



July 1, 2020

Kenneth T. Cuccinelli  
Senior Official Performer Duties of the Director  
U.S. Citizenship and Immigration Services  
U.S. Department of Homeland Security  
20 Massachusetts Avenue NW M.S. 2090  
Washington, D.C. 20529

Dear Mr. Cuccinelli,

We are writing to urge U.S. Citizenship and Immigration Services (USCIS) to immediately remove from its website the egregiously false claim that the recent U.S. Supreme Court decision on DACA “has no basis in law.”

As you know, last week, in an opinion authored by Chief Justice Roberts, the Supreme Court ruled that the Trump administration’s attempted rescission of DACA was arbitrary and capricious, in violation of the Administrative Procedure Act. This conclusion rests firmly on the existing, well-settled principle of administrative law that “[a]n agency must defend its actions based on the reasons it gave when it acted,” a principle that the Department of Homeland Security violated in its haste to deport hundreds of thousands of Dreamers.<sup>1</sup>

The mandate from the Supreme Court could not be clearer: the DACA program must be reinstated as it was before the administration’s lawless rescission.<sup>2</sup> Your claim that the Supreme Court’s decision “has no basis in law” can only be read as a threat that USCIS will not comply with the Court’s order. We should not need to tell you that defying the Supreme Court is completely unacceptable. We ask that you not only remove the statement, but clearly state that you will follow the law.

Your shocking statement only serves to further engender distrust and fear in a naked attempt to dissuade those eligible for DACA from applying for the protections to which they are entitled. We hope you agree that, unquestionably, USCIS is bound to follow the Supreme Court’s order,

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<sup>1</sup> Department of Homeland Security v. Regents of the University of California, 2020 WL 321746 at \* 14, 17 (June 18, 2020) (noting that the Department had “entirely failed” to consider obvious alternatives to complete rescission of DACA and had refused to consider the important reliance interests that DACA had engendered)(quoting *Motor Vehicle Mfrs. Ass’n of US., Inc. v. State Farm Mut. Auto. Ins. Co.* 463 U.S. 29, 43 (1983)).

<sup>2</sup> As former USCIS Director Leon Rodriguez explained, the Court’s ruling “requires [USCIS] to take new applications.” And even Mike Howell, a former Trump administration DHS official, conceded, unless and until DHS rectifies the errors identified in the Court’s opinion, the DACA program must operate “as it initially was dreamt of.” Molly O’Toole, *The Supreme Court Rejected Trump’s Attempt to End DACA. Now What?*, L.A. TIMES, June 18, 2020, available at <https://www.latimes.com/politics/story/2020-06-18/the-supreme-court-rejected-trumps-attempt-to-end-daca-now-what>.

and your statement gives the false impression that USCIS will not be administering the program. This dangerous distortion of USCIS's legal obligations is misleading and deceptive.

The Supreme Court's decision was a victory for the rule of law. The Trump administration clearly violated foundational tenets of administrative law in its eagerness to deport DACA-recipients. But this decision was also a moral victory for the hundreds of thousands of Dreamers across our country, for their families and communities, and for our core values as a nation of immigrants.

We are disheartened and disappointed that USCIS would use its public platform to lash out against this decisive vindication of our commitment to the rule of law and to Dreamers. To rectify this error, we expect that USCIS will swiftly remove the false statement from its website and issue a new statement, clarifying that USCIS will follow the law.

Sincerely,

A handwritten signature in blue ink, reading "Richard Blumenthal", is written over a horizontal line.

Richard Blumenthal  
United States Senator

/s/ Edward J. Markey  
/s/ Elizabeth Warren  
/s/ Tom Udall  
/s/ Jeffrey A. Merkley  
/s/ Kristin Gillibrand  
/s/ Patrick Leahy  
/s/ Ron Wyden



U.S. Citizenship  
and Immigration  
Services

July 10, 2020

The Honorable Richard Blumenthal  
United States Senate  
Washington, DC 20510

Dear Senator Blumenthal:

Thank you for your suggestions and comments in your July 1, 2020 letter related to the Department of Homeland Security's (DHS) implementation of the Supreme Court's ruling in *Department of Homeland Security v. Regents of the University of California* regarding the Deferred Action for Childhood Arrivals (DACA) program. Mr. Cuccinelli asked that I respond on his behalf.

Reaffirming Acting Secretary Wolf's statement on the Supreme Court's decision, DACA recipients deserve closure and finality surrounding their status here in the United States. U.S. Citizenship and Immigration Services (USCIS) will work with DHS on next steps regarding the Court's decision and will consider your views during this process.

Thank you again for your letter and interest in this matter. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (202) 272-1940.

Sincerely,



Joseph Edlow  
Deputy Director for Policy

cc:

The Honorable Edward J. Markey  
United States Senator

The Honorable Elizabeth Warren  
United States Senator

The Honorable Tom Udall  
United States Senator

The Honorable Richard Blumenthal  
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The Honorable Jeffrey A. Merkley  
United States Senator

The Honorable Kristin Gillibrand  
United States Senator

The Honorable Patrick Leahy  
United States Senator

The Honorable Ron Wyden  
United States Senator