



October 27, 2011

Senator Mary Landrieu, Chair
Senate Committee on Appropriations, Subcommittee on Homeland Security
Senate Dirksen Building – 135
Washington, DC 20510-6039

Dear Senator Mary Landrieu:

Americans are expressing deep concerns that our nation's immigration policies are in disarray; they are failing to meet any identifiable national purpose. In recent months, however, a new cause for concern has emerged – and it is generating alarm and excitement among the American people.

United States immigration policy is no longer being made through an open and transparent legislative process; instead it is now dictated by policy memos and directives from within the Executive Branch. It is urgent that Congress re-assert its authority, including the power of the purse, over constitutional prerogatives regarding U.S. immigration policy.

In an announcement issued by the White House and the Department of Homeland Security (DHS) on August 18 (while Congress was in recess), the Executive Branch implemented unilateral and sweeping changes to U.S. immigration policy. These policy changes, which the Administration executed under the guise of “prosecutorial discretion,” simply rewrite immigration law by ignoring numerous statutes passed by Congress. In addition, the Executive Branch has unilaterally decided to redirect funding appropriated by Congress to carry out specific provisions and functions of U.S. immigration law to other purposes that the current Administration has determined to be of “higher priority.” This “higher priority” results in a virtual collapse of most U.S. immigration law enforcement.

These sweeping, unlegislated changes to immigration policy announced in August were laid out in a series of policy memos and directives from the Director of Immigration and Customs Enforcement (ICE), John Morton, over the course of more than a year. In the memos,



Mr. Morton directs ICE personnel to refrain from enforcing laws against entire classes of immigration law violators. The memos clearly instruct ICE personnel to grant what amounts to administrative amnesty to anyone who might have qualified for legislative amnesty under bills that were rejected by Congress multiple times.

The Administration's policy announcement also calls for a "case-by-case" review of 300,000 pending deportation cases, plus all new incoming cases. The purpose of this review is to determine which fall into the category defined by the Administration as "high priority" or "low priority," with the intent of dismissing those that fall in the latter category. In addition, DHS has indicated that it will grant work authorization to the illegal aliens whose cases it dismisses, *in spite of the fact that Congress has expressly prohibited the employment of people who are in the country illegally.*

Secretary Napolitano has assigned an interagency task force of DHS and Department of Justice personnel to review the current and future removal caseload. More than two months after the announcement, the Executive Branch has not provided Congress, or the American public, any details about this task force, how it will operate, how long it will take to review 300,000 cases, or how much the review will cost.

In short, the events of the past months clearly demonstrate that a critical public policy is now being made by the Executive Branch, in consultation with a small group of "stakeholders," in direct defiance of Congress's exclusive constitutional legislative authority. Moreover, the directives that now constitute our immigration policy are being carried out in a manner designed to prevent scrutiny by Congress and the American public. The process is completely opaque and not subject to any kind of independent review.

Congress must hold the Administration accountable for the enforcement of immigration laws that have been constitutionally enacted by the Legislative Branch. In particular, the Appropriations Committee must ensure that the funds it has allocated to DHS and other agencies to implement U.S. immigration laws are expended for enforcing the law, not undermining it in a manner that violates the public trust. Specifically, the Appropriations Committee must immediately defund the secretive and unauthorized interagency task force whose stated purpose is to identify unlawful aliens who will be allowed to remain in the United States in direct contravention of laws passed by Congress.

The position taken by the Administration is more than bad policy. It is a direct challenge to the Separation of Powers doctrine of our Constitution that must be answered by Congress. Further, these unlegislated changes to our immigration policy are being implemented in a manner that challenges our basic democratic principles of openness and transparency.

Senator Mary Landrieu, Chair

October 27, 2011

Page 3

Congress has both the power and the constitutional obligation to bar this dangerous usurpation of power by the Executive Branch that, if allowed to stand, will have implications that extend far beyond immigration policy.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan Stein". The signature is fluid and cursive, with a large initial "D" and "S".

Dan Stein, President

Federation for American Immigration Reform

cc: Sen. Frank Lautenberg

Sen. Daniel Inouye

Sen. Patrick Leahy

Sen. Patty Murray

Sen. John Tester

Sen. Dan Coates

Sen. Thad Cochran

Sen. Richard Shelby

Sen. Lisa Murkowski

Sen. Jerry Moran