

United States Senate

WASHINGTON, DC 20510

June 19, 2012

President Barack H. Obama
The White House
1600 Pennsylvania Avenue NW
Washington, D.C. 20500

Dear President Obama:

We are extremely concerned by your announcement last week that the Department of Homeland Security plans to implement a program that grants deferred action to an untold number of illegal immigrants in the United States, and to allow them to receive work authorization during this time of record unemployment. Not only do we question your legal authority to act unilaterally in this regard, we are frustrated that you have intentionally bypassed Congress and the American people.

As President, you swore to uphold and defend the Constitution and enforce the laws. Your recently announced directive runs contrary to that responsibility. Not only is your directive an affront to our system of representative government and the legislative process, but it is an inappropriate use of Executive power.

Your position on whether you have the legal authority to act unilaterally has changed dramatically. Just last year, you personally disputed the notion that the Executive Branch could act on its own and grant benefits to a certain class of illegal immigrants. Specifically, you stated,

"This notion that somehow I can just change the laws unilaterally is just not true. The fact of the matter is there are laws on the books that I have to enforce. And I think there's been a great disservice done to the cause of getting the DREAM Act passed and getting comprehensive immigration passed by perpetrating the notion that somehow, by myself, I can go and do these things. It's just not true. We live in a democracy. You have to pass bills through the legislature, and then I can sign it."

- Why has your position on the legal authority of the Executive Branch changed?
- Did you consult with attorneys prior to the announcement about your legal authority to grant deferred action and work authorizations to a specific class of illegal immigrants?
- Did you obtain a legal opinion from the Office of Legal Counsel or anyone else in the administration about your legal authority to implement such a program?
- Please provide copies of any documentation, including any and all legal opinions, memoranda, and emails, that discusses any authority you have or do not have to undertake this immigration directive.

Letter to President Obama, June 19, 2012

We are also concerned that the directive being implemented allows individuals under the age of 30 to obtain a work authorization. According to the Bureau of Labor Statistics, the unemployment rate for young adults aged 16-24 has been nearly 17% for the last year. According to a Gallup poll conducted in April of this year, 32% of 18 to 29 year-olds in the U.S. workforce were underemployed. Your directive runs contrary to the premise that American workers must come before foreign nationals. It is astonishing that your administration would grant work authorizations to illegal immigrants during this time of record unemployment. Your directive will only increase competition for American students and workers who struggle to find employment in today's economy. Moreover, under current law, some foreign students and other legal visa holders are prohibited from obtaining work authorizations, giving illegal immigrants an advantage over those who play by the rules.

The implementation of your directive raises several serious questions.

- What will happen if your directive is challenged in court?
- Will individuals who have applied for deferred action be required to leave the U.S. if such a challenge is upheld?
- How will the administration handle family members, specifically the parents who violated federal immigration law?
- Will individuals who entered the U.S. on their own volition – either by crossing the border illegally or overstaying a visa – be eligible for deferred action?
- Why does the directive allow individuals up to age 30 to benefit from deferred action if the directive is aimed at helping young people and students?
- How will federal officials who process the applications ensure that information provided by the individual is accurate and how will they verify that one truly entered the country before the age of 16 or are currently under the age of 30?
- Will evidence submitted in support of deferred action applications be limited to independently verifiable government-issued documents (e.g., school records, W-2s, tax returns)? If not, why not? If affidavits will be accepted, will they be required to be made under penalty of perjury? If not, why not?
- Will illegal immigrants be required to appear in person for an interview by the federal government before deferred action is granted?
- How will the agency implementing the program ensure that fraud and abuse is prevented?
- What will the consequences be for individuals who intentionally defraud the government?
- Which databases will be used and how will background checks be conducted to ensure that individuals do not have a criminal history or pose a threat to public safety?
- What would constitute a “significant” misdemeanor offense, which is one of the criteria for eligibility for deferred status?
- Will individuals with final orders of removal be eligible for deferred action?
- What action will the administration take if an individual is denied deferred action?
- What action will be taken if an individual is granted deferred action, but subsequently abuses that grant, is arrested, is found to be a member of a criminal gang, or does not actually attend school?

Letter to President Obama, June 19, 2012

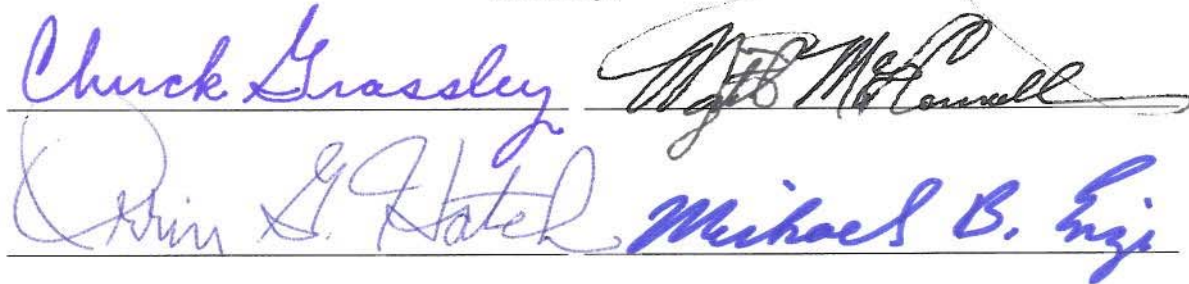
- Absent congressional action, what will happen in two years to the individuals who are granted deferred action?
- Will recipients of deferred action be eligible for receipt of advance parole?
- What criteria will be used to decide who gets work authorizations and who does not?
- Which other departments and agencies will be consulted and will work with the Department of Homeland Security on the implementation of this directive?

We also believe that taxpayers deserve to know how this program will be funded.

- Can you assure us that the total implementation cost of the program will be paid for by the individuals seeking to benefit, or will U.S. taxpayers subsidize any part of the program?
- How much, if anything, will an illegal immigrant be required to pay in order to obtain deferred action?
- What legal authority does the Executive Branch have to mandate a fee for this service? We understand that the Department has never previously charged a fee for the processing of a request for deferred action.
- Do you plan to reprogram funds at the Department of Homeland Security or any other Executive Branch agency to help fund the implementation of the directive?
- If you plan to use funds that already have been appropriated or other funds from the Department, please explain which programs will be reduced in order to cover the costs associated with the directive.
- If USCIS adjudications staff will be diverted from their normal duties to handle the millions of potential deferred action applications, what will be the impact on other USCIS programs?

Given that this directive is effective immediately and that many questions remain unanswered, we ask that you immediately make available Department of Homeland Security Secretary Janet Napolitano, U.S. Immigration and Customs Enforcement Director John Morton and U.S. Citizenship and Immigration Service Director Alejandro Mayorkas to respond to our concerns. We would appreciate responses to our questions, including any relevant documentation related to this directive, no later than July 3, 2012.

Sincerely,


Chuck Grassley John McCain
Devin I. Patel Michael B. Enj

Letter to President Obama, June 19, 2012

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