

LAMAR S. SMITH, Texas
CHAIRMAN

F. JAMES SENSENBRENNER, JR., Wisconsin
HOWARD COBLE, North Carolina
ELTON GALLEGLY, California
BOB GOODLATTE, Virginia
DANIEL E. LUNGREN, California
STEVE CHABOT, Ohio
DARRELL E. ISSA, California
MIKE PENCE, Indiana
J. RANDY FORBES, Virginia
STEVE KING, Iowa
TRENT FRANKS, Arizona
LOUIE GOHMERT, Texas
JIM JORDAN, Ohio
TED POE, Texas
JASON CHAFFETZ, Utah
TIM GRIFFIN, Arkansas
TOM MARINO, Pennsylvania
TREY GOWDY, South Carolina
DENNIS ROSS, Florida
SANDY ADAMS, Florida
BEN QUAYLE, Arizona
MARK AMODEI, Nevada

JOHN CONYERS, JR., Michigan
RANKING MEMBER

HOWARD L. BERMAN, California
JERROLD NADLER, New York
ROBERT C. "BOBBY" SCOTT, Virginia
MELVIN L. WATT, North Carolina
ZOE LOFGREN, California
SHEILA JACKSON LEE, Texas
MAXINE WATERS, California
STEVE COHEN, Tennessee
HENRY C. "HANK" JOHNSON, JR., Georgia
PEDRO R. PIERLUISI, Puerto Rico
MIKE QUIGLEY, Illinois
JUDY CHU, California
TED DEUTCH, Florida
LINDA T. SANCHEZ, California
JARED POLIS, Colorado

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-3951

<http://www.house.gov/judiciary>

June 20, 2012

The Honorable Alejandro Mayorkas
Director
United States Citizenship and Immigration Services
20 Massachusetts Avenue, NW
Washington, DC 20529

Dear Director Mayorkas,

Last Friday, 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.

This brazen move by the Administration is a campaign sound bite and not sound policy. I understand that in the wake of the President's failed economic policies, under which 23 million Americans are unemployed or can't find full-time work, the President felt pressure to attempt to boost his reelection prospects by political pandering. This executive order also will 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.

On February 15, 2012, you told Members of the House Judiciary Committee's Subcommittee on Immigration Policy and Enforcement, that the prioritization of fraud detection is one of your "core responsibilities" as Director of U.S. Citizenship and Immigration Services (USCIS).¹ You also noted in your written testimony that USCIS "must continue to strive to improve the Agency's fraud prevention and detection operations...."²

¹ *Safeguarding the Integrity of the Immigration Benefits Adjudication Process*: Hearing Before the Subcomm. on Immigration Policy and Enforcement of the House Comm. on the Judiciary, 112th Cong. 8 (2012)(statement of Alejandro Mayorkas, Director, United States Citizenship and Immigration Services).

² *Id.* at 11.

We agree that when processing visa, citizenship and other immigration-related applications, fraud detection is of the utmost importance. It is your duty as Director of USCIS to make every possible effort to prevent fraudulent immigration-related applications from being approved. 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 submit a fraudulent application simply in hopes of receiving amnesty.

History has proved 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.³ 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."⁴ The Commission noted that, "the Government was sorely taxed by its burden of disproving the evidence presented in each application."⁵ 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.⁶

³ See Philip Martin, *Harvest of Confusion: Immigration Reform and California Agriculture*, 24 *Inter. Migration Rev.* 69, 83 (1990).

⁴ Commission on Agricultural Workers, Report of the Commission on Agricultural Workers 63 (1992).

⁵ *Id.* at 64.

⁶ Monica Heppel & Sandra Amendola, *Immigration Reform and Perishable Crop Agriculture: Compliance or Circumvention?* 24 (1992).

Pursuant to the U.S. Supreme Court's decision in *Plyler vs. Doe*,⁷ 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 USCIS, I suggest that at minimum you require that to be eligible for deferred action 1) each applicant must be interviewed in-person by a USCIS adjudicator, 2) each applicant must submit a valid school transcript with the application and 3) the validity of each transcript must be verified by the educational institution to guard against the proliferation of counterfeit transcripts.

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:

- 1) On what day and at what time did you become aware of the new policy?
- 2) On what day and at what time did USCIS operational staff become aware of the new policy?
- 3) Will the applications be administratively reviewed or judicially reviewed?
- 4) How many USCIS staff will help to process (including interviews, background checks and document verification) the hundreds of thousands, and likely more, of anticipated amnesty applications under the new policy?
- 5) For what type of visa or other immigration-related applications will the processing rate be reduced in order to process applications for amnesty under this new policy?
- 6) What type of, and how much, training will USCIS staff receive in order to process applications for amnesty under the new policy? What percentage of this training will be focused on anti-fraud efforts?
- 7) Will U.S. taxpayers be forced to foot the bill for granting amnesty to the illegal immigrants who apply for relief under the new policy?
- 8) Will a fee be charged to illegal immigrant applicants to cover the cost of processing applications for amnesty under the new policy?

⁷ *Plyler, v. Doe*, 457 U.S. 202 (1982).

- 9) Will fees for other immigration-related applications be raised to cover the cost of processing illegal immigrant amnesty applications under the new policy?
- 10) Will there be a waiver of any fees for illegal immigrants who claim to not have the ability to pay any required fee, thus requiring individuals who are attempting to immigrate through the legal process, to pay for processing of illegal immigrants' application?
- 11) Will USCIS coordinate with each applicant's native country to ensure that there is no criminal record in that country?
- 12) Will each applicant undergo a biometric "background check" during the application process?
- 13) Will each applicant undergo a biographic "background check" during the application process?
- 14) Will USCIS conduct in-person interviews of each applicant?
- 15) 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."⁸ Please list specifically what type of each document will be acceptable. What other types of documents will be acceptable?
- 16) When an applicant is deemed ineligible for amnesty under the new policy, will the applicant be detained and put into deportation proceedings?
- 17) 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?
- 18) What evidentiary standard will be applied to submitted documents or other "proof" of eligibility for amnesty under the new policy?

⁸ *Frequently Asked Questions*, United States Department of Homeland Security, Pg. 4, June 18, 2012.

- 19) Will there be an appeal process for any applicants who are deemed ineligible? If so, what will be that process?
- 20) 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 prosecuted?
- 21) 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?
- 22) 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?
- 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?⁹
- 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?¹⁰
- 25) Please list each misdemeanor crime that is not considered a “significant misdemeanor.”¹¹
- 26) Will DUI be considered a “significant misdemeanor”?
- 27) Will third parties be able to submit applications on behalf of illegal immigrant applicants?
- 28) If a third party is found to have submitted a fraudulent application on behalf of an illegal immigrant, will that third party be prosecuted?

⁹ *Id.* at 5.

¹⁰ *Id.* at 5.

¹¹ *Id.* at 5.

The Honorable Alejandro Mayorkas
Page Six

- 29) 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?
- 30) Will illegal immigrants granted amnesty under the new policy be allowed to travel freely outside and back into the United States?
- 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)?

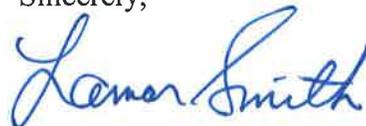
Unfortunately, your own admissions on a June 18, 2012, conference call regarding the new policy for "Stakeholders," show that little if any thought was put toward actual implementation of the policy. At the outset of the call you stated that you, Immigration and Customs Enforcement Director John Morton and Customs and Border Protection Commissioner David Aguilar 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 president's 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
Chairman

cc: The Honorable John Conyers, Jr.