



JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

JAMES C. DUFF
Secretary

September 4, 2020

Honorable Lindsey Graham
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

In my August 19, 2020 letter to House and Senate leadership, I outlined six recommendations approved by the Judicial Conference of the United States to improve judicial security. That letter was prompted by the July 2020 attack on the family of United States District Court Judge Esther Salas that resulted in the murder of her 20-year-old son, Daniel, and the critical wounding of her husband, Mark. Unfortunately, too many others in our judicial family have experienced similar tragedy and grief. The murders of United States District Judge John Wood (1979), United States District Judge Richard Daronco (1988), United States Circuit Judge Robert Vance (1989), United States District Judge John Roll (2011), family members of United States District Judge Joan Lefkow (2005), and now the son of United States District Judge Esther Salas were tragic targeted attacks against federal judges and their families. Unfortunately, threats have greatly multiplied over the past five years and require immediate legislative action to enhance security protections.

Among the recommendations approved by the Judicial Conference is to seek legislation to enhance the protection of judges' personally identifiable information (PII), particularly on the internet. Another recommendation is to seek legislation to eliminate the sunset provision in 5 U.S.C. app. § 105(b)(3)(E), which grants the Judicial Conference authority to redact financial disclosure reports. Other recommendations are for additional appropriations - for the upgrade, installation, and continued sustainment of the Home Intrusion Detection Systems program; for additional deputy U.S. Marshals; and for the Federal Protective Service (FPS) to fund the required upgrades for courthouse security camera systems. A final recommendation is to support the development of a resource to monitor the public availability of judges' PII, inform judges of security vulnerabilities created by this information, and where necessary, advise the appropriate law enforcement of an inappropriate communication.

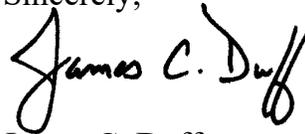
Honorable Lindsey Graham

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With this letter, I am providing a set of guiding principles regarding the protection of personally identifiable information that we hope will be reflected in legislation to improve the safety and security of federal judicial officers and their immediate families. I am also attaching additional information on a related recommendation – the permanent authority to redact personally identifiable information from financial disclosure reports.

We look forward to working with you and members of the Judiciary Committee in improving judicial security in the Third Branch. If you have questions or concerns, please feel free to contact me or the Office of Legislative Affairs, Administrative Office of the U. S. Courts, at (202) 502-1700.

Sincerely,

A handwritten signature in black ink that reads "James C. Duff". The signature is written in a cursive, slightly slanted style.

James C. Duff
Secretary

Enclosures

cc: Honorable Dianne Feinstein
Honorable Cory Booker
Honorable Bob Menendez



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JAMES C. DUFF
Secretary

September 4, 2020

Honorable Jerrold Nadler
Chairman
Committee on the Judiciary
United States House of Representatives
Washington, DC 20515

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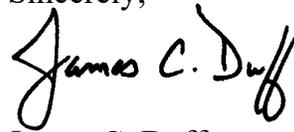
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A handwritten signature in black ink that reads "James C. Duff". The signature is written in a cursive style with a large, sweeping initial "J".

James C. Duff
Secretary

Enclosures

cc: Honorable Jim Jordan

Principles for Federal Judicial Privacy Legislation

Protection of Judges' Personally Identifiable Information

The judiciary supports the protection of and prevention of unauthorized release of personally identifiable information of federal judicial officers and their immediate families ("Judges' Personally Identifiable Information" or "JPII"), particularly such information that is available and distributed through the internet. "Immediate family" includes a judicial officer's spouse, child, parent, or any blood relative of the judicial officer or the judicial officer's spouse who lives in the same residence as the judicial officer.

The goal of this legislation is to ensure that federal judicial officers are able to administer justice fairly without fear of personal reprisal from individuals affected by decisions made in the course of carrying out their professional duties. The purposes of the legislation are to remove and/or limit access to JPII from publicly displayed records, as well as to prohibit any person, business, association, or agency from posting, displaying, selling, sharing, transferring, or trading JPII with others. Federal privacy legislation shall not be construed to impair free access to decisions and opinions expressed by judicial officers in the course of carrying out their public duties.

The judiciary recommends enactment of federal legislation that incorporates the following:

1. **PROTECTION OF FEDERAL JUDICIAL OFFICERS** including the Chief Justice of the United States; the Associate Justices of the Supreme Court of the United States; judges of the United States courts of appeals; district judges and magistrate judges of the United States district courts, including the district courts in Guam, the Northern Mariana Islands, and the Virgin Islands; judges of the Court of Appeals for the Federal Circuit, Court of International Trade, United States Bankruptcy courts, United States Court of Federal Claims, and any court created by Act of Congress, the judges of which are entitled to hold office during good behavior. The legislation shall extend to any individual identified above, whether in active, senior, recalled, or retired status, as well as any individual whose nomination to a position listed above has been transmitted by the President of the United States to the United States Senate and whose nomination remains pending before the United States Senate.
2. **PROTECTION OF PERSONALLY IDENTIFIABLE INFORMATION** of judicial officers and their immediate family members, to include but not be limited to the primary home address; date of birth; social security number; driver's license number; voter registration information that includes a home address; bank account and credit or debit card information; property tax records and any property ownership records, including a secondary residence and any investment property; birth and marriage records; marital status; personal email addresses; home or mobile phone number; vehicle registration information; family member's employer, daycare, or school; personal photographs or photographs of a judicial officer's home; religious, organization, club, or association memberships; identification of children under the age of 18; and any other unique biometric data or piece of information that can be used to identify an individual.

3. **PROHIBITION OF PUBLIC DISTRIBUTION OF JPII BY ANY FEDERAL GOVERNMENT AGENCY.** Federal government agencies shall have an affirmative duty to prevent the public disclosure of JPII, and upon written request shall remove restricted JPII from internet sites or publicly accessible federal government databases within 48-72 hours of the request.
4. **MANDATORY REMOVAL OR REDACTION OF JPII UPON WRITTEN REQUEST SERVED ON ANY PERSON, BUSINESS, ASSOCIATION, OR AGENCY.** Upon written request, a person, business, association or agency must, within 48-72 hours of receipt of the request, redact from the public record any existing JPII and may not thereafter knowingly post, display, sell, share, trade or transfer JPII, including publicly accessible and displayed content. No person, business or association shall solicit JPII with intent to do harm to a judicial officer or immediate family member. The written request by a judicial officer, or his or her representative, to remove and/or to redact from the public record JPII of the judicial officer or an immediate family member shall not require a showing of fear of harm or immediate threat and shall remain effective until revocation of the request by the judicial officer or a surviving immediate family member.
5. **ENFORCEMENT/REMEDIES** shall include a private right of action (including injunctive or declaratory relief), civil enforcement authority by an appropriate federal department or regulatory agency, and limited criminal enforcement authority.
6. **PREEMPTION OF STATE LAWS.** Federal legislation must mandate and/or provide incentives for the protection of JPII held at the state/county/local level – at a minimum including motor vehicle registration and driver’s license information; real estate transaction and property tax records; and voter registration information that includes a home address. Restricted JPII of federal judicial officers and immediate family members must be exempt from state public information laws. Federal legislation might include grant programs to assist states in complying with these provisions.

Permanent Authority to Redact Sensitive Security Information from Judicial Financial Disclosure Reports

PROPOSED LEGISLATION:

SECTION 1. REDACTION AUTHORITY CONCERNING SENSITIVE SECURITY INFORMATION.

Section 105(b)(3) of the Ethics in Government Act of 1978 (5 U.S.C. App.) is amended by striking subparagraph (E).

BACKGROUND AND JUSTIFICATION:

- The Judicial Conference of the United States seeks legislation to eliminate the sunset provision in 5 U.S.C. app. § 105(b)(3)(E), which grants the Judicial Conference authority to redact financial disclosure reports.
- The need to provide permanent redaction authority is a sensitive security matter. A lapse in redaction authority, which has occurred in the past, creates significant security risks to judges and judiciary employees. Federal judges and judiciary employees, like probation officers, routinely interact with disgruntled litigants and convicted criminals who may bear grudges against them. Without redaction authority, these individuals will be able to learn sensitive information such as the unsecured locations of judges, employees, and their families. Redaction of this sensitive information protects these public servants and their families from harm.
- Judges and certain judicial employees are required to file financial disclosure reports under the Ethics in Government Act of 1978, as amended. Congress has recognized judges and judicial employees have been the subject of assault, threats and harassment. Accordingly, Congress enacted legislation that grants the Judiciary the authority to redact certain statutorily required information in a financial disclosure report in limited instances when the release of the information could endanger a judicial officer or employee or his or her family (The Identity Theft and Assumption Deterrence Act of 1998, Section 7, P.L. 105-318, October 30, 1998.) We thank the Congress for their past support of this critical safeguard.
- Congress has extended the authority to redact six times since 1998. In 2012, Congress passed an extension of the sunset provision through December 31, 2017. Unfortunately, the redaction authority expired on January 1, 2018 because Congress did not take final action on eliminating the sunset provision or renewing the authority. It wasn't until March 23, 2018, upon enactment of the Consolidated Appropriations Act of 2018 that redaction authority was again extended to December 31, 2027.

- Congress previously has indicated support for legislation to make this authority permanent. As noted in House Report 115-332, the House has consistently supported permanent reauthorization of redaction authority. The House passed permanent redaction authority in 2011 by a vote of 384-0. In October 2017, the Senate Committee on Homeland Security and Governmental Affairs favorably reported to the Senate S. 1584 which provided for permanent redaction authority (see Senate Report 115-172.)
- The Judicial Conference uses its redaction authority carefully and reasonably. Each year a very small percentage of the financial disclosure reports filed contain an approved redaction of some information in the report. In 2019, 4,379 individuals employed in the judicial branch were required to file a financial report and 155 filers, or just 3.5 per cent, requested redaction. Of those, 150 requests were granted in full or in part. Of the 34,612 reports released to the public, only 1,970 contained partial redactions. Although only a small percentage of reports released to the public are approved for any redactions, the written application to examine a financial disclosure report and the ability to withhold sensitive information remain important protections for the judicial officers and employees who are most at risk for facing serious threats and inappropriate communications.