

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

STATE OF TEXAS, <i>et al.</i>)	
)	
)	
Plaintiffs,)	
)	No. 1:14-cv-254
v.)	
)	
UNITED STATES OF AMERICA, <i>et al.</i>)	
)	
Defendants.)	
)	

DEFENDANTS' JULY 9 ADVISORY

The Government takes very seriously the concerns expressed in the Court's July 7, 2015 Order. The Government fully appreciates the urgency of the situation and is proceeding with expedited remediation. On July 31, 2015, the parties will file a joint status report in which the Government will detail the actions it has taken to correct the problems identified in the May 7 Advisory and the results of those actions, including steps taken since the June 23, 2015 hearing. *See* Order of July 7, 2015 (ECF No. 281); Minute Entry of June 23, 2015. The Government files this Advisory to apprise the Court of (1) new information with respect to three-year Employment Authorization Documents (EADs), and (2) the ongoing measures to address the matters raised in the Court's July 7, 2015 Order.

The Government recognizes the import of the Court's concerns regarding the progress of the Government's efforts relating to the approximately 2,000 post-injunction issuances. In addition to other measures that are underway, the three-year DACA grants and EAD cards have been invalidated for all of these individuals and changed to two years; the SAVE database that states use to verify eligibility for driver's licenses and other state benefits has been updated to

reflect the two-year authorizations for all of these individuals; and USCIS has now sent two rounds of individualized letters demanding the return of the three-year EAD cards and warning recipients that a failure to return the card could affect their deferred action and employment authorization. The Government has already secured return of nearly 1200 of these three-year EADs. We are now executing additional steps to secure return of the remaining three-year EADs. The Government will provide the Plaintiffs with further updated information as part of the meet and confer process.

Finally, as part of its ongoing efforts to keep the Court promptly apprised of developments, Defendants file this Advisory to inform the Court of information that recently came to the attention of counsel for the Government regarding a relatively small number of three-year EADs that were approved and issued by the Department of Homeland Security (DHS) prior to the Court's entry of its preliminary injunction, were mailed to the intended recipients prior to the injunction, returned by the Postal Service as undeliverable, but which were then re-mailed after the Court's injunction. Defendants will also update the Court on this issue as part of the July 31, 2015 status report.

According to DHS's currently available information, a small percentage of three-year EADs approved, issued, and mailed prior to the injunction – approximately 500 of the EADs approved and issued – were then returned as undeliverable and subsequently re-mailed to an updated address after the Court's entry of its injunction. These were EADs provided to individuals who qualified for 2012 DACA. Government counsel has been advised that these cards were re-mailed pursuant to standard USCIS mail processing procedures by a mailing contractor. Defendants are continuing to examine the circumstances leading to the re-mailings, but are filing this Advisory now to ensure that the Court is promptly apprised of this information.

DHS is taking immediate steps to address the issue. DHS is undertaking an expedited process of corrective action for the approximately 500 three-year EADs re-mailed after the injunction. All such three-year EADs will be converted to two-year EADs, and DHS will expeditiously seek the return of the three-year EADs that were re-mailed – as it is doing for the approximately 2,000 individuals addressed in the Government’s May 7, 2015 advisory.¹

Defendants will update the Court on the above-described actions relating to the re-mailing issue, as well as the actions taken with respect to the approximately 2,000 individuals who were the subject of the Government’s May 7, 2015 Advisory, as part of the July 31 status report, which we believe will satisfy this Court that no hearing is required on August 19.

Date: July 9, 2015

Respectfully submitted,

KENNETH MAGIDSON
United States Attorney

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General

DANIEL DAVID HU
Assistant United States Attorney
Deputy Chief, Civil Division

JOYCE R. BRANDA
Deputy Assistant Attorney General

KATHLEEN R. HARTNETT
Deputy Assistant Attorney General

JENNIFER D. RICKETTS
Branch Director, Federal Programs Branch
Attorney-in-Charge (VA Bar No. 29281)

JAMES J. GILLIGAN
Special Litigation Counsel

¹ In addition, DHS is taking steps to ensure that no additional three-year EADs will be re-mailed in the future. For those three-year EADs that have been returned but not yet re-mailed to an updated address, they will be converted to two-year EADs prior to any re-mailing. And if additional three-year EADs are returned, DHS has created a process to capture them in order to ensure they are converted to two-year EADs prior to any re-mailing. DHS believes it is unlikely that there will be many, if any, three-year EADs that will be returned as undeliverable at this point in time given the time that has now passed since the injunction issued.

/s/ Daniel Schwei

BRADLEY H. COHEN
KYLE R. FREENY
ADAM D. KIRSCHNER
JULIE S. SALTMAN
DANIEL SCHWEI
Civil Division, Federal Programs Branch
U.S. Department of Justice
P.O. Box 883
Washington, D.C. 20044
Tel.: (202) 305-8693
Fax: (202) 616-8470
Daniel.S.Schwei@usdoj.gov

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Defendants' July 9 Advisory has been delivered electronically on July 9, 2015, to all counsel of record through the court's ECF system.

/s/ Daniel Schwei
Counsel for Defendants