

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

NATIONAL ASSOCIATION FOR THE  
ADVANCEMENT OF COLORED  
PEOPLE, *et al.*,

*Plaintiffs,*

v.

DONALD TRUMP, in his official capacity  
as President of the United States, *et al.*,

*Defendants.*

No. 1:17-cv-01907 (CRC)

**DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR STATUS  
CONFERENCE AND ADOPTION OF A CASE MANAGEMENT ORDER**

**INTRODUCTION**

Plaintiffs ask this Court to dispense with the rules and procedures governing an Administrative Procedure Act (“APA”) record-review case and to adopt instead “a Case Management Order with a schedule that is similar to the schedules adopted by the Courts presiding over the other, sister cases” challenging the rescission of DACA. ECF No. 9 (Pls.’ Mem.) at 3. Plaintiffs contend that the adoption of their proposed Case Management Order would “permit the parties in this action to use discovery conducted in the sister cases in order to reduce, and possibly eliminate, the need for discovery in this action.” *Id.*, at 4. However, for the reasons set forth below, and based on this Court’s Local Rules and established precedent in this Circuit holding that discovery outside of the administrative record is generally impermissible in an APA record review case such as this, Defendants oppose Plaintiffs’ motion for entry of a Case Management Order.

## ARGUMENT

### 1. This Case Should be Resolved By Dispositive Motions

As a threshold matter, although Defendants' answer is not due until November 24, 2017, *see* FEDERAL RULE OF CIVIL PROCEDURE 12(A)(2), Defendants intend by Wednesday, November 8, 2017, to move for dismissal of Plaintiffs' Complaint in its entirety for lack of jurisdiction or, alternatively, on the legal merits of Plaintiffs' claims. Engaging in discovery before the resolution of Defendants' Motion to Dismiss would be inappropriate under both the Federal Rules of Civil Procedure and the Local Rules of the U.S. Court for the District of Columbia, in addition to being highly prejudicial to Defendants in this action.

Discovery is inappropriate before the defendants in an action have had the opportunity to respond to the complaint. *See* LCvR 16.3(b). First, it is inappropriate for discovery of any kind to go forward pending the adjudication of Defendants' dispositive motion and a determination by the Court about whether it has jurisdiction to decide Plaintiffs' claims and whether Plaintiffs' claims are otherwise justiciable. *Sibley v. U.S. Supreme Court*, 786 F. Supp. 2d 338, 346-47 (D.D.C. 2011). Second, it is also well established that actions for review of an administrative record are exempt from the requirements of Federal Rules of Civil Procedure 16(b) and 26(f). *See* Fed. R. Civ. P. 26(a)(1)(B)(i), (f); LCvR 16.3(b). Accordingly, in Administrative Procedure Act ("APA") challenges such as this, discovery outside of the administrative record is generally impermissible. *Air Transport Ass'n of America v. Nat'l Mediation Bd.*, 663 F.3d 476, 487 (D.C. Cir. 2011) ("Discovery typically is not available in APA cases."); *Hill Dermaceuticals, Inc. v. FDA*, 709 F.3d 44, 47 (D.C. Cir. 2013) ("[I]t is black-letter administrative law that in an APA case, a reviewing court should have before it neither more nor less information than did the agency when it made its decision.") (internal quotation marks omitted); *see also FMBE Bank Ltd*

*v. Mnuchin*, 249 F. Supp. 3d 215, 227 (D.D.C. 2017) (“In an APA case . . . to . . . engage in extra-record discovery, a plaintiff must generally make a strong showing of bad faith or improper behavior on the part of the agency.”). Indeed, this principle formed the bedrock of Defendants’ requests for emergency stays of discovery in the New York and California related cases, which were respectively granted by the Second Circuit and Ninth Circuit courts of appeals (*see infra*).

That Plaintiffs also allege constitutional violations as part of their APA challenges does not change the general rule that discovery is unavailable. *See Jarita Mesa Livestock Grazing Ass’n v. U.S. Forest Service*, 58 F. Supp. 3d 1191, 1237-38 (D.N.M. 2014) (“[T]hat the appeal alleges constitutional violations as well as statutory ones does not take it outside of the APA”); *see also* 5 U.S.C. § 706(2)(B) (instructing courts to set aside agency action under the APA when found to be “contrary to constitutional right, power, privilege, or immunity”). This is particularly true where “a plaintiff’s constitutional claims fundamentally overlap with their other APA claims,” which occurs when the allegations are functionally similar. *Chiayu Chang v. U.S. Citizenship and Immigration Services*, -- F. Supp. 3d --, No. 16-1740, 2017 WL 2480749 at \*2, (D.D.C. May 31, 2017). Plaintiffs’ constitutional claims allege that the government will violate the due process rights of DACA recipients by using information they provided in their DACA applications in future deportation proceedings, and by “reneging on promises that applicants allowed to register in the DACA program could only be deprived of their status as lawfully present if there was an issue of fraud, criminal (sic), national security, or [a] public safety issue.” ECF No. 1, (Compl.) at ¶¶ 60-61. These claims are fundamentally interwoven with Plaintiffs’ APA claim alleging that the rescission is arbitrary and capricious. *See id.*, ¶ 62 (challenging these actions for being “arbitrary and capricious, in violation of the Due Process Clause of the Fifth Amendment”). For this reason, and because Plaintiffs’ constitutional challenges are

reviewable (if at all) only under the APA, *see* 5 U.S.C. § 706(2)(B), no discovery of extra-record material is justified. *See Chiayu Chang*, 2017 WL 2480749 at \*2 (rejecting argument that presence of due-process and equal-protection claims challenging denial of visa applications entitled plaintiffs to discover evidence outside the administrative record).

Most importantly, Plaintiffs' principle contention—that “the adoption of an expedited case schedule will cause the Defendants no prejudice, as they are already subject to expedited schedules in several other pending cases that challenge the same action”—is incorrect. In response to Defendants' petitions for writs of mandamus challenging burdensome and inappropriate discovery demands, the U.S. Court of Appeals for the Second Circuit stayed all discovery and administrative-record supplementation in the New York cases on October 20, 2017—four days *before* Plaintiffs filed their motion. And the Court of Appeals for the Ninth Circuit followed suit four days later, staying all discovery in the California cases only a few hours after Plaintiffs asked this Court to impose a schedule mimicking those in the “sister cases.” *See In Re: Elaine Duke*, No. 17-3345 (2d Cir. Oct. 20, 2017); *In re: USA, et al v. USDC-CASF*, No. 17-72917 (9th Cir. Oct. 24, 2017). Defendants had argued in their mandamus petitions that the burden placed on the Government by the wide-ranging and wholly inappropriate discovery sought by plaintiffs in those cases prejudiced the Government's ability both to defend against these cases and to perform core mission objectives. Indeed, declarations attached to briefing in the Northern District of California attested that the flood of document-production demands imposed by plaintiffs in that and the related New York cases had required the search, collection, and processing of more than 1.2 million documents from more than 100 custodians and, among other things, had required Immigrations and Customs Enforcement to reassign 1 out of every 14 attorneys *nationwide* to document review solely related to DACA lawsuits. *See* Exhs. A-D,

Decls. These demands impact critical mission objectives, *see id.*, and implicate important separation-of-powers concerns. This Court should not order Defendants to resume discovery only a week after two courts of appeals intervened in the very cases on which Plaintiffs rely in their motion. For each of the above reasons, the Court should deny Plaintiffs' Motion to enter a Case Management Order.

2. Defendants' Responses to Plaintiffs' Statements in their Rule 26(f) Report

In its Minute Order of October 26, 2017, in addition to its order that Defendants respond to Plaintiffs' motion for the adoption of a Case Management Order, the Court further directed Defendants to state their "positions on the statements made in Plaintiffs' Rule 26(f) report, which is attached to Plaintiffs' motion." Pursuant to that direction, Defendants state as follows:

I. DESCRIPTION OF THE CASE

Defendants oppose the entry of a schedule permitting discovery and contend that this case may be resolved by dispositive motions in advance of the date on which the DACA Program will be rescinded.

II. MATTERS RELATED TO LOCAL RULE 16

1. Plaintiffs "seek the administrative record on which the Defendants rely to support rescission of the DACA Program." That administrative record has been publicly filed in two district courts, *see Regents of University of CA v. DHS*, No. 17-5211, Doc. 64 (N.D. Cal. Oct. 6, 2017); *Batalla Vidal v. Baran*, No. 16-4756, Doc. 77 (E.D.N.Y. Oct. 6, 2017), and will be produced by Defendants in this case. Defendants otherwise object to any discovery as inappropriate and unnecessary in this record-review case. Defendants object to Plaintiffs' contention that this Court

should enter a schedule mimicking that in the California and New York cases because, as explained above, discovery in those cases has been stayed.

2. Defendants agree that the complaint was amended to add two additional plaintiffs on October 23, 2017, and Defendants otherwise object to the addition of new claims to the complaint.

3. Defendants oppose the transfer of this case to a magistrate judge.

4. Defendants do not believe that a realistic possibility of settlement exists in this case.

5. Defendants assert that this case presents pure questions of law and can be resolved on a motion to dismiss or, in the alternative, on motions for summary judgment.

6. Defendants object to Plaintiffs' request for initial disclosures because, as discussed above, initial disclosures are not required in record-review cases such as this. *See* Fed. R. Civ. P. 26(a)(1)(B)(i).

7. Defendants object to Plaintiffs' specific request for interrogatories and document requests because, *even if* the discretionary decision to rescind DACA is reviewable, its propriety must be decided on the administrative record.

8. Defendants do not believe that expert witness reports or testimony will be necessary to resolve this case because it presents pure questions of law.

9. Defendants agree that this case is not a class action.

10. Defendants agree that this case is not a class action.

11. Defendants object to Plaintiffs' proposed schedule, including the proposal for a bench trial the week of February 12, 2018, as unnecessary because where, as

here, there is a “contemporaneous explanation” for an agency’s decision, its validity “must . . . stand or fall on the propriety of that finding” based on the administrative record. *Camp v. Pitts*, 411 U.S. 138, 143 (1973) (per curiam).

12. Defendants contend that a bench trial will not be necessary because this case presents pure questions of law that can be decided on the basis of dispositive motions.

13. Defendants do not believe that a status conference is necessary before Defendants have responded to Plaintiffs’ Complaint, but Defendants are available to appear and participate if the Court determines that an early conference would be prudent.

Lastly, Defendants object to Plaintiffs’ proposed schedule because discovery is unnecessary. Defendants will file a motion to dismiss this case on Wednesday, November 8, 2017, and propose that Plaintiffs’ Opposition be due two weeks later, on Wednesday, November 22, 2017.

### **CONCLUSION**

For the foregoing reasons, Defendants respectfully request that the Court deny Plaintiffs’ Motion to enter a Case Management Report.

Dated: October 30, 2017

Respectfully submitted,

CHAD A. READLER  
Acting Assistant Attorney General

BRETT A. SHUMATE  
Deputy Assistant Attorney General

JENNIFER D. RICKETTS  
Director, Federal Programs Branch

JOHN R. TYLER  
Assistant Branch Director

/s/ Kate Bailey  
KATE BAILEY  
Trial Attorney  
United States Department of Justice  
Civil Division, Federal Programs Branch  
20 Massachusetts Ave., N.W.  
Washington, DC 20530  
Tel.: 202.514.9239  
Fax: 202.616.8460  
Email: kate.bailey@usdoj.gov

*Counsel for Defendants*

## Exhibit A

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

REGENTS OF UNIVERSITY OF CALIFORNIA and  
JANET NAPOLITANO, in her official capacity as  
President of the University of California,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF  
HOMELAND SECURITY and ELAINE DUKE, in  
her official capacity as Acting Secretary of the  
Department of Homeland Security,

Defendants.

Hon. William Alsup

Case No. 17-cv-05211-WHA

**DECLARATION OF VIJAI CHELLAPPA**

I, Vijai Chellappa, do hereby declare and state:

1. I am an E-Discovery Digital Forensic Analyst with U.S. Customs and Border Protection (CBP), E-Discovery Team, Security Operations, Cyber Security Directorate, Office of Information Technology (OIT). I have 15 years of experience in the Information Technology field, and I have worked for CBP, OIT since 2009. I have been an E-Discovery Digital Forensic Analyst since 2011.

2. I am aware of the Court Order dated October 10, 2017, Dkt. No. 67, Order Shortening Time for Briefing Motion to Complete the Administrative Record. I make the following statements based on my personal knowledge and upon information furnished to me in the course of my official duties.

3. In CBP's efforts to respond to discovery requests in this and related cases, I have assisted in the ongoing process of searching, collecting, reviewing, and analyzing documents

based on searches of more than 70 GB of data (90,219 electronic files) acquired from searches of 12 network drives and approximately 29 workstations.

4. Additionally, I developed and executed the search of CBP's e-mail mailbox journal servers which consisting of approximately 200 TB of data from CBP e-mail mailboxes to locate potentially responsive e-mail messages.

5. CBP, OIT has dedicated significant hours and all of the E-Discovery computer search resources to accelerate the total time needed to respond to pending discovery. To date, I have already expended approximately 48 hours in this effort, to include the searches, data transfers, and refining process for potential discovery material in this and related matters. Additionally, the Agency has experienced impacts to agency function and mission, as all E-Discovery computer server resources were reassigned and diverted to address the search for documents responsive to current discovery requests in the various pending DACA cases. Specifically, all of our work for other cases and court deadlines was put on hold to perform discovery tasks in this and related matters in order to expend the entire resource of E-Discovery's computer server in response to production of this discovery request. As a result, the agency is already more than a week behind in other litigation obligations and has also fallen behind on an ongoing critical surveillance operation.

6. Similar burdens would likely be incurred to immediately locate any additional materials that I understand Plaintiffs assert should be part of the administrative record.

I declare that to the best of my current knowledge the foregoing is true and correct. Executed on this 12<sup>th</sup> day of October 2017.

A handwritten signature in black ink, appearing to read 'Vijai Chellappa', is written above a solid horizontal line.

Vijai Chellappa

## Exhibit B

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

REGENTS OF UNIVERSITY OF CALIFORNIA  
and JANET NAPOLITANO, in her official  
capacity as President of the University of  
California,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF  
HOMELAND SECURITY and ELAINE DUKE,  
in her official capacity as Acting Secretary of the  
Department of Homeland Security,

Defendants.

Hon. William Alsup

Case No. 17-cv-05211-WHA

**DECLARATION OF DAVID J. PALMER**

I, David J. Palmer, do hereby declare and state:

1. I am the Chief of Staff for the Office of the General Counsel in the United States Department of Homeland Security. In this capacity, I supervise attorneys and other professional staff who are coordinating efforts at DHS Headquarters to respond to court orders and discovery requests in this case and other related actions. I make the following statements based on my personal knowledge and upon information furnished to me in the course of my official duties.

2. I am aware of the Court Order dated October 10, 2017, Dkt. No. 67, Order Shortening Time for Briefing Motion to Complete the Administrative Record.

3. I have reviewed the Plaintiff's Motion to Complete the Administrative Record (*Regents of University of Cal. v. U.S. Dep't of Homeland Security*), Case No. 17-cv-5211, Dkt.

No. 65) (“Motion”) and their interpretation of the “administrative record,” on pages 9 and 10 of Plaintiffs’ motion.

4. If DHS Headquarters were required to search, review, and compile documents based on Plaintiffs’ interpretation of the contents of the proposed administrative record as defined in their Motion, DHS Headquarters would not have been able to search, collect, review, or provide the documents by October 6, 2017, nor would it be able to do so by October 12, 2017, due to the level of effort necessary and the complexity of the undertaking.

5. In response to the discovery requests served in the various DACA cases pending here and in the Eastern District of New York, DHS Headquarters is in the process of searching, collecting, reviewing and analyzing documents from more than 30 custodians which includes a collection of at least 30,118 documents from DHS Headquarters custodians alone, and likely far more given potential DHS Headquarters equities in documents that may be in the possession, custody or control of its component agencies. Similar burdens would likely be incurred to locate the materials Plaintiffs assert should be part of the administrative record.

6. We have dedicated a significant number of staff and hours to the efforts. For example, to date we have already expended more than 150 hours on compiling documents for potential discovery in the various DACA cases. We would experience impacts to agency functions and mission, as resources and personnel would have to be reassigned and diverted to address compiling the administrative record pursuant to Plaintiff’s interpretation. For example, we have already diverted staff from normal operational duties such as preventative maintenance of information technology systems and resolving customer issues. Litigation attorneys recruited to review and analyze documents in this action and other related actions also have full dockets of other litigation matters with pending briefing and discovery deadlines. All full time employees

on the DHS Headquarters litigation team have been assigned to review documents in the various DACA cases and there is no prospect of reassigning or rebalancing their work in other cases. In order to accomplish the review and analysis of documents, DHS Headquarters has also diverted attorney resources from five other legal practice areas.

7. Even with these diverted resources, given the careful review that must be conducted, the volume of the records, and prevalence of privilege issues, the agency would require substantial time and a significant expenditure of resources to identify and assess properly documents within the Plaintiffs' definition of administrative record.

8. The agency, however, is taking extraordinary steps to devote the resources necessary to accelerate the total time needed to respond to pending discovery. Given the number and complexity of documents at issue, the multiple layers of review required, and the difficulty of the issues presented, the agency's best, good faith analysis is that the agency would not have been able to search, collect, review, or provide the documents by October 6, 2017 nor by October 12, 2017 that would fit Plaintiffs' definition of an administrative record.

I declare that to the best of my current knowledge the foregoing is true and correct. Executed on this 12 day of October 2017.

  
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**DAVID J. PALMER**

Exhibit C

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

REGENTS OF UNIVERSITY OF CALIFORNIA  
and JANET NAPOLITANO, in her official  
capacity as President of the University of  
California,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF  
HOMELAND SECURITY and ELAINE DUKE,  
in her official capacity as Acting Secretary of the  
Department of Homeland Security,

Defendants.

Hon. William Alsup

Case No. 17-cv-05211-WHA

**DECLARATION OF JAMES W. McCAMENT**

I, James W. McCament, do hereby declare and state:

1. I am the Deputy Director of U.S. Citizenship and Immigration Services. I make the following statements based on my personal knowledge and upon information furnished to me in the course of my official duties.

2. I am aware of the Court Order dated October 10, 2017, Dkt. No. 67, Order Shortening Time for Briefing Motion to Complete the Administrative Record.

3. I have reviewed the Plaintiff's Motion to Complete the Administrative Record (*Regents of University of Cal. v. U.S. Dep't of Homeland Security*, Case No. 17-cv-5211, Dkt. No. 65) ("Motion") and their interpretation of the "administrative record," on pages 9 and 10 of Plaintiffs' motion.

4. If we were required to search, review, and compile documents in our agency based on Plaintiffs' interpretation of the contents of the administrative record as defined in their Motion, our agency would not have been able to search, collect, review, or provide the documents by October 6, 2017 nor by October 13, 2017 due to the level of effort and complexity of the undertaking.

5. In response to the discovery requests served in the various DACA cases pending here and in the Eastern District of New York, USCIS is in the process of searching, collecting, reviewing and analyzing documents from more than approximately 70 custodians, including more than 260,000 emails in addition to documents from approximately 30 shared drives or hard drives. We have dedicated significant staff and hours to the efforts and thus have diverted staff from meeting critical agency goals. For example, to date, I understand that we have already expended more than an estimated 290 hours on identifying and coordinating with custodians, and searching and compiling documents for potential discovery in this and related matters. Similar burdens would likely be incurred to locate the materials Plaintiffs assert should be part of the administrative record.

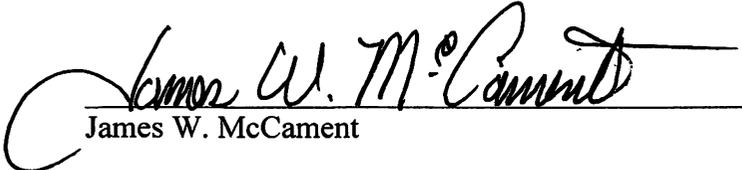
6. We would experience impacts to agency function and mission as resources and personnel would have to be reassigned and diverted to address compiling Plaintiff's interpretation of the administrative record. For example, as part of the ongoing efforts to respond to discovery requests in the various pending DACA cases, the Office of Information Technology (OIT) team has made responding to discovery requests in the various pending DACA cases its exclusive focus to meet the Court deadline. As a result, OIT postponed several other jobs, including three projects and two investigations that have been put on hold to support this and related case matters. The U.S. Citizenship and Immigration Services Office of the Chief

Counsel had to shift personnel to respond to discovery requests and the majority of assigned Counsels time is dedicated to discovery, whereas in their normal course of business, they would have been providing legal guidance on a wide array of issues. Finally, various reporting requirements and requests have had to be delayed so that resources could be reallocated to the discovery in this case and related case matters.

7. Even with these diverted resources, given the careful review that must be conducted and the volume of the records at issue, the agency would require substantial time and a significant expenditure of resources to find documents within the Plaintiffs' definition of administrative record.

9. The agency, however, is taking extraordinary steps to devote the resources necessary to accelerate the total time needed to respond to pending discovery. Given the number and complexity of documents at issue, the multiple layers of review required, and the difficulty of the issues thereby presented, the agency's best, good faith analysis is that the agency would not have been able to search, collect, review, or provide the documents by October 6, 2017 nor by October 13, 2017 that would fit Plaintiffs' definition of administrative record.

I declare that to the best of my current knowledge the foregoing is true and correct. Executed on this 12 day of October 2017.

  
James W. McCament

## Exhibit D

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

REGENTS OF UNIVERSITY OF CALIFORNIA  
and JANET NAPOLITANO, in her official  
capacity as President of the University of  
California,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF  
HOMELAND SECURITY and ELAINE DUKE,  
in her official capacity as Acting Secretary of the  
Department of Homeland Security,

Defendants.

Hon. William Alsup

Case No. 17-cv-05211-WHA

**DECLARATION OF RAYMOND MILANI**

I, Raymond Milani, do hereby declare and state:

1. I am an Associate Legal Advisor with the Office of the Principal Legal Advisor (OPLA), U.S. Immigration and Customs Enforcement (ICE), U.S. Department of Homeland Security (DHS). OPLA is charged by statute with representing the agency in civil immigration proceedings before the nation's immigration courts and with providing specialized legal advice to agency personnel. 6 U.S.C. § 252(c). I make the following statements based on my personal knowledge and upon information furnished to me in the course of my official duties.

2. In my position, I assist OPLA's legal divisions during the entire eDiscovery lifecycle, to include the distribution and monitoring of preservation notices, coordinating with ICE's Office of the Chief Information Officer (OCIO) to collect electronically stored data in a defensible manner, process, analyze, and search electronically stored information, set up

documents for review and redaction, and produce reviewed documents in a format and manner agreed to by opposing counsel/parties and in compliance with the Federal Rules of Civil Procedure. I am also involved in all aspects of the acquisition process for eDiscovery software and supporting systems (market research, statement of work, proposal evaluations, contract awards); responsible for the administration and configuration of eDiscovery software; am a liaison to OCIO on all issues related to eDiscovery and the support and maintenance of the application; and a point of contact assisting other DHS components with their eDiscovery implementation and acquisition. I have performed these functions since February 2008.

3. I am aware of the Court Order dated October 10, 2017, Dkt. No. 67, Order Shortening Time for Briefing Motion to Complete the Administrative Record.

4. I have reviewed Plaintiffs' Motion to Complete the Administrative Record (*Regents of University of Cal. v. U.S. Dep't of Homeland Security*), Case No. 17-cv-5211, Dkt. No. 65) ("Motion") and their interpretation of the "administrative record," on pages 9 and 10 of Plaintiffs' motion.

5. In the course of responding to discovery requests in this and related litigation initiated against the federal government related to Deferred Action for Childhood Arrivals (DACA), ICE is in the process of searching, collecting, reviewing, and analyzing documents from 26 custodians, including more than 872,000 documents.

6. For context, in less than five days, ICE has already expended more than 220 hours on compiling documents for potential discovery in this and related DACA litigation. Similar burdens would likely be incurred to locate the materials Plaintiffs assert should be part of the administrative record.

7. Consequently, an effort to satisfy Plaintiffs' "administrative record" interpretation would impose severe impacts upon agency function and mission, with resources and personnel reassigned and diverted to address compiling Plaintiff's interpretation of the administrative record. For example, ICE has delayed and put at risk other case deadlines in an effort to respond to discovery requests in the various pending DACA matters. Work on those non-DACA matters had to be halted to address discovery in this and related matters. ICE has pulled agency counsel and personnel from immigration court appearance responsibilities and other regular duties, essentially, having to devote 1 out of every 14 attorneys in ICE's legal offices across the country to handle the discovery in this and related DACA lawsuits filed against the federal government. And, even with such diverted resources, which are currently focused on general discovery obligations arising incident to such litigation, the careful review required to comb through the volume of records at issue and identify those that specifically satisfy Plaintiffs' "administrative record" interpretation would likely require substantial additional time.

8. Based on my experience, the efforts ICE has undertaken to respond to this and related DACA litigation is completely unprecedented, in terms of devotion of resources necessary to accelerate discovery production efforts. In responding to DACA-related discovery, ICE began its collection late Wednesday, October 4, and all potentially responsive records were assembled for processing by Friday morning, October 6. ICE's OCIO assigned 2 Active Directory Exchange (ADEX) personnel to work on the collection of documents from 26 custodians. ICE personnel spent a combined total of 220 hours on the project from early Wednesday evening, October 4, until late Monday afternoon, October 9. These efforts included substantial overnight and (holiday) weekend work. This size of this data pull was approximately 872,000 documents and 196 GB of data.

9. The agency has also devoted 82 individuals, the vast majority of whom are attorneys, to review the data collected to date. The discovery responses alone have impacted ICE's mission. One example is the delay in document review in another important district court class action suit. ICE placed that entire discovery project on hold for more than three business days to accommodate the DACA litigation discovery effort.

I declare that to the best of my current knowledge the foregoing is true and correct. Executed on this 12th day of October 2017.

  
Raymond Milani