

Congress of the United States
Washington, DC 20515

July 24, 2020

President Donald J. Trump
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

Dear Mr. President,

We are writing about your Administration's failure to process new applications for the Deferred Action for Childhood Arrivals (DACA) program. Last month, we joined a written request on this issue to the Senior Official Performing the Duties of the Director at U.S. Citizenship and Immigration Services (USCIS), Kenneth T. Cuccinelli. Mr. Cuccinelli has failed to comply with, or respond to, our request. We demand that your Administration process new DACA applications or provide a legal justification for failing to do so.

On June 18, 2020, the Supreme Court, in an opinion authored by Chief Justice Roberts, ruled that your Administration's attempted rescission of the memorandum establishing DACA was arbitrary and capricious, in violation of the Administrative Procedure Act.¹ Based on the Court's decision, because the rescission was unlawful, your Administration must immediately return to implementing the DACA memorandum as it existed prior to the attempted rescission. This means processing new applications for DACA, which your Administration has refused to do.

Compliance with the Supreme Court's judgment is not a matter of Executive branch discretion.² When the Supreme Court decides a question of law, the parties appearing before it, including the Executive branch, are bound by its opinion.³ Your Administration's refusal to carry out the Court's directive is an illegal usurpation of authority in violation of the separation of powers.

As Congress, the federal courts, and the public have repeatedly reminded you: "Presidents are not kings."⁴ Failure to comply with the Supreme Court's judgment is illegal, unconstitutional, and effectively an act of tyranny. You must immediately direct USCIS to process new

¹ *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1915 (2020).

² After the Supreme Court enters its judgment, the parties have 25 days to file a petition for rehearing. SUP. CT. R. 44. If no petition is filed and the case is on appeal from a federal court of appeal, the Court will "send the clerk of the lower court a copy of the opinion or order of [the] Court and a certified copy of the judgment." SUP. CT. R. 45. A copy of this certified judgment was sent from the Supreme Court on July 20, 2020. The lower court's mandate "must issue 7 days after the time to file a petition for rehearing expires . . . [though] [t]he court may shorten or extend the time by order. FED. R. APP. P. 41(b). Separately, on June 30, the U.S. Court of Appeals for the Fourth Circuit issued its mandate in *Casa de Maryland v. Department of Homeland Security*, ordering the vacatur of DHS's September 5, 2017 rescission of DACA. Mandate, *Casa de Maryland*, 18-1521, ECF no. 68 (4th Cir. June 30, 2020). The Second Circuit is expected to issue its mandate shortly.

³ U.S. CONST., art. VI, cl. 2; *Marbury v. Madison*, 5 U.S. 137, 177 (1803) ("It is emphatically the province and duty of the [federal judiciary] to say what the law is.").

⁴ *Comm. on the Judiciary v. McGahn*, No. 19-cv-2379, 114 (D.D.C. Nov. 25, 2019).

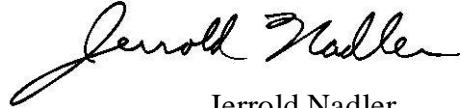
applications for DACA. If not, we demand a legal justification for not complying with the Supreme Court's decision.

Sincerely,



Zoe Lofgren
Chair

Subcommittee on Immigration and Citizenship
House Committee on the Judiciary



Jerrold Nadler
Chairman

House Committee on the Judiciary