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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

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KRISTINE J. LUCIUS, *Democratic Chief Counsel and Staff Director*

February 24, 2015

The Honorable Jeh Johnson
Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Secretary Johnson:

I am writing to you today to confirm that the Obama Administration intends to honor the recently issued federal injunction against both the Administration's Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) program and its expansion of the Deferred Action for Childhood Arrivals (DACA) program. Your comments and the President's comments raise serious questions about the Administration's intent to comply with the law and abide by the most basic rules of our American system of government.

As you know, the Administration's DAPA program, which you announced in a memorandum¹ on November 20, 2014, was enjoined last week by U.S. District Judge Andrew S. Hanen of the Southern District of Texas. In granting his Order of Temporary Injunction, Judge Hanen explicitly applied the injunction to "[t]he United States of America, its departments, agencies, officers, agents and employees," and went on to state with clarity that the order "enjoined [the United States government] from implementing *any and all aspects or phases* of the [DAPA] program as set out" (emphasis added) in the DAPA program memorandum, "pending a final resolution of the merits of this case or until a further order of this Court, the United States Court of Appeals for the Fifth Circuit or the United States Supreme Court." The court order also enjoined any further implementation of the DACA program expansion "pending a trial on the merits or until a further order of this Court, the Fifth Circuit Court of Appeals or the United States Supreme Court."²

¹ See generally Department of Homeland Security, Sec. Jeh Johnson, *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* (Nov. 20, 2014).

² *Texas v. United States*, Case No. 1:14-cv-00254, 1-2 (S.D. Tex.) (Feb. 16, 2015).

Your comments, and comments of the President, in the wake of the court order suggest the Administration intends to defy the injunction. In your press release in the wake of the injunction, you stated that, while the Department of Homeland Security recognizes that it “must comply” with the court order pending appeal or further court action, you also stated that the Department “*will be prepared to implement DAPA and expanded DACA*” at the conclusion of the litigation.³ President Obama expressed a similar view, stating that the Department would “*be prepared to implement [the DAPA program] fully as soon as the legal issues get resolved,*” will be engaged in “*preparatory work [for the DAPA program and DACA program expansion] because this is a big piece of business,*” and “*will continue in the planning because we want to make sure as soon as these legal issues get resolved ... that we are ready to go.*”⁴ This is entirely unacceptable.

Violating an unambiguous federal court order by defying its instructions to cease and desist a particular activity would represent a significant breach of your authority, and would be an escalation in abuse of our separation of powers. For a President and his cabinet to telegraph intent to violate a federal court order requires additional scrutiny from Congress.

In order to help us learn more about the Administration’s position, please provide the following information no later than 9:00 a.m. on Friday, February 27, 2015:

- 1) The precise DAPA program-related and DACA program expansion-related actions, procedures, processes, and/or preparations the Administration intends to continue to implement despite the current federal court order;
- 2) The specific sources of funding the Administration intends to use to continue to implement the above actions, procedures, processes, and/or preparations, including indications as to whether the funding comes from the general fund of the Treasury or one or more designated offsetting accounts;
- 3) A clarification of how continuing to prepare for the DAPA program and DACA program expansion does not violate the court order’s specific instruction to refrain “from implementing any and all aspects or phases” of the DAPA program and DACA program expansion; and
- 4) The specific provisions of federal law that you believe permit the Administration to continue to implement the above actions, procedures, processes, and/or preparations in the face of the current federal court order.

My office, the people of the State of Texas, and the American people look forward to your timely response.

³ Department of Homeland Security, Statement by Sec. Jeh Johnson (Feb. 17, 2015) (emphasis added).

⁴ Remarks by the President After Meeting with Secretary of Defense Ash Carter (Feb. 17, 2015) (emphasis added).

Sincerely,

A handwritten signature in blue ink, appearing to read 'Ted Cruz', with a stylized flourish at the end.

Ted Cruz

Chairman, Subcommittee on Oversight, Agency
Action, Federal Rights and Federal Courts
United States Senate Committee on the Judiciary