



Statement for the Record of

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Protecting Dreamers and TPS Recipients

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I. INTRODUCTION

United We Dream is the largest immigrant youth-led network in the United States. We create welcoming spaces for young people—regardless of immigration status—to support, engage, and empower them to make their voice heard and win. We have an online reach of five million and are made of a powerful membership of 500,000 members and 112 local groups across 28 states. Over 60 percent of our members are women and 20 percent identify as LGBTQ.

United We Dream’s vision is of a multi-racial democracy where immigrants and communities of color live safe, with dignity, while thriving. We pursue this vision by building a multi-racial, multi-ethnic movement of young people who organize and advocate for the dignity and justice of immigrants and communities of color at the local and national levels. Led by and accountable to youth leadership, United We Dream uses diverse and innovative strategies to effectively change and improve the material conditions for all immigrants and communities of color in the United States. Combining grassroots and digital organizing, advocacy, transformative leadership development, story-telling, and culture change, we build momentum together with allies for long lasting change. As part of this work, United We Dream advocates for the continued and expanded protection of individuals with Deferred Action for Childhood Arrivals (DACA) and Temporary Protected Status (TPS), representing a combined one million individuals.

This statement speaks to the need to enact legislation establishing a roadmap to citizenship for undocumented youth, DACA recipients, and TPS holders—a roadmap that is not compromised through corresponding enforcement increases or the penalization of collateral immigrant groups. Congress has a mandate and an opportunity to enact bold and progressive legislation that provides a clean roadmap to citizenship for undocumented young people and TPS holders in the 116th Congress; and concurrently to establish a pro-immigrant benchmark for future immigration legislation.

II. BACKGROUND

Under the Trump administration, immigrants, especially those who are undocumented, have been subject to an unprecedented climate of terror through the cancerous growth of immigration enforcement. President Trump has provided free reign to U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP) to terrorize communities, break apart families, and detain immigrants at unprecedented rates, including those with deportation protections.

Through the Executive’s authority to implement and exercise our nation’s immigration laws, the Trump administration engaged in radical campaigns targeting immigrants, both documented and those without status. At the border, the administration has separated thousands of children from their families and utilized cages to incarcerate children.¹ Through members and their

¹ OFFICE OF INSPECTOR GENERAL, U.S. DEPARTMENT OF HOMELAND SECURITY, Separated Children Placed in Office of Refugee Resettlement Care (Jan. 2019), available at <https://oig.hhs.gov/oei/reports/oei-BL-18-00511.pdf>; *Separation at the border: children wait in cages at south Texas warehouse*, THE GUARDIAN, June 17, 2018, <https://www.theguardian.com/us-news/2018/jun/17/separation-border-children-cages-south-texas-warehouse-holding-facility>.

families, United We Dream has been at the forefront of fighting back and protecting immigrant families. United We Dream provides a comprehensive overview of the expansive increase in enforcement under this administration, including leveraging data collected through United We Dream's MigraWatch and community organizing, in its report *The Truth About ICE and CBP: A Comprehensive Analysis of the Devastating Human Impact of the Deportation Force by the Immigrant Youth & Families Who Know It Best*.² United We Dream has also regularly conducted surveys of thousands of DACA recipients, collecting and analyzing data points on economic gains, attitudes, and other metrics.³ We submit both reports for the record as part of this hearing. Below, we provide a brief overview of the growth of enforcement and the immigration protections rescinded by this administration.

A. U.S. Immigration and Customs Enforcement

To effectuate its mission of deporting as many immigrants as possible, the Trump administration supercharged an already formidable deportation machinery. Shortly after his inauguration, President Trump signed two Executive Orders that directed the federal government to radically ramp up its deportation machinery.⁴ These orders, combined with subsequent political appointments at all levels of government, regulations, and policy guidance, enabled the federal government to unleash a reign of terror and immigration enforcement unseen in generations.

ICE now targets long-time community members and immigrants with no criminal history,⁵ with arrests by ICE rising more than 30 percent, from FY 2016 (110,104) to FY 2017 (143,470);⁶ and another 10 percent from FY 2017 to FY 2018 (158,581).⁷ ICE's arrests of immigrants without criminal convictions more than doubled—increasing 146 percent from FY 2016 (15,353) to FY 2017 (37,734);⁸ and increased 42 percent from FY 2017 to FY 2018 (53,441).⁹ To incarcerate the

² Greisa Martinez Rosas and Sanaa Abrar, *The Truth About ICE and CBP: A Comprehensive Analysis of the Devastating Human Impact of the Deportation Force By The Immigrant Youth & Families Who Know It Best*, United We Dream, Feb. 2019, available at <https://unitedwedream.org/the-truth-about-ice-and-cbp/>.

³ Tom K. Wong et al., *Amid Legal and Political Uncertainty, DACA Remains More Important Than Ever*, Center for American Progress, Aug. 15, 2018, <https://www.americanprogress.org/issues/immigration/news/2018/08/15/454731/amid-legal-political-uncertainty-daca-remains-important-ever/>.

⁴ Border Security and Immigration Enforcement Improvements, Exec. Order No. 13,767, 82 Fed. Reg. 8793 (Jan. 25, 2017), available at <https://www.federalregister.gov/documents/2017/01/30/2017-02095/border-security-and-immigration-enforcement-improvements>.

⁵ *Id.*

⁶ Kate Voigt, *Cogs in the Deportation Machine: How Policy Changes by the Trump Administration Have Touched Every Major Area of Enforcement* 7, April 24, 2018, available at <http://www.aila.org/infonet/aila-report-cogs-in-the-deportation-machine>.

⁷ U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, U.S. DEPARTMENT OF HOMELAND SECURITY, Fiscal Year 2018 ICE Enforcement and Removal Operations Report 2 (Dec. 14, 2018), <https://www.ice.gov/doclib/about/offices/ero/pdf/eroFY2018Report.pdf>.

⁸ *Id.*; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, U.S. DEPARTMENT OF HOMELAND SECURITY, Fiscal Year 2017 ICE Enforcement and Removal Operations Report (Dec. 13, 2017), <https://www.ice.gov/removal-statistics/2017>.

⁹ U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, U.S. DEPARTMENT OF HOMELAND SECURITY, Fiscal Year 2018 ICE Enforcement and Removal Operations Report 3 (Dec. 14, 2018), <https://www.ice.gov/doclib/about/offices/ero/pdf/eroFY2018Report.pdf>.

growing number of arrested immigrants, ICE dramatically expanded its detention capacity, currently holding an average daily population of 45,000 in detention camps.¹⁰ Functionally, this means that ICE incarcerates approximately 400,000 immigrants every year.¹¹

B. Deferred Action for Childhood Arrivals

DACA is a form of prosecutorial discretion that provides a two-year, renewable grant of employment authorization (commonly known as a “work permit”) and protection from deportation for immigrant youth who entered the United States before the age of 16 and meet a variety of stringent educational and background criteria.¹² Originally implemented by the Obama administration in 2012, the federal government granted deferred action under DACA to over 800,000 individuals, many of whom represent key members and leaders within the immigrant youth movement.¹³ In September 2017, the Trump administration announced it would terminate DACA.¹⁴ This announcement was followed by multiple lawsuits and federal court injunctions directing the administration to—for now—continue to accept renewals.¹⁵ The continued existence of DACA remains in question and, for now, DACA exists, although in limited form.¹⁶ The resumption of DACA would allow upwards of 1.9 million individuals to apply for and eventually receive deferred action.¹⁷

¹⁰ Letter from National Organizations to Mitch McConnell, Leader, U.S. Senate, et al. (Sept. 5, 2018), *available at* https://www.immigrantjustice.org/sites/default/files/uploaded-files/no-content-type/2018-09/FY19-CR-detention-funding-NGO-letter_Sept2018_Final.pdf.

¹¹ Aria Bendix, *ICE Shuts Down Program for Asylum-Seekers*, THE ATLANTIC, June 9, 2017 (“These large-scale detention rates continue today, with around 400,000 immigrants being held in detention facilities each year—around 80 times the amount held in 1994.”).

¹² See Memorandum from Janet Napolitano, Secretary, U.S. Department of Homeland Security to David V. Aguilar, Acting Commissioner, U.S. Customs and Border Protection, et al. on Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children (June 15, 2012), *available at* <http://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf>.

¹³ U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEPARTMENT OF HOMELAND SECURITY, Number of Form I-821D, Consideration of Deferred Action for Childhood Arrivals, by Fiscal Year, Quarter, Intake and Case Status Fiscal Year 2012-2018 (Sept. 30, 2018) (Nov. 14, 2018), <https://www.uscis.gov/tools/reports-studies/immigration-forms-data> (filter by “Deferred Action for Childhood Arrivals (DACA)” category).

¹⁴ Memorandum from Elaine C. Duke, Acting Secretary, U.S. Department of Homeland Security to James W. McCament, Acting Director, U.S. Citizenship and Immigration Services, et al. on Memorandum on Rescission Of Deferred Action For Childhood Arrivals (DACA) (Sept. 5, 2017), *available at* <https://www.dhs.gov/news/2017/09/05/memorandum-rescission-daca>.

¹⁵ *Status of Current DACA Litigation*, National Immigration Law Center (Nov. 9, 2018), *available at* <https://www.nilc.org/issues/daca/status-current-daca-litigation/>.

¹⁶ Michael D. Shear, *Federal Judge in Texas Delivers Unexpected Victory for DACA Program*, THE N.Y. TIMES, Aug. 31, 2018, <https://www.nytimes.com/2018/08/31/us/politics/texas-judge-daca.html>; Obed Manuel, *Judge denies injunction to halt DACA, but indicates he may kill the program*, DALLAS NEWS, Aug. 31, 2018, <https://www.dallasnews.com/news/immigration/2018/08/31/judge-denies-injunction-halt-daca-indicates-may-kill-program>.

¹⁷ Faye Hipsman, Barbara Gomez-Aguiñaga, and Randy Capps, *DACA at Four: Participation in the Deferred Action Program and Impacts on Recipients*, Migration Policy Institute, Aug. 2016, *available at* <https://www.migrationpolicy.org/research/daca-four-participation-deferred-action-program-and-impacts-recipients>.

While DACA represents the segment of immigrant youth most commonly known to the American public, it does not represent the entirety of the immigrant youth population that needs relief. This broader population includes individuals who entered after DACA's cut-off date, who do not meet DACA's age requirements, or who would qualify for relief under various legislation providing relief to immigrant youth. Future legislation must provide relief to *all* immigrant youth—not just DACA recipients.

C. Temporary Protected Status

TPS is an immigration status established by Congress in 1990 that allows the U.S. Department of Homeland Security (DHS) to provide six to 18-months of employment authorization and to suspend the deportation of immigrants who cannot be safely returned to their home countries due to dangerous conditions, such as armed conflict, natural disasters, or other extraordinary circumstances.¹⁸ USCIS has granted TPS to an estimated 437,000 individuals, with designations regularly extended under both Democratic and Republican administrations.¹⁹ The Trump administration, however, terminated TPS and Deferred Enforcement Departure for virtually all countries, affecting 98 percent of all TPS holders, including immigrants who have resided in the United States for decades and whose deportation is still impractical or dangerous.²⁰

Over the next two years, almost all TPS holders will lose their status, particularly if various court injunctions are lifted or stayed.²¹ TPS holders have 275,000 U.S. citizen children, representing youth at risk of being separated from their families or being moved to a country that is foreign to them.²² While TPS holders are generally older than immigrant youth, their longstanding ties to our nation demonstrate the need to provide permanent relief for this population, jointly, alongside immigrant youth.

¹⁸ 8 U.S.C. § 1254a (West 2018); Madeline Messick and Claire Bergeron, *Temporary Protected Status in the United States: A Grant of Humanitarian Relief that Is Less than Permanent*, Migration Policy Institute, July 2, 2014, available at <https://www.migrationpolicy.org/article/temporary-protected-status-united-states-grant-humanitarian-relief-less-permanent>.

¹⁹ Robert Warren and Donald Kerwin, *A Statistical and Demographic Profile of the US Temporary Protected Status Populations from El Salvador, Honduras, and Haiti*, Center for Migration Studies, 2017, available at <http://cmsny.org/publications/jmhs-tps-elsalvador-honduras-haiti/>; Jill H. Wilson, CONG. RESEARCH SERV., RS20844, *Temporary Protected Status: Overview and Current Issues* (2018), available at <https://fas.org/sgp/crs/homsec/RS20844.pdf>. The TPS population estimates from CRS include all individuals granted TPS and does not discount deceased individuals or those that have adjusted to another status, hence why it is a larger estimate than that provided by MPI. See *id.* at 5.

²⁰ *Temporary Protected Status (TPS) and Deferred Enforcement Departure (DED)*, Catholic Legal Immigration Network, Inc. (last accessed Nov. 19, 2018), <https://cliniclegal.org/tps>.

²¹ *Id.*

²² Nicole Prchal Svajlenka, Angie Bautista-Chavez, and Laura Muñoz Lopez, *TPS Holders Are Integral Members of the U.S. Economy and Society*, Center for American Progress, Oct. 20, 2017, <https://www.americanprogress.org/issues/immigration/news/2017/10/20/440400/tps-holders-are-integral-members-of-the-u-s-economy-and-society/>.

II. PRINCIPLES FOR LEGISLATIVE RELIEF

With the potential end of both DACA and TPS in the coming years, it is incumbent on Congress to enact legislation to protect these populations by establishing a fair and humane roadmap to citizenship. Below, United We Dream describes the principles that any legislation providing relief to immigrant youth and TPS holders must contain. With the administration rescinding a variety of immigration protections and top enforcement officials promising to target *all* immigrants, no individual, with or without status, is safe.²³ Importantly, such a roadmap *cannot* come at the cost of increased enforcement, either in the interior or at the border, or by reducing collateral or future immigration flows. Legislation must never punish Black and brown communities, parents, and future immigrants in exchange for protection of immigrant youth and TPS holders.

A. The False Dichotomy of Trading Enforcement for Protection

Future legislation must not contain onerous interior or border enforcement provisions; further criminalize immigrants; expand the nation's deportation apparatus; continue or expand the funding of immigration enforcement; or close off our immigration system to future immigrants, especially Black and brown immigrants. Specifically, in terms of enforcement, legislation providing permanent protection for immigrant youth must not: (a) fund additional ICE or CBP agents; (b) foster the expansion or continuation of our nation's sprawling and inhumane network of detention camps; (c) further criminalize immigrants by expanding the grounds of inadmissibility or deportability; or (d) continue the ongoing militarization of the border. In terms of benefits, legislation must not: (a) eliminate legal paths to immigration, including the diversity visa, sibling visa category, or other family-based immigration paths; (b) gut our nation's humanitarian forms of relief, including asylum; or (c) prohibit immigrant youth who receive relief from sponsoring their parents or other relatives in the future.

B. Rethinking Eligibility and Benefits

The American electorate spoke boldly in the 2018 midterm elections, rejecting the principles of hate and division, and electing a diverse and progressive cohort of members to the U.S. House of Representatives. With this mandate, Congress must move forward with legislation providing relief to immigrant youth and TPS holders that is bold, expansive, and resets the conversation on the possible scope of relief. Thus, Congress must expand relief in two key areas: (a) background eligibility criteria; and (b) benefits and relief.

1. Inclusive Relief for Immigrants and Communities of Color

We urge Congress to abandon the failed experiment of disqualifying immigrants from relief based on previous interactions with the criminal justice system. Our immigration system is shamefully tied with our criminal justice system, from increased criminal prosecutions for immigration-related offenses by the federal government; racial profiling, arrest, killings, and prosecution of Black and brown people by state and local enforcement (and collateral

²³ Elise Foley, *ICE Director To All Undocumented Immigrants: 'You Need To Be Worried'*, HUFFINGTON POST, June 13, 2017, https://www.huffingtonpost.com/entry/ice-arrests-undocumented_us_594027c0e4b0e84514eebfbe (“‘If you’re in this country illegally and you committed a crime by entering this country, you should be uncomfortable,’ Acting Director Thomas Homan told the House Appropriations Committee’s Homeland Security Subcommittee. ‘You should look over your shoulder, and you need to be worried.’”).

immigration consequences); to the double-standard for immigrants in terms of rehabilitation and post-conviction relief. The criminal justice system works in tandem with our civil immigration system to disqualify individuals from relief and future immigration relief cannot exacerbate this poisonous dynamic.

We recommend that future legislation adopt the American Hope Act’s framework regarding criminal background eligibility. The American Hope Act does not disqualify applicants based on felony or misdemeanor convictions (e.g. the so-called “criminal bars”) alone, but instead predicates eligibility on whether an individual is inadmissible under a comprehensive list of grounds.²⁴ Thus, criminal bars are not needed as the above framework incorporates ineligibility grounds (many based in criminal conduct) that were previously established by Congress.

Felony and misdemeanor bars (which, again, exist in addition to grounds of inadmissibility) feed into the administration’s narrative that immigrants are criminals; and the broken messaging framework that there are “good” immigrants and “bad” immigrants. Moreover, the felony and misdemeanor bars fail to acknowledge the disparities in our criminal justice system, where people of color are more likely to be arrested and convicted. Our country continues to move away from penalizing individuals for previous criminal conduct—including movements like “Ban the Box” and criminal justice reform—recognizing the value of rehabilitation. We must continue this movement in the immigration sphere as well.

This legislation will likely be used as a basis for future comprehensive immigration reform. Future negotiations regarding comprehensive immigration reform will likely lead to enforcement concessions, especially in the area of criminal background eligibility. Thus, it is imperative to frame the criminal eligibility conversation in a manner as progressive as possible, as immigration legislation, especially in the bipartisan context, inevitably becomes more—not less—stringent.

2. Progressive Eligibility Criteria and Relief

Beyond criminal background requirements, Congress must rethink other eligibility criteria and the scope of immigration relief. Below we outline the key principles that Congress must include in any legislation providing relief to immigrant youth and TPS holders.

Adopt a Reasonable Age of Entry Requirement. Congress should revisit the historical requirement requiring applicants for relief to have entered the United States before the age of 18. Individuals who entered the country before the age of 21, an age where some individuals are still recognized by the Immigration and National Act as “children,”²⁵ form just as deep of a connection with this country and their communities as those who entered before the age of 18.

Two-Year Period of Presence. Congress should revisit the minimum period of residence required to be eligible for relief. The American Hope Act required six months, while the Dream Act of 2017 required four years. A fair compromise that reflects the need to not exclude recent

²⁴ American Hope Act of 2017, H.R. 3591, 116th Cong. (2017).

²⁵ 8 U.S.C. § 1101 (West 2019) (“The term ‘child’ means an unmarried person under twenty-one years of age . . .”).

arrivals would be a two-year period of residence, which would provide relief to recent entrants who have begun to form connections with this country and their communities.

Relief for Deported Youth. Nor have the administration's immigration enforcement policies been without consequences, with immigrant youth regularly being arrested, detained, or deported. For an overview of current and former DACA recipients who have been arrested, detained, or deported by this administration, see United We Dream's report.²⁶ For these individuals, especially those that previously held or qualified for DACA, immigration relief must provide a mechanism for them to apply for relief from abroad. President Trump should not narrow the population of immigrant youth that would qualify for relief under future immigration relief by engaging in the wholesale purge of immigrant communities.

Flexible Employment Track. Legislation providing relief to immigrant youth traditionally predicates that relief on the employment track, in addition to educational and uniformed services tracks, to remove conditions from conditional permanent resident status. Legislation must be cognizant of the unique obstacles faced by communities of color under our capitalist system, where communities of color and women are more susceptible to layoffs and employment discrimination. Any employment track must be sufficiently flexible and only require individuals be employed at least 50 percent during the requisite employment period.

Higher Education Access. Immigration legislation must go beyond the repeal of Section 505, which enacts barriers to states seeking to provide in-state tuition to undocumented students.²⁷ Accordingly, legislation must explore the feasibility of linking federal funding to states and higher education institutions with a commitment to not discriminate against students in the context of admissions, enrollment, and in-state tuition. Legislation could also adopt a framework where grants are offered to states who actively take steps to expand higher education access, including scholarships and in-state tuition, to undocumented students.

Due Process. Providing relief for upwards of three million immigrant youth and TPS holders will be an undertaking not seen since the Immigration Reform and Control Act of 1986. Congress must recognize the magnitude of this undertaking and establish a grant program for non-profit organizations offering legal assistance to applicants for relief or who seek to re-grant funds to help applicants pay the application fee. Moreover, immigration legislation must establish an administrative review process for denials and terminations of status, providing sorely needed accountability for administrations that would employ regulatory tools to delay and deny applications for relief.

Addressing Cost Concerns. Historically, once of the biggest barriers to relief for immigrant youth, particularly in the case of DACA, has been cost. The filing fees for relief often represent a significant portion of an applicant's disposable income, particularly if applicants are from families where there are multiple individuals seeking relief. Legislation must not contain

²⁶ Greisa Martinez Rosas and Sanaa Abrar, *The Truth About ICE and CBP: A Comprehensive Analysis of the Devastating Human Impact of the Deportation Force By The Immigrant Youth & Families Who Know It Best* 23, United We Dream, Feb. 2019, available at <https://unitedwedream.org/the-truth-about-ice-and-cbp/>.

²⁷ 8 U.S.C. § 1623 (West 2019).

unnecessary and costly medical examinations as a prerequisite for relief, which can often cost upwards of \$500. Additionally, Congress must institute a cost ceiling for any fees to prevent current or future administrations from setting filing fees exorbitantly high in an effort to discourage individuals from seeking relief. Congress must explore strategies to expand existing fee exemptions and expand access to the filing fee waiver employed by applicants seeking relief in collateral contexts.²⁸

III. CONCLUSION

Congress has a moral imperative and a mandate to begin the first steps in a long process to heal our nation's immigrant community. To do so, it must enact fair, humane, and expansive immigration relief for immigrant youth and TPS recipients in accordance with the principles outlined in this statement. This legislation would represent a down payment to Congress' obligation to enact future legislation that would establish a roadmap to citizenship for the broader undocumented immigrant community. This broader undocumented community includes parents of immigrant youth and U.S. citizens who have deep roots to this country and are equally deserving of the ability to fully integrate into the country they consider home.

For the last two years, immigrant youth, their families, and communities of color have experienced the firsthand impact of animus-filled immigration enforcement and criminal justice systems. Inherently institutionally racist in nature, the Trump administration mercilessly expanded these systems and unleashed their full force as a single, unified deportation apparatus acting upon vulnerable communities. Rescinding protections, targeting long-time residents, and shirking any semblance of accountability or transparency, this administration has declared a war on immigrants and communities of color.

Yet, in spite of this relentless assault on immigrant freedoms, immigrant youth and their families have consistently and courageously fought back. Organizing in the streets and all levels of government, immigrant youth and their families have delivered a stinging rebuke to this administration—that no matter how fervent its commitment to xenophobia, racism, and criminalization, immigrants are #HereToStay.

²⁸ U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEPARTMENT OF HOMELAND SECURITY, Fee Waiver Guidance (Sept. 4, 2015), <https://www.uscis.gov/node/44213>.