

Congress of the United States
Washington, DC 20515

August 7, 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's plan to grant deferred action to individuals here illegally, particularly with regard to how the plan will be funded without imposing additional taxes on American citizens or raising fiscal concerns regarding the management of U.S. Citizenship and Immigration Services (USCIS), a fee-based agency. We are also concerned about the impact of this plan on the millions of legal immigrants whose interests will be put behind those of illegal immigrants.

To receive deferred action under your June 15, 2012, memo, illegal immigrants must file the form I-821D (previously an I-821 was used for applicants seeking temporary protected status) and they must, at the same time, file a form I-765 application for employment authorization. The current cost an immigrant must pay when they file an I-765 is \$380. Virtually all immigrants who apply for immigration benefits must currently pay \$85 to cover the cost of the biometric background check. So the total fee for the work authorization and the biometric check is \$465 – the same amount you plan to charge illegal immigrants who apply for deferred action under the June 15, 2012, memo.

Madam Secretary – if the only fees you charge are those to cover the processing of the I-765 and the biometric fee, who will cover the cost of processing the I-821D?

The type of adjudicatory steps that you have indicated will be taken to process the deferred action applications include many of the same adjudicatory steps that were required to process applications for the Special Agricultural Worker (SAW) amnesty contained in the Immigration Reform and Control Act of 1986. For instance, DHS must determine continuous presence as of a certain date, lack of criminal convictions and proof of a certain activity (for SAW it was farmwork and for deferred action it is school attendance).

USCIS continues to process SAW applications with the form I-687. The current required fee to file an I-687 is \$1130. So, according to the June 15 guidance, USCIS will charge nothing to process deferred action applications that have substantially the same adjudicatory requirements as SAW applications that cost USCIS \$1130 to process. Again Madam Secretary, we ask who will cover the cost of processing the I-821D?

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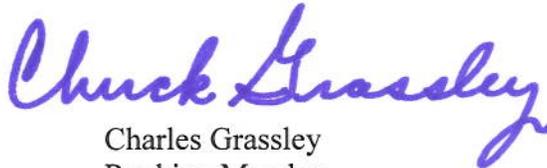
Historically, the refusal of USCIS to charge enough in application/processing fees to cover its actual processing costs has resulted in an enormous backlog of legal immigration benefits applications and in very long processing wait times for legal immigrants and aspiring U.S. citizens. Per USCIS request, Congress provided funds to USCIS specifically to hire personnel to reduce that backlog. The decision not to charge a fee for form I-821D processing threatens a return to enormous backlogs and another request to Congress for appropriated funds. It is wrong to put the interests of illegal immigrants ahead of the interests of legal immigrants and U.S. citizens. And it is an additional insult to make U.S. taxpayers foot the bill for this massive amnesty program.

For the sake of preserving our immigration system and ensuring that policies are fiscally sound, we would like to understand the Department's rationale for the fee assessment for illegal immigrants who will benefit from the directive. We deserve honesty and accountability, and seek to ensure that legal immigrants and taxpayers will not be hurt by this faulty plan.

Sincerely,



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



Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate