

# United States Senate

WASHINGTON, DC 20510

March 8, 2018

The Honorable Kirstjen M. Nielsen  
Secretary of Homeland Security  
U.S. Department of Homeland Security  
Washington, D.C. 20528

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Dear Secretary Nielsen:

We write today to urge the Department of Homeland Security (DHS) and U.S. Citizenship and Immigration Services (USCIS) to expedite the adjudication of renewal applications for the Deferred Action for Childhood Arrivals (DACA) program that DHS is currently required to accept and process pursuant to preliminary injunctions issued by two United States District Courts. DACA recipients have experienced months of traumatic uncertainty as to their future status in the country they call home. Expediting the review of their applications will help to reduce the chaos and anxiety associated with President Trump's termination of the DACA program, and demonstrate DHS's good-faith compliance with the spirit of the district courts' orders.

On January 9, 2018, the U.S. District Court for the Northern District of California issued a preliminary injunction, which partially blocks the administration's termination of the DACA program, and directs DHS to resume accepting DACA renewal applications on the same terms and conditions as before the program was terminated on September 5, 2017.<sup>1</sup> On February 13, 2018, the U.S. District Court for the Eastern District of New York issued a similar preliminary injunction.<sup>2</sup> Since the Supreme Court denied the administration's request for certiorari before judgment in the California case on February 26, 2018, the preliminary injunctions remain in effect.<sup>3</sup> Under the terms of these preliminary injunctions, hundreds of thousands of individuals who had previously received deferred action through the DACA program are now eligible to apply to renew their status and, in the case of those whose DACA protections already have expired, to regain that status.

We encourage DHS and USCIS to expedite the review and processing of these renewal applications. An estimated 20,000 young people have already seen their DACA status expire, and until those benefits are restored, they are vulnerable to the threat of detention and deportation, and may have already lost jobs, drivers' licenses, and educational opportunities.<sup>4</sup> Reducing the processing time for DACA renewal applications, particularly for those individuals

<sup>1</sup> Order Denying FRCP 12(b)(1) Dismissal And Granting Provisional Relief, *Regents of the Univ. of Cal. v. U.S. Department of Homeland Security* (No. 3:17-cv-5211) (N.D. Cal. Jan. 9, 2018).

<sup>2</sup> Amended Memorandum & Order & Preliminary Injunction, *Vidal v. Nielsen* (No. 1:16-cv-04756) (E.D.N.Y. Feb. 13, 2018).

<sup>3</sup> *Dept. of Homeland Sec. v. Regents of Univ. of Cal.*, No. 17-1003 (S.Ct. Feb. 22, 2018).

<sup>4</sup> *Dreams Deferred: A Look at DACA Renewals and Losses Post-March 5*, CENTER FOR AMERICAN PROGRESS (March 2, 2018), <https://www.americanprogress.org/issues/immigration/news/2018/03/02/447486/dreams-deferred-look-daca-renewals-losses-post-march-5/>.

whose status has already expired, is a vital step to minimize fear and confusion for recipients, their families, employers, schools, and communities.

In addition to processing DACA renewal applications quickly, we urge DHS to also consider taking other steps to reduce the anxiety and uncertainty felt by Dreamers whose status is at risk, or has already expired. In January, when USCIS announced it was terminating Temporary Protected Status (TPS) for approximately 200,000 Salvadorans effective September 9, 2019, it also announced it would automatically extend the validity of work authorization for 180 days, through September 5, 2018, recognizing that not all re-registrants would receive new work permits before their current work permits expired.<sup>5</sup> A similar action to extend the validity of work authorization permits for current DACA recipients would not only be a compassionate response, but would also reduce administrative burdens at USCIS, allowing the agency to work through existing application backlogs.

As hundreds of thousands of DACA recipients were only recently given permission to file for renewal, as a result of the injunctions, we are concerned that many of these applications will not be adjudicated before these recipients' current protections expire. DACA recipients are at risk of losing their jobs and deportation if their status expires. Thus, we strongly urge you to take administrative action to automatically extend work authorizations and issue written guidance that clearly states DACA recipients will not be enforcement priorities for removal. These actions will allow DACA recipients to continue living and working in their home communities while their DACA renewal applications are processed.

Additionally, please provide written answers to the following questions about DHS and USCIS's policies and procedures for processing DACA renewal applications pursuant to the January 9th and February 13<sup>th</sup> preliminary injunctions by March 30, 2018.

1. On February 28, 2018, USCIS published new data about current DACA recipients and pending applications as of January 31, 2018. Please provide updated information on the number of DACA renewal applications that USCIS has received since announcing that the agency would resume accepting these applications on January 13, 2018.
2. How many DACA renewal applications that were received after the January 13, 2018 announcement have been adjudicated?
3. How many DACA renewal applications that were received after the January 13, 2018 announcement have been approved?
4. How many DACA renewal applications that were received after the January 13, 2018 announcement have been rejected?
5. How many DACA renewal applications that were received after the January 13, 2018 announcement have been denied?
6. How many DACA renewal applications that were received after the January 13, 2018 announcement have been administratively closed?
7. How many DACA renewal applications that were received after the January 13, 2018 announcement remain pending?

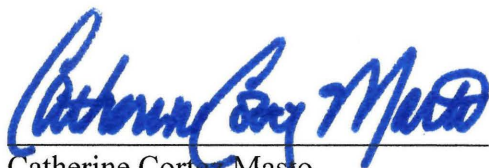
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<sup>5</sup> Federal Register, "Termination of the Designation of El Salvador Temporary Protected Status," Notice by the USCIS on 1/18/2018, available at <https://www.federalregister.gov/documents/2018/01/18/2018-00885/termination-of-the-designation-of-el-salvador-for-temporary-protected-status>

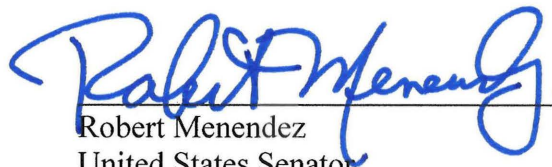
8. How many DACA renewal applications are pending in total?
9. What is the average processing time for DACA renewal applications filed after January 13, 2018?
10. Will USCIS commit to publish data related to the processing times and outcomes of DACA renewal applications that are received and processed pursuant to the preliminary injunctions?
11. Will USCIS commit to updating that published data on a weekly basis?
12. How many initial DACA applications were pending on September 5, 2017, when the program's termination was announced?
13. How many of those initial DACA applications pending on September 5, 2017 have been approved? How many have been rejected? How many have been denied?
14. How many initial DACA applications received prior to September 5, 2017 are still pending review?
15. What is the current average processing time for initial DACA applications?

We appreciate your attention to this request and look forward to your full and prompt response.

Sincerely,



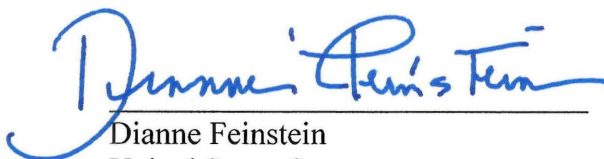
Catherine Cortez Masto  
United States Senator



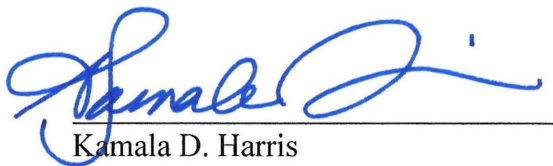
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United States Senator



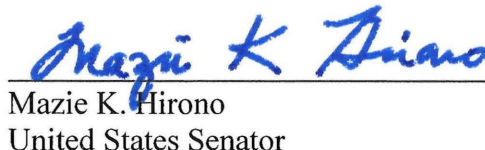
Richard J. Durbin  
United States Senator



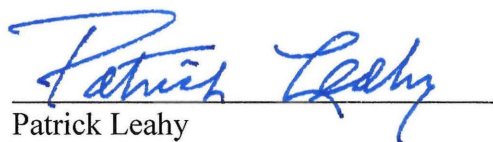
Dianne Feinstein  
United States Senator



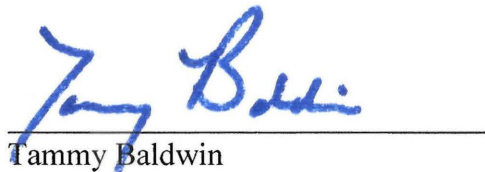
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United States Senator



Mazie K. Hirono  
United States Senator

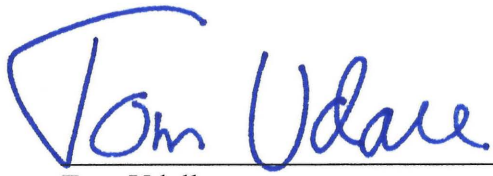


Patrick Leahy  
United States Senator



Tammy Baldwin  
United States Senator





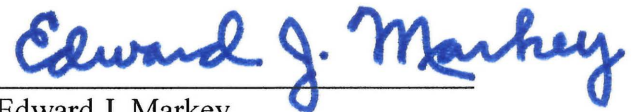
Tom Udall  
United States Senator



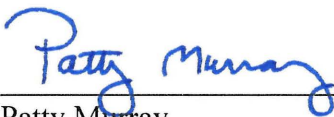
Bernard Sanders  
United States Senator



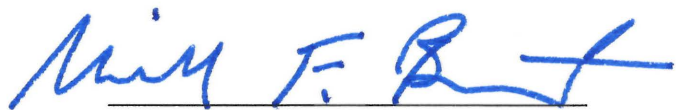
Kirsten Gillibrand  
United States Senator



Edward J. Markey  
United States Senator



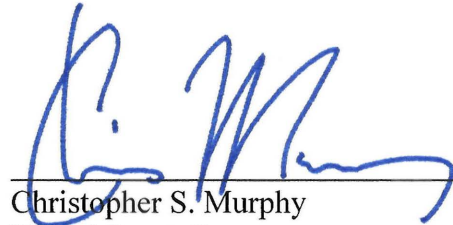
Patty Murray  
United States Senator



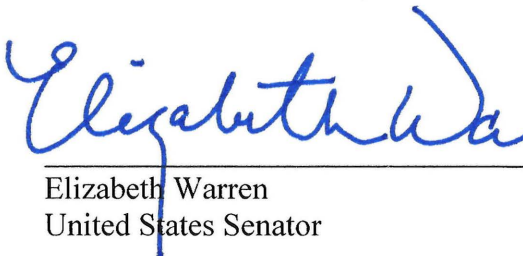
Michael F. Bennet  
United States Senator



Cory A. Booker  
United States Senator



Christopher S. Murphy  
United States Senator



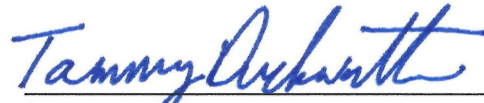
Elizabeth Warren  
United States Senator



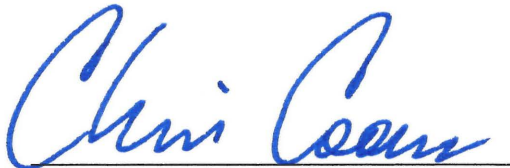
Margaret Wood Hassan  
United States Senator



Jack Reed  
United States Senator



Tammy Duckworth  
United States Senator



Christopher A. Coons  
United States Senator

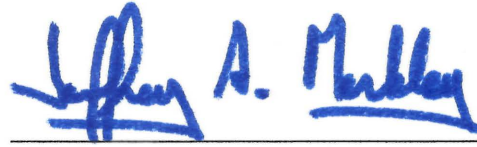


Martin Heinrich  
United States Senator



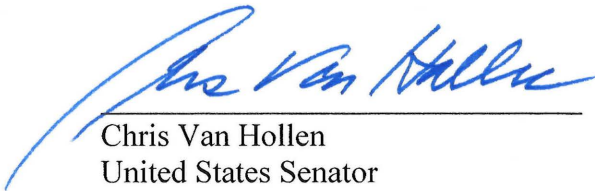
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Tina Smith  
United States Senator



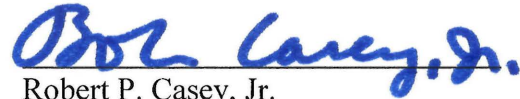
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Jeffrey A. Merkley  
United States Senator



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Chris Van Hollen  
United States Senator



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Robert P. Casey, Jr.  
United States Senator



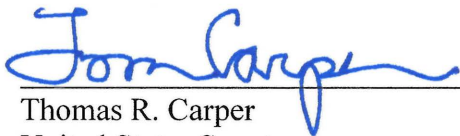
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Mark R. Warner  
United States Senator



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Bill Nelson  
United States Senator



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Thomas R. Carper  
United States Senator



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Maria Cantwell  
United States Senator



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Amy Klobuchar  
United States Senator



**U.S. Citizenship  
and Immigration  
Services**

May 8, 2018

The Honorable Catherine Cortez Masto  
United States Senate  
Washington, DC 20510

Dear Senator Cortez Masto:

Thank you for your March 8, 2018 letter. Secretary Nielsen asked that I respond on her behalf.

As part of U.S. Citizenship and Immigration Services' (USCIS) continued modernization effort, in February 2016, USCIS began processing newly filed Deferred Action for Childhood Arrivals (DACA) renewal cases through the USCIS Electronic Immigration System (USCIS ELIS) using a semi-automated adjudication process designed to expeditiously process DACA renewal requests when requestors satisfactorily complete biometric capture, required system security checks, as well as checks to determine whether they meet the DACA renewal guidelines.

As stated in the archived DACA FAQs, USCIS' processing goal for DACA renewal requests is 120 days. Factors that may affect the timely processing of a DACA renewal request include, but are not limited to:

- Failure to appear at an Application Support Center for a scheduled biometrics appointment to obtain fingerprints and photographs.
- Issues of national security, criminality, or public safety discovered during the background check process that require further vetting.
- Issues of travel abroad that need additional evidence/clarification.
- Name/date of birth discrepancies that may require additional evidence/clarification.
- The renewal submission was incomplete or contained evidence that suggests a requestor may not satisfy the DACA renewal guidelines which would require USCIS to request additional evidence or an explanation.

A recent query of our records revealed that between October 1, 2017 and February 28, 2018, 62 percent of DACA renewals were processed within 60 days; 74 percent within 90 days; and 89 percent within USCIS' DACA renewal processing time goal of 120 days. Over that same time period, DACA renewals without a Request for Evidence, Notice of Intent to Deny, or other background check issues were processed at rates of 85 percent within 60 days; 94 percent within 90 days; and 98 percent within USCIS' DACA renewal processing time goal of 120 days. See table.

<b>DACA Renewal Processing Times</b> <b>October 1, 2017 – February 28, 2018</b>	
<b>DACA Renewals, Total</b>	
<b>Processed within</b>	<b>Percentage</b>
60 days	62%
90 days	74%
120 days	89%
<b>DACA Renewals without a Request for Evidence, Notice of Intent to Deny, or other background check issues</b>	
<b>Processed within</b>	<b>Percentage</b>
60 days	85%
90 days	94%
120 days	98%

In accordance with longstanding policy, there is no expedited processing for deferred action, including deferred action under DACA. As noted above, DACA renewal requests are generally processed expeditiously within the semi-automated system when a requestor satisfactorily completes biometric capture and all required system checks. Changing USCIS' policy to begin expedited processing of certain DACA requests would not be consistent with the terms and conditions of the current DACA policy in effect on September 4, 2017. Additionally, as you are aware, two district court preliminary injunctions require USCIS to maintain the DACA policy on the same terms and conditions that existed prior to issuance of the DACA Rescission Memorandum on September 5, 2017.

As your letter notes, USCIS has at times automatically extended the validity of employment authorization documents (EADs) issued under a country's TPS extension or termination with a wind-down. However, such an extension is not applicable to DACA recipients. Individuals granted TPS, an immigration status created by Congress, are automatically eligible to work, and may request and obtain an EAD through the submission of a Form I-765. An individual granted TPS does not lose TPS until USCIS withdraws the individual's TPS, or until the TPS designation for the country forming the basis of the individual's TPS is terminated.

However, deferred action under DACA does not confer any lawful immigration status. Instead, deferred action is a discretionary determination made on a case by case basis to defer removal action against an individual for a specified period of time. Under USCIS regulations, employment authorization is dependent on the grant of deferred action, and must be applied for and approved, as there is no automatic entitlement to employment authorization based solely upon a grant of deferred action.<sup>1</sup> As noted in former Secretary Napolitano's memorandum, "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children,"<sup>2</sup> which established the DACA policy, "No individual should receive deferred

<sup>1</sup> See 8 CFR 274a.12(c)(14). DACA requestors must submit Form I-765, Application for Employment Authorization, and Form I-765 Worksheet, along with their DACA request to request employment authorization.

<sup>2</sup> <https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf>

action under this memorandum unless they first pass a background check and requests for relief pursuant to this memorandum are to be decided on a case by case basis.”

Because a grant of deferred action is a discretionary determination made on a case by case basis, USCIS cannot issue a blanket extension of deferred action and associated work authorization to an entire group of individuals.

USCIS is committed to the timely processing of all DACA renewal requests. Please find enclosed the detailed responses to each of your questions. Additionally, USCIS is reviewing the recent ruling on April 24, 2018, by the U.S. District Court for the District of Columbia in *Trustees of Princeton University, et al. v. Trump*, with regard to its impact on DACA rescission.

Thank you again for your letter and interest in this important issue. The co-signers of your letter will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the U.S. Citizenship and Immigration Services Office of Legislative Affairs at (202) 272-1940.

Respectfully,

A handwritten signature in black ink, appearing to read "L. Francis Cissna".

L. Francis Cissna  
Director

Enclosure



**The Department of Homeland Security's Response to  
Senator Cortez Masto's March 8, 2018 Letter**

- 1. On February 28, 2018, USCIS published new data about current DACA recipients and pending applications as of January 31, 2018. Please provide updated information on the number of DACA renewal applications that USCIS has received since announcing that the agency would resume accepting these applications on January 13, 2018.**

U.S. Citizenship and Immigration Services (USCIS) resumed accepting DACA renewal requests on January 10, 2018. Between January 10, 2018, and March 31, 2018, USCIS has accepted approximately 64,210 DACA requests.

- 2. How many DACA renewal applications that were received after the January 13, 2018 announcement have been adjudicated?**

Of the 64,210 DACA requests accepted between January 10, 2018, and March 31, 2018, USCIS has adjudicated approximately 31,930 requests as of March 31, 2018.

- 3. How many DACA renewal applications that were received after the January 13, 2018 announcement have been approved?**

Of the 64,210 DACA requests accepted between January 10, 2018, and March 31, 2018, USCIS has approved approximately 31,860 requests as of March 31, 2018.

- 4. How many DACA renewal applications that were received after the January 13, 2018 announcement have been rejected?**

As of March 31, 2018, USCIS has rejected approximately 5,900 requests with a received date between January 10, 2018, and March 31, 2018.

- 5. How many DACA renewal applications that were received after the January 13, 2018 announcement have been denied?**

Of the 64,210 DACA requests accepted between January 10, 2018, and March 31, 2018, USCIS has denied approximately 70 requests as of March 31, 2018.

- 6. How many DACA renewal applications that were received after the January 13, 2018 announcement have been administratively closed?**

Of the 64,210 DACA requests accepted between January 10, 2018, and March 31, 2018, USCIS has administratively closed 0 requests as of March 31, 2018.

**7. How many DACA renewal applications that were received after the January 13, 2018 announcement remain pending?**

Of the 64,210 DACA requests accepted between January 10, 2018, and March 31, 2018, approximately 32,280 requests remained pending as of March 31, 2018.

**8. How many DACA renewal applications are pending in total?**

As of March 31, 2018, USCIS has 34,866 total pending DACA renewal requests.

**9. What is the average processing time for DACA renewal applications filed after January 13, 2018?**

Of the 31,930 DACA requests accepted between January 10, 2018, and March 31, 2018, with a final adjudication as of March 31, 2018, the average processing time was 37 days. Processing time is defined as the elapsed days between the received date and the final adjudication date.

**10. Will USCIS commit to publish data related to the processing times and outcomes of DACA renewal applications that are received and processed pursuant to the preliminary injunctions?**

USCIS will explore the feasibility of posting on [www.uscis.gov](http://www.uscis.gov) processing time data and outcomes for DACA renewal requests accepted following issuance of the January 9, 2018 preliminary injunction.

**11. Will USCIS commit to updating that published data on a weekly basis?**

USCIS will explore the feasibility of posting on [www.uscis.gov](http://www.uscis.gov) processing time data and outcomes for DACA renewal requests accepted following issuance of the January 9, 2018 preliminary injunction. At this time, USCIS cannot commit to publishing this data on a weekly basis.

**12. How many initial DACA applications were pending on September 5, 2017, when the program's termination was announced?**

On September 5, 2017, there were 36,455 DACA initial requests pending.

**13. How many of those initial DACA applications pending on September 5, 2017 have been approved? How many have been rejected? How many have been denied?**

Of the 36,455 DACA initial requests pending on September 5, 2017, 21,885 had a final adjudication as of March 31, 2018.

- 8 requests were administratively closed;
- 17,649 cases were approved;
- 4,226 cases were denied; and
- 2 cases were rejected.

**14. How many initial DACA applications received prior to September 5, 2017 are still pending review?**

Of the 36,455 DACA initial requests pending on September 5, 2017, 14,570 remained pending as of March 31, 2018.

**15. What is the current average processing time for initial DACA applications?**

DACA initial requests with a final adjudication during March 2018 had an average processing time of 323 days. Processing time is defined as the elapsed days between the received date and the final adjudication date.