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ENVIRONMENT AND PUBLIC WORKS

September 11, 2012

The Honorable John T. Morton
Director
U.S. Immigration and Customs Enforcement
Department of Homeland Security
500 12th Street SW
Washington, D.C. 20536

Dear Director Morton:

Thank you for the response from your Office of Congressional Relations regarding the proposed disciplinary action against a U.S. Immigration and Customs Enforcement agent in the Philadelphia field office. I appreciate the timely reply and description of the incident.

I must, however, respectfully disagree that the central issue here concerns the chain of command. Rather, the central issue concerns the agent's sworn duties under the law and the Administration's "priorities" that contradict that sworn obligation.

The facts are not in dispute. The ICE agent in question apprehended an individual operating the vehicle of a wanted fugitive alien and brought him into custody. It was discovered that the apprehended alien was a 35-year-old Mexican citizen unlawfully present in this country who had incurred ten misdemeanor traffic violations and did not have a driver's license. Your letter acknowledges that the alien arrived in the U.S. in September of 2002, meaning that he was an adult aged around 25 at the time of his illegal entry. He could not, therefore, qualify for "deferred action," even under the Administration's unlawfully imposed DREAM Act directive.

Consistent with his duties under the law, the officer attempted to issue the alien a simple and routine Notice to Appear before a federal immigration judge. But the officer was prevented from doing so by his supervisors, the alien was released without consequence, and now the veteran ICE agent trying to fulfill his legal duty—and to protect citizens on our roads from a clear public safety threat—is faced with suspension.

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Based on my own experience in law enforcement, I believe the supervisors' actions in this matter, and your support for them, disastrously undermine the effectiveness of your officers in the field and their ability to enforce our nation's laws.

It is difficult not to conclude from this and many other incidents that your agency is placing more emphasis on weakening enforcement procedures and releasing those apprehended than on supporting the officers who risk their lives every day to enforce the law.

Another alarming truth is further elucidated by this incident. The Administration goes to great lengths to publicly suggest that administrative amnesty is limited to those who entered this country by the age of 16, are currently not more than 30 years of age, are high school graduates or college students, and have exemplary records. But the Delaware incident demonstrates what we have long known: that the Administration's non-enforcement policy applies to the overwhelming majority of illegal immigrants living in the United States—regardless of age, date of entry or, in many cases, even criminal history.

In this case, the individual entered the country as an adult, is well over the age of 30, and had multiple misdemeanor infractions. ICE supervisors had no interest of any kind in his educational background. He was not eligible for "deferred action," but he was released regardless under the far broader non-enforcement policy that has been quietly instituted.

Apparently, even violent offenders are eligible for automatic release under the President's non-enforcement policy. Since I last wrote to you, several ICE agents filed a lawsuit against you and Secretary Napolitano in the federal district court for the Northern District of Texas. According to the complaint, ICE agent Samuel Martin, along with another ICE agent, picked up an illegal alien from the El Paso County, Texas jail on July 17, 2012. While the agents were trying to place the individual in the vehicle, he attempted to escape and physically assaulted the agents. Although the agents regained custody of the alien and transported him to the El Paso Criminal Alien Program office for processing, the agents' supervisors ordered them to release the alien without charges and specifically to not issue a Notice to Appear, as required by 8 U.S.C. § 1225(b)(2)(A). The agents protested the release of the alien but were told "it was a management decision, based on the President's new immigration policies." Anyone with the even the slightest experience in law enforcement can see that such actions are devastating to law enforcement personnel.

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According to 8 U.S.C. § 1225(a)(1), "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 designation triggers 8 U.S.C. § 1225(a)(3), which requires that all applicants for admission "shall be inspected by immigration officers." This, in turn, triggers 8 U.S.C. § 1225(b)(2)(A), which requires that "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." As you know, the proceedings under 8 U.S.C. § 1229a are removal proceedings in United States immigration courts.

There is no question that the Administration's unilaterally decreed policy is contrary to codified federal law and places our law enforcement officers in an untenable position. It comes as no surprise that the morale of your agents has plummeted.

Your job is to carry out the mission of your agency and support the officers on the front lines. Your apparent failure to support your officers in these incidents, and your evident lack of concern for the Administration's decision to nullify the very laws they were sworn to enforce, raises serious questions about your ability to lead this agency.

Very truly yours,



Jeff Sessions
United States Senator

JS:ph