United States Senate
WASHINGTON, DC 20510

November 17, 2017

Kirstjen M. Nielsen
Principal Deputy Chief of Staff
The White House
1600 Pennsylvania Ave. NW
Washington, DC 20500

Dear Ms. Nielsen:

Congratulations on your nomination to serve as Secretary of the Department of Homeland Security (DHS). If confirmed, among your most important responsibilities will be administering our immigration laws and advising the President on immigration policy. Therefore, we write today to ask a number of immigration-related questions to assist with our consideration of your nomination, which is pending in the Senate.

1. On September 5, Attorney General Sessions announced the termination of the Deferred Action for Childhood Arrivals (DACA) program. That same day, the President called on Congress to come up with a solution within six months to "legalize DACA."[1] In your pre-hearing questionnaire, in response to a question about whether you support a path to citizenship for DACA recipients, you stated:

   > Congress has clear constitutional policymaking authority to change immigration law in order to develop a permanent solution for those individuals that were [DACA] recipients. If confirmed, I will stand ready to work with Congress to provide any technical assistance needed towards a permanent, legal solution and towards enacting measures that enhance border security, interior enforcement, and our immigration system generally.[2]

   Subsequently, during your confirmation hearing, in response to a question from Senator Harris regarding whether you agree that legislation must be passed to protect these young people by the end of this calendar year, you stated, "I believe that we must, and we owe it to them to find a permanent solution. It's no way to expect anyone to live, a month or two months at a time."[3]

   We believe that prompt passage of the bipartisan, bicameral Dream Act of 2017 (S. 1615/ H.R. 3440) this calendar year would provide the solution that you have recognized is needed. However, your role in advancing legislation as a senior White House official and

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[1] https://twitter.com/realdonaldtrump/status/905228667336499200?lang=en.
[2] U.S. Senate Committee on Homeland Security and Governmental Affairs (HSGAC) Pre-Hearing Questionnaire, Q. 57, p. 49, available at https://www.hsgac.senate.gov/hearings/nomination-of-kirstjen-m-nielsen-to-be-secretary-us-department-of-homeland-security.
[3] CQ Congressional Transcripts, *Senate Homeland Security and Governmental Affairs Hold Hearing on Kirstjen M. Nielsen to be Homeland Security Secretary*, Nov. 08, 2017, http://plus.cq.com/doc/congressionaltranscripts-5212793?3.

as DHS Secretary, if you are confirmed, goes beyond providing technical assistance to Congress. Indeed, the White House and Acting DHS Secretary Duke have issued public statements endorsing proposed immigration legislation. For example, Acting Secretary Duke stated on August 2, 2017, "The RAISE Act embodies the President's vision for a merit-based immigration system that would better serve our national interest."[4]

Will you take this opportunity to urge Congress to promptly pass the Dream Act?

2. Due to the arbitrary and short timeline for DACA renewal announced on September 5, 2017, thousands of DACA recipients were unable to file their DACA renewal applications and thousands more sent their renewal applications before the October 5th deadline, but USCIS rejected them because they arrived after the deadline.[5]

   According to press reports, many DACA applications were received after the deadline due to mail delays that the U.S. Postal Service (USPS) has said were its fault. Despite this acknowledgement, a U.S. Citizenship and Immigration Services (USCIS) spokesperson maintained that the rejection of these applications was appropriate, stating, "U.S.C.I.S. is not responsible for the mail service an individual chooses, or for delays on the part of mail service providers."[6] It is fundamentally unfair to punish these young people for the postal service's mistakes. On November 15, Acting Secretary Duke reversed the decision by USCIS to reject these timely filed applications, and has directed USCIS to accept resubmitted DACA renewal requests from individuals whose applications were delayed as a result of USPS mail service error.[7]

   a) **Do you agree with Acting Secretary Duke's decision to reverse this decision by USCIS and accept DACA renewal applications received after the deadline due to postal service error?**

   b) **If confirmed, will you commit to ensuring that the Acting Secretary's decision is fairly implemented and does not disqualify applications mailed with a reasonable expectation of arrival at the agency by October 5?**

3. Former Secretary Kelly and USCIS Director Cissna both committed that no individual would lose his or her DACA status before it expires unless the person violates the terms of their DACA. **Will you make the same commitment?**

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[4] *Statement By Acting Secretary Of Homeland Security Elaine Duke On Legislation To Create A Merit-Based Immigration System*, https://www.dhs.gov/news/2017/08/02/statement-acting-secretary-homeland-security-elaine-duke-legislation-create-merit.

[5] Approximately 154,000 people were eligible to apply for renewal, 132,000 DACA applications were received on time, 4,000 arrived after October 5, and 18,000 did not apply for renewal, https://www.nytimes.com/2017/11/10/nyregion/post-office-mail-delays-daca-applications.html.

[6] Id.

[7] *USCIS Guidance on DACA Renewal Requests Affected by Mail Service Issues*, https://www.uscis.gov/news/alerts/uscis-guidance-daca-renewal-requests-affected-mail-service-issues; *In Reversal, Immigration Agency Will Consider Delayed DACA Requests*, https://www.nytimes.com/2017/11/15/nyregion/uscis-immigration-daca-requests.html.

4. Temporary Protected Status (TPS) provides safety in the United States to approximately 437,000 people from 10 countries and their families.[8] More than 90 percent of TPS recipients are collectively nationals of three countries: El Salvador, Honduras, and Haiti. The governments of each of these three countries have requested that the Trump Administration continue existing TPS designations based on their assessment that their nations lack the capacity to absorb tens of thousands of TPS returnees.[9]

a) You stated in your pre-hearing questionnaire that, "the continued 'push' drivers for illegal migration from Central America are the crime and instability in those countries that are largely a consequence of drug demand in the United States and the resulting destabilization from drug trafficking organizations using these countries as transit zones."[10] **Do you believe that sending TPS recipients from Central America back to countries with such crime and instability is justifiable?**

b) Nearly 275,000 Americans have parents who are TPS recipients living in the U.S. from El Salvador, Honduras, or Haiti.[11] **Do you believe it is appropriate to separate these American children from their parents?**

c) White House Chief of Staff John Kelly reportedly called Acting Secretary Duke to pressure her to terminate TPS for Hondurans.[12] **Did you participate in this call with Acting Secretary Duke or any other call or other communication with DHS or State Department officials about TPS since November 2016? Please list and describe these communications.**

d) **Do you believe decisions to renew or revoke TPS designations by the Secretary of Homeland Security should be based solely on legal and policy bases and should be made free of any political pressure from the White House?**

e) **How would you respond as Secretary if a White House official calls you and asks you to terminate a TPS designation for a particular nation?**

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

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[8] USCIS data cited in Congressional Research Service (CRS) Report RS20844, *Temporary Protected Status: Overview and Current Issues*, November 2, 2017, http://www.crs.gov/reports/pdf/RS20844.

[9] October 4, 2017 letter from the Haitian ambassador to Acting Secretary Duke requesting that Haiti's designation be extended for an additional 18 months, cited in CRS Report RS20844; Honduran President Juan Orlando Hernandez called on the Trump administration to continue TPS for Hondurans, cited in http://www.miamiherald.com/news/nation-world/world/americas/article180679161.html; El Salvador's government asked the Trump Administration to extend TPS to nearly 200,000 of its nationals living in the United States, the country's foreign minister announced, cited in https://www.voanews.com/a/el-salvador-asks-us-government-for-tps-extenwsion-/4002837.html.

[10] HSGAC Pre-Hearing Questionnaire, Q. 28, p. 12-13.

[11] *Temporary Protected Status in the United States: Beneficiaries from El Salvador, Honduras, and Haiti*, October 23, 2017, https://www.americanimmigrationcouncil.org/research/temporary-protected-status-united-states.

[12] *White House chief of staff tried to pressure acting DHS secretary to expel thousands of Hondurans, officials say*, November 9, 2017, https://www.washingtonpost.com/world/national-security/white-house-chief-of-staff-tried-to-pressure-acting-dhs-secretary-to-expel-thousands-of-hondurans-officials-say/2017/11/09/914d3700-c54a-11e7-a441-3a768c8586f1_story.html?utm_term=.73fd38046a55.

Sincerely,

RICHARD J. DURBIN
United States Senator

PATRICK LEAHY
United States Senator

JACK REED
United States Senator

ROBERT MENENDEZ
United States Senator

SHERROD BROWN
United States Senator

SHELDON WHITEHOUSE
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