

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
WESTERN DIVISION**

**STATE OF KANSAS, STATE OF NORTH
DAKOTA, *et al.*,**

Plaintiffs,

v.

UNITED STATES OF AMERICA, *et al.*,

Defendants.

Case No. 1:24-cv-00150-DMT-CRH

RESPONSE TO ORDER FOR SUPPLEMENTAL INFORMATION

Pursuant to the Court's Order for Supplemental Information, ECF No. 87, the State of North Dakota respectfully submits the following response.

1. On October 15, 2024, the Court held oral argument on Plaintiffs' Motion for a Stay of the Final Rule and Preliminary Injunction. *See* ECF No. 84. In response to arguments made during the hearing, the Court ordered Defendants to identify for North Dakota, under seal, the 130 DACA recipients in North Dakota, for the purpose of assessing North Dakota's standing in this litigation and the appropriateness of venue. *See* ECF No. 87. The Court ordered Defendants to provide the names and addresses of known DACA recipients in North Dakota by October 29, 2024, and directed North Dakota to provide a response identifying its direct and indirect costs attributable to those DACA recipients by November 12, 2024. *See* ECF No. 87.

2. Defendants filed a motion for reconsideration of that order. *See* ECF No. 90; *see also* ECF Nos. 93, 96. This Court denied that motion, but amended its prior order to: (a) exclude from disclosure information pertaining to two individuals in North Dakota whose information is also subject to disclosure limitations under 8 U.S.C. § 1367(a)(2); and (b) direct the parties to work together on a protective order. *See* ECF No. 98.

3. The parties then jointly submitted a proposed protective order, which was entered by the Court, ECF No. 100, and on October 29, 2024, Defendants provided the names and addresses of 126 DACA recipients in North Dakota under seal. The parties then submitted a proposed amendment to the protective order, which was entered by the Court on November 01. *See* ECF Nos. 102, 103.

4. On October 31, 2024, North Dakota provided a partial response to the Court's request for supplemental information, identifying that the N.D. Department of Transportation estimates that the currently active non-commercial Driver Licenses and Identification Cards issued to the 126 identified DACA recipients in the State were produced at a total net cost to the State of approximately \$584.74. ECF No. 103 at ¶ 18. The State also identified average costs to the State for each student enrolled in the public school system of \$14,345.87, *id.* at ¶ 19, and additional average costs for students who receive transportation or subsidized meals, *id.* at ¶¶ 20-21. The State further indicated that it was attempting to resolve issues of data ownership and access in order to provide an estimate as to the public education costs related to the 126 DACA recipients identified in North Dakota, and that it would provide a supplemental response with that information by the deadline of November 12. *Id.* at ¶¶ 22-23.

Supplemental Response Relating to the State Costs for Providing Public Education to DACA Recipients or Their Dependents in North Dakota.

5. As provided in the attached declaration from the N.D. Information Technology Department, the State's ability to access and report search results from data relating to public school enrollment is subject to various data sharing agreements with individual school districts, who retain ownership of the data in certain respects. Ex. 1 (Korsmo Decl.) at ¶ 4. As of the date of this filing, the State is not able to provide specific numbers identifying, even in aggregate and de-identified form, how many of the 126 identified DACA recipients in the State are enrolled in the State's public school system or have dependents that are so enrolled. *Id.* at ¶ 5. Reporting those numbers would potentially require structural changes to how the State's data relating to

public school enrollment is maintained and accessed, or a broader dissemination of information related to the covered individuals than might be warranted under the Amended Protective Order.

6. However, the State is able to provide a response identifying whether, as a binary yes or no, at least one of the 126 identified DACA recipients are either currently enrolled in the North Dakota public education system or have dependents that are currently enrolled in the North Dakota public education system. Ex. 1 (Korsmo Decl.) at ¶ 6.

7. Subject to those limitations, the State is able to confirm, based on the records available to it, that at least one of the 126 DACA recipients identified as residing in the State is either enrolled in the State's public education system or has dependents so enrolled. Ex. 1 (Korsmo Decl.) at ¶ 7. Consequently, at average costs of \$14,345.87 per student, ECF No. 103 at ¶ 19, the State is currently able to submit that it annually incurs estimated public education-related expenses related to the identified DACA recipients or their dependents of at least \$14,345.87.

Dated: November 12, 2024

Respectfully submitted,

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EXHIBIT 1

DECLARATION OF TRACY KORSMO

Pursuant to 28 U.S.C. § 1746, I, Tracy Korsmo, states as follows:

1. I am over 18 years of age, have personal knowledge of the matters set forth herein, and am competent to make this declaration.

2. I serve as the SLDS Program Manager of the North Dakota Information Technology Department (NDIT). As part of my professional duties, I am familiar with the databases utilized by the State to maintain information and data related to public school enrollment in North Dakota.

3. At the request of the North Dakota Attorney General's Office, I have prepared this declaration addressing whether the State has information to verify if 126 individuals identified by the Attorney General's Office by name and address are currently enrolled in the North Dakota public education system or if those individuals have dependents that are currently enrolled in the North Dakota public education system.

4. The State's information regarding public school enrollment is maintained in a series of databases referred to as the Statewide Longitudinal Data System, or "SLDS." NDIT is the State entity most capable of conducting State-wide searches of the records maintained in SLDS, and I manage the State's SLDS program. However, the data and records in SLDS are generally input and owned by individual school districts, and the State's ability to access and report data from SLDS is subject to, and restricted by, multiple agreements with various school districts relating to data ownership, access, and use.

5. Due to certain restrictions on accessing and using data in SLDS, NDIT is not able to provide specific numbers reporting, even in aggregate form, how many of the 126 individuals

identified by the Attorney General's Office are currently enrolled in the North Dakota public education system or if those individuals have dependents that are currently enrolled in the North Dakota public education system.

6. However, NDIT is able to conduct a search of SLDS to establish whether or not the records maintained in SLDS reflect that at least one of the 126 individuals are either currently enrolled in the North Dakota public education system or have dependents that are currently enrolled in the North Dakota public education system.

7. Subject to the limitations described above, NDIT staff working at my direction conducted a search of SLDS utilizing the names and addresses of the 126 individuals requested by the Attorney General's Office, and were able to confirm that at least one of those individuals is reflected as either currently enrolled in the North Dakota public education system or has one or more dependents that are currently enrolled in the North Dakota public education system.

8. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed in Bismarck, North Dakota, on November 12, 2024.

Tracy Korsmo

Tracy Korsmo
SLDS Program Manager
N.D. Information Technology Dept.