

# Congress of the United States

Washington, DC 20510

October 5, 2012

The Honorable Janet Napolitano  
Secretary  
Department of Homeland Security  
Washington, DC 20528

Dear Secretary Napolitano:

Since President Obama's June 15 announcement of the Deferred Action for Childhood Arrivals (DACA) directive, we have sent you several letters in an attempt to fulfill our constitutional obligation to conduct oversight of the Executive Branch. Your Department has not responded to our requests, contrary to the President's pledge to be transparent and forthcoming.

On September 20, we wrote to you requesting that the Department maintain and publish basic statistics on the DACA program, and provide such data to us on a weekly basis. On September 12, we learned that U.S. Citizenship and Immigration Service (USCIS) had received nearly 87,000 applications. Of those, fewer than a dozen Requests for Evidence (RFEs) were issued. Strikingly, not one application had been denied.

These figures call into question the policies in place for adjudicators who process DACA applications. Are officers being instructed to approve, or pressured to "get to a yes"? Is there guidance to officers that RFEs not be issued, or to be issued only in extremely rare circumstances?

Needless to say, we were shocked to learn that there is, in fact, a policy requiring adjudicators who process DACA applications to send any Notice of Intent to Deny (NOID) or RFE up their chain of command. The attached series of emails, which was sent by the Chief of Service Center Operations, instructs USCIS adjudicators "to hold RFEs and denials," saying all such cases must be sent to the Front Office for supervisory review.

According to the emails, while the denials and RFEs require supervisory review, adjudicators are told they "can adjudicate approvals through to completion." Clearly, such a policy warns adjudicators against denying or issuing an RFE, even if it is warranted. An adjudicator is more likely to approve, bypassing further review, avoiding scrutiny by their management, and maintaining a positive personnel record.

This is consistent with findings by the Department of Homeland Security Inspector General that adjudicators agreed that "production expectations are too high." The IG also noted that "approval of a case takes significantly less time and effort than any of the other actions. ISOs who feel pressed for time or behind in their work, and wish to meet production goals, might opt to approve a marginal case and move on to the next file."

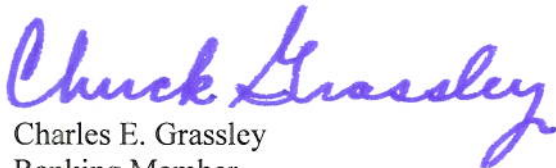
An RFE also serves a useful purpose. It “allows the individual who seeks the benefit to provide further proof of entitlement.” According to the IG, “Many ISOs said that USCIS leans too heavily toward limiting RFEs and increasing approvals.”

The signal being sent to adjudicators who process DACA applicants is clear: if they do not approve an application for DACA, then it will be reviewed by headquarters. Their decisions will be scrutinized until they get to a yes. This is unacceptable and must be rectified immediately so that adjudicators have the autonomy and authority to do what they are trained to do and to follow the letter of the law. We ask that you rescind the policy and to ensure that personnel action against adjudicators in the field will not be tolerated if denials or RFEs are issued.

Finally, the series of emails also direct USCIS service centers to provide data on a daily basis. Specifically, it states that “the front office wants to know on a daily basis the breakdown of approvals, FREs, NOIDS and denials.” We ask that, in addition to the data we requested on September 20, you provide us the daily statistics reported by the service centers to headquarters, as required by the attached series of emails. Additionally, because not one application has been denied, we request that your Department provide us with a report on how many denials and RFEs were sent to headquarters but subsequently overturned.

We look forward to your immediate response in this matter.

Sincerely,



Charles E. Grassley  
Ranking Member  
Senate Committee on the Judiciary



Lamar Smith  
Chairman  
House Committee on the Judiciary

cc: Alejandro Mayorkas, Director  
U.S. Citizenship and Immigration Service

John Morton, Director  
U.S. Immigration and Customs Enforcement



**From:** Velarde, Barbara Q

**Sent:** Friday, September 07

**To:** Renaud, Daniel M; FitzGerald, Karen L; Canney, Keith J; Richardson, Gregory A; Barrows, Angela K; Micale, Jonathan; Melville, Rosemary; Schoening, Donald (Donald.Schoening@uscis.dhs.gov); Hazuda, Mark J; Pearl, Thomas F (Thomas.F.Pearl@uscis.dhs.gov); Jacobson, Neil M; Lewis, Theodore R

**Cc:** Cox, Sophia; Lauver, Tinnina M; Neufeld, Donald W; Rigdon, Jerry L; Arroyo, Susan K (Susan.K.Arroyo@uscis.dhs.gov); O'Dowd, Margaret P; McConnell, James E

**Subject:** RE: DACA Denials

One final note... at least for today. We are reaching out to OIT and customer service to find out what if anything is voiced to the customer if we do an RFE or denial ordered. We will let you know how C3 should be updated depending on what we find out... so stay tuned on that piece of this. Thanks

**From:** Velarde, Barbara Q

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**Subject:** RE: DACA Denials

I was just asked by the front office to augment this hold to include RFEs and Denials.

So, until further notice... the front office wants to know on a daily basis the breakdown of approvals, RFES, NOIDs and denials. What this will mean operationally is that you can adjudicate approvals through to completion. For RFEs and NOIDS you can prepare the documents and pass for supervisory review but cannot push it through to final update until you have compiled a daily report to us to identify the number of RFEs and NOIDS and received our clearance. This is basically to provide the FO with visibility on the ratio of actions. Therefore a daily report of approval numbers will be needed so we can better put the anticipated adjudicative actions into context. This communication will come through SCOPS per the below directive. I am modifying the list of folks you need to copy on this report to include Jim McConnell. For RFES and NOIDs we do not need to know the reason for the RFE or NOID just the numbers; however, I expect that we might be asked for the reason so it might be prudent for you to have that information available. We will then let you know when you can issue the RFE and NOIDs.

For denials, the below message is still in place. I've already received questions about the below directive and if the hold on issuance of denials changes the need for supervisory review. The simple answer is no the requirement for supervisory review is still in place.

The message I take away from this request for this type of granular reporting is that each center must ensure that they are fully tracking all DACA actions and reviewing actions carefully. I would encourage you all to be fully engaged during this rollout.

Please let me know if a call on Monday is necessary to further explain this.

Thank you for your continued patience and cooperation.

Barbara

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**Sent:** Friday, September 07

**To:** Renaud, Daniel M; FitzGerald, Karen L; Canney, Keith J; Richardson, Gregory A; Barrows, Angela K; Micale, Jonathan; Melville, Rosemary; Schoening, Donald ([Donald.Schoening@uscis.dhs.gov](mailto:Donald.Schoening@uscis.dhs.gov)); Hazuda, Mark J; Pearl, Thomas F ([Thomas.F.Pearl@uscis.dhs.gov](mailto:Thomas.F.Pearl@uscis.dhs.gov)); Jacobson, Neil M; Lewis, Theodore R

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**Subject:** DACA Denials

We have been requested to hold any DACA denials prior to issuance and communicate the pending denial through HQSCOPS so we can alert the front office. Please make sure this is communicated to the field. We indicated that all denials (except for abandonment denials) required supervisory review during the early stages of DACA. However, at this time and until further notice, please make sure that ALL denials are held. Please send us an email indicating the reason for the denial as well as any prior actions such as an RFE or NOID. Please send these notices to Jerry Rigdon, Susan Arroyo, and me. If these POCs change, I will let you know. I would also ask that once a week you send us an email with a spreadsheet containing all those that have been sent up to us that are awaiting a response back from us. Please let me know if you have any questions.

Thanks,

Barbara