



North Carolina General Assembly
House Of Representatives

REPRESENTATIVE CHRIS MILLIS
16TH DISTRICT

OFFICE: 633 LEGISLATIVE OFFICE BUILDING
300 N. SALISBURY STREET
RALEIGH, NC 27603-5925
PHONE: (919) 715-9664
FAX: (919) 754-3315
EMAIL: chris.millis@ncleg.net
DISTRICT: P.O. BOX 878
HAMPSTEAD, NC 28443
(910) 352-1740

COMMITTEES:

REGULATORY REFORM, CHAIRMAN
APPROPRIATIONS
APPROPRIATIONS, AGRICULTURE AND NATURAL AND
ECONOMIC RESOURCES
COMMERCE AND JOB DEVELOPMENT
ENVIRONMENT
HOMELAND SECURITY, MILITARY, AND VETERANS
AFFAIRS
STATE PERSONNEL

March 27, 2017

Elaine Marshall
Secretary
North Carolina Department of the Secretary of State
PO Box 29622
Raleigh, NC 27626-0622

Dear Secretary Marshall,

Thank you for your office's response to my Legislative Request made on February 22, 2017. After an extensive review of the documents provided, I have serious concerns about the results. The details of the identification documents you and your office provided are extremely troubling.

Because much, but not all, of this issue involves persons in the United States known as "Deferred Action for Childhood Arrivals" (DACA), a clear understanding of DACA and a "DACA Card" are essential.

DACA is an operational category of immigration enforcement created by the U.S. Department of Homeland Security (DHS) in June 2012. DACA is not federal law. DACA is not referenced in the U.S. Code, it has never been adopted by Congress. DACA is not defined or addressed in the Code of Federal Regulations, which are the administrative rules and regulation created to implement federal law. DACA is not in North Carolina law, nor is it addressed in the North Carolina Administrative Codes.

DACA is a subset of prosecutorial discretion, relating to immigration. DHS chooses to not prioritize prosecution and deportation of some persons who arrived illegally in the United States as children, have grown into adulthood and now make their lives in the United States. The DACA aliens remain here temporarily and indefinitely, without lawful immigration documents and status. DACA is essentially legal limbo for these illegal aliens.



Under its administrative discretion, DHS allows these aliens to apply for deferment of immigration enforcement (indefinitely, subject to administrative direction), and for temporary employment authorization (renewable every two years), to facilitate safe and legitimate work and income for these persons. Employment authorization through DHS is available to a wide range of individuals in this category who are not Permanent Resident Aliens. Employment authorization does not require or grant legal or lawful immigration status.

A person who seeks DACA status with DHS completes USCIS Form I-821D (Consideration of Deferred Action for Childhood Arrivals) and USCIS Form I-765 (Application for Employment Authorization) and submits these forms simultaneously to DHS. Applicants later submit to biometric screening (fingerprinting, photograph and signature collection). A person whose application for DACA is approved receives a letter (Form I-797, Notice of Action) notifying them of the decision.

A DACA Approval Notice states, “USCIS, in the exercise of its prosecutorial discretion has decided to defer action in your case.” It further states, “Deferred action does not confer or alter any immigration status.” And continues, “This form does not constitute employment authorization, nor may it be used in place of an Employment Authorization Document. If granted, you will receive your Employment Authorization Document separately by mail.” (See pages 0576 and 1047 of your response)

Employment-authorized DACAs then receive a mailer that contains an Employment Authorization Card (EAC), FORM I-766. This mailer is similar to other mailers people commonly receive from financial institutions (Debit/Credit Cards) and the DMV (Driver License). The person’s EAC is attached to the mailer and the mailer serves as duplicate reference for essential information contained on the card (Alien Registration Number, Name, Address, Card Number). (See page 1048 of your response)

An EAC is the only card DACA aliens receive from the U.S. Government. A DACA EAC indicates the category “C33.” The EAC marked with “C33” is commonly known and referred to (among DACA individuals, immigration service providers, employers, and the community at-large) as the “DACA Card.” For independent information on a DACA EAC and this commonly known and used terminology, please review the following references. First, a DHS pamphlet entitled “Consideration of Deferred Action for Childhood Arrivals, Guidance for Employers.” This document is found in your office’s response to my legislative request, page 0230. Second, an article entitled “Replace a Lost DACA Card.” The article is attached to this letter and can also be reviewed at www.citizenpath.com/replace-a-lost-daca-card/. Third, you may also wish to review a video discussing the EAC/“DACA Card” at <https://youtu.be/VqmE-ZBjFW4?t=53s>.

The use of the common term “DACA Card,” referring to an EAC marked “C33,” is similar to the common term “Green Card,” used in reference to a Permanent Resident Alien Card (FORM I-551). Deputy Secretary of State Haley Hanes acknowledged the common reference to “Green Card” in her presentation to the legislature on December 12, 2016. She said your office accepts as proof of legal residence, “Permanent Residency Cards, which are also commonly known as Green Cards.” EAC marked with “C33” are also commonly known as “DACA Cards.”

Your office did not document the category codes for Employment Authorization Cards (EAC/EAD) found in your files and listed on the spreadsheet included with your response to my legislative request. But, after reviewing all the legible identification documents and annotating the spreadsheet with category codes (i.e. C33, A10, etc.) and other notes, a very clear picture of the situation exists.

The documents reveal:

- Approximately 350 “DACA Cards” (EAC marked with Category C33) accepted by your office in lieu of “Green Cards” (Form I-551).
- More than 100 other EAC, marked with various Category codes, accepted by your office in lieu of “Green Cards” (Form I-551).
- More than 250 DACA aliens granted commissions as notaries public.
- An additional 72 aliens (not permanent residents) of various immigration statuses and categories granted commissions as notaries public.

Therefore, the records provided by your office indicate that there are over 320 commissioned notaries that did not meet the stated requirement from the notary application, “If you are not a citizen of the United States, attach a copy of your Permanent Resident card (Form I-551) issued to all Permanent Residents as evidence of alien registration and permanent status in the U.S.”

The submitted identification documents in your files also include:

- 32 DACA Driver Licenses
- 2 DACA Decision Approval Notices from Homeland Security (pages 0576 and 1047 of your response)
- 4 DACA Employment Authorization Approval Notices from Homeland Security (pages 0774, 1163, 1169, and 1204 of your response)
- 3 Mexican National Passports, one containing a NAFTA work/travel visa (pages 1173, 1287, and 1397 of your response)
- 1 EAC marked with code C18, indicating “An alien against whom a final order of deportation or removal exists and who is released on an order of supervision....” (C18 EAC is page 1073 of your response. Explanation of C18 is found on page 0116 of your response.)

Given the abundance, preponderance, and details of this evidence, it is clear that you have commissioned to many types of aliens (including illegal aliens) the authority as notaries public

over the last nine years. You and your office failed to properly qualify these individuals before granting commissions.

First, you and your office granted notary commissions to these aliens **in conflict with the letter and the spirit of North Carolina law and United States law**. North Carolina law on the subject reads that the Secretary of State grants notary commissions to persons meeting a variety of requirements including, “[r]eside legally in the United States.” Residence in this case must be viewed in terms of Federal immigration law. The State law exists in the context of *Bernal v. Fainter*, a 1984 U.S. Supreme Court decision that affirmed a Permanent Resident Alien’s ability to receive a notary commission. “Reside legally in the United States,” has for years been clearly, unequivocally, and consistently indicated as U.S. Citizenship or Permanent Resident Alien status on the NC notary application (revised July 2013) and in the NC Notary Public Manual (published 2016).

Furthermore, Federal law clearly regulates the access of aliens to public benefits. 8 USC § 1621 governs alien eligibility for state and local public benefit programs. This law was cited by the Obama administration’s own Department of Justice in arguing twice that DACA aliens are NOT eligible for professional (law) licenses.

The federal law prohibits nonimmigrants and other aliens from receiving “any grant, contract, loan, professional license, or commercial license provided by an agency of a State or local government...,” unless State law enacted after August 22, 1996, “affirmatively provides for such eligibility.” DACA individuals fall within this prohibition. And, State law defines the notary commission as a grant, but, nowhere in state law is granting such notary commission to these aliens “affirmatively” provided. (NCGS §10B-10(a), “If the Secretary grants a commission....”)

Therefore, granting notary commissions to DACA aliens is contrary to both State and Federal law. This point supersedes the semantic argument over “legal” residency requirements. It also applies to many other categories of EAC recipients. In North Carolina, it is the basis for denying in-state college tuition benefits to DACA and other aliens.

Second, you and your office granted notary commissions to these aliens **indiscriminately by accepting EACs, regardless of Federal immigration category**, in lieu of Green Cards. The response to my legislative request stated that your office, “only collects the document type and expiration date from each document presented....” This indicates your office has not even considered the category of EAC’s submitted.

Further, a memo from the General Counsel in your office, dated September 26, 2016, retrospectively, incorrectly, and incredibly suggests, “As best I can determine, a DHS EAD does not specify which of the many categories of deferred action applies to the holder of the document. Therefore, it does not appear that, even if we wanted to, we could tell whether a holder of an EAD was issued the EAD under, for example, the Deferred Action for Childhood Arrivals (“DACA”) program....” It is clear your office wants others to believe that you did not, before this issue was raised publicly, consider the various categories EAC are issued under and the implications of any category.

And, although you publicly implied that a “Green Card” is a subset of EAC, EAC are NOT issued to “Green Card” holders. You incorrectly stated, “there are some forty categories, Green Card being one of those, that our federal government evaluates the status of these people, issues that employment authorization....” A “Green Card” is employment authorization itself. A “Green Card” (FORM I-551) is separate and distinct from a EAC (FORM I-766).

Third, you and your office granted notary commissions to these aliens **secretly, without means for the public, or the General Assembly, to have knowledge of these actions.** As I read the information provided, the first EAC documented notary was commissioned on February 7, 2008. That individual submitted an EAC reflecting category “A12,” indicating Temporary Protected Status. It appears the first DACA notary was commissioned December 13, 2012.

Both of these commissions, and many more, occurred before the “Application for Initial Appointment as a Notary Public” was revised in 2013; before the Notary Public Act was amended in 2013; and, before the North Carolina Notary Public Manual was updated and published in 2016. Neither the law, the Application, nor the Manual, reflect your office’s willingness to accept anything besides a FORM I-551 (Green Card) as proof of legal residency. There has been ample opportunity to inform the public of your actions and seek legislative authorization. Your failure to disclose and communicate your true actions damages your credibility.

No change was made to the North Carolina Administrative Codes to reflect acceptance of EAC. No request was processed by the legislature to include a change to State law and affirmatively provide for any aliens to receive notary commissions when the Notary Public Act was updated by the General Assembly in 2013. In fact, the 2013 update to the Notary Public Act actually made the process of commissioning notaries more secretive, streamlined and isolated within your organization. Whereas before the 2013 changes, an applicant was required to have their application recommended by a local elected public official, after the law’s amendment, no such requirement exists.

A layer of oversight, input, and protection (a local layer) that might have detected the irregularity surrounding commissioning alien notaries was removed. It was removed before the commissioning of DACA notaries accelerated, causing question about the timing, intent and effect of the amendment to the Act. This amendment requires closer investigation moving forward.

The whole specter of secrecy is extremely dangerous. Government secrecy is antithetical to our American ideal, culture and expectations. When secrecy undermines trust, it undermines the relationship of citizens and government; the relationship of executive and legislative branches; and the relationship of our society to the rule of law.

Executive branch function is to implement, administer and enforce State law, created by the legislature. Any Executive Officer or Department that oversteps its bounds and begins independently making policy, in lieu of working with the legislature to update policy and law appropriately, is committing a serious error. You and your office have done so, you have

effectively determined and implemented policy without legislation. And, the legislature, local elected officials and the public had no way to readily discover or understand your actions.

More troubling is the reality that I cannot reasonably and honestly reconcile the evidence your office provided with the statements you and your staff have made in recent months. Your office's communications director was queried for a *North State Journal (NSJ)* article published September 17, 2016. You discussed the issue at length during your appearance on the *Capitol Tonight* news program October 24, 2016. And, your Deputy Secretary Haley Hanes appeared before the North Carolina General Assembly Joint Legislative Oversight Committee on General Government, December 12, 2016, delivering a presentation on Notary Commissioning by your office. Each of these public comment interactions presents problems.

It is unclear if the original failure to properly qualify applicants was intentional or due to incompetence. Either is unacceptable. It is unclear if the secrecy surrounding alien notary commissions was intentional. But it is clearly your intentional decision, demonstrated by you (personally) and your staff (in testimony, correspondence and public statements), to defend these reckless and improper actions as "correct." In doing so, it is clear that you and your staff have misled the public and legislature with suspicious and untrue statements.

Your office's contribution to the original *NSJ* article confirmed that EAC are accepted as proof of "legal residency" by your office. Reference was made to *Bernal v. Fainter*. The misdirection of this reference is that EAC aliens are NOT also "Green Card" holders – Permanent Resident Aliens. It may simply have been a conflation of two related points.

Then, the Monday after the *NSJ* article was published, your staff swiftly sought assistance from the North Carolina Department of Justice (NCDOJ) to support your actions. Such affirmation would have been more timely had it occurred years ago – prior to, or at least coincidental with, initiating acceptance of EAC; knowledge that DACA were applying for notary commissions; and/or a periodic review of notary and/or immigration law.

After an initial response that referenced NCDOJ's previous opinion and advisory letters regarding DACA in NC, the lawyer reflected that DACA are ineligible to receive in-state tuition and obtain professional licenses in NC, consistent with 8 USC §1621; other State and Federal precedents; and the Obama administration's own positions. At that point, a thorough coordinated review of the Notary Public Act and 8 USC §1621 would have benefited the process and most likely settled the matter.

However, at the modified and renewed request of your staff, he launched consideration of the questions of "legal residence," lawful status and technical qualifications. He and others at NCDOJ who reviewed his drafts worked to reach an argument to support your position. At one point, a draft included the statement, "it is my opinion that the Department should not accept EAD alone as proof of lawful presence."

Later, in his actual advisory letter, he had concluded, "it is inconceivable that USCIS would grant an EAD allowing a non-citizen to work in the U.S. if the non-citizen were here unlawfully." A cursory review of the code for EAC reveal "C18", as in, "An alien against whom

a final order of deportation or removal exists and who is released on an order of supervision....” This category alone invalidates his premise.

The lawyer’s lack of detailed knowledge and understanding in the area of Employment Authorization; Alien Categorization; and the scope and detail of your office’s practices is apparent. He was not granted a full understanding of the evidence you provided at my request. His letter loosely construed facts and circumstances. He employed circular reasoning. And, he overlooked the primary points of law in favor of technical definitions to ground his advice.

Regardless of the merit, or lack thereof, he provided an “advisory letter” that clearly states it,

“has not been reviewed and approved in accordance with the procedures for issuing an official Attorney General’s opinion.”

Yet, **you personally and falsely stated**, October 24, 2016 in a televised interview/debate,

“The Attorney General of this state has issued an opinion that what we are doing is correct.”

Your statement was neither true or honest.

During the same televised interview/debate, October 24, 2016, you claimed,

“We have not, we are not issuing commissions to illegal aliens.”

By my review of the documents your office provided, you had **commissioned** more than **250 DACA illegal aliens before you made that statement** and you have commissioned **at least 2 since** your statement. The illegal alien whose EAC was marked C18 (“An alien against whom a final order of deportation or removal exists and who is released on an order of supervision....”, 8 CFR PART 274a.12(c)(18)), was commissioned July 27, 2016, 3 months before your statement.

And finally, during that same televised interview/debate, you stated,

“we don’t even have a DACA card in the file.”

Madam Secretary, the documents your office provided contained about **350 “DACA cards”** (EAC marked with Category C33), not to mention the **2 DACA Decision Approval Notices, 4 DACA Employment Authorization Approval Notices** and **32 DACA Driver Licenses**. Your statement was and is false.

Consistent with your assertions, in her December presentation to legislators, Ms. Hanes stated,

“I know there had been some question about whether or not we accept DACA documents for commissioning, and we do not. That’s a separate thing and we do not accept those as proof of legal residency.”

In light of the documents provided in your response, the falsehood of Ms. Hanes’s statement is astounding. This statement pretends to completely disconnect DACA and EAC once again. It ignores the other DACA documents found throughout the files of these alien notaries.

It is not only what she said at the presentation that is problematic, but, what she failed to say. When presenting the notary application to the legislators, she failed to point out that the application asks applicants to submit FORM I-551, ONLY. The application does not indicate any other document acceptable to prove “legal residency.” Yet she listed other options during her presentation (i.e. EAC and Work/Student Visas).

Ms. Hanes discussed the Essential Duties of Notaries with two presentation slides. She stated a notary is a public officer. It is more accurate to state that a notary is a ministerial officer of the North Carolina government. She described notaries as third-party witness to transactions and documents. Her examples were standard – Deeds, Wills, Powers of Attorney (including Medical). However there is another transaction that Notaries are able to validate that went unmentioned.

In North Carolina, absentee ballots are required to contain the signature of two witnesses or **one notary public**. So, in this era of heightened sensitivity to voter fraud, election interference and tension over immigration policy, North Carolina today – during recent election cycles; and until the errors of your office are corrected – has commissioned more than 325 alien notaries who can singlehandedly validate fraudulent votes statewide, if they are so inclined. Your office has enabled this potential fraud. And, if the issue of these alien notaries had not been raised, if the question of your actions had not been pursued, our state would be completely unaware. If we took your word, this truth would not be exposed.

Throughout the inquiry into your actions, you have maintained a position that you are “correct.” To maintain that position in light of this letter, the evidence your office provided following my legislative request, and the revelations that evidence have produced, is disingenuous at best. Continued deception of the North Carolina General Assembly and the citizens of North Carolina is unacceptable.

The reality presented in the documents reviewed illustrate a clear failure in the execution of your responsibilities as Secretary of State. Among other duties, you are tasked, as Secretary, with commissioning notaries and enforcing the Notary Public Act. In doing so, you are responsible for upholding the “underlying purposes” of the act, including, “[t]o promote, serve and protect the public interests,” and “[t]o prevent fraud and forgery.” By granting commissions to over 300 persons ineligible for those commissions over the past 9 years, you have not met your responsibility. By secretly commissioning these aliens as notaries against the spirit and letter of State and Federal Law, under cover of indications to the contrary, you have committed serious wrongdoing. By making false and misleading statements about your office’s actions, and the actions of other executive offices, you are not honestly executing the office of Secretary of State

of North Carolina. These failures all are part and parcel of what I see as your malfeasance in office.

Because of your failures, along with the fact that your actions have been masked from the public through both false and misleading statements, I am compelled to call for your immediate resignation from the office of Secretary of State. I make this demand with a serious consideration of the implications.

If you choose not to resign, please know that I will proceed with all legislative actions, including a resolution of impeachment, to seek your removal from office on the grounds of malfeasance, dishonesty, and the unlawful actions identified.

Please inform me of your decision to resign, or not, without delay.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Millis", written over a horizontal line.

Representative Chris Millis

attachment