

**Penn State Law**

---

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

---

2013

# FOIA Request to USCIS on Deferred Action Records

Shoba S Wadhia



Available at: [https://works.bepress.com/shoba\\_wadhia/25/](https://works.bepress.com/shoba_wadhia/25/)



May 24, 2013

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 internal documents and guidance pertaining to deferred action since June 17, 2011.

### **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 information about the general deferred action program filed on or after June 17, 2011.

### **General Records**

1. Any internal guidance, correspondence, and/or other documents discussing the decision-making process or providing guidelines for granting or denying an application

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.

### **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.

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.

##### **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 internal guidance on deferred action 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 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.

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 policy analysis 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).

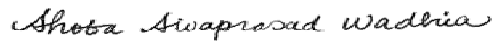
\* \* \* \* \*

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@psu.edu](mailto:ssw11@psu.edu). Thank you in advance for your cooperation and timely consideration of this request.

Sincerely,

A handwritten signature in cursive script that reads "Shoba Sivaprasad Wadhia". The signature is written in black ink and is positioned to the left of a vertical line that extends downwards from the end of the signature.

Shoba Sivaprasad Wadhia, Esq.  
Clinical Professor and Director  
Center for Immigrants' Rights: <http://law.psu.edu/immigrants>  
The Pennsylvania State University  
The Dickinson School of Law  
329 Innovation Boulevard, Suite 118  
State College, PA 16803  
814-865-3823 (p)