

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

September 21, 2010

The Honorable Janet Napolitano
Secretary
Department of Homeland Security
Nebraska Avenue Complex
245 Murray Lane, Mailstop 0150
Washington, DC 20528-0150

Dear Secretary Napolitano:

We write to you again to express our growing concern about the Department of Homeland Security's execution of U.S. immigration laws. Several of us have written to you previously about a USCIS memorandum entitled "Administrative Alternatives to Comprehensive Immigration Reform." We now understand that an additional memorandum, which laid out some of the same proposals for granting immigration benefits to illegal immigrants who are barred from such relief by federal law, and which contained extensive discussions of the political considerations for such actions, was prepared at DHS headquarters for your review earlier this year. As members of the Committee with jurisdiction over immigration and naturalization matters, we ask that you make time before we recess in October to come to Capitol Hill and brief us on these memos and on the department's recent actions in this area.

In response to earlier queries about the USCIS memorandum, you stated that the document was an "internal draft memorandum" that was intended to simply "raise [the] best ideas" of DHS employees and should not be equated with official action by DHS. You have also stated that DHS will not take any action with regard "to the Nation's entire illegal immigrant population or large classes of such population" to stop the removal of illegal immigrants.

These assurances, however, do not address the other proposals contained in these recently-discovered memoranda that would, among other things, evade the current statutory penalties that bar aliens who illegally cross our borders from receiving immigration benefits, or that would allow violators of U.S. immigration laws to use relationships to legal residents or U.S. citizens to obtain immigration benefits to which they are not entitled under the law. These proposals, which are described in both

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memos, could allow millions of illegal immigrants to stay permanently in the United States. Your assurances also fail to address reports that DHS has adopted a policy of refusing to remove any illegal immigrant who happens to be apprehended if he or she might qualify for relief in legislation – such as the DREAM Act or the AgJobs bill – that has been introduced, but not passed, by Congress. Finally, your assurances do little to assuage our concerns about repeated references in the memoranda to finding other ways, on an administrative level, to make most illegal immigrants in the country legal.

Whether or not the proposals in either memo have been officially implemented, it is increasingly clear that this Administration is following the spirit of these proposals by dramatically narrowing its efforts to remove whole classes of illegal immigrants.

Last month, for example, ICE decided to *prohibit* state and local law enforcement from taking illegal aliens into custody when they are stopped, but not arrested, for a traffic violation. More recently, ICE has proposed new guidance that would effectively require state and local authorities to release illegal aliens if the alien's only violation is his or her illegal status. And earlier this year, ICE issued a policy that discourages deporting, or even apprehending, illegal aliens who have not been convicted of felonies or are not actively obstructing the removal process. We are concerned that, as a result of such policies, illegal immigrants who are being transported through border states and are apprehended by ICE or local authorities would be released into local communities, rather than detained by ICE. ICE has also decided to dismiss approximately 17,000 cases for aliens currently in immigration proceedings if the alien *might* qualify for some kind of immigration relief. News reports indicate that some regional offices are dismissing *any* case involving an alien who has been in the United States for more than two years and has not committed a felony.

DHS has loudly touted an “expansion” of the Secure Communities program, yet we understand that the department has decided to allow so-called sanctuary cities to continue harboring illegal immigrants in their criminal justice systems by concealing their presence from DHS. And the Administration's declarations that it will work cooperatively with state and local law enforcement on immigration-related matters ring hollow when the Department of Justice files suit to bar Arizona from enforcing a state law designed to assist the federal government in apprehending illegal immigrants.

Madam Secretary, the Administration has made much of Congress's recent action to provide the executive branch additional dollars for immigration enforcement. But it is difficult to understand how those funds can be well spent if the Administration's policies deliberately overlook most illegal immigrants or provide for

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the immediate release of the thousands of illegal immigrants whom DHS deems to be of "low priority."

We ask that you explain as soon as possible to Congress what prompted the memoranda proposing "administrative" methods for "immigration reform" and the policies that have been adopted as a result of these deliberations. The American people deserve to know.

We look forward to hearing from you about your availability to brief us before we recess in October.

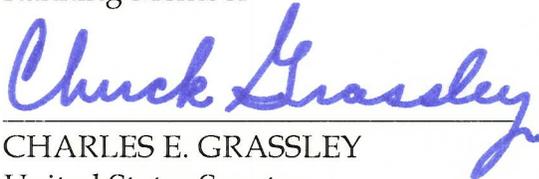
Sincerely,



JEFF SESSIONS
Ranking Member



ORRIN G. HATCH
United States Senator



CHARLES E. GRASSLEY
United States Senator



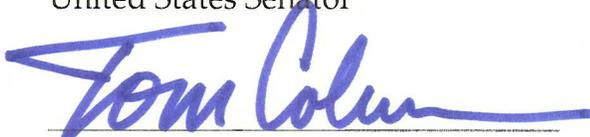
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TOM COBURN
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