

United States Senate

WASHINGTON, DC 20510-1304

April 17, 2020

The Honorable Chad Wolf
Acting Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Acting Secretary Wolf:

In light of serious concerns that the Trump Administration is preparing mass deportations of Deferred Action for Childhood Arrivals (DACA) recipients, I write to urgently seek more information about the confidentiality of information that DACA recipients have provided to U.S. Citizenship and Immigration Services (USCIS). These concerns are particularly pressing at a time when more than 200,000 DACA recipients are “essential critical workers,” as defined by your agency, on the frontlines of the COVID-19 pandemic, including 41,700 DACA recipients in the health care industry.

Long-standing USCIS policy is that information provided by DACA recipients will not be used in removal proceedings. According to “Deferred Action for Childhood Arrivals: Response to January 2018 Preliminary Injunction,” which appears on the USCIS website, “Unless otherwise provided in this guidance, the DACA policy will be operated on the terms in place before it was rescinded on Sept. 5, 2017, until further notice.” That page links to “DHS DACA FAQs,” which state:

Information provided in this request is protected from disclosure to ICE and CBP for the purpose of immigration enforcement proceedings unless the requestor meets the criteria for the issuance of a Notice To Appear or a referral to ICE under the criteria set forth in USCIS’ Notice to Appear guidance (www.uscis.gov/NTA). Individuals whose cases are deferred pursuant to DACA will not be referred to ICE.

DHS and USCIS nominees and officials have testified under oath, both before and after the Administration announced its intent to rescind DACA, that existing DACA guidelines would remain in place. For example, at a Senate Judiciary Committee hearing on May 24, 2017, Senator Durbin asked then-USCIS Director nominee Francis Cissna, “For the record, do you commit to maintaining the existing DACA guidelines?” Mr. Cissna replied, “If confirmed I would see my role to be to administer that program well as it stands with its current parameters.” At a Senate Homeland Security Committee hearing on November 8, 2017, Senator Harris asked then-DHS Secretary nominee Kirstjen Nielsen, “If confirmed, do you commit that this information [provided by DACA requestors] will not be shared for enforcement purposes?” Ms. Nielsen replied, “Yes, as I understand it, there are extraordinarily limited circumstances that involve very specifically national or public safety. To my knowledge, there are no other reasons or exceptions to enable that information to be shared for any enforcement purpose. If there are any, I will commit to you to immediately come and talk to you about it and work out a solution together.”

In light of grave concerns about the confidentiality of information that DACA requestors have provided to USCIS, I request that you respond to the following questions as soon as possible, and no later than May 1, 2020:

1. Is it still DHS policy that USCIS may not refer DACA recipients to ICE?
2.
 - a. Has USCIS referred any current or former DACA recipients to ICE since January 20, 2017?
 - b. If yes, how many current or former DACA recipients has USCIS referred to ICE since January 20, 2017?
3. In what circumstances, if any, can ICE access information submitted by a DACA requestor?
4.
 - a. Does ICE have access to any databases in which information submitted by a DACA requestor is stored?
 - b. If yes, which databases and under what circumstances can ICE access this information?
 - c. For each such database, how long has ICE had such access and how many DACA requestors' information has ICE accessed?
 - d. For each such database, does ICE require permission from USCIS to access DACA requestors' information? If yes, which USCIS officials are authorized to grant such permission?
 - e. For each such database, which ICE officials are authorized to access DACA requestors' information?
5.
 - a. Can ICE access information submitted by DACA requestors through the National Records Center?
 - b. If yes, since when has ICE had this access?
6.
 - a. What policies or procedures govern ICE's access to DACA requestors' information? Please provide copies of any such policies or procedures.
 - b. How long have such policies or procedures been in place?
 - c. If such policies or procedures have changed since January 20, 2017, was Congress notified of any such changes?
 - d. In how many instances have the policies or procedures governing ICE's access to DACA requestors' information been violated?

7.

- a. Has ICE used DACA requestors' information in any enforcement actions?
- b. If yes, in how many instances has this taken place and what was the nature of such enforcement actions?

Thank you for your time and consideration. I look forward to your prompt response.

Sincerely,



Richard J. Durbin
United States Senator