

**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 partial 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);¹ 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 on October 29, 2024. *See* ECF No. 100.

4. On October 29, 2024, Defendants provided the names and addresses of 126 DACA recipients in North Dakota under seal.² The parties then submitted a proposed amendment to the protective order on October 31, which is currently pending before the Court. *See* ECF No. 102.

5. In accordance with the Court's order, North Dakota has assessed certain direct and indirect public costs that are attributable to the identified 126 persons, and now files this partial response to the Court's order for supplemental information. The State is still conducting an assessment of whether its records indicate any of the 126 identified DACA recipients are enrolled in the State's public education system or have dependents enrolled in the State's public education system, and intends to provide a supplemental response on that point as soon as able, and no later than the deadline of Nov. 12, 2024 at 5:00 pm CT set by the Court in ECF No. 87.

I. State Expenses Attributable to Driver Licenses and Identification Cards.

6. The N.D. Department of Transportation issues two primary types of credentials—Driver Licenses and Identification Cards—with both types of credentials being produced at a net financial loss for the State of North Dakota. *See* Exhibit 1 (Oct. 31 Rehborg Decl.) at ¶¶ 6, 12, 14.

7. The N.D. Department of Transportation is only capable of reporting per-applicant costs for Driver Licenses and Identification Cards on an average and aggregated basis, and is unable to quantify the difference in average costs associated with issuing citizen and non-citizen credentials. However, to the extent there is a difference in cost-per-applicant, the N.D. Department of Transportation anticipates that the average cost for non-citizen applicants (including DACA

¹ After the Court's order but before disclosing the directed information, counsel for the Defendants informed counsel for North Dakota that a third individual in the data set was also subject to disclosure limitations under 8 U.S.C. § 1367(a)(2); the parties agreed that the Defendants would withhold that third individual's name and address as well.

² The data sent by Defendants includes only 126 names and addresses.

recipients) would be higher than the overall average due to additional staff time required for confirming eligibility. *See* Exhibit 1 (Oct. 31 Rehborg Decl.) at ¶ 18.

8. In providing the calculations and estimates summarized below, the N.D. Department of Transportation used data from the 2021-23 biennium, but it does not have any reason to believe that the average net costs for the current biennium would be fundamentally different. *See* Exhibit 1 (Oct. 31 Rehborg Decl.) at ¶ 3.

A. Driver Licenses.

9. The average cost-per-applicant for a Driver License is different based upon whether the applicant is seeking an initial license or a new license after their prior license has lapsed (both of which require testing), or whether the applicant is seeking a timely renewal of an already-issued license (which typically does not require testing).

i. Average Driver License Net Costs (Without Testing).

10. When a non-commercial Driver License is issued without testing (primarily for applicants seeking a timely renewal of a previously issued Driver License), the State of North Dakota incurs approximate average net costs of \$3.97 for each Driver License that is issued. *See* Exhibit 1 (Oct. 31 Rehborg Decl.) at ¶ 6.

11. That average net cost per Driver License issued (without testing) includes the average staff time and material expenses for processing each application, updating required databases, and creating and distributing each physical card (\$18.97), and it accounts for being offset by the applicant fee that is charged for each card (\$15.00). *Id.*

ii. Average Driver License Net Costs (With Testing).

12. When a non-commercial Driver License is issued after testing (generally because the applicant is seeking an initial license), the State also incurs average additional net testing costs of at least another \$3.97 per Driver License issued. *See* Exhibit 1 (Oct. 31 Rehborg Decl.) at ¶ 11.

13. That additional net testing cost includes the cost of staff time for administering and reviewing the road test portion of the testing (average costs to the State of \$12.47 per road test) as well as a flat fee incurred by the State every time a written test is taken in-person (\$1.50 per written

test taken in-person) and it accounts for being offset by the applicant fees that are charged to most applicants for testing (\$5.00 each for a road test and for an in-person written test, for a total of \$10 per average applicant). *Id.* at ¶¶ 8, 9, 11.

14. Most of the costs incurred by the State for Driver License testing come from the road test portion of the testing, and for purposes of this declaration the N.D. Department of Transportation treated the staff time cost for administering and reviewing the written portion of the testing as \$0.00. *Id.* at ¶ 8. While some Driver License applicants require multiple tests before receiving a license, most applicants who receive a license require only one written test and one road test. *Id.* at ¶ 10. For purposes of this declaration, the N.D. Department of Transportation calculated an average net cost per applicant who received a Driver License after requiring testing by assuming that each applicant required one road test and one in-person written test. *Id.* at ¶ 10.

15. Using those assumptions for the average testing applicant, NDDOT calculates that the average net cost of testing per Driver License that was issued with testing is \$3.97. That value is in addition to the average approximate cost for processing and creating each card described above (\$3.97), yielding an average net cost of \$7.94 for each non-commercial Driver License that was issued after requiring testing. *Id.* at ¶ 12.

B. Identification Card Net Costs.

16. The State of North Dakota incurs average approximate net costs of \$10.97 per Identification Card issued. *See* Exhibit 1 (Oct. 31 Rehborg Decl.) at ¶¶ 13-14. Like with Driver Licenses that are issued without testing, that average net cost per credential includes staff time and material expenses for processing each application, updating required databases, and creating and distributing each physical card (\$18.97), and the net cost accounts for being offset by the application fee that is charged for each Identification Card (\$8.00). *Id.*

C. Estimate of Net Costs for the Currently Active Driver Licenses and Identification Cards Issued to Identified DACA Recipients in North Dakota.

17. From among the 126 DACA recipients identified by Defendants, the N.D. Department of Transportation's records indicate the following number of currently active non-commercial Driver Licenses and Identification Cards, at the following average net costs:

a. Non-Commercial Driver Licenses (Without Testing):

- 67 at \$3.97 each = \$265.99

b. Non-Commercial Driver Licenses (With Testing):

- 36 at \$7.94 each = \$285.84

c. Identification Cards:

- 3 at \$10.97 each = \$32.91

See Exhibit 1 (Oct. 31 Rehborg Decl.) at ¶¶ 6, 12, 14, 17.

18. Based upon the above, North Dakota submits 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.

II. State Expenses Attributable to Public Education.

A. Average Costs Incurred by the State Per Student.

19. As stated in a declaration provided by the N.D. Department of Public Instruction, the State of North Dakota incurred average educational costs of \$14,345.87 for each student in the public education system during the 2022-23 school year. See Exhibit 2 (Tescher Decl.) at ¶ 4. That number reflects teacher salaries and various classroom-related expenses, but it does not include extracurricular-related expenses, capital outlay, school lunch programs, or transportation expenses that are incurred by the State. *Id.* The State does not have calculations of cost per student for the current school year, but reasonably anticipates the cost per student will not be lower than it was in 2022-23, as the cost per student has increased for the last decade and the Department of Public Instruction does not have any basis to anticipate that trend will stop this year. *Id.* at ¶ 5.

20. During the 2022-23 school year, the State of North Dakota also incurred average transportation costs per student of \$2,041.23 for each student in the public education system who received publicly funded transportation. *See* Exhibit 2 (Tescher Decl.) at ¶ 6. The State does not have calculations of average transportation costs per student for the current school year, but reasonably anticipates the cost per transported student will not be lower this year, as the transportation cost per student has increased for the last decade and the Department of Public Instruction does not have any basis to anticipate that trend will stop this year. *Id.* at ¶ 7.

21. During the 2022-23 school year, the State of North Dakota also incurred average costs per student of \$177 for each student in the public education system who subsidized or free school lunches. *See* Exhibit 2 (Tescher Decl.) at ¶ 8. That average cost reflects only the State portion of the average cost, and does not include average costs paid for by the federal government. *Id.* The State does not have calculations of average costs per student who received subsidized or free school lunches for the current school year, but reasonably anticipates the cost per student will be higher this year, as the State legislature has increased State funding for subsidized and free lunch programs since the 2022-23 school year. *Id.* at ¶ 9.

B. Estimate of State Costs for Public Education Related to Identified DACA Recipients in North Dakota.

22. As of the date of this filing, State agencies are still assessing whether State records indicate that any of the 126 identified DACA recipients in the State are enrolled in the State's public education system or have dependents enrolled in the State's public education system. Addressing that question has required resolving several issues related to data ownership and access, and it has required the parties to seek an amended protective order from the Court, which is still pending approval.

23. The State intends to file a supplemental response providing that information in aggregate form as soon as it is able, and in any event before the deadline of Nov. 12, 2024 at 5:00 pm CT set by the Court in ECF No. 87.

Dated: October 31, 2024

Respectfully submitted,

DREW H. WRIGLEY
North Dakota Attorney General

/s/ Philip Axt
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Solicitor General
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Counsel for the State of North Dakota

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DECLARATION OF ROBIN R. REHBORG

Pursuant to 28 U.S.C. § 1746, I, Robin R. Rehborg, states as follows:

1. My name is Robin R. Rehborg. I serve as the Deputy Director for Driver Safety of the North Dakota Department of Transportation (NDDOT). I have served with the NDDOT for approximately 18 years. In my capacity as Deputy Director of the NDDOT, I am familiar with the State of North Dakota's processes and costs for issuing Driver Licenses and Identification Cards. I am over 18 years of age, have personal knowledge of the matters set forth herein, and am competent to make this Declaration.

2. At the request of the North Dakota Attorney General's Office, NDDOT has analyzed the approximate average net costs incurred by the State for each Driver License or Identification Card that is issued or renewed by the State.

3. NDDOT does not track costs for issuing Driver Licenses or Identification Cards on a person-by-person basis. However, NDDOT does have aggregate information about its operational costs and the numbers of Driver Licenses and Identification Cards that it has issued. In order to calculate the average costs per credential reflected in this declaration, NDDOT used data from the 2021-23 biennium, which is the latest complete data set available to it. NDDOT has no reason to believe that average net costs during the current biennium, or during the biennium preceding 2021-23, are or were substantially different.

4. For non-commercial Driver Licenses, the average net cost per license is different based upon whether the license was issued after testing (generally required when an applicant receives their initial license) or whether the license was issued without testing (which typically occurs when the applicant seeks a timely renewal of a previously issued license).

5. For non-commercial Driver License applicants that did not require testing, NDDOT has calculated that the State incurred average costs of approximately \$18.97 for each Driver License that was issued by the State. That number reflects the average cost for creating each credential and includes material costs as well as staff hours for receiving and reviewing the required documentation for each applicant, creating and distributing each physical card, and updating and maintaining required databases. For calculating that average cost per Driver License credential issued (without testing), NDDOT divided the total costs for creating Driver Licenses during the 2021-23 biennium by the number of Driver Licenses issued during that biennium, that did not require testing, plus employee time for processing the applications. That average cost of \$18.97 per license relates only to the processing, creation, and maintenance of the Driver License credential; it does not include costs related to administering or reviewing the written or road test portions of a Driver License.

6. The State of North Dakota receives a \$15 fee from each applicant for a Driver License (without testing). Using the \$15 application fee as an offset to the \$18.97 in average State costs for creating each license, NDDOT produced each Driver License that was issued without testing at a net cost to the State of approximately \$3.97 per credential.

7. For Driver License applicants that require testing, the State of North Dakota incurs the same net expenses described above (\$18.97 to produce the card, offset by the \$15 application fee, for a net cost of \$3.97 per credential), but it also incurs net costs related to administering and reviewing both a road test and a written test. For non-commercial Driver License testing, the road test portion requires the State to incur substantially more expenses than the written portion.

8. For written testing, NDDOT incurs a flat cost of \$1.50 each time the test is taken in-person. NDDOT also incurs a small amount of staff time expenses related to administering

each written test that is taken; however, for purposes of this calculation NDDOT is treating the staff time expenses related to administering written tests as zero. Consequently, for written tests, NDDOT incurs, at minimum, a cost of \$1.50 for each test taken in-person.

9. For road testing, NDDOT has calculated that the State incurs aggregate average costs of approximately \$12.47 for each road test conducted. That aggregate average testing cost consists of staff time for administering the tests and reviewing test results. For calculating average costs per road test, NDDOT divided the costs of administering and reviewing all non-commercial Driver License road tests that were conducted during the 2021-23 biennium by the total number of road tests that were taken during that biennium.

10. For non-commercial Driver License testing, the State of North Dakota receives \$5 for each road test or in-person written test that is attempted.¹ Some applicants may require multiple tests; however, the majority of applicants who receive a Driver License require only one written test and one road test. In order to calculate an average testing cost per applicant who received a Driver License (with testing), for purposes of this declaration NDDOT treated each successful Driver License applicant who received a Driver License (with testing) as requiring only two tests (one in-person written test and one road test).

11. Using both of the \$5 test fees (i.e., \$10) as an offset to the \$12.47 in average State costs per road test plus \$1.50 in State costs per in-person written test, NDDOT calculates that it conducted non-commercial Driver Licensing testing at an average net cost to the State of approximately \$3.97 for each Driver License applicant that received testing (most of whom

¹ NDDOT also allows non-commercial Driver License applicants to take the written test online remotely. Applicants are charged a \$10 fee for taking the test remotely, all of which is paid to the vendor, and none of which is paid to NDDOT. NDDOT must then dedicate staff time to reviewing the results of written tests taken online when the applicant comes in-person to NDDOT. During the 2021-23 biennium, the majority of applicants taking the written test took the test in-person.

required only one written test and one road test). However, that calculation of net testing costs per applicant is likely lower than reality given that, as noted above, some applicants require multiple roads tests, and each additional road test comes at an average net cost of \$7.47 to the State. For example, a Driver License applicant who took one written test and two road tests required the State to incur average net costs of \$11.44 for testing.

12. That average net testing cost of \$3.97 per successful applicant (with one in-person written test and one road test) is in addition to the average net cost of \$3.97 to produce the card, yielding an average net cost of \$7.94 for each non-commercial Driver License issued by the State that required testing (assuming only one in-person written test and one road test).

13. For Identification Cards, NDDOT has calculated that the State incurs aggregate average costs of approximately \$18.97 for each Identification Card that is issued or renewed (the same approximate cost as creating a Driver License, without any testing).

14. The State of North Dakota receives an \$8 fee for each applicant for an Identification Card that is issued or renewed. As such, during the 2021-23 biennium, each Identification Card issued by the State was at an average net cost of approximately \$10.97 per credential.

15. Non-commercial Driver Licenses issued by the State of North Dakota must be renewed every 6 years, and Identification Cards must be renewed every 8 years.

16. Driver Licenses and Identification Cards issued by the State of North Dakota to non-citizens must be distinguishable from Driver Licenses and Identification Cards issued to U.S. citizens. *See* N.D.C.C. § 39-06-07.1. Currently, the State of North Dakota has 12,879 active Driver Licenses and Identification Cards issued to non-citizens of the United States; 10,766 of those non-citizen credentials are Driver Licenses and 2,113 are Identification Cards.

17. NDDOT staff working at my direction have reviewed the list of 126 individuals

that was provided by the Attorney General's Office and checked them against NDDOT's records. Based on NDDOT's records, the following numbers of those individuals have active North Dakota-issued Driver Licenses or Identification Cards as of the date of this declaration:

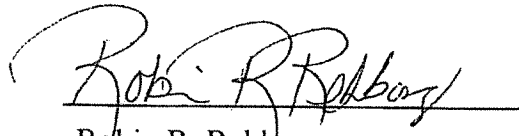
- a. Non-Commercial Driver Licenses (without testing): 67
- b. Non-Commercial Driver Licenses (with testing): 36
- c. Identification Cards: 3

18. NDDOT is currently only capable of reporting the average costs for creating Driver License and Identification Card credentials on an aggregate basis and is unable to offer a specific number for the difference in average costs associated with citizen and non-citizen credentials. However, NDDOT believes to the extent there is a difference in average costs per applicant, non-citizen applicants will be slightly higher than the average due to additional staff time required to confirm eligibility and verify documents.

19. Lastly, in addition to the numbers of non-commercial Driver Licenses and Identification Cards discussed above, NDDOT's records also indicate that 5 individuals on the list of 126 individuals had specialized Driver Licenses—specifically 1 of those individuals also has a motorcycle endorsement on their Driver License, and 4 of those individuals have some form of Commercial Driver License. Those specialized Driver Licenses impose additional net costs to the State; however, the average net cost incurred by each of those specialized Driver Licenses has not been calculated for purposes of this declaration.

20. 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 October 31, 2024.

A handwritten signature in black ink, appearing to read "Robin R. Rehborg", written over a horizontal line.

Robin R. Rehborg
Deputy Director for Driver Safety
N.D. Department of Transportation

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DECLARATION OF ADAM TESCHER

Pursuant to 28 U.S.C. § 1746, I, Adam Tescher, 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. My name is Adam Tescher. I serve as the School Finance Officer with the North Dakota Department of Public Instruction (ND DPI). I have served with the ND DPI for approximately 9 years. In my capacity as School Finance Officer, I am familiar with the costs incurred by the State of North Dakota for providing public education to North Dakota students.

3. At the request of the North Dakota Attorney General's Office, ND DPI has prepared this declaration addressing some of the average costs incurred by the State of North Dakota for students currently enrolled in the North Dakota public education system.

4. During the 2022-23 school year, the most recent year of complete data, the State of North Dakota incurred average educational costs per student of \$14,345.87 for each student in the public education system.¹ That average cost per student includes salaries for instructional staff, administrators, and support staff; classroom materials and equipment; school utilities and maintenance. It does not include capital outlay, extracurricular activities, school lunch programs, transportation, or early childhood education.

5. ND DPI does not currently have a calculation for the average cost per student for the current school year but anticipates the cost per student will be higher in the current school year

¹ See State of North Dakota, Dept. of Public Instruction, School Finance Facts, at 4 (Feb. 2024), <https://www.nd.gov/dpi/sites/www/files/documents/SFO/2024FinFacts.pdf>

than it was in 2022-23. The cost of education has increased over the last decade and ND DPI does not have any basis to anticipate that trend will reverse this school year.

6. During the 2022-23 school year, approximately 34% of the students enrolled in the North Dakota public education system received State-funded transportation, and school districts in the State of North Dakota incurred average costs per student of \$2,041.23 for each student in the public education system that received transportation.² That average cost includes salaries, fuel, and vehicle expenses related to transporting students to and from public schools. It does not include costs attributable to transportation to or for extracurricular activities.

7. ND DPI does not currently have a calculation for the average transportation cost per student that received public-funded transportation for the current school year but anticipates the average cost per student will be higher in the current year than it was in 2022-23. The transportation cost has increased over the last decade and ND DPI does not have any basis to anticipate that trend will reverse this school year.

8. Information received from the ND DPI Child Nutrition & Food Distribution office, during the 2023-24 school year, approximately 8% of the students enrolled in the North Dakota public education system received subsidized or free school lunches, and the State of North Dakota incurred average costs per student of \$177 for each student in the public education system that received subsidized or free school lunches. That average cost includes only the average cost per student incurred by the State for subsidized or free lunch programs; it does not include costs that are covered by the federal government.

9. ND DPI does not have currently have a calculation of the average cost per student

² See State of North Dakota, Dept. of Public Instruction, School Finance Facts, at 4 (Feb. 2024), <https://www.nd.gov/dpi/sites/www/files/documents/SFO/2024FinFacts.pdf>

that received subsidized or free school lunches for the 2024-25 school year but anticipates the cost per student will be higher in 2024-25 than it was in 2023-24, due to the State legislature increasing the funding for subsidized and free lunches for the 2024-25 school year.

10. 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 October 31, 2024.

A handwritten signature in black ink, appearing to read "Adam Tescher", is written over a horizontal line.

Adam Tescher
School Finance Officer
N.D. Department of Public Instruction