



U.S. Department of Justice
Civil Division, Federal Programs Branch
1100 L Street NW
Washington, DC 20005

December 4, 2020

VIA ECF

The Honorable Nicholas G. Garaufis
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *State of New York, et al. v. Trump, et al.*, No. 17-cv-5228 (NGG) (VMS)
Batalla Vidal, et al. v. Wolf, et al., No. 16-cv-4756 (NGG) (VMS)

Dear Judge Garaufis:

Defendants respectfully write “to update the court on the status of discussions,” Minute Order of Dec. 3, 2020, between the parties regarding the scope of relief to be ordered in light of the Court’s recent opinion in the above-captioned matters. In particular, due to the ongoing nature of the parties’ discussions, Plaintiffs’ filing from earlier today, *Batalla Vidal* ECF No. 352, does not include certain information that the Court might find relevant in considering Plaintiffs’ pending motion.

As demonstrated by the attached email thread, Ex. 1, yesterday evening, the parties had a lengthy meet-and-confer call regarding Plaintiffs’ requests for relief, and the possibility that the parties might be able to reach agreement on certain issues (or at least narrow the scope of any remaining disagreements). During that call, Plaintiffs expressed their intent to present a modified proposal to the Government regarding the issue of accrual of unlawful presence, and the Government expressed its intent to provide Plaintiffs with additional detail regarding available options to accomplish an extension of existing one-year grants of deferred action and employment authorization to two years. At 11:19 AM this morning, counsel for Plaintiffs informed counsel for the Government that “aside from the Federal Register and EAD conversion issues, plaintiffs do not see any further ways to narrow the disputes between us based on your positions.” At 11:32 AM this morning, counsel for the Government responded, and included additional information about the Government’s optimism that the parties might soon be able to reach an agreement on a mechanism by which, within 30 days, one-year grants of deferred action and employment authorization might be extended to two years.

At 11:32 AM, the *Batalla Vidal* Plaintiffs filed their reply. The *State of New York* Plaintiffs filed their reply at 11:41 AM.

At 1:10 PM, Plaintiffs’ counsel responded to Government counsel’s email, noting that Plaintiffs are “happy to continue discussing this,” and proposing a further conversation. Counsel for the Government will respond shortly to arrange for a further conversation between the parties. Counsel for the Government further intends to notify the Court immediately should the parties

reach any final agreements that are relevant to the Court's consideration of Plaintiffs' pending motion.

Because of the timing and the ongoing nature of the parties' communications, Plaintiffs' reply does not include this additional information regarding "the status of discussions" between the parties, so Defendants are including it here as a courtesy, and consistently with the Court's minute order of yesterday.

Defendants thank the Court for its consideration of this matter.

Dated: December 4, 2020

Respectfully submitted,

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Acting Assistant Attorney General

SETH D. DuCHARME
Acting United States Attorney

BRAD P. ROSENBERG
Assistant Branch Director

/s/ Stephen M. Pezzi
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Attorneys for Defendants

Pezzi, Stephen (CIV)

From: Araceli Martínez-Olguín <martinez-olguin@nilc.org>
Sent: Friday, December 04, 2020 1:10 PM
To: Pezzi, Stephen (CIV); Colangelo, Matthew; 'Muneer Ahmad'
Cc: Khan, Sania; Wardenski, Joseph; Finkelstein, Alex; Dasgupta, Anisha; batallavidal_Iso@mailman.yale.edu; Parker, Joshua; 'Jessica Young'; Mayra Joachin; Trudy Rebert; Thorp, Galen (CIV); Westmoreland, Rachael (CIV); Marutollo, Joseph (USANYE); Rosenberg, Brad (CIV); karen.tumlin@justiceactioncenter.org; Batalla; batalla@maketheroadny.org
Subject: RE: EDNY DACA - Meet and confer; request for consent to file reply brief

Stephen and counsel,

We appreciate you sharing that update about converting expanding 1 year DACA/EADs to 2 years, and are heartened to learn that you might be in a position to get the needed approvals for these proposals as early as next week. Plaintiffs would be in a position to agree to publication on the USCIS and DHS websites regarding the conversion of 1 year DACA and EAD grants to 2 years by COB Monday. With respect to individualized mailed notices within 30 days, that also seems promising. Plaintiffs continue to need mailed individual EADs with the correct expiration date. Do you have a proposal on how soon those could be completed?

We're happy to continue discussing this and wonder if you might have some time later today to make sure we understand what the agency is prepared to do, and on what timeline. If and when we can reach agreement on these proposals we could submit a notice to the court.

Cheers,
Araceli

Araceli Martínez-Olguín | Supervising Attorney

(pronouns: she/hers/ella)

National Immigration Law Center

t: 213.797.7420 | f: 213.639.3911 | e: martinez-olguin@nilc.org

From: Pezzi, Stephen (CIV) <Stephen.Pezzi@usdoj.gov>
Sent: Friday, December 4, 2020 8:32 AM
To: Colangelo, Matthew <Matthew.Colangelo@ag.ny.gov>; 'Muneer Ahmad' <muneer.ahmad@ylsclinics.org>
Cc: Khan, Sania <Sania.Khan@ag.ny.gov>; Wardenski, Joseph <Joseph.Wardenski@ag.ny.gov>; Finkelstein, Alex <Alex.Finkelstein@ag.ny.gov>; Dasgupta, Anisha <Anisha.Dasgupta@ag.ny.gov>; batallavidal_Iso@mailman.yale.edu; Parker, Joshua <Joshua.Parker@ag.ny.gov>; 'Jessica Young' <jessica.young@maketheroadny.org>; Mayra Joachin <Joachin@nilc.org>; Araceli Martínez-Olguín <martinez-olguin@nilc.org>; Trudy Rebert <rebert@nilc.org>; Thorp, Galen (CIV) <Galen.Thorp@usdoj.gov>; Westmoreland, Rachael (CIV) <Rachael.Westmoreland@usdoj.gov>; Marutollo, Joseph (USANYE) <Joseph.Marutollo@usdoj.gov>; Rosenberg, Brad (CIV) <Brad.Rosenberg@usdoj.gov>; karen.tumlin@justiceactioncenter.org; Batalla <Batalla@nilc.org>; batalla@maketheroadny.org
Subject: RE: EDNY DACA - Meet and confer; request for consent to file reply brief

Counsel,

On the issue of extending 1-year DACA/EADs to 2 years, we do have an update to offer. After further conversations within DOJ, DHS, and USCIS, we are optimistic that, as early as next week, we could be in a position to agree to something like the following:

- Immediate notice on DHS and USCIS websites about the Court's order and a forthcoming extension of all 1-year DACA/EADs to 2 years, as early as COB Monday.
- Within 30 days, individualized paper notice to class members that deferred action has been extended from 1 years to 2 years.
- Within 30 days, individualized paper notice to class members that existing 1-year EADs have now been extended by DHS/USCIS to two years. These could be presented to an employer as definitive evidence of the extension of the validity period of the EADs. These notices would be specific to each individual, and also specifically note that they are to be accepted for I-9 verification, for example.
- This would all be accomplished a letter, on government letterhead, with secured features.

Happy to answer any questions you have about the 1-year vs. 2-year extension issues raised above, as well as some of the potential downsides of the Federal Register notice approach. In short, it now seems likely that an extension of 1-year EADs to 2-year EADs can be accomplished as quickly (or more quickly) as a Federal Register notice, and our understanding is that Plaintiffs' ultimate goal here is the extension of those EADs as quickly as possible.

On the other issues, I am disappointed to hear that Plaintiffs have no further proposals to share (e.g., on the unlawful presence issue), as our conversation yesterday evening led me to believe that further discussion might be fruitful. Please let me know if anything changes (including after your filing), such that you think additional conversation on those issues might be worth pursuing. Either way, I look forward to hearing your thoughts on the proposal above (which, to be clear, would still require additional sign-off within DOJ and DHS before we could reach a definitive agreement).

Best,

Stephen M. Pezzi

Trial Attorney

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From: Colangelo, Matthew <Matthew.Colangelo@ag.ny.gov>

Sent: Friday, December 04, 2020 11:19 AM

To: Pezzi, Stephen (CIV) <spezzi@CIV.USDOJ.GOV>; 'Muneer Ahmad' <muneer.ahmad@ylsclinics.org>

Cc: Khan, Sania <Sania.Khan@ag.ny.gov>; Wardenski, Joseph <Joseph.Wardenski@ag.ny.gov>; Finkelstein, Alex <Alex.Finkelstein@ag.ny.gov>; Dasgupta, Anisha <Anisha.Dasgupta@ag.ny.gov>; 'batallavidal_Iso@mailman.yale.edu' <batallavidal_Iso@mailman.yale.edu>; Parker, Joshua <Joshua.Parker@ag.ny.gov>; 'Jessica Young' <jessica.young@maketheroadny.org>; 'Mayra Joachin' <Joachin@nilc.org>; 'Araceli Martínez-Olguín' <martinez-olguin@nilc.org>; 'Trudy Rebert' <rebert@nilc.org>; Thorp, Galen (CIV) <GThorp@civ.usdoj.gov>; Westmoreland, Rachael (CIV) <rwestmor@CIV.USDOJ.GOV>; Marutollo, Joseph (USANYE) <JMarutollo@usa.doj.gov>; Rosenberg, Brad (CIV) <BRosenbe@civ.usdoj.gov>; 'Karen Tumlin' <karen.tumlin@justiceactioncenter.org>; 'Batalla' <Batalla@nilc.org>; 'batalla@maketheroadny.org' <batalla@maketheroadny.org>

Subject: RE: EDNY DACA - Meet and confer; request for consent to file reply brief

Stephen and colleagues -- Thank you for the thorough meet and confer yesterday where we discussed the outstanding issues between the parties, including each paragraph of plaintiffs' proposed order. After further discussion, aside from

the Federal Register and EAD conversion issues, plaintiffs do not see any further ways to narrow the disputes between us based on your positions. If you have any updates regarding your clients' position on the conversion to two-year EADs and the Federal Register notice this morning before we file, please let us know. Thank you – Matthew

From: Pezzi, Stephen (CIV) <Stephen.Pezzi@usdoj.gov>

Sent: Thursday, December 3, 2020 9:43 PM

To: 'Muneer Ahmad' <muneer.ahmad@ylsclinics.org>

Cc: Khan, Sania <Sania.Khan@ag.ny.gov>; Wardenski, Joseph <Joseph.Wardenski@ag.ny.gov>; Finkelstein, Alex <Alex.Finkelstein@ag.ny.gov>; Dasgupta, Anisha <Anisha.Dasgupta@ag.ny.gov>; 'batallavidal_Iso@mailman.yale.edu' <batallavidal_Iso@mailman.yale.edu>; Parker, Joshua <Joshua.Parker@ag.ny.gov>; 'Jessica Young' <jessica.young@maketheroadny.org>; 'Mayra Joachin' <Joachin@nilc.org>; 'Araceli Martínez-Olguín' <martinez-olguin@nilc.org>; 'Trudy Rebert' <rebert@nilc.org>; Thorp, Galen (CIV) <Galen.Thorp@usdoj.gov>; Westmoreland, Rachael (CIV) <Rachael.Westmoreland@usdoj.gov>; Marutollo, Joseph (USANYE) <Joseph.Marutollo@usdoj.gov>; Rosenberg, Brad (CIV) <Brad.Rosenberg@usdoj.gov>; Colangelo, Matthew <Matthew.Colangelo@ag.ny.gov>; 'Karen Tumlin' <karen.tumlin@justiceactioncenter.org>; 'Batalla' <Batalla@nilc.org>; 'batalla@maketheroadny.org' <batalla@maketheroadny.org>

Subject: RE: EDNY DACA - Meet and confer; request for consent to file reply brief

Counsel,

It was a pleasure speaking with you earlier this evening. We remain hopeful that we will be able to reach agreement on some of these remedial issues, or at least narrow the scope of any remaining disagreements as far as we can. To that end, we look forward to receiving your proposals on the subjects that we discussed (e.g., on the unlawful presence issue, and on any of the other issues for which there is some possibility of common ground). On our end, we will continue to do everything we can to get additional clarity from the agency, as quickly as we can, regarding the logistical pros and cons (to the agency and to the Plaintiffs) of the various options we have discussed regarding extending 1-year DACA/EADs to 2 years. We remain uncertain as to how much of this will be feasible before noon tomorrow, but we will do everything we can to move things along as fast as we can.

In the interim, if you have any additional questions or concerns, do not hesitate to reach out (including late tonight or early tomorrow morning, if necessary), either by email or at the number below (which is currently forwarding to my cell).

Best regards,

Stephen M. Pezzi

Trial Attorney

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From: Pezzi, Stephen (CIV)

Sent: Thursday, December 03, 2020 9:53 AM

To: Muneer Ahmad <muneer.ahmad@ylsclinics.org>

Cc: Khan, Sania <Sania.Khan@ag.ny.gov>; Wardenski, Joseph <Joseph.Wardenski@ag.ny.gov>; Finkelstein, Alex <Alex.Finkelstein@ag.ny.gov>; Dasgupta, Anisha <Anisha.Dasgupta@ag.ny.gov>; batallavidal_Iso@mailman.yale.edu; Parker, Joshua <Joshua.Parker@ag.ny.gov>; Jessica Young <jessica.young@maketheroadny.org>; Mayra Joachin <Joachin@nilc.org>; Araceli Martínez-Olguín <martinez-olguin@nilc.org>; Trudy Rebert <rebert@nilc.org>; Thorp, Galen (CIV) <GThorp@civ.usdoj.gov>; Westmoreland, Rachael (CIV) <rwestmor@CIV.USDOJ.GOV>; Marutollo, Joseph

(USANYE) <JMarutollo@usa.doj.gov>; Rosenberg, Brad (CIV) <BRosenbe@civ.usdoj.gov>; Colangelo, Matthew <Matthew.Colangelo@ag.ny.gov>; Karen Tumlin <karen.tumlin@justiceactioncenter.org>; Batalla <Batalla@nilc.org>; batalla@maketheroadny.org

Subject: RE: EDNY DACA - Meet and confer; request for consent to file reply brief

5 PM today works for us. Thanks.

Stephen M. Pezzi

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From: Muneer Ahmad <muneer.ahmad@ylsclinics.org>

Sent: Wednesday, December 02, 2020 7:45 PM

To: Pezzi, Stephen (CIV) <spezzi@CIV.USDOJ.GOV>

Cc: Khan, Sania <Sania.Khan@ag.ny.gov>; Wardenski, Joseph <Joseph.Wardenski@ag.ny.gov>; Finkelstein, Alex <Alex.Finkelstein@ag.ny.gov>; Dasgupta, Anisha <Anisha.Dasgupta@ag.ny.gov>; batallavidal_Iso@mailman.yale.edu; Parker, Joshua <Joshua.Parker@ag.ny.gov>; Jessica Young <jessica.young@maketheroadny.org>; Mayra Joachin <Joachin@nilc.org>; Araceli Martínez-Olguín <martinez-olguin@nilc.org>; Trudy Rebert <rebert@nilc.org>; Thorp, Galen (CIV) <GThorp@civ.usdoj.gov>; Westmoreland, Rachael (CIV) <rwestmor@CIV.USDOJ.GOV>; Marutollo, Joseph (USANYE) <JMarutollo@usa.doj.gov>; Rosenberg, Brad (CIV) <BRosenbe@civ.usdoj.gov>; Colangelo, Matthew <Matthew.Colangelo@ag.ny.gov>; Karen Tumlin <karen.tumlin@justiceactioncenter.org>; Batalla <Batalla@nilc.org>; batalla@maketheroadny.org

Subject: Re: EDNY DACA - Meet and confer; request for consent to file reply brief

Stephen,

Could we plan to speak at 5:00 pm tomorrow? It would be most helpful if you could present a specific proposal for how the government would implement the 2-year conversion. Your papers suggested publication in the Federal Register as one option. We would appreciate learning if that is the government's proposal or if it has something else in mind.

We can use the following conference number:

203-432-9666

Meeting ID: 2034324716

Best,
Muneer

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From: "Pezzi, Stephen (CIV)" <Stephen.Pezzi@usdoj.gov>
Date: Wednesday, December 2, 2020 at 5:31 PM
To: Muneer Ahmad <muneer.ahmad@ylsclinics.org>
Cc: "Khan, Sania" <Sania.Khan@ag.ny.gov>, "Wardenski, Joseph" <Joseph.Wardenski@ag.ny.gov>, "Finkelstein, Alex" <Alex.Finkelstein@ag.ny.gov>, "Dasgupta, Anisha" <Anisha.Dasgupta@ag.ny.gov>, "batallavidal_Iso@mailman.yale.edu" <batallavidal_Iso@mailman.yale.edu>, "Parker, Joshua" <Joshua.Parker@ag.ny.gov>, Jessica Young <jessica.young@maketheroadny.org>, Mayra Joachin <Joachin@nilc.org>, Araceli Martínez-Olguín <martinez-olguin@nilc.org>, Trudy Rebert <rebert@nilc.org>, "Thorp, Galen (CIV)" <Galen.Thorp@usdoj.gov>, "Westmoreland, Rachael (CIV)" <Rachael.Westmoreland@usdoj.gov>, "Marutollo, Joseph (USANYE)" <Joseph.Marutollo@usdoj.gov>, "Rosenberg, Brad (CIV)" <Brad.Rosenberg@usdoj.gov>, "Colangelo, Matthew" <Matthew.Colangelo@ag.ny.gov>, Karen Tumlin <karen.tumlin@justiceactioncenter.org>, Batalla <Batalla@nilc.org>, "batalla@maketheroadny.org" <batalla@maketheroadny.org>
Subject: RE: EDNY DACA - Meet and confer; request for consent to file reply brief

Mr. Ahmad,

Thanks for your email. We remain interested in an effort to reach some common ground on these remedial issues. Tomorrow is a busy day, but we can speak at 4:15 PM, if that works for your side.

As for your forthcoming motion for leave to file a reply brief on Friday, Defendants do not oppose. Note that I am not sure whether we will be able to finalize any agreements before Friday -- but we can try.

I look forward to speaking with you tomorrow.

Best,

Stephen M. Pezzi

Trial Attorney

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From: Muneer Ahmad <muneer.ahmad@ylsclinics.org>
Sent: Wednesday, December 02, 2020 3:43 PM
To: Pezzi, Stephen (CIV) <spezzi@CIV.USDOJ.GOV>
Cc: Khan, Sania <Sania.Khan@ag.ny.gov>; Wardenski, Joseph <Joseph.Wardenski@ag.ny.gov>; Finkelstein, Alex <Alex.Finkelstein@ag.ny.gov>; Dasgupta, Anisha <Anisha.Dasgupta@ag.ny.gov>; batallavidal_Iso@mailman.yale.edu; Parker, Joshua <Joshua.Parker@ag.ny.gov>; Jessica Young <jessica.young@maketheroadny.org>; Mayra Joachin <Joachin@nilc.org>; Araceli Martínez-Olguín <martinez-olguin@nilc.org>; Trudy Rebert <rebert@nilc.org>; Thorp, Galen

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Subject: EDNY DACA - Meet and confer; request for consent to file reply brief

Dear Stephen,

I am following up on Matthew's correspondence with you below to renew the State and *Batalla Vidal* Plaintiffs' willingness to meet and confer regarding the possibility of a stipulation to relief in the DACA cases. We believe that there may be some room for agreement, particularly with respect to the conversion of 1-year DACA and EADs to 2 years, and propose that the parties talk by phone tomorrow, December 3. Please let us know if you are amenable.

In addition, the Plaintiffs plan to seek leave from the Court to file a short reply brief, to be due by this Friday, December 4. Please let us know if the government consents to this request. We would appreciate your prompt response.

Best,
Muneer

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From: "Colangelo, Matthew" <Matthew.Colangelo@ag.ny.gov>

Date: Monday, November 23, 2020 at 3:24 PM

To: "Pezzi, Stephen (CIV)" <Stephen.Pezzi@usdoj.gov>, Karen Tumlin <karen.tumlin@justiceactioncenter.org>

Cc: "Khan, Sania" <Sania.Khan@ag.ny.gov>, Muneer Ahmad <muneer.ahmad@ylsclinics.org>, "Wardenski, Joseph" <Joseph.Wardenski@ag.ny.gov>, "Finkelstein, Alex" <Alex.Finkelstein@ag.ny.gov>, "Dasgupta, Anisha" <Anisha.Dasgupta@ag.ny.gov>, "batallavidal_Iso@mailman.yale.edu"

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Subject: RE: EDNY DACA - Local Rule 56.1 statement

Stephen -- thank you for the call and for this message. The NY and BV teams are both happy to discuss a negotiated resolution regarding relief under the APA, but at this point we think it would be most productive to get our motions on file and then discuss once you've had an opportunity to review the relief we're seeking and discuss it with your clients. If you'd like to schedule a time to discuss on Wednesday morning in the interest of resolving the remedial question by stipulation, let us know and we can be available at your convenience. Thanks -- Matthew.

From: Pezzi, Stephen (CIV) <Stephen.Pezzi@usdoj.gov>

Sent: Monday, November 23, 2020 10:16 AM

To: Colangelo, Matthew <Matthew.Colangelo@ag.ny.gov>; Karen Tumlin <karen.tumlin@justiceactioncenter.org>

Cc: Khan, Sania <Sania.Khan@ag.ny.gov>; Muneer Ahmad <muneer.ahmad@ylsclinics.org>; Wardenski, Joseph <Joseph.Wardenski@ag.ny.gov>; Finkelstein, Alex <Alex.Finkelstein@ag.ny.gov>; Dasgupta, Anisha <Anisha.Dasgupta@ag.ny.gov>; batallavidal_Iso@mailman.yale.edu; Parker, Joshua <Joshua.Parker@ag.ny.gov>; Jessica Young <jessica.young@maketheroadny.org>; Mayra Joachin <Joachin@nilc.org>; Araceli Martínez-Olguín <martinez-olguin@nilc.org>; Trudy Rebert <rebert@nilc.org>; Thorp, Galen (CIV) <Galen.Thorp@usdoj.gov>; Westmoreland, Rachael (CIV) <Rachael.Westmoreland@usdoj.gov>; Marutollo, Joseph (USANYE) <Joseph.Marutollo@usdoj.gov>; Rosenberg, Brad (CIV) <Brad.Rosenberg@usdoj.gov>

Subject: RE: EDNY DACA - Local Rule 56.1 statement

Matthew,

Per our call, Defendants do not oppose that request for relief. As we also discussed, let me know if you think it would be worth having a broader conversation about the scope of relief that Plaintiffs intend to request.

Thanks,

Stephen M. Pezzi

Trial Attorney

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From: Colangelo, Matthew <Matthew.Colangelo@ag.ny.gov>

Sent: Sunday, November 22, 2020 7:42 PM

To: Pezzi, Stephen (CIV) <spezzi@CIV.USDOJ.GOV>; Karen Tumlin <karen.tumlin@justiceactioncenter.org>

Cc: Khan, Sania <Sania.Khan@ag.ny.gov>; Muneer Ahmad <muneer.ahmad@ylsclinics.org>; Wardenski, Joseph <Joseph.Wardenski@ag.ny.gov>; Finkelstein, Alex <Alex.Finkelstein@ag.ny.gov>; Dasgupta, Anisha <Anisha.Dasgupta@ag.ny.gov>; batallavidal_Iso@mailman.yale.edu; Parker, Joshua <Joshua.Parker@ag.ny.gov>; Jessica Young <jessica.young@maketheroadny.org>; Mayra Joachin <Joachin@nilc.org>; Araceli Martínez-Olguín <martinez-olguin@nilc.org>; Trudy Rebert <rebert@nilc.org>; Thorp, Galen (CIV) <GThorp@civ.usdoj.gov>; Westmoreland, Rachael (CIV) <rwestmor@CIV.USDOJ.GOV>; Marutollo, Joseph (USANYE) <JMarutollo@usa.doj.gov>; Rosenberg, Brad (CIV) <BRosenbe@civ.usdoj.gov>

Subject: EDNY DACA - Local Rule 56.1 statement

Counsel – the plaintiffs intend to file a joint request with Judge Garaufis tomorrow morning seeking leave to forgo the Local Civil Rule 56.1 statement in connection with our forthcoming motion for partial summary judgment, given that we are proceeding on the APA claim only. Please let us know if we may state that Defendants do not oppose this request. Thanks – Matthew