Congress of the United States
Washington, DC 20515

August 13, 2012

The Honorable Janet Napolitano
Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Dear Secretary Napolitano,

We are very concerned about the Department of Homeland Security's (DHS) plan to grant deferred action to individuals here illegally under the plan entitled "Deferred Action for Childhood Arrivals," particularly with regard to how the President's directive will be implemented without a serious plan to combat fraud and abuse. We have repeatedly asked for more information on how the Department will detect fraud and verify documents provided, but no assurances have been provided to Congress thus far.

According to the guidelines released on August 3, 2012, in order to be eligible for deferred action under this new policy, illegal immigrants *must* apply for work authorization. These illegal workers will compete for scarce jobs in difficult economic times with Americans who need to provide for their families. The Department has indicated that it may also grant relief to illegal immigrant parents who brought their children to the U.S. illegally. These parents will not be penalized for breaking the law when helping their illegal immigrant children apply for this new immigration benefit, and in turn, may also be allowed to work and compete with unemployed Americans.

While potentially millions of illegal immigrants will be permitted to compete with American workers for jobs, there seems to be little if any mechanism in place for vetting fraudulent applications and documentation submitted by those who seek deferred action. This administration will undoubtedly preside over one of the most fraud-ridden immigration programs in our history. Illegal immigrants will be eager to purchase or create fake documents showing that they arrived in the United States before the age of 16 and meet the continued physical presence requirements. DHS will be sorely taxed by the burden of disproving the evidence presented in each application. According to the Commission on Agricultural Workers, such fraud was prevalent during the 1986 Special Agricultural Worker (SAW) amnesty, where up to two-thirds of the amnesty applications for illegal immigrant "farmworkers" were fraudulent.

When DHS officials recently announced the guidelines on August 3, they made it distressingly clear that the administration plans to press the replay button for the large-scale fraud from the 1986 amnesty. Specifically, Director of U.S. Citizenship and Immigration Service, Alejandro Mayorkas, indicated that confidentially will be protected when an individual applies for deferred action. Illegal immigrants who applied under the SAW program also benefitted from confidentiality. Immigration and Nationality Act §210(b)(6), enumerated the SAW confidentiality provisions. Due to the confidentiality provisions, fraud in SAW

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applications could not be used to deny or revoke applications, to place aliens in removal proceedings, or to show that aliens committed fraud in the past when seeking other immigration benefits. A violation of the confidentiality provisions under the SAW program – despite how meritorious -- could result in a criminal penalty, with fines of up to $10,000.

Similarly, Director Mayorkas stated that Immigration and Customs Enforcement (ICE) could not use the information from deferred action applications in subsequent removal proceedings. He did not make any exception for fraud. Additionally, Director Mayorkas indicated that many of the people who apply for and are denied deferred action would not receive a notice to appear in removal proceedings. Hence, they will not be referred to ICE for removal – despite being illegally present in the United States and not being eligible for administrative amnesty.

Shortly after the SAW applications were filed, patterns of fraud emerged where individuals claiming to be "farmworkers" were committing fraud. They provided letters attesting that they had worked on farms when they in fact never had. However, the confidentially provisions made it nearly impossible to revoke any of the fraudulent applications even where the illegal immigrant knowingly and willfully supplied a false writing or document in support of such fraudulent application. As Director Mayorkas indicated, mere affidavits will be sufficient to meet some of the eligibility requirements for deferred action. This was one of the primary reasons for fraud in the SAW program. Every illegal immigrant under the age of 31 will be tempted to seek false affidavits to seek deferred action. These actions demonstrate that the administration will look the other way as illegal immigrants receive immigration benefits and work authorization through fraud.

Furthermore, Department officials indicated to Committee staff that they would not use fraud prevention and detection measures that you consider "too expensive" or "time consuming", or that would "unduly impact" USCIS's other responsibilities. This attitude blatantly demonstrates that the Department has little regard for preventing fraud, especially since the law allows the Department to impose fees for the benefit of deferred action. The illegal immigrants themselves, rather than the American taxpayer or legal immigrants, should bear any expense associated with the program.

Pursuant to the Supreme Court's decision in Plyler v. Doe (457 U.S. 202 (1982)), illegal immigrants who would qualify for your amnesty should have attended school before the age of 16. Yet your Department officials stated that verified school transcripts would not be required from applicants. This is the single most effective anti-fraud step the Department could take, but it appears that little effort will be taken to detect fraud on the front end.

Director Mayorkas also stated that all misrepresentation in the application process will be prosecuted to the highest degree of the law. However, without any details of how the Department plans to seek out fraud in the application process, there seems to be little to support such statements. Based on these concerns, we would like to know:

1) What steps will the administration take to review and ensure that fraudulent documents are not submitted in support of applications for deferred action?
2) What type of fraud detection mechanisms will be used?
3) How will the veracity of affidavits be assessed? Will the author's word, signed, and notarized be sufficient?
4) In what circumstances will an individual receive a notice of intent to deny and a denial of deferred action?
5) In what circumstance will an individual who is denied deferred action be placed in removal proceedings?
6) Please explain the applicable confidentially provisions. At what point in the process does confidentially attach? Will confidentiality be protected no matter the case, or will previous fraud, criminal behavior or national security concerns be raised with other law enforcement?
7) What sort of punishment will be sought for aliens who commit fraud or material misrepresentation?

For the sake of preserving the integrity of our immigration system and ensuring that the process is not riddled with fraud, we would like to understand the Department's rationale for not placing in removing proceedings illegal immigrants denied deferred action and for attaching confidentiality provisions. The American public deserves honesty and accountability, and we seek to ensure that legal immigrants and American workers will not be hurt by your scheme.

Sincerely,

Lamar Smith
Chairman
Committee on the Judiciary
U.S. House of Representatives

Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate