

United States Senate

WASHINGTON, DC 20510

May 11, 2015

VIA ELECTRONIC TRANSMISSION

The Honorable Leon Rodriguez
Director
United States Citizenship and Immigration Services
111 Massachusetts Avenue, N.W.
Washington, D.C. 20529

Dear Director Rodriguez:

In a briefing to staffers on April 9, 2015, U.S. Citizenship and Immigration Services (USCIS) officials stated that USCIS planned to load Deferred Action for Childhood Arrivals (DACA) applications into the Electronic Immigration System (ELIS). As a result of this revelation, we are writing to express concern that USCIS may have prematurely made a decision that exposes our immigration system to fraud and national security threats.

ELIS, an electronic platform that has struggled to function properly for almost a decade, is supported by fees USCIS receives through its Premium Processing service, which provides expedited processing for certain employment-based petitions and applications.¹ Under this program, USCIS guarantees 15 calendar day processing to those petitions or applicants who choose to use this service and pay the \$1,225 fee. Currently, USCIS is processing various forms through ELIS, including the I-90 form. Meanwhile, USCIS has not prioritized processing immigration forms for legal immigrants through ELIS.

Prior to its decision to include DACA applications in ELIS, USCIS had originally planned to process Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) applications through its ELIS platform. On January 23, 2015, the Department of Homeland Security (DHS) issued a Request for Proposal (RFP) seeking records operations services in support of DAPA. The RFP states “[t]he contractor may be required to perform using ELIS” to process DAPA applications and that “over time, all immigration requests filed with and adjudicated by USCIS will be incorporated into USCIS ELIS.”² According to various estimates, the number of DAPA applicants could range from 2 to 4.5 million people. However, since a federal court recently issued an injunction on the DAPA program, USCIS has halted its plans to process DAPA applicants through ELIS.

According to USCIS officials present at the April 9th meeting, the decision to move DACA or DAPA applications into the ELIS platform was based on three elements: (1) potential surges; (2) simplicity; and (3) large volumes. These three elements are not enough to base a

¹ See <http://www.uscis.gov/forms/how-do-i-use-premium-processing-service> (“U.S. Citizenship and Immigration Services, *How Do I Use the Premium Processing Service?*”).

² Request for Proposal, Deferred Action for Parents of U.S. Citizens and Lawful Permanent Residents (DAPA) Operations Center Contract, January 23, 2105, HSSCCG-15-R-00011.

decision that will have long lasting effects on our immigration landscape. This decision is not only a potential burden to taxpayers and disservice to those that pay the premium processing fees, but may very well increase fraudulent activity.

In a 2012 Privacy Impact Assessment, USCIS reported that ELIS automated background functions “will detect duplicate and related accounts...and identify potential national security concerns, criminality, and fraud to ensure that serious or complex cases received additional scrutiny.”³ However, in 2014, the DHS Office of Inspector General (OIG) reported that USCIS’s IT systems do not fully provide the functionality needed to support its mission.⁴ In fact, the functionality of ELIS is so poor that USCIS staff, according to the OIG, prefer to process cases on paper rather than the electronic system meant to help them accurately and quickly identify fraudulent applicants.⁵

These 2014 findings, coupled with a 2013 report from the OIG on the USCIS fraud detection process, reveals further issues in USCIS immigration controls. OIG reported that over the four-year period from FY 2008 to FY 2011, USCIS failed to record almost half of the 1,144 findings of fraud in its I-130 and I-485 forms.⁶ The report also noted that USCIS might have a limited ability to track, monitor, and identify inadmissible aliens, and to detect and deter immigration fraud.⁷ In a February 4, 2015, hearing before the Senate Committee on Homeland Security & Governmental Affairs, former USCIS Deputy Ombudsman Luke Bellocchi echoed this assessment, testifying that the current USCIS digital infrastructure was not sufficient to handle virtual processing of application packages despite billions spent on implementation.⁸ In fact, the USCIS Director announced that the new goal for completing the transformation project was FY 2018 or 2019, eleven years after its original launch.⁹

Along with the technical issues surrounding ELIS, the Government Accountability Office (GAO), in its February 2015 *High-Risk Series*, emphasized that “between July 2011 and September 2014, the program’s life-cycle cost estimate increased from approximately \$2.1 billion to approximately \$2.6 billion.”¹⁰ In a recent brief to Committee staff, GAO noted that the program has been recently re-baselined and the cost of the program has been revised upward to approximately \$3.1 billion.

³ DHS/USCIS/PIA-043, May 16, 2012, available at

http://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_uscis_elis_3_automatedbackgroundfunctions.pdf

⁴ Department of Homeland Security Office of Inspector General, U.S. Citizenship and Immigration Services Information Technology Management Process and Challenges, July 2014, http://www.oig.dhs.gov/assets/Mgmt/2014/OIG_14-112_Jul14.pdf.

⁵ *Ibid*

⁶ Department of Homeland Security, Office of the Inspector General, “U.S. Citizenship and Immigration Services’ Trafficking and Monitoring of Potentially Fraudulent Petitions and Applications for Family-Based Immigration Benefits,” OIG-13-97, June 2013, p. 3.

⁷ *Ibid*

⁸ U.S. Senate Committee on Homeland Security and Governmental Affairs, *Deferred Action on Immigration: Implications and Unanswered Questions*, testimony of Luke P. Bellocchi, February 4, 2015.

⁹ Aliya Sternstein, “After Delays, USCIS Sets New Deadline for Digital Immigration Records,” NextGov.com, July 29, 2014.

¹⁰ Government Accountability Office, *High Risk Series: An Update*, February 2015, pg. 43.

Given the many issues with ELIS and the decision by USCIS to process DACA applicants using the ELIS platform, please provide answers to the following questions:

1. How much more money does USCIS intend to spend on ELIS implementation?
2. What are the costs to develop a DACA module in ELIS? Please provide a detailed explanation of how those costs were determined.
3. Please provide the current timeline for the DACA module.
4. What portion of DACA applicant packages are slated to be processed through ELIS? Will renewal requests be processed?
5. How is USCIS ensuring that what is uploaded to ELIS does not violate the injunction imposed by the U.S. District Court for the Southern District of Texas?
6. USCIS cited "simplicity" as a factor it uses to determine which product line to upload to ELIS. How do DACA applications meet this standard?
7. The USCIS Director has stated that ELIS will not be ready until FY 2018. GAO recently briefed Committee staff that this has changed to 2019. How then is USCIS processing DACA applicants through ELIS today?
8. By loading DACA applications onto ELIS before applications relating to legal immigration visa programs, USCIS is prioritizing the more efficient processing of immigration benefits for illegal immigrants over those for legal immigrants and nonimmigrants, not to mention the U.S. employers that are actually paying the Premium Processing fees funding ELIS. Why is USCIS doing this?
9. Since the Premium Processing Service is currently funding ELIS, why are those applications and petitions from which Premium Processing fees are collected not being uploaded onto ELIS first?
10. On March 3, 2015, USCIS Chief Financial Officer Joseph Moore testified before Congress that USCIS currently has over \$1 billion in cash reserves, about \$460 million of which comes from Premium Processing fees.
 - a) If USCIS has a reserve fund based on these fees, why does USCIS not reduce the fees associated with this program?
 - b) To what extent are these reserves being used to develop the DACA modules in the ELIS platform?
11. Earlier this year at a Senate Homeland Security and Governmental Affairs hearing regarding the President's executive actions, Mr. Bellocchi indicated that the Office of

Fraud Detection and National Security (FDNS) was excluded from reviewing applications for DACA. Will ELIS now permit FDNS a role in reviewing DACA applicants? Will future DAPA applicants receive FDNS review if the court's injunction is lifted?

12. Please provide an assessment of the quality of the code in ELIS and whether the integrity of the code could be a cause for potential cyber breaches. Please further provide an assessment of whether the deficiencies highlighted by DHS OIG and GAO could give rise to fraudulent activity within the ELIS system and what protocols are in place to prevent illegal tampering of the digital documents.
13. What has DHS done to improve the efficiency of ELIS in contrast to paper-based methods of processing? What security protocols will be implemented to ensure that external or internal actors do not tamper with any paper documents waiting to be digitized?
14. What performance metrics will be used to assess the efficiency and effectiveness of ELIS? What steps has USCIS taken to respond to the deficiencies highlighted by DHS OIG and GAO?
15. What methodology is USCIS employing to determine the return on investment (ROI) provided by ELIS? What methodology is DHS using to compare the investment in ELIS versus other potential USCIS or DHS investments? How is DHS rationalizing that ROI to determine overall program value and success?

Please number your responses according to their corresponding questions and sub-questions. We would appreciate a response by May 25, 2015. If you have any questions, please do not hesitate to contact Katherine Nikas for Senator Grassley at (202) 224-5225 and Brooke Ericson for Senator Johnson at (202) 228-0079. Thank you for your cooperation in this important matter.

Sincerely,


Charles E. Grassley

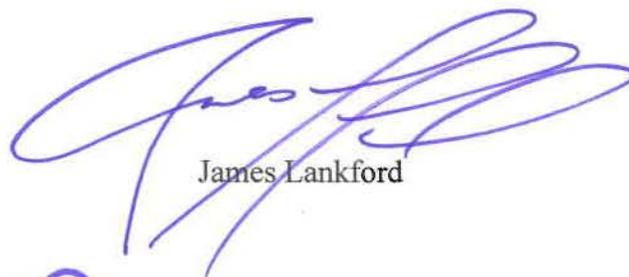

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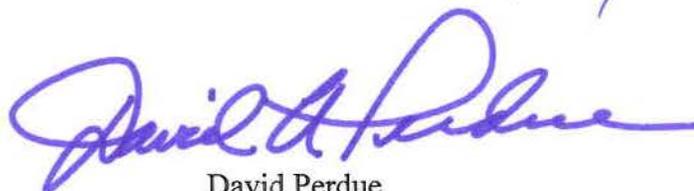

John McCain



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