration of Deferred Action for Childhood Arrivals (DACA) since August 15, 2012. Requester seeks to study the biographical and demographical profile of all applicants for deferred action and DACA, as well as grants and denials of deferred action and DACA applicants. This request is made for a scholarly purpose and not for commercial use.

### **Requester**

Immigration law expert Shoba Sivaprasad Wadhia directs Penn State's Center for Immigrants' Rights, an immigration policy clinic where students produce practitioner toolkits, white papers, and primers of national impact on behalf of client organizations. Professor Wadhia researches the role of prosecutorial discretion in immigration law; the association between detention, removal and due process; and the intersection between immigration, national security, and race. Prior to joining Penn State Law, Professor Wadhia was deputy director for legal affairs at the National Immigration Forum in Washington, D.C., where she worked on issues surrounding the creation of the U.S. Department of Homeland Security, "post 9-11" executive branch policies impacting immigrant communities, and comprehensive immigration reform.

### **Request for Information**

Requester seeks disclosure of any and all records that were prepared, received, transmitted, collected, and/or maintained by the U.S. Department of Homeland Security (DHS) and/or U.S. Citizenship and Immigration Services (USCIS) that describe, refer, or relate to applications for deferred action since June 17, 2011, and Consideration of Deferred Action for Childhood Arrivals (DACA) since August 15, 2012.

The requested records include, but are not limited to:

1. Each DACA applicant's DACA application (Form I-821D)
2. Each DACA applicant's application for employment authorization (Form I-765)
3. Each DACA applicant's application for employment authorization worksheet (Form I-765WS)
4. Any correspondence between DHS and/or USCIS and each deferred action or DACA applicant
5. Any internal agency correspondence and/or documents pertaining to or discussing each deferred action or DACA applicant
6. Copies of all written decisions for each applicant (acceptances and denials)
7. Any internal guidance, correspondence, and/or other documents discussing the decision-making process or providing guidelines for granting or denying an application

In addition to the above requested records, the requester seeks the following information about each applicant:

1. Nationality or country of birth
2. Date of birth
3. Gender
4. Date of entry to U.S.
5. Length of stay in U.S.
6. Whether the applicant has legal counsel or a Form G-28 on file
7. Whether the applicant has U.S. citizen family members
8. Application status
  - a. If denied, reasons/factors for denial
    - i. If denied for criminal history or public safety reasons, please specify what crimes or public safety reasons were the basis for the denial
  - b. If approved, reasons/factors for approval
  - c. If pending, reasons/factors for pending status or request for more evidence
9. Time between filing application and decision
10. Any comments about the application or decision

Also, the requester seeks information about the total numbers of:

1. DACA approvals that resulted in the grant of an Employment Authorization Document (EAD)
2. DACA approvals that resulted in an EAD denial

Requester asks that any records that exist in electronic form be provided in their native electronic format on a compact disc (CD), digital video disk (DVD), or equivalent electronic medium. Requester asks that any documents stored in Portable Document Format ("PDFs") be provided as individual files in a searchable PDF format. Ideally, the information requested above would be provided in an Excel spreadsheet. Finally, requester requests copies of all deferred action and DACA application forms and cases that were reviewed internally after a denial and the outcome.

All requested records that are responsive may be provided with personally identifying details redacted.

### **Request for Fee Waiver**

A waiver of fees is requested under 5 U.S.C. 552(a)(4)(A)(iii) and 6 CFR § 5.11(k) because these requests seek documents, the disclosure of which “is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” *Id.* The requested information will be used to prepare a scholarly article and to further the public understanding of deferred action and the DACA program and their applicability to individuals facing immigration action.

Congress intended the FOIA fee waiver provision to encourage “open and accountable government.” *Citizens for Responsibility and Ethics in Washington v. U.S. Dep’t. of Educ.*, 593 F. Supp. 2d 261, 271 (D.D.C. 2009). Therefore, agencies should “apply the public-interest waiver liberally.” *Conklin v. United States*, 654 F. Supp. 1104, 1005 (D.Colo. 1987). DHS regulations clarify that fee waivers are appropriate if disclosure of the requested information is “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government” and is “not primarily in the commercial interest of the requester.” 6 CFR 5.11 § (k)(i) and 6 CFR § 5.11(k)(ii).

#### **1. Disclosure of the Information is in the Public Interest**

To determine whether the requested information satisfies the first requirement, DHS has identified four relevant factors: (i) whether the subject of the request concerns “the operations or activities of the [federal] government;” (ii) whether the information is meaningfully informative about the operations or activities of the government such that its disclosure is “likely to contribute” to an understanding of such government functions; (iii) whether disclosure of the information will contribute to “public understanding,” meaning a reasonably broad audience of interested persons beyond just the requester; and (iv) whether the disclosure will “significantly” increase public understanding of government operations or activities. 6 CFR § 5.11(k)(2)(i)-(iv).

##### **i. *The subject directly concerns the operations of the federal government.***

The requested documents and information concern identifiable “operations or activities” of the government. Requester seeks records of undocumented immigrants applying for deferred action under the newly implemented DACA program or the traditional deferred action process. The requested documents and information will allow the requester to analyze the frequency with which USCIS grants or denies such requests, as well discern any potential patterns present in the applications, grants, and denials.

##### **ii. *The informative value will contribute to an understanding of government activities.***

The requested documents and information will contribute to an understanding of government activities by allowing the requester to analyze the demographic and biographic profile of deferred action and DACA applicants, as well as how long it takes USCIS to process and approve pending applications, and to publish the research in scholarly law journals.

iii. ***This information will contribute to the understanding of a broad audience.***

The requested documents and information will contribute to the understanding of the public as a whole, not just a limited subsection of individuals. Because DACA is such a new program, the amount of information that is available to the public on the subject is limited at this point. The requested documents and information will help undocumented immigrants who are potentially eligible for DACA relief understand the potential impact DACA will have, as well as help the public as a whole understand the workings of the DACA program. In addition, because much of the information sought has not been consistently tracked and recorded by DHS in the past, the requester seeks to build upon and supplement her previous research on the subject of deferred action.

iv. ***This information will significantly increase public understanding.***

The requested documents and information will significantly increase public understanding of deferred action and the DACA program. President Obama's decision to grant deferred action to certain undocumented immigrants who meet the DACA eligibility requirements was met with much debate and concern. Releasing this information will allow the public to realize the potential impact of DACA, including, but not limited to, who stands to benefit, how many people stand to benefit, and the likelihood of a successful application.

2. **Disclosure of the Information is Not Primarily in the Commercial Interest of the Requester.**

To determine whether the request satisfies the second requirement, DHS has identified two concerns: (i) whether the requester has a commercial interest that would be furthered by the requested disclosure and (ii) whether the public interest in disclosure is greater in magnitude than any identified commercial interest of the requester. 6 CFR § 5.11(k)(3)(i)-(ii).

- i. ***Shoba Sivaprasad Wadhia is the director of the Penn State University Dickinson School of Law's Center for Immigrants' Rights and is a leading scholar in the field of immigration law, focusing specifically on prosecutorial discretion and deferred action.***

The Center for Immigrants' Rights is an immigration clinic at the Penn State Dickinson School of Law. Professor Shoba Sivaprasad Wadhia is the clinic's director. The requested information is to be used solely for scholarly research and the requester does not stand to gain financially from any of the information hereby requested.

Given that FOIA's fee waiver requirements are to "be liberally construed in favor of waivers for noncommercial requesters," a waiver of all fees is justified and warranted in this case. *See Judicial Watch, Inc., v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003). If you deny the fee waiver request, we respectfully ask for a limitation of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) ("fees shall be limited to reasonable standard charges for document duplication when records are not sought for

commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media . . .”).

Please inform me if the charges for this FOIA production will exceed \$25.00.

**Expedited Processing**

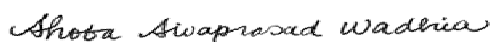
Also requested is expedited treatment of this FOIA request. This request qualifies for expedited treatment pursuant to 5 U.S.C. § 552(a)(6)(E) and applicable regulations. There is a compelling need for expedited processing of this request, namely an “urgency to inform the public concerning the actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II).

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Thank you for your consideration of this request. If this request is denied in whole or in part, the requestor asks that the government justify all redactions by reference to the specific exemptions of FOIA. I expect the government to release all segregable portions of otherwise exempt material. I reserve the right to appeal a decision to withhold any information or to deny expedited processing or waiver of fees.

If you have any questions about this request you may contact me at (814) 865-3823 or [ssw11@dsl.psu.edu](mailto:ssw11@dsl.psu.edu). Thank you in advance for your cooperation and timely consideration of this request.

Sincerely,



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