

LOU BARLETTA  
11TH DISTRICT, PENNSYLVANIA

TRANSPORTATION AND  
INFRASTRUCTURE COMMITTEE

EDUCATION AND THE WORKFORCE  
COMMITTEE

SMALL BUSINESS COMMITTEE



Congress of the United States  
House of Representatives  
Washington, DC 20515-3811

June 26, 2012

The Honorable Peter King  
Chairman, Homeland Security Committee  
H2-176 Ford House Office Building  
Washington, D.C. 20515

The Honorable Bennie G. Thompson  
Ranking Member, Homeland Security Committee  
H2-176 Ford House Office Building  
Washington, D.C. 20515

The Honorable Lamar Smith  
Chairman, Judiciary Committee  
2138 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable John Conyers  
Ranking Member, Judiciary Committee  
2138 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairmen King and Smith and Ranking Members Thompson and Conyers:

As you know, Homeland Security Secretary Janet Napolitano recently ordered Immigration and Customs Enforcement (ICE) officials to not deport certain classes of immigrants who are in the country illegally. What concerns me the most is that this order is not only a threat to our country's national security, but also it is illegal under the provisions of the 1996 *Illegal Immigration Reform and Immigrants Responsibility Act*.

The Obama Administration argues that Secretary Napolitano and the Department of Homeland Security (DHS) personnel can use "prosecutorial discretion" to decide what individuals they can and cannot deport. But Congress took this power away from the Executive Branch in the 1996 legislation.

Simply put – this "prosecutorial discretion" does not exist.

In fact, several provisions of existing law actually require immigration officials to address illegal aliens when they become aware that they are in the country illegally:

- 8 U.S.C. § 1225(a)(1) defines the terms used: "an alien present in the United States who has not been admitted ... shall be deemed for purposes of this chapter an applicant for admission."
- This triggers 8 U.S.C. § 1225(b)(2)(A), which mandates that if the immigration officer determines that the alien is unlawfully present, the alien *must be placed in deportation proceedings*: "In the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title."

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- The proceedings described in 8 U.S.C. § 1229a are the deportation (or “removal”) proceedings of U.S. immigration courts.

This law removed any suggestion of “prosecutorial discretion” when dealing with illegal immigration. In suggesting that immigration officials still have that discretion, Secretary Napolitano and President Obama are actually ordering federal immigration officials to break the 1996 law.

Since the Executive Branch is citing a privilege that no longer exists and ordering federal immigration officials to break the 1996 *Illegal Immigration Reform and Immigrants Responsibility Act*, which was passed by Congress and signed into law by the President, I respectfully request that your Committees use their investigatory powers to determine the legality of the DHS decision to use so-called “prosecutorial discretion” to deliberately ignore the immigration status of certain individuals and subsequently issue these individuals work permits that can be renewed indefinitely.

My district in Pennsylvania has one of the highest unemployment rates in the state, and our country is still reeling from one of the worst recessions we have ever faced. The Department’s unlawful action could have grave consequences on our labor force and on our economy. Additionally, allowing individuals with forged documents to remain in this country could pose a serious threat to our national security. For these reasons, I believe your Committee needs to take immediate action on this important matter.

If you have any questions please contact Thomas Lamberti in my office at 5-6511 or [thomas.lamberti@mail.house.gov](mailto:thomas.lamberti@mail.house.gov).

Very truly yours,



Lou Barletta  
Member of Congress