United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510–6275

April 27, 2015

VIA ELECTRONIC TRANSMISSION

The Honorable Jeh Johnson
Secretary
Department of Homeland Security
Washington, DC 20528

Mr. León Rodríguez
Director
U.S. Citizenship and Immigration Services
Washington, DC 20529

Dear Secretary Johnson and Director Rodríguez:

I am writing in regard to your implementation of the President's recent executive actions on immigration, as well as your representations to a federal judge about that implementation. On November 20, 2014, Secretary Johnson issued a memorandum to Director Rodríguez imposing the President's new unilateral immigration policies on the agencies within the Department of Homeland Security ("DHS"). That memorandum was titled "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" ("DHS Directive.")[1] Among other things, the DHS Directive expanded the parameters of the Deferred Action for Childhood Arrivals ("DACA") program by: removing the age cap for eligible applicants; extending renewals and work authorizations from two-year periods to three; and adjusting the date-of-entry requirement. Regarding the extension of DACA's renewal and work authorization periods to three years, the directive stated:

> This change shall apply to all first-time applications as well as all applications for renewal effective November 24, 2014. Beginning on that date, USCIS should issue all work authorization documents valid for three

[1] Available at http://www.dhs.gov/sites/default/files/publications/14_1120_memo_deferred_action.pdf

years, including to those individuals who have applied and are awaiting two-year work authorization documents based on the renewal of their DACA grants.[2]

On December 3, 2014, several States filed suit in federal court in Texas against both of you in your official capacities, the United States, and other related defendants.[3] The plaintiff States argued that the DHS Directive violates the President's constitutional duty to "take Care that the Laws be faithfully executed," and violates the Administrative Procedure Act.[4] On December 4, 2014, the plaintiff States filed a motion for a preliminary injunction, seeking a court order barring the DHS and USCIS from implementing the DHS Directive until the Court could rule on the directive's legality.[5] The plaintiff States sought the Court's "emergency intervention" because it would be "difficult or impossible to undo the President's lawlessness after the Defendants start granting applications for deferred action" pursuant to the DHS Directive, which included the DACA expansion.[6] The plaintiff States thus asked the Court to hold a hearing on the motion by December 31, 2014, or as soon as practicable thereafter, and to expedite the briefing schedule accordingly.

In response, the government attorneys representing you in the case informed the Court that there was no need to rush because DHS and USCIS would take no actions pursuant to the DHS Directive until February 18, 2015.[7] Relying on these representations, the Court not only gave your attorneys extra time for your briefing but also understood February 18, 2015, to be the agreed-upon date by which to rule on the motion for a preliminary injunction. In keeping with this understanding, on February 16, 2015, the Court issued its ruling, granting the plaintiff States' motion and barring you from implementing the DHS Directive until the Court had ruled on its legality.[8] The Court held that, without such an injunction prohibiting DHS and USCIS from implementing the DHS Directive, the plaintiff States would suffer irreparable harm.

Two weeks after the Court issued its ruling, your attorneys, contrary to their prior assertions, notified the Court that between November 24, 2014, and the issuance of the Court's order on February 16, 2015, USCIS had in fact granted the three-year DACA approvals established by the DHS Directive to approximately 100,000 people here illegally.[9] In response, the Court noted that "despite the Government's multiple assurances that no action would be taken prior to February 18, 2015, in reality, between November 24, 2014, and February 16, 2015, the DHS granted approximately 100,000 applications pursuant to the revised DACA, the terms

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[2] *Id.* at 3.
[3] *Texas, et al. v. United States, et al.*, 1:14-cv-00254 (TXSD).
[4] Pls.' Compl. ¶¶ 71, 82, 86, ECF No. 1.
[5] Pls.' Mot. for Prelim. Inj., ECF No. 5.
[6] *Id.* at 1-2.
[7] *See* Order 3-7, ECF No. 226.
[8] Order and Mem. Op., ECF. Nos. 144-145.
[9] Defs.' Advisory, ECF No. 176.

of which were established in the 2014 DHS Directive that is the subject of this suit."[10] The Court noted that it was "extremely troubled" by the Government's actions, and stated: "[w]hether by ignorance, omission, purposeful misdirection, or because they were misled by their clients, the attorneys for the Government misrepresented the facts."[11] In a hearing on the issue, the Court asked: "Can I trust what the President says?"[12]

In order to evaluate the circumstances under which USCIS granted, pursuant to the DHS Directive, over 100,000 three-year DACA approvals and work authorizations between November 24, 2014, and February 18, 2015, please provide copies of the following by no later than May 11, 2015:

1. All communications within or between DHS and USCIS relating to the implementation of the policies set forth in Secretary Johnson's November 20, 2014, DHS Directive, including, but not limited to, communications regarding the timing of such implementation.

2. All communications between the White House and DHS or USCIS relating to the implementation of the policies set forth in Secretary Johnson's November 20, 2014, DHS Directive, including, but not limited to, communications regarding the timing of such implementation.

3. All instructions and memoranda sent to USCIS Field Offices, USCIS personnel involved in the processing of DACA initial application, renewal, and work authorization forms (such as I-821D and I-765), and/or USCIS Directorates and Program Offices concerning implementation of the DHS Directive, including, but not limited to, the timing of such implementation.

4. All questions or comments DHS or USCIS received from any DHS or USCIS personnel concerning the scope or implementation of the DHS Directive, including, but not limited to, questions or comments concerning the timing of such implementation.

5. All communications within or between DHS and USCIS relating to the potential or actual effects of the States' lawsuit on the implementation of the DHS Directive, and any actions to be taken in response.

[10] Order 2-3, ECF No. 226.
[11] Order 3, 6, ECF No. 226.
[12] Sarah Flores and Cameron Langford, *Judge in Immigration Case Questions Trust in Obama*, COURTHOUSE NEWS SERVICE, Mar. 19, 2015.

6. All communications between the White House and DHS or USCIS relating to the potential or actual effects of the States' lawsuit on the implementation of the DHS Directive, and any actions to be taken in response.

7. Any reports or other data to or from USCIS Field Offices, USCIS personnel involved in the processing of DACA applications or renewals, and/or USCIS Directorates and Program Offices documenting grants of three-year DACA approvals and work authorizations --for both initial applications and renewals-- from November 20, 2014 through February 18, 2015.

8. All communications between DHS or USCIS and the Justice Department concerning when USCIS would begin implementing the DHS Directive, including, but not limited to, when USCIS would begin granting three-year DACA periods for both new applications and renewals.

Please provide the requested documents organized categorically by the numbers above and in searchable PDF format. If you have any questions about this request, feel free to contact Patrick Davis of my Committee staff at (202) 224-5225. Thank you for your attention to this important matter.

Sincerely,

Charles E. Grassley
Chairman
Senate Committee on the Judiciary