

United States Senate

WASHINGTON, DC 20510

May 7, 2018

The Honorable Kirstjen Nielsen
Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Secretary Nielsen:

We write today to express our concerns about a recent report in the *Washington Post* that U.S. Citizenship and Immigration Services (USCIS) intends to establish an internal affairs division charged with oversight of the agency's caseworkers.¹ While robust oversight to prevent waste, fraud, and abuse is a wholly appropriate duty for any federal government agency, we are troubled by the suggestion that USCIS' new division will instead be devoted to the surveillance of USCIS caseworkers in order to discourage from using discretion in adjudication of immigration benefits.

As you know, USCIS is the component agency within the U.S. Department of Homeland Security (DHS) that is charged with adjudicating immigration petitions and applications. Each day, the professional men and women at USCIS adjudicate more than 26,000 immigration petitions and applications using well established agency policies, guidance, and practices.² In fact, a 2016 report on USCIS' existing internal affairs operations by the Inspector General for DHS showed that USCIS received significantly fewer complaints in FY2016 than in the previous two fiscal years, and found that "investigations conducted by the Investigations Division were thorough and complete."³ Given the absence of significant concerns in the 2016 Inspector General report, we are concerned this new unit could send the message that USCIS leadership believes its officers and adjudicators are not doing their jobs appropriately or professionally, and are placing the legal immigration system at grave imminent risk.

To aid our understanding of why USCIS leadership believes that heightened surveillance and greater oversight of its caseworkers are needed, we would appreciate your responses to the following questions by no later than June 1, 2018:

¹ Nick Miroff, *U.S. Immigration Agency to more closely monitor caseworkers, documents show*, WASHINGTON POST (March 16, 2018), https://www.washingtonpost.com/world/national-security/us-immigration-agency-to-more-closely-monitor-caseworkers-documents-show/2018/03/15/c8289c0c-2881-11e8-874b-d517e912f125_story.html?utm_term=.ea0f0c98cfe8.

² *A Day in the Life of USCIS*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES (June 29, 2017), <https://www.uscis.gov/about-us-0>.

³ *Oversight Review of the United States Citizenship and Immigration Services, Investigations Division*, Office of Inspector General, Department of Homeland Security 1 (June 16, 2016), OIG-16-96-IQO, <https://www.oig.dhs.gov/assets/Mgmt/2016/OIG-16-96-IQO-Jun16.pdf>.

1. Please provide all relevant documents, including but not limited to draft policy guidance and implementation directives, detailing USCIS's plan to develop a new internal affairs division (i.e., "Organization of Professional Responsibility"). Alternatively, please make someone from your staff available to brief staff no later than June 1, 2018.
2. Has USCIS begun staffing the new internal investigation office by reassigning personnel, as has been reported?
3. In another effort to reorganize aspects of USCIS, it has been recently reported that the now former head of the Administrative Appeals Office (AAO) was reassigned to the Potomac Service Center.⁴ Please explain in detail the facts and circumstances, including whose decision it was at USCIS, to reassign the former head of AAO.
4. Please provide the following information:
 - a. A list of all trainings, field manuals, and other resources USCIS adjudicators currently receive prior to being authorized to make adjudication decisions. If these vary by type of benefit, please describe each separately.
 - b. Please provide a list of adjudication types, which by operation of law or policy, have officer discretion as an essential element of the adjudication.
 - c. What metrics does USCIS rely on in determining whether an officer is properly adjudicating immigration petitions and applications that require the application of the officer's discretion?
 - d. Is USCIS planning to change current metrics, or add additional metrics to be considered in determining whether an adjudicator is being "too lenient" in making decisions? If these vary by type of benefit, please describe each separately.
 - e. Please articulate clearly the distinction between a proper exercise of adjudicator judgement in granting (or denying) an immigration benefit, and an adjudicator being "too lenient."
 - f. What is the current disciplinary process for an adjudicator who is deemed "too lenient" in the application of their discretion?
 - g. Please provide all information related to any proposed changes to the disciplinary process for caseworkers under the planned Organization of Professional Responsibility.
 - h. Will a finding by the new the internal affairs division of an improper use of discretion subject an adjudicator to discipline or a finding of misconduct? If so,

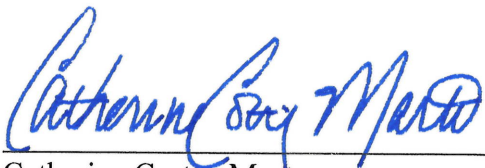
⁴ Laura D. Francis, *Immigration Agency Removing Appeals Office Chief*, Bloomberg BNA (Feb. 23, 2018), <https://www.bna.com/immigration-agency-removing-n57982089157/>.

will employees accused of misconduct or otherwise subject to discipline have an opportunity to seek legal or other forms of redress?


- i. For each of the past three years, provide a numerical breakdown, by USCIS service center or field office, as appropriate, of instances in which USCIS adjudicators were to be “too lenient” in approving naturalization or adjustment of status applications.
5. USCIS processing times for certain benefit types have significantly increased in the past year. For example, in many USCIS field offices across the country, according to USCIS data, processing times now exceed 15 months. For each field office across the country adjudicating naturalization applications, please provide for each fiscal quarter beginning with Fiscal Year 2017:
- a. Processing times for ELIS-based naturalization applications;
 - b. Processing times for non-ELIS-based (paper-based) naturalization applications;
 - c. Number of instance where more than one naturalization interview notice (regardless of reason) was sent to applicants;
 - d. Number of requests for additional evidence (“RFEs”) sent to applicants.
6. Does USCIS expect the increased oversight of its caseworkers through the new internal affairs division to increase application processing times and exacerbate existing application backlogs? Is USCIS considering measures to ensure that processing times do not suffer as a result of the increased bureaucratic burden?

Thank you in advance for your cooperation with this request.

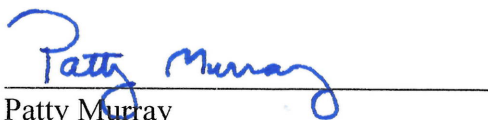
Sincerely,



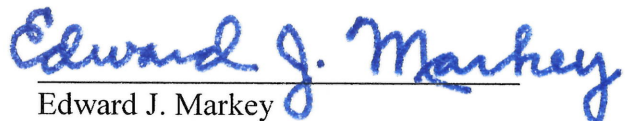
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United States Senator



Mazie K. Hirono
United States Senator



Patty Murray
United States Senator



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Kirsten Gillibrand
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Tammy Duckworth
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Cory A. Booker

Cory A. Booker
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Bernard Sanders
United States Senator

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