

United States Senate  
WASHINGTON, DC 20510

August 30, 2018

The Honorable Kristjen M. Nielsen  
Secretary  
U.S. Department of Homeland Security  
Washington, DC 20528

Dear Secretary Nielsen:

We write regarding alarming reports that U.S. Immigration and Customs Enforcement (ICE) and U.S. Citizenship and Immigration Services (USCIS) have been coordinating to arrest, detain, and deport individuals seeking to obtain legal immigration status in the United States, including spouses of U.S. citizens. These actions appear to violate the rights of individuals who qualify for provisional waivers under current Department of Homeland Security (DHS) regulations and prevent them from pursuing their applications for legal status.

Hundreds of parents and children remain separated due to the administration's cruel zero tolerance policy, and according to these new reports, DHS is also pursuing other avenues to rip families apart by preventing spouses and other immediate family members of U.S. citizens from obtaining legal status in the United States. These actions stoke an environment of fear in communities across the country and divert important resources away from pursuing real public safety threats. We write to express our opposition to these actions, and to request information about your policies regarding individuals who have been arrested during attempts to obtain legal status in the United States.

Documents obtained by the American Civil Liberties Union in recent litigation challenging these arrests reveal that ICE and USCIS have been coordinating to lure individuals to USCIS offices under the auspices of conducting interviews to process requests for legal status and arresting them at the end of the interview.<sup>1</sup> In one case, an immigrant from Brazil who is married to a U.S. citizen and was working to obtain permanent legal status was arrested at a USCIS office and placed in detention after going there for an interview. ICE's own records showed that he had no criminal history or gang affiliation, yet ICE coordinated with USCIS to arrest and attempt to deport him.<sup>2</sup> And in March 2017, five individuals were arrested in Lawrence, Massachusetts while applying for green cards at USCIS offices. None of those individuals posed threats to the community.<sup>3</sup> Despite the absence of criminal activity, however, all five were placed in detention. These are not isolated cases. Just this year, ICE has similarly

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<sup>1</sup> See e.g. Petitioner's Notice of Filing, Exs. F, G, I, *Calderon v. Nielsen*, No. 1:18-cv-10225-MLW (D. Mass. 2018)

<sup>2</sup> *Id.* at Ex. F.

<sup>3</sup> Boston Globe, "Five arrested at Lawrence immigration office," Milton J. Valencia, March 31, 2017, <https://www.bostonglobe.com/metro/2017/03/31/five-arrested-lawrence-immigration-office/SUeBGCVTiNxKerc1C84nhM/story.html>.

arrested at least 17 individuals in New England alone, and ICE and USCIS documents show that the two agencies have consistently coordinated to schedule and spread out the interviews “so the public would be less likely to find out about the arrests.”<sup>4</sup>

Current DHS regulations allow certain undocumented individuals, including individuals without criminal records who are married to U.S. citizens or have other mitigating circumstances, to remain in the country while they pursue their applications to obtain legal status.<sup>5</sup> Arresting these individuals while they are attempting to adjust their status violates their right to seek provisional waivers under DHS regulations, which allow individuals who meet the eligibility criteria to continue the process of legalizing their status without fear of deportation.

Instead of encouraging undocumented individuals to come out of the shadows and, where they qualify, obtain legal status in the United States, these arrests instill fear in our communities, discouraging individuals from taking the necessary steps to obtain legal status. We are concerned that, like arrests at courthouses and other sensitive locations, arrests at USCIS interviews may also undermine effective law enforcement by discouraging undocumented individuals from collaborating with law enforcement to keep our neighborhoods safe.<sup>6</sup> In addition, they divert resources away from pursuing violent criminals who pose actual threats.<sup>7</sup>

We are troubled by these reports, and in order to better understand DHS policy on arrests and detention of individuals during routine administrative encounters with immigration authorities, we request that you answer the following questions:

1. What is DHS’s policy for arresting or detaining individuals who are in the process of applying for lawful status in the United States? Please provide any policy or guidance documents regarding this policy.
  - a) Has this policy changed since January 19, 2017?
    - If so, how did DHS notify the public of this change?
    - Has DHS provided training to its personnel on the implementation of this policy change?
2. What is USCIS’s role in coordinating with ICE to make arrests or engage in other enforcement-related activities?
3. Since January 20, 2017, how many individuals who were attempting to obtain lawful permanent status in the United States has DHS arrested or detained at USCIS offices?
  - a) How many of those individuals have spouses who are U.S. citizens or legal permanent residents?
  - b) How many of those individuals have other immediate family members who are U.S. citizens or legal permanent residents?
  - c) How many of those individuals had criminal records?

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<sup>4</sup> Boston Globe, “Agencies set ‘trap’ for immigrants seeking legal status, ACLU says,” Maria Cramer, August 14, 2018, <https://www.bostonglobe.com/metro/2018/08/13/government-agencies-set-trap-for-immigrants-seeking-legal-status-aclu-says/m5vpYHotiHD0z6vcJWYe7J/story.html>.

<sup>5</sup> 8 C.F.R. §§ 212.7(e), 241.4.

<sup>6</sup> New York Times, “Fewer Immigrants Are Reporting Domestic Abuse. Police Blame Fear of Deportation,” Cora Engelbrecht, June 3, 2018, <https://www.nytimes.com/2018/06/03/us/immigrants-houston-domestic-violence.html>.


<sup>7</sup> CNN, “How Trump changed the rules to arrest more non-criminal immigrants,” Tal Kopan, March 2, 2018, <https://www.cnn.com/2018/03/02/politics/ice-immigration-deportations/index.html>.



- Please specify the criminal activity related to each case.
- d) How many of those individuals are currently being held in immigration detention?
  - What is the average length of time these individuals have been held?
- e) How many of those individuals have been deported?
- f) How many have since obtained lawful status in the United States?
  - What was the average amount of time these individuals spent in detention prior to the decision that granted them lawful status in the United States?

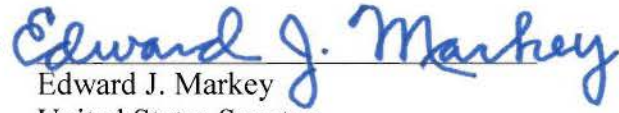
Please provide responses on or before September 13, 2018. We appreciate your immediate attention to this request.

Sincerely,



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Elizabeth Warren  
United States Senator



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Edward J. Markey  
United States Senator