United States Senate
WASHINGTON, DC 20510

July 17, 2017

The Honorable John F. Kelly
Secretary
U.S. Department of Homeland Security
3801 Nebraska Avenue, NW
Washington, DC 20528

Dear Secretary Kelly:

We write to express our serious and growing concern that U.S. Department of Homeland Security personnel have taken steps to erode longstanding protections for immigrant survivors of domestic violence, sexual assault, human trafficking, and other crimes, undermining the bipartisan Violence Against Women Act ("VAWA"), the Trafficking Victim Protection Act ("TVPA"), and other state and federal laws enacted to protect survivors.

Congress has taken many actions to protect survivors and to remove from the hands of abusers the ability to use immigration enforcement as a tool of control. Under VAWA, spouses, children, and parents of U.S. citizens or lawful permanent residents may "self-petition" to obtain lawful permanent residence. These commonsense provisions allow individuals the right to petition for an immigrant visa in order to seek safety and independence from an abuser, without the abuser's involvement. Congress created the U and T visas in 2000 to "strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking[...]and other crimes[...]committed against aliens, while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States."[1]

Previously, U.S. Immigration and Customs Enforcement ("ICE") recognized that trust between law enforcement and survivors of crime is critical to bringing perpetrators to justice. The ICE memorandum issued by then ICE Director John Morton ("Morton Memo")[2] advised that ICE officers, special agents, and attorneys should exercise all appropriate prosecutorial discretion to curtail any effect that immigration enforcement may have on the willingness of survivors, witnesses, and plaintiffs to call the police and pursue justice, which included survivors of domestic violence, sexual assault, human trafficking, and other crimes. The Morton Memo provided undocumented survivors a sense of certainty and safety about coming forward to law enforcement to report crimes.

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[1] P.L. No. 106-386, 114 Stat. 1464, §1513(a)(2)(A).
[2] Memorandum from John Morton, Director of Immigration and Customs Enforcement, "Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs," *US Immigration and Customs Enforcement,* Jun. 17, 2011, https://www.ice.gov/doclib/foia/prosecutorial-discretion/certain-victims-witnesses-plaintiffs.pdf.

However, the recent changes in enforcement priorities, your February 20, 2017 memorandum implementing President Trump's executive order on interior enforcement ("2017 Kelly Memo"),[3] and reports of ICE agents in the field, cast this sense of certainty in question. While the U.S. Customs and Border Protection ("CBP") website continues to state that, "ICE and CBP conduct their enforcement actions consistent with the Department of Homeland Security's November 20, 2014 memorandum[4] prioritizing the removal of national security, border security, and public safety threats,"[5] the 2017 Kelly Memo states "the Department no longer will exempt classes or categories of removable aliens from potential enforcement."[6]

Furthermore, all immigration enforcement guidance issued by previous Administrations that conflicts with the 2017 Kelly Memo were rescinded, with two stated exemptions listed.[7] It remains unclear whether the Morton Memo is considered "in conflict" and has therefore been rescinded in its entirety, or remains in effect. Together, the Morton Memo and CBP's *Sensitive Locations FAQs*[8] proved valuable for organizations supporting survivors to understand enforcement practices and how best to protect the people they serve. This lack of clarity calls into question how CBP and ICE will interact with survivors of domestic violence, sexual assault, trafficking, and other crimes. These concerns were magnified last week, when it was reported that ICE agents showed up in a courtroom for human trafficking victims.[9] Inevitably, this complicates immigration enforcement practices, leaving the Department, Congress and, most importantly, the public, confused and unclear regarding ICE's and CBP's policies related to survivors of abuse and enforcement at sensitive locations.

We hope these protections remain in place for survivors, but to clarify for the public what policy CBP and ICE rely on when enforcing immigration laws for survivors of domestic violence, sexual assault, trafficking, and other crimes and in sensitive locations, we request you provide the following information no later than July 31, 2017:

1. A detailed description of any change in DHS policy or procedures, since January 19, 2017, that allows for DHS agents to detain a survivor or witness of domestic violence,

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[3] Memorandum from John Kelly, U.S. Secretary of Homeland Security, "Enforcement of the Immigration Laws to Serve the National Interest," Feb. 20, 2017, https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf.

[4] Memorandum from Jeh Johnson, U.S. Secretary of Homeland Security, "Policies for the Apprehension, Detention and Removal of Undocumented Immigrants," Nov. 20, 2014, https://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf.

[5] U.S. Customs and Border Protection, "Sensitive Locations FAQ's," Aug. 22, 2016, https://www.cbp.gov/border-security/sensitive-locations-faqs.

[6] Memorandum from John Kelly, U.S. Secretary of Homeland Security, "Enforcement of the Immigration Laws to Serve the National Interest," *Department of Homeland Security*, Feb. 20, 2017, https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf/.

[7] *Id.* The 2017 Kelly Memo rescinded all previous directives to the extent of the conflict, with the exception of a 2012 memorandum exempting beneficiaries of the Deferred Action for Childhood Arrivals (DACA) program and a 2014 memorandum on deferred action for beneficiaries of DACA and parents of U.S. citizens or permanent residents. On June 15, 2017, the 2014 memorandum was rescinded.

[8] See note 5.

[9] Outcry after Immigration Agents Seen at Queens Human Trafficking Court, WNYC, Jun. 16, 2017, https://www.wnyc.org/story/outcry-after-immigration-agents-come-trafficking-victim-queens-courthouse/.

sexual assault, human trafficking, or other enumerated crime listed in INA §101(a)(15)(U), and under what conditions.

2. A detailed description of how DHS and ICE conduct oversight of its immigration enforcement actions in the field, including as it pertains to individuals enumerated in 8 USC §1367 or in locations enumerated in 8 USC §1229(e), including individuals who were detained "collaterally" to other enforcement targets.

3. A copy of any written policies or standard practices DHS and ICE personnel follow when they are presented with information about a potential survivor or a person described in 8 USC §1367.

4. A description of how the Executive Order pertaining to interior enforcement will be implemented by local DHS personnel, ICE agents, and ICE trial attorneys, as it relates to survivors and witnesses who may fall into the enumerated enforcement priorities, and what guidance local DHS personnel, ICE agents, and ICE trial attorneys were provided on this matter.

5. A detailed description of how expansion of INA §287(g) agreements and reinstatement of the Secure Communities program, as described in the interior and border enforcement Executive Orders, will address training, policy, and protocol relating to individuals eligible for protections under VAWA and the TVPA.

6. A detailed description of how the Executive Order pertaining to interior enforcement will be implemented as it relates to the Privacy Act and personally identifying information about non-citizens who may be survivors of domestic violence, sexual assault, stalking, human trafficking or other crimes, but are not yet identified or otherwise indicated as a survivors in DHS' record systems. In your response, address disclosures of survivor information made on the Victim Information and Notification Exchange ("VINE"), including what actions DHS is taking to ensure any information about the identity or location of a survivor is protected.

7. A detailed description of how the Executive Order pertaining to interior enforcement will be implemented as it relates to the Victims of Immigration Crime Engagement ("VOICE") Office, and non-citizen survivors of domestic violence, sexual assault, human trafficking, and other crimes and witnesses who are potentially eligible for protections under the VAWA, TVPA, Special Immigrant Juveniles, and other humanitarian immigration protections.

8. Specific clarification as to whether the June 2011 Morton Memo was rescinded.[10]

In the future, we urge you and the Department's personnel to carefully consider the impact of any change to DHS, ICE, or CBP enforcement policy on survivors of domestic violence, sexual assault, trafficking, and other crimes, *before* any decision is made. Survivors of domestic violence, sexual assault and trafficking often face extraordinary barriers to escaping abuse and

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[10] See note 2.

any efforts by DHS, ICE, or CBP should be carefully thought out to make sure they do not discourage reporting or enable abusers to continue their abuse. Thank you for your prompt attention to this matter.

Sincerely,

Patty Murray
United States Senator

Dianne Feinstein
United States Senator

Catherine Cortez Masto
United States Senator

Patrick Leahy
United States Senator

Richard J. Durbin
United States Senator

Jack Reed
United States Senator

Maria Cantwell
United States Senator

Robert Menendez
United States Senator

Amy Klobuchar
United States Senator

Sheldon Whitehouse
United States Senator

Tom Udall
United States Senator

Kirsten Gillibrand
United States Senator

Al Franken
United States Senator

Richard Blumenthal
United States Senator

Tammy Baldwin
United States Senator

Mazie K. Hirono
United States Senator

Martin Heinrich
United States Senator

Tim Kaine
United States Senator

Elizabeth Warren
United States Senator

Heidi Heitkamp
United States Senator

Edward J. Markey
United States Senator

Cory A. Booker
United States Senator

Chris Van Hollen
United States Senator

Tammy Duckworth
United States Senator