

Congress of the United States

Washington, DC 20510

October 25, 2017

The Honorable Elaine C. Duke
Acting Secretary of Homeland Security
U.S. Department of Homeland Security
Nebraska Avenue Complex
3801 Nebraska Avenue, N.W.
Washington, D.C. 20528

Dear Acting Secretary Duke:

We write to urge you to keep the Trump Administration's commitment to ensure that the information provided by individuals as part of the Deferred Action for Childhood Arrivals (DACA) program is protected and not used for enforcement purposes.

On June 15, 2012, the Department of Homeland Security (DHS) established a deferred action process to protect certain young people who pose no national security or public safety risk, meet certain other criteria, and were brought to the United States as children.¹ Since its inception, the DACA program has allowed nearly 800,000 young people to come out of the shadows to work, go to school, serve in the military, and contribute more fully to their communities.²

The United States government committed to these young people that the information they provided to United States Citizenship and Immigration Services (USCIS) as part of the DACA program would not be used against them or their families for immigration enforcement purposes and people applying for DACA relied on this assurance in submitting applications. A frequently asked questions (FAQ) document provided to DACA applicants states:

[I]nformation provided in this request is protected from disclosure to ICE [Immigration and Customs Enforcement] and CBP [Customs and Border Protection] for the purpose of immigration enforcement proceedings unless the requestor meets the criteria for the

¹ Office of the Press Secretary, Department of Homeland Security (2012, June 15), *Secretary Napolitano Announces Deferred Action Process for Young People Who Are Low Enforcement Priorities*.

<https://www.dhs.gov/news/2012/06/15/secretary-napolitano-announces-deferred-action-process-young-people-who-are-low>.

² U.S. Citizenship and Immigration Services (2017, June 30), *Number of Form I-821D, Consideration of Deferred Action for Childhood Arrivals, by Fiscal Year, Quarter, Intake, Biometrics, and Cases Status*.

https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/daca_performancedata_fy2017_qtr3.pdf.

issuance of a Notice to Appear or a referral to ICE under the criteria set forth in USCIS's Notice to Appear guidance.³

DHS reaffirmed this policy in a December 30, 2016 letter from then DHS Secretary Jeh Johnson, writing, "DHS has consistently made clear that information provided by applicants will be collected and considered for the primary purpose of adjudicating their DACA requests and would be safeguarded from other immigration-related purposes."⁴ The letter further states, "the U.S. government represented to applicants that the personal information they provided will not later be used for immigration enforcement purposes except where it is independently determined that a case involves a national security or public safety threat, criminal activity, fraud, or limited other circumstances where issuance of a notice to appear is required by law."⁵

During his confirmation hearing, USCIS Director Francis Cissna committed to maintain the existing guidelines for the DACA program. However, we were concerned by your testimony at a September 27, 2017 Senate Homeland Security and Governmental Affairs Committee hearing that you could not promise that DACA information would not be shared with ICE.⁶ Moreover, at a recent Senate Judiciary Committee hearing, then Acting USCIS Director James McCament stated, "Since 2012, that information sharing policy has not changed," while also noting that it is "subject to change."⁷

As a result of the Administration's decision to terminate DACA, hundreds of thousands of individuals who trusted the U.S. government with a copious amount of detailed personal information about themselves and their families are living in fear. This fear is compounded by an enforcement policy that makes millions of undocumented immigrants enforcement priorities rather than prioritizing true public safety and national security threats.

The most recent enforcement data provided by ICE showed an alarming nearly threefold increase between January 22, 2017 and September 2, 2017 in the arrest of individuals with no criminal history compared with the same period in 2016.⁸ ICE Acting Director Thomas Homan testified before the House Appropriations Committee earlier this year that every undocumented

³ U.S. Citizenship and Immigration Services, *Archived Frequently Asked Questions*, <https://www.uscis.gov/archive/frequently-asked-questions>.

⁴ Johnson, Jeh (2016, December 30), Letter to Representative Judy Chu. <https://chu.house.gov/sites/chu.house.gov/files/documents/DHS.Signed%20Response%20to%20Chu%2012.30.16.pdf>.

⁵ Ibid.

⁶ Senate Homeland Security and Governmental Affairs Commission (2017, September 27), *Senate Homeland Security and Governmental Affairs Holds Hearing on Threats to National Security*, <http://www.cq.com/doc/congressionaltranscripts-5184431?6>.

⁷ Senate Judiciary Committee (2017, October 3), *Senate Judiciary Committee Holds Hearing on Oversight of the Decision to End Deferred Action for Childhood Arrivals*, <http://www.cq.com/doc/congressionaltranscripts-5189705?3>.

⁸ Miroff, Nick. "Deportations slow under Trump despite increase in arrests by ICE." *Washington Post*, 28 September 2017, https://www.washingtonpost.com/world/national-security/deportations-fall-under-trump-despite-increase-in-arrests-by-ice/2017/09/28/1648d4ee-a3ba-11e7-8c37-e1d99ad6aa22_story.html.

person in this country “should be uncomfortable, [they] should look over [their] shoulder, and [they] need to be worried.” He further added that “no population is off the table.”⁹

It is imperative that the United States government keep its promise to these young people and their families. We urge you to honor the commitment made to DACA applicants that their information will not be shared for the purpose of immigration enforcement absent very specific circumstances. Doing anything less than this would be contrary to our economic and security interests and a betrayal of the commitment to DACA recipients and their families.

Please provide responses to the following questions no later than fourteen days from this date. Thank you for your prompt attention to this matter.

1. On August 15, 2012, the Department issued a Privacy Impact Assessment for the DACA Program (DHS/USCIS/PIA-045). In that document, DHS established the following policy for sharing DACA application information:

*Information provided in this request is protected from disclosure to ICE and CBP for the purpose of immigration enforcement proceedings unless the individual meets the guidelines for the issuance of a Notice to Appear (NTA) or a referral to ICE under the guidelines set forth in USCIS's Notice to Appear guidance (www.uscis.gov/NTA). Individuals whose cases are deferred pursuant to the consideration of deferred action for childhood arrivals process will not be referred to ICE. The information may be shared with national security and law enforcement agencies, including ICE and CBP, for purposes other than removal, including for assistance in the consideration of the deferred action for childhood arrivals request, to identify or prevent fraudulent claims, for national security purposes, or for the investigation or prosecution of a criminal offense. The above information sharing policy covers family members and guardians, in addition to the individual.*¹⁰

- a. Consistent with the sworn testimony of USCIS Director Francis Cissna and then Acting USCIS Director James McCament, can you confirm that the August 15, 2012 policy established by DHS is still binding on the Department, including on USCIS, ICE, and CBP?
- b. Have there been any communications between DHS officials and outside agencies, including the Department of Justice or the White House, concerning a change to this policy? If so, please detail these communications and provide any related documentation.

⁹ House Appropriations Subcommittee on Homeland Security (2017, June 13), *House Appropriations Subcommittee on Homeland Security Holds Hearing on the Immigration and Customs Enforcement and Customs and Border Protection Fiscal 2018 Budgets*. <http://www.cq.com/doc/congressionaltranscripts-512289678>.

¹⁰ Department of Homeland Security (2012, August 15), *Privacy Impact Assessment for the Deferred Action for Childhood Arrivals (DACA)*. https://www.dhs.gov/sites/default/files/publications/privacy/privacy_pia_uscis_daca.pdf.

- c. Consistent with the sworn testimony of USCIS Director Francis Cissna, can you confirm that DHS will maintain the August 15, 2012 policy, including after March 5, 2018 when individuals begin to lose their DACA status as a result of the Administration's decision to end the DACA program?
 - d. What steps has DHS taken to ensure that Department employees are aware of the policy? Please provide, in full, any guidance that has been issued to DHS personnel as it relates to the information submitted by DACA applicants and recipients as part of the program.
2. Are any new information sharing agreements currently under consideration between USCIS, CBP, and ICE? Please provide a list of information sharing agreements under consideration that could impact DACA recipients and their families.
 3. Please provide the number of DACA applicants and recipients whose DACA information has been shared with ICE or CBP for the purposes of immigration enforcement, broken down by month and the reason for sharing such information.
 4. Are DACA recipients who lose their DACA status considered an enforcement priority simply as a result of being out of status?
 5. Has there been any consideration of treating DACA recipients or former recipients as an enforcement priority? If so, please detail any proposed policy and documentation related to such consideration.
 6. In the 2012 Privacy Impact Assessment, DHS recognized a risk that "[i]ndividuals who have legitimate access to [DACA application data] could exceed their authority and use the data for unofficial purposes." The document describes a set of safeguards that the Department adopted to address that risk:

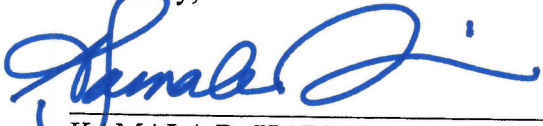
*USCIS developed a Deferred Action for Childhood Arrivals Standard Operating Procedure to ensure accurate data entry and proper handling and the appropriate use of information. Prior to any system access, all DHS employees are required to take annual computer security and privacy awareness training, which addresses this issue. DHS also maintains rules of behavior for employees who use DHS systems. USCIS also limits access to PII by employing role-based access (only allowing access to users who need particular PII to perform their duties). USCIS also deploys user logs to ensure users are only accessing information related to their job functions. Additionally, disciplinary rules are in place to ensure the appropriate use of information.*¹¹


- a. Please provide a copy of the Deferred Action for Childhood Arrivals Standard Operating Procedure.

¹¹ Ibid.

- b. Can you confirm that the Department has retained the safeguards that it identified in the 2012 Privacy Impact Assessment?
- c. What are the specific training, procedural, and technical safeguards that ensure a DHS employee with legitimate access to DACA application information cannot disclose the information "to ICE and CBP for the purpose of immigration enforcement proceedings unless the individual meets the guidelines for the issuance of a Notice to Appear (NTA) or a referral to ICE under the guidelines set forth in USCIS's Notice to Appear guidance"?

Sincerely,

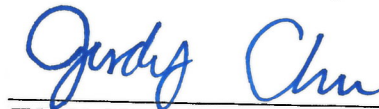

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United States Senator



MICHELLE LUJAN GRISHAM

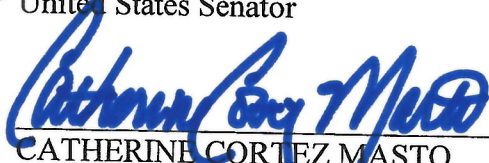
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Chair, Congressional Hispanic Caucus

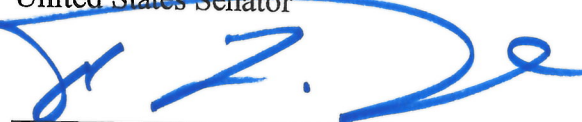

JUDY CHU
Chair, Congressional Asian Pacific
American Caucus

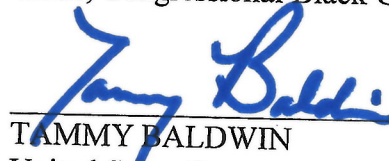

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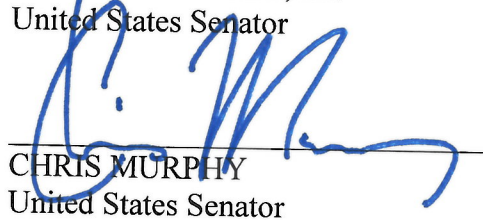

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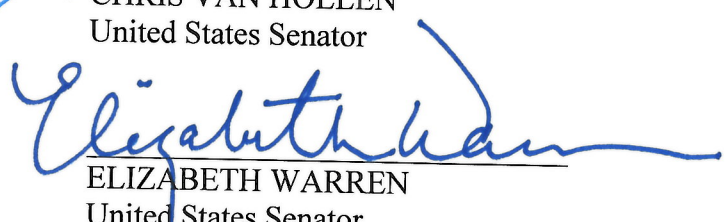

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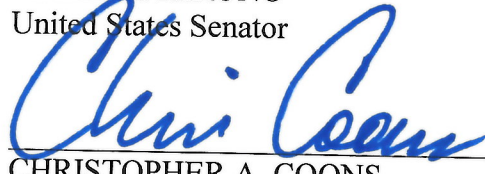

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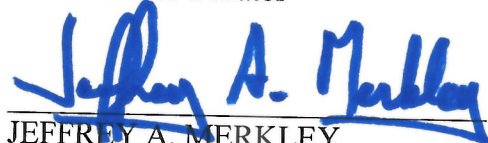

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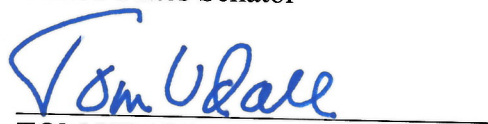

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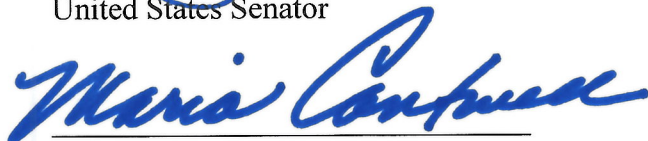
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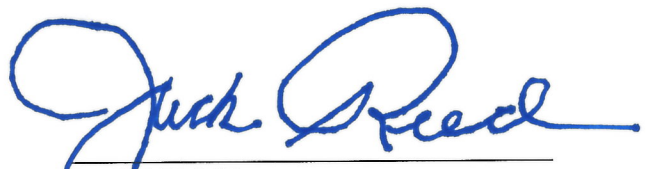
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