STATEMENT OF

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FOR A HEARING ON
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Introduction

Chairman Grassley, Ranking Member Feinstein, and distinguished Members of the Committee, thank you for the opportunity to appear today to discuss Deferred Action for Childhood Arrivals (DACA). DACA, and more generally, concern over the status of individuals illegally brought to the United States as minors, has been a subject of debate for well over a decade.

In the absence of new legislation to remedy the problem, officials within the Department of Homeland Security (DHS) have sought to deal humanely with minors while trying to avoid the creation of "pull" factors that would induce further illegal and dangerous migration of vulnerable youth and children. No other institution in the Federal Government encounters as many legal and illegal immigrants as does DHS. On any given day, our Department is both naturalizing new citizens and deporting aliens who are not legally entitled to remain in the United States.

DHS understands immigrants and their aspirations, but also understands the expectations of the American public that we will faithfully execute the laws. As we provide our testimony before this Committee, we recognize DACA is in active litigation and discovery is now taking place. Within these necessary limitations, we appreciate the opportunity to discuss the practical and operational dimensions of how the DACA policy is being phased out by DHS.

It is within this context that our statement will focus on the timeline of DACA, including how it is being moved toward an orderly phase out by the Administration.

DACA History

On June 15, 2012, then DHS Secretary Janet Napolitano issued a memorandum entitled "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children." This memorandum created the policy known as DACA. Under the DACA memorandum and implementing guidance, individuals without lawful status could request a two-year period of deferred action and apply for employment authorization (with the possibility of renewal) if they met certain age requirements, continuously resided in the United States for a period of five years, met certain educational or service requirements with the U.S. Coast Guard or Armed Forces, and had not been convicted of a felony, significant misdemeanor, or three or more other misdemeanors, and did not otherwise pose a threat to national security or public safety.

The 2012 memorandum also made clear that individuals could be considered for DACA even if they were already in removal proceedings or were subject to a final removal order.

The memorandum directed DHS to conduct background checks on DACA requestors. It also ordered U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection, and U.S. Citizenship and Immigration Services (USCIS) to exercise prosecutorial discretion, on an individual basis, to prevent low priority individuals from being placed into removal proceedings or removed from the United States. In essence, the memorandum provided guidance on immigration officers' exercise of discretion on an individual basis to defer the removal of individuals who met the DACA guidelines, even if they did not request and receive DACA formally. Once an individual was granted deferred action, the 2012 memorandum allowed

USCIS to determine whether or not the DACA recipient qualified for work authorization during the deferred action period.

On November 20, 2014, then DHS Secretary Jeh Johnson issued a memorandum entitled "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Residents." Among other things, this memorandum expanded DACA and created the Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) policy.

This expansion of DACA and creation of DAPA was subject to a preliminary injunction issued by the District Court for the Southern District of Texas on February 16, 2015. The preliminary injunction was affirmed by the U.S. Court of Appeals for the Fifth Circuit on November 9, 2015, and an equally divided Supreme Court decision led to the Fifth Circuit opinion being upheld on June 15, 2016.

In light of those decisions, then DHS-Secretary Kelly rescinded DAPA and the expansion of DACA on June 15, 2017. Original DACA recipients were unaffected, and individuals who had received three year validity periods for DACA and the associated work authorization under the November 2014 memorandum prior to the district court injunction were allowed to maintain those approvals through their expiration, unless terminated or revoked for case specific reasons.

Orderly Phase Out of DACA

On June 29, 2017, the State of Texas and several other states sent a letter to Attorney General Sessions asserting that the original 2012 DACA memorandum is unlawful for the same reasons stated in the Fifth Circuit and district court opinions regarding DAPA and expanded DACA. The letter noted that if DHS did not rescind the DACA memorandum by September 5, 2017, the states would seek to amend the DAPA lawsuit to include a challenge to DACA.

The Attorney General sent a letter to DHS on September 4, 2017, that stated DACA "was effectuated by the previous administration through executive action, without proper statutory authority and with no established end-date, after Congress' repeated rejection of proposed legislation that would have accomplished a similar result. Such an open-ended circumvention of immigration laws was an unconstitutional exercise of authority by the Executive Branch." The letter further stated that DACA possessed the same legal and constitutional defects identified by the courts as DAPA. As such, the potential outcome of a legal challenge to DACA would likely yield a similar result as the legal challenge to DAPA.

Taking into consideration the federal court rulings in ongoing litigation and the September 4, 2017 letter from the Attorney General, it became clear that the policy should be terminated in a humane and orderly fashion. On September 5, 2017, the Acting Secretary of Homeland Security rescinded the June 15, 2012 memorandum establishing DACA, and provided for its orderly wind down. This plan permits current DACA recipients to retain the periods of both deferred action and their employment authorization documents (EADs) until they expire, unless terminated or

revoked for case specific reasons. Periods of deferred action under DACA and the accompanying work authorization were generally valid for two years from the date of approval.

The Administration's decision to terminate DACA was not taken lightly. We were faced with two options: wind-down DACA in an orderly fashion that protects recipients in the near-term while allowing Congress time to work to pass legislation to address this issue; or allow the judiciary to potentially shut down DACA completely and immediately. We chose the least disruptive option. This option will limit disruption to current DACA recipients while providing time for Congress to seek a legislative solution.

To implement the orderly wind down under this process, USCIS will consider, on an individual, case-by-case basis: 1) Properly filed, pending DACA initial requests and associated applications for EADs that have been received as of September 5, 2017; and 2) Properly filed pending DACA renewal requests and associated applications for EADs from DACA recipients that have been received as of September 5, 2017, and from DACA recipients whose DACA has or will expire between September 5, 2017 and March 5, 2018, inclusive, that have been received as of October 5, 2017. DACA recipients eligible to renew under these parameters must file the Form I-821D to request consideration, along with their Form I-765, and required fee, to apply for employment authorization. DACA renewal requestors do not need to submit any additional documents at the time of the request for renewal unless the requestor has new documents involving removal proceedings or criminal history that were not already submitted to USCIS in a previously approved DACA request. Individuals who did not request initial DACA on or before September 5, 2017, may no longer do so. USCIS will reject all initial requests received after September 5, 2017.

Conclusion

The Executive Branch should not create "pull" factors for illegal immigration into the United States. Illegal immigration is dangerous for aliens, especially children, and for the United States. The 2014 surge of unaccompanied alien children at the Southwest border involved treacherous journeys by vulnerable populations. This surge also placed overwhelming pressure on the government to process and provide care for those flooding the border. There is a moral hazard when we reward and incentivize illegal behavior. We must avoid sending any message to people outside the United States that illegal entry will benefit them, either immediately or in the future. DHS stands ready to provide technical assistance requested by Congress to support the effort to achieve a reasonable legislative solution for DACA that is in line with the Administration's priorities.

Chairman Grassley, Ranking Member Feinstein, and distinguished Members of the Committee, thank you for the opportunity to testify today and we look forward to your questions.