ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

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July 3, 2012

The Honorable John Morton
Director
U.S Immigration and Customs Enforcement
500 12th Street, SW
Washington, DC 20536

Dear Director Morton,

On June 15, 2012, President Obama announced that his Administration will stop deporting and begin giving work permits to potentially millions of illegal immigrants. Not only is this amnesty an overreach of executive branch authority, it is a magnet for fraud. This blatantly political, large-scale action is an unprecedented breach of faith with the American people and ignores the rule of law that is the foundation of our democracy.

But to add insult to injury, internal documents obtained by the House Judiciary Committee reveal that President Obama is already granting amnesty to illegal immigrants although the Department of Homeland Security stated it would take 60 days to implement the Administration's amnesty plan. The documents demonstrate that illegal immigrants have already benefited from the new policy, even though there are no standards in place. Without any standards in place, the President's new amnesty is an open invitation to fraud.

This brazen move by the Administration is a campaign sound bite and not sound policy. This executive order will also encourage massive amounts of fraud. Illegal immigrants will be eager to purchase fake documents showing that they arrived in the United States before the age of 16. And many "entrepreneurs" will be eager to meet the demand for fake documents.

It is your duty as Director of ICE to make every possible effort to ensure fraud is not perpetrated within the immigration system. Unfortunately, the very policy set forth in Secretary Napolitano's June 15, 2012, memo entitled, "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children" makes carrying out that duty virtually impossible. The Administration's policy is an incentive for any illegal immigrant to perpetrate fraud in our immigration system simply in hopes of receiving administrative amnesty.

History has proven that amnesty is an open invitation to fraud. Professor Philip Martin of the University of California at Davis estimated that up to two-thirds of the applications for amnesty for illegal immigrant "farmworkers" under the 1986 Special Agricultural Worker (SAW) amnesty were fraudulent.[1] The Commission on Agricultural Workers found that, "With some luck, eventual U.S. permanent resident status could be gained through the purchase of a single fraudulent affidavit and the ability to maintain one's composure in an interview."[2] The Commission noted that, "the Government was sorely taxed by its burden of disproving the evidence presented in each application."[3] The number of fraudulent applications for President Obama's amnesty is likely to exceed the SAW amnesty.

Monica Heppel and Sandra Amendola note that:

> [T]he documentation required in the application process for SAWs was substantially less rigorous than it was for general legalization applicants. . . . The extremely large number of SAW applicants surprised Congress, the INS (who processed the applications), and almost all observers of farm labor in the United States. To explain the large number, most persons involved in the legalization process assume high rates of fraud in the SAW program.[4]

Pursuant to the U.S. Supreme Court's decision in *Plyler vs. Doe*,[5] illegal immigrant minors who qualify for relief under the President's new policy would have attended school before the age of 16. So each truly qualified applicant should match a school transcript. Therefore, in order to have any credibility as Director of ICE, I/we suggest that at minimum you require that to be eligible for deferred action 1) each applicant must seek the relief in person (either in removal proceedings or at an ERO office 2) each such applicant must submit a valid school transcript 3) the validity of each transcript must be verified by the educational institution to guard against the proliferation of counterfeit transcripts, 4) documentary evidence demonstrating physical presence at the time the memo was issued, and 5) documentary evidence of physical presence in the United States for five years.

But the expected fraud is far from the only problematic aspect of this unprecedented policy. Therefore, please provide detailed answers to the questions listed below. Regarding the new policy:

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[1] *See* Philip Martin, *Harvest of Confusion: Immigration Reform and California Agriculture*, 24 Inter. Migration Rev. 69, 83 (1990).
[2] Commission on Agricultural Workers, Report of the Commission on Agricultural Workers 63 (1992).
[3] *Id.*at 64.
[4] Monica Heppel & Sandra Amendola, *Immigration Reform and Perishable Crop Agriculture: Compliance or Circumvention?* 24 (1992).
[5] *Plyler, v. Doe*, 457 U.S. 202 (1982).

1) When did this policy first go into effect?

2) Have many individuals been granted deferred action pursuant to this policy thus far?

3) Is there any evidentiary standard in place for aliens to demonstrate they are eligible for the deferred action under the President's plan?

4) Who will be conducting reviews to determine eligible aliens? What will be the standard for that review? Will it be prima facie eligibility?

5) What documents will an illegal immigrant be required to submit to meet the education requirements as stated in the president's plan? How will "education" be defined?

6) The Secretary indicated that acceptable documentation of proof that an illegal immigrant entered the United States prior to age 16 and that they have "resided" in the United States for at least five years, includes "financial record, medical records, school records, employment records and military records."[6] Please list specifically what type of each document will be acceptable. What other types of documents will be acceptable?

7) What documents are acceptable to demonstrate that an alien was physically present in the U.S. at the time of the announcement?

8) From what date would the alien have to be physically present in the U.S.?

9) Does an individual age-out for deferred action once they turn 30?

10) Will each potential beneficiary undergo a biometric "background check" during the application process? Will this check include and FBI fingerprint check?

11) Are aliens who become fugitives after being ordered removed eligible for deferred action under the policy?

12) Are individuals with final orders eligible for deferred action under the policy?

13) Will people who have been removed be paroled back into the country to benefit from the policy?

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[6] United States Department of Homeland Security, *Frequently Asked Questions*, 4, (June 18, 2012).

14) Will each beneficiary undergo a biographic "background check" during the application process?

15) When an applicant is deemed ineligible for amnesty under the new policy, will the applicant be detained and put into deportation proceedings?

16) When an illegal immigrant is granted amnesty under the new policy, and is consequently allowed to remain in the United States, will it be considered a "hardship" for their illegal immigrant relatives to be placed in removal proceedings such that the relatives will be eligible for prosecutorial discretion pursuant to the June 17, 2011, Morton memo on priorities for removal (as implemented on August 18, 2011)? If so, would this apply to the illegal immigrant parents who brought the children to the U.S. in the first place? Will it apply to other family members and legal guardians?

17) Will there be an appeal process for any applicants who are deemed ineligible? If so, what will be that process?

18) Regarding illegal immigrants who submit "employment records" as proof that they entered the United States prior to age 16 or that they have "resided" in the United States for at least five years preceding June 15, 2012, will the employers be investigated to determine any violation of 8 U.S. C. §1324a and subsequently imprisoned for civil penalties of for prosecution?

19) Will the illegal immigrant be investigated to determine any violation of Social Security laws and referred to DOJ for prosecution?

20) If an illegal immigrant is found to have submitted fraudulent documents as part of their application, will that illegal immigrant be detained, prosecuted under applicable sections of the U.S. Code, and placed in removal proceedings?

21) If an illegal immigrant is found to have made false statements on a submitted application, will that illegal immigrant be detained, prosecuted under applicable sections of the U.S. Code, and placed in removal proceedings?

22) How is "convicted" and "significant misdemeanor" defined under this policy?

23) How many misdemeanors "occurring on the same day" can an illegal immigrant have been convicted of and still be deemed eligible for amnesty under the new policy?[7]

24) How many misdemeanors "arising out of the same act, omission, or scheme of misconduct" can an illegal immigrant have been convicted of and still be deemed eligible for amnesty under the new policy?[8]

25) Please list each misdemeanor crime that is not considered a "significant misdemeanor."[9]

26) Will DUI be considered a "significant misdemeanor"?

27) Will individuals who receive deferred action under the president's plan be permitted to depart the country and reenter?

28) Will third parties be able to submit applications on behalf of illegal immigrant applicants?

29) If a third party is found to have submitted a fraudulent application on behalf of an illegal immigrant, will that third party be prosecuted?

30) If a third party is found to have submitted a fraudulent application on behalf of an illegal immigrant, will the illegal immigrant be detained, prosecuted under applicable sections of the U.S. Code, and placed in removal proceeding?

31) Will recipients of deferred action be eligible for receipt of advance parole?

32) Is the Administration considering allowing recipients of deferred action under this initiative, or any other classes of illegal immigrants, to enlist in the U.S. Armed Forces under 10 U.S. C. 504(b)(2)?

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[7] *Id.* at 5.
[8] *Id.* at 5.
[9] *Id.* at 5.

Unfortunately, DHS's own admissions on a June 18, 2012, conference call regarding the new policy for "Stakeholders," show that little if any thought was put toward actual implementation of the policy. At the outset of the call, Director Mayorkas of United States Citizenship and Immigration Services stated that you, Commissioner David Aguilar, and himself were "not in the position to answer many questions about the process" for this new policy because you have not yet determined the process for eligibility and evidentiary requirements for the presidents new directive.

Such a lack of forethought about processing and implementation prior to announcement of the policy is a dereliction of the duty the President vowed to uphold. Unfortunately, this Administration continues to place partisan politics and illegal immigrants ahead of the American people and the rule of law.

Because the President announced this new policy without first receiving the input of the agencies responsible for its actual implementation, I understand that you do not yet have the answers to all of the questions listed above. Please answer any questions you can at this point. And as the Chairman of the Committee of jurisdiction in the U.S House of Representatives, I request to be kept informed as answers to the remaining questions are developed. In addition, I request on-going briefings regarding the policy as it is developed and implemented.

Thank you for your attention to this matter.

Sincerely,

Lamar Smith

Lamar Smith
Chairman

cc: The Hon. John Conyers, Jr.