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# United States Senate

COMMITTEE ON THE JUDICIARY  
WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, *Chief Counsel and Staff Director*  
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March 2, 2016

## VIA ELECTRONIC TRANSMISSION

The Honorable Jeh Johnson  
Secretary  
Department of Homeland Security  
Washington, DC 20528

Dear Secretary Johnson:

We write to express our continuing concerns about the manner in which the Administration has been abusing its immigration parole authority generally, and, more specifically, to obtain answers to questions about abuses of the advance parole program as applied to the Deferred Action for Childhood Arrivals (DACA) program.

On June 15, 2012, President Obama stated from the White House Rose Garden in his speech announcing the DACA program: “Now, let’s be clear -- this is not amnesty, this is not immunity. This is not a path to citizenship.”<sup>1</sup> It is now abundantly clear this is not true.

The grant of advance parole to DACA recipients does indeed open the door to undocumented immigrants to gain U.S. citizenship. Though the federal statute governing the parole authority requires that parole be granted only for “urgent humanitarian reasons” or in cases of “significant public benefit,” United States Citizenship and Immigration Services (USCIS) policy has expanded potential grounds of advance parole approval for DACA recipients to “educational purposes, employment purposes, or humanitarian purposes.”<sup>2</sup> USCIS guidance adds that “[e]ducational purposes include, but are not limited to, semester abroad programs or academic research.”<sup>3</sup> A DACA recipient granted advance parole to participate in a semester

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<sup>1</sup> Remarks by the President on Immigration (June 15, 2012), The White House, Office of the Press Secretary, available at <https://www.whitehouse.gov/the-press-office/2012/06/15/remarks-president-immigration>.

<sup>2</sup> Immigration and Nationality Act, section 212(d)(5)(A); Instructions for Application for Travel Document (Form I-131), United States Citizenship and Immigration Services, available at [https://www.uscis.gov/sites/default/files/files/form/i-131\\_instr.pdf](https://www.uscis.gov/sites/default/files/files/form/i-131_instr.pdf).

<sup>3</sup> *Id.*

abroad program, for example, is paroled into the United States upon return and is thereby made eligible to adjust to lawful permanent resident status if they otherwise qualify for one of the existing immigrant visa categories.<sup>4</sup> After five years as a permanent resident, a person may apply for U.S. citizenship. During a Judiciary Committee hearing on July 21, 2015, USCIS Director Rodriguez did not contest Senator Lee’s statement that return to the U.S. of DACA recipients as parolees lifts a “significant legal impediment” to their ability to obtain lawful permanent residence and, ultimately, citizenship.<sup>5</sup>

This path to citizenship for DACA recipients has been known and discussed openly by immigration lawyers for years. In August 2013, for example, the Legal Action Center of the American Immigration Council published a “practice advisory” on advance parole for DACA recipients that concluded that “for those DACA recipients who are married to a U.S citizen, or qualify as children of U.S. citizens, travel on advance parole may have the dual benefits of eliminating exposure to the unlawful presence ground of inadmissibility and creating eligibility to adjust status in the United States.”<sup>6</sup> The practice advisory further reveals:

At least one practitioner has shared that a DACA recipient successfully adjusted after traveling abroad on advance parole. Similarly, [Temporary Protected Status] recipients who originally entered without inspection, and thus – like DACA recipients – were unable to adjust, reportedly have been able to adjust after returning on advance parole. In these cases, their status as parolees upon their return rendered them eligible for adjustment.<sup>7</sup>

Since 2013, the number of DACA recipients who have obtained advance parole, left the country and returned as parolees, and then adjusted to lawful permanent resident status can only have increased.

A recent story in a California newspaper describes how exploitation of this loophole has now become a cottage industry.<sup>8</sup> According to the story, undocumented, DACA-recipient students at various Southern Californian universities have started going on organized “study abroad” trips to Mexico after securing advance parole from USCIS, returning as parolees who

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<sup>4</sup> Section 245(a) of the Immigration and Nationality Act provides: “The status of an alien who was inspected and admitted *or paroled* into the United States ... may be adjusted by the [Secretary of Homeland Security], in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence....” (emphasis added).

<sup>5</sup> Oversight of the Administration’s Misdirected Immigration Enforcement Policies: Examining the Impact on Public Safety and Honoring the Victims, Senate Judiciary Committee (Jul. 21, 2015). Adjusting to lawful permanent resident status after returning to the United States as a parolee is further facilitated by an outrageous 2012 decision of the Board of Immigration Appeals, under which a departure from the United States with advance parole is not deemed to be a “departure” that would trigger the three- and ten-year bars on admission to the United States for persons who have been unlawfully present in the United States for more than 6 months. *Matter of Arrabally and Yerrabally*, 25 I&N Dec. 771 (BIA 2012).

<sup>6</sup> Practice Advisory: Advance Parole for Deferred Action for Childhood Arrival (DACA) Recipients, Legal Action Center and Catholic Legal Immigration Network, Inc. (Aug. 28, 2013), at 8 (available at [http://www.legalactioncenter.org/sites/default/files/advance\\_parole\\_for\\_daca\\_recipients.pdf](http://www.legalactioncenter.org/sites/default/files/advance_parole_for_daca_recipients.pdf)).

<sup>7</sup> *Id.*

<sup>8</sup> David Bauman, “Immigration: Undocumented college students find way to study abroad, return legally,” *The Press Enterprise* (Feb. 5, 2016), available at <http://www.pe.com/articles/students-793699-advance-parole.html>.

are then eligible to adjust to lawful permanent resident status.<sup>9</sup> One professor of Chicano Studies at Cal State Long Beach is described as having “discovered” the advance parole provision in 2014 and used it to take two students to Mexico that spring.<sup>10</sup> In December 2015, that same professor used advance parole to take 30 undocumented students from across Southern California to study and visit family in Mexico.<sup>11</sup> He plans to take another round of students this summer.<sup>12</sup>

In light of the foregoing, please answer the following questions:

1. How many DACA recipients have:
  - a. Received advance parole?
  - b. Travelled abroad and been paroled back into the United States?
2. How many of the DACA recipients who have travelled abroad and been paroled back into the United States subsequently:
  - a. Became the beneficiaries of an immigrant petition?
  - b. Applied for adjustment to lawful permanent resident status?
3. For those aliens described in question #2 who applied for adjustment, please explain the basis for the alien’s lawful permanent residence (e.g. marriage to a U.S. citizen).
4. In a letter to you from House Judiciary Committee Chair Robert Goodlatte, dated February 13, 2015, Rep. Goodlatte states that he is troubled by the fact that USCIS claims ‘not [to] have a way to track electronically’ the number of DACA recipients who have received advance parole and who have subsequently applied for adjustment of immigration status.<sup>13</sup> Rep. Goodlatte expresses in his letter his hope that USCIS not having a way to track such requests is not intentional in order to avoid answering questions about how many DACA recipients get Green Cards.
  - a. Is it technically possible for USCIS to track how many DACA recipients who have re-entered the country as parolees subsequently adjust status? If not, why not?
  - b. If it is technically possible for USCIS to track how many DACA recipients who have re-entered the country as parolees subsequently adjust status, and if USCIS is not tracking this data, please explain why USCIS is not tracking it.

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<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</sup> Id.

<sup>13</sup> Goodlatte: Change to Unilateral Immigration Program Provides Pathway to Citizenship, Office of Congressman Bob Goodlatte (Feb. 13, 2015), available at [http://goodlatte.house.gov/press\\_releases/662](http://goodlatte.house.gov/press_releases/662).

We ask that you respond to our concerns and the questions included in this letter by March 14, 2015. If you have any questions, please contact Kathy Nuebel Kovarik or Mike Lemon of the committee at 202-224-5225. Thank you for your attention to this important matter.

Sincerely,

Chuck Grassley *Chair* *C.G.*