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OPEN BORDERS: THE IMPACT OF PRESIDENTIAL AMNESTY ON BORDER SECURITY

U.S. HOUSE COMMITTEE ON HOMELAND SECURITY

ONE HUNDRED THIRTEENTH CONGRESS, SECOND SESSION

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Committee on
HOMELAND SECURITY
Chairman Michael McCaul

Opening Statement

December 2, 2014

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**Statement of Chairman Michael McCaul (R-Texas)
Committee on Homeland Security**

“Open Borders: The Impact of Presidential Amnesty on Border Security”

Remarks as Delivered

Today, we’re here to talk about illegal immigration and the grave consequences of the administration’s recent actions to bypass Congress. Immigration reform is an emotional and divisive issue; there is no doubt about that. But the president’s unilateral actions to bypass Congress undermine the constitution and threaten our democracy.

Let me be clear: our immigration system is broken, and we need to fix it. America has always stood proudly as a beacon of hope for millions who are seeking a better life. And we should work hard to keep it that way. But regardless of where you stand on this issue, there is a right way to do this, and there is a wrong way. And unfortunately the president has taken the wrong way.

In addition, the president has risked breaking something much more fundamental: our democratic process. We are a nation of laws. Yet this unprecedented executive power grab undermines the principle that the people—not just one man—should be the ultimate decision makers on our country’s most important political matters. This action has also “poisoned the well” here in Washington at a time when Americans desperately want their government to work together.

We are facing crucial challenges that require Congress and the White House to cooperate, from combating overseas threats to driving economic growth. But by making an end-run around Congress, the president has deliberately and willfully broken the trust that is needed between our branches of government. The President knows the damage of these actions. He has said over 20 times in his presidency that he did not have the authority to take executive action on immigration, and that this is “not how democracy works.” He also said doing so would, “lead to a surge in more illegal immigration.” He was right. It will.

History has proven that amnesty perpetuates a cycle of illegal entry into this country. This was true in the 1980s and has proven true under this administration’s abuse of “prosecutorial discretion”— a power to decide when to prosecute lawbreakers and when not to, a power which should be used narrowly and carefully. This

administration has done the opposite. They've taken a sweeping approach to prosecutorial discretion that makes a mockery of the law.

The consequences are very real. This summer, the administration's refusal to enforce our immigration laws enticed at least 60,000 unaccompanied children to make the perilous journey to our borders.

Many travelled to the United States under misinformation regarding the administration granting of "permiso's." We can expect many, many more to do the same because of the president's recent actions.

The lax interior enforcement policies adopted by this administration coupled with even the perception of amnesty become a powerful magnet that encourages more illegal immigration. We essentially tell citizens of other countries if you come here, you can stay – don't worry, we won't deport you. The reality on the ground is that unless you commit multiple crimes, the chances of your being removed from this country are close to zero. This year the U.S. Border Patrol apprehended 479,000 individuals along the Southern Border but less than half were deported. Those who remained were given notices to appear before an immigration judge, with a court date years away, and released into the country. We know that the majority will never check back in with authorities.

If we don't think that message is making its way back to Mexico and Central America, we are simply fooling ourselves. We will see a wave of illegal immigration because of the president's actions.

At its core, the president's unilateral amnesty plan is deeply unfair to the millions who are waiting in line to become a part of our great nation, and it demonstrates reckless disregard for America's security. We have a formal immigration process for a reason: to promote fairness in allowing people to enter the United States and to keep those who will seek to do us harm outside of our borders.

Sadly, the Department of Homeland Security is unprepared to handle the coming surge that the president's policies will incite. The Border Patrol's resources are already strained as immigrants pour across the border, making it difficult to identify smugglers, criminals, and potential terrorists.

We need to reform our immigration laws, but we need to do it the right way. And that means starting the process in the lawmaking branch of our government. Congress will address immigration reform. But we need to do so in an intelligent way, and in keeping with the wishes of the American people. The majority of American's do not agree with the president's executive actions. They want Congress to find a solution--one that begins with securing our borders.

I look forward to hearing from the Secretary, and I hope he will address the serious concerns Congress and the American people have about the president's decision.

We cannot turn a blind eye to the real threats which these actions will bring to our country's doorstep.

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Statement

by

Secretary Jeh C. Johnson

U.S. Department of Homeland Security

Hearing before the

House Committee on Homeland Security

December 2, 2014

Thank you Chairman McCaul, Ranking Member Thompson, and Committee members for the opportunity to testify today.

On November 20 President Obama announced a series of executive actions to begin to fix our immigration system. The President views these actions as a first step toward reform of the system, and continues to count on Congress for the more comprehensive reform that only legislative changes can provide.

The actions we took will begin to fix the system in a number of respects.

To promote border security for the future, and to send a strong message that our borders are not open to illegal migration, we prioritize the removal of those apprehended at the border and those who came here illegally after January 1, 2014, regardless of where they are apprehended. We also announced the next steps to strengthen our border security efforts as a part of our Southern Border Campaign Strategy, which I first announced earlier this year.

To promote public safety, we make clear that those convicted of crimes, criminal street gang members, and national security threats are also priorities for removal.

To promote accountability, we encourage those undocumented immigrants who have been here for at least five years, have sons or daughters who are citizens or lawful permanent residents, and do not fall into one of our enforcement priorities, to come out of the shadows, get on the books, and pass national security and criminal background checks. After clearing all their background checks, these individuals are eligible for work authorization and will be able to pay taxes and contribute more fully to our economy. The reality is that, given our limited resources, these people are not priorities for removal—it's time we acknowledge that and encourage them to be held accountable. This is simple common sense.

To rebuild trust with state and local law enforcement which are no longer honoring ICE detainers, we are ending the controversial Secure Communities program as we know it, and making a fresh start with a new program that fixes existing problems.

To promote U.S. citizenship, we will enable applicants to pay the \$680 naturalization fee by credit card and expand citizenship public awareness.

To promote the U.S. economy, we will take administrative actions to better enable U.S. businesses to hire and retain qualified, highly skilled foreign born workers.

The reality is that, for decades, Presidents have used executive authority to enhance immigration policy. President Obama views these actions as a first step toward

the reform of the system, and continues to count on Congress for the more comprehensive reform that only changes in law can provide.

I recommended to the President each of the Homeland Security reforms to the immigration system that he has decided to pursue. These recommendations were the result of extended and candid consultations I had with the leadership of Immigration and Customs Enforcement (ICE), Customs and Border Protection (CBP) and U.S. Citizenship and Immigration Services (USCIS). Along the way, I also spoke with members of the workforce who implement and enforce the law to hear their views. In my own view, any significant change in policy requires close consultation with those who administer the system. We also consulted a wide range of stakeholders, including business and labor leaders, law enforcement officers, religious leaders, and members of Congress from both sides of the aisle. We also consulted with the Department of Justice, and we received a formal, written opinion from the Justice Department's Office of Legal Counsel concerning enforcement prioritization and deferred action, and that opinion has been made public.

Here is a summary of our executive actions:

Strengthening border security. Our executive actions emphasize that our border is not open to future illegal migration and that those who come here illegally will be sent back, unless they qualify for some form of humanitarian relief under our laws. The reality is that, over the last fifteen years spanning the Clinton, Bush, and Obama Administrations, much has been done to improve border security. But, through the executive actions announced last week, we can and will do more.

Today, we have unprecedented levels of border security resources—personnel, equipment and technology—along our Southwest border. This investment has produced significant positive results. Apprehensions have declined from over 1.6 million in 2000 to around 400,000 a year—the lowest rate since the 1970s. According to Pew Research, the number of undocumented immigrants in this country grew to a high of 12.2 million in 2007 and has remained, after a slight drop, at about 11.3 million ever since. That means this population has stopped growing for the first time since the 1980s, and over half of these individuals have been in the United States for 13 years.

Without a doubt, we had a setback this summer. We saw an unprecedented spike in illegal migration into South Texas—from Guatemala, Honduras, and El Salvador. And as everyone knows, it consisted of large numbers of unaccompanied children and adults with children. We responded with more security and law enforcement resources; more processing centers; more detention space; more Border Patrol agents in the Rio Grande Valley; more prosecution of criminal smuggling organizations; an aggressive public message campaign; engagement of Central American leaders by the President and the Vice President; and increased interdiction efforts by the Government of Mexico. And,

since the spring, the numbers of unaccompanied children crossing the southern border illegally have gone down considerably: May – 10,578; June – 10,620; July – 5,499; August – 3,138; September – 2,426; October – 2,529.

However, we are not finished with the work of securing our border. We can and will do more—that’s a critical component of the President’s executive actions.

We will build upon the border security infrastructure we put in place last summer. We announced several days ago the opening of another detention facility for adults with children in Dilley, Texas, that has the capability to detain over 2,000 individuals. At the same time, we will close the smaller, temporary facility for adults with children at Artesia, New Mexico. We are developing a “Southern Border Campaign Strategy” to fundamentally alter the way in which we marshal resources to the border under the direction of three new Department task forces. They will follow a focused risk-based strategy, with the overarching goals of enforcing our immigration laws and interdicting individuals seeking to illegally cross land, sea and air borders. These actions are designed to send a clear message: in the future, those who attempt to illegally cross our borders will be sent back.

Creating new and clearer enforcement prioritization policies. This new policy will also have a strong border security component to it, in addition to prioritizing for removal public safety and national security threats. Virtually every law enforcement agency engages in prosecutorial discretion. With the finite resources an agency has to enforce the law, it must prioritize use of those resources. To this end, DHS will implement a new and clearer enforcement and removal policy. The new policy places: (i) top priority on national security threats, convicted felons, criminal gang participants, and illegal entrants apprehended at the border; (ii) second-tier priority on those convicted of significant or multiple misdemeanors and those who entered or re-entered this country unlawfully after January 1, 2014, -- regardless of whether they are apprehended at the border -- or significantly abused the visa or visa waiver programs; and (iii) the lowest priority are those who are non-criminals but who have failed to abide by a final order of removal issued on or after January 1, 2014.

Giving people the opportunity to be held accountable. The reality is that, undocumented immigrants who have been in this country for years, raising American families and developing ties to the community. Many of these individuals have committed no crimes and are not enforcement priorities. It is time that we acknowledge this as a matter of official policy and encourage eligible individuals to come out of the shadows, submit to criminal and national security background checks, and be held accountable.

We will therefore offer, on a case-by-case basis, deferred action to individuals who (i) are not removal priorities under our new policy, (ii) have been in this country at

least 5 years, (iii) have sons or daughters who are U.S. citizens or lawful permanent residents, and (iv) present no other factors that would make a grant of deferred action inappropriate. The reality is that our finite resources will not and should not be expanded to remove these people. We are also amending eligibility for the Deferred Action for Childhood Arrivals (DACA) program. At present, eligibility is limited to those who were under 31 years of age on June 15, 2012, entered the United States before June 15, 2007, and were under 16 years old when they entered. We will amend eligibility for DACA to cover all undocumented immigrants who entered the United States before the age of 16, not limited to those born after June 15, 1981. We are also adjusting the cut-off date from June 15, 2007 to January 1, 2010 and expanding the period of work authorization from two years to three years.

President Obama's Administration is not the first to undertake such actions. In fact, the concept of deferred action is an established, long-standing administrative mechanism dating back decades, and it is one of a number of similar mechanisms Administrations have used to grant temporary immigration relief for humanitarian and other reasons. For example, Presidents Reagan and Bush authorized executive action to shield undocumented children and spouses who did not qualify for legalization under the Immigration Reform and Control Act of 1986. This "Family Fairness Program" used a form of relief known at the time as "indefinite voluntary departure," which is similar to the deferred action authority we use today.

Fixing Secure Communities. We will end the Secure Communities program as we know it. The overarching goal of the program is a good one, but it has attracted widespread criticism in its implementation and has been embroiled in litigation. Accordingly, we will replace it with a new "Priority Enforcement Program" that closely and clearly reflects DHS's new top enforcement priorities. The program will continue to rely on fingerprint-based biometric data submitted during bookings by state and local law enforcement agencies but will, for the most part, limit the circumstances under which DHS will seek an individual in the custody of state and local law enforcement—specifically, only when an individual has been convicted of certain offenses listed in Priorities 1 and 2 of our new enforcement priorities outlined above.

Pay reform for ICE ERO officers. We will conduct an expeditious review of personnel reforms for Immigration and Customs Enforcement (ICE) officers engaged in removal operations, to bring their job classifications and pay coverage in line with other law enforcement personnel, and pursue regulations and legislation to address these issues.

Extending the provisional waiver program to promote family unity. The provisional waiver program we announced in January 2013 for undocumented spouses and children of U.S. citizens will be expanded—to include the spouses and children of lawful permanent residents, as well as the adult children of U.S. citizens and lawful

permanent residents. At the same time, we will clarify the “extreme hardship” standard that must be met to obtain the provisional waiver.

Supporting military families. We will work with the Department of Defense to address the availability of parole-in-place and deferred action, on a case-by-case basis, for the spouses, parents, and children of U.S. citizens or lawful permanent residents who seek to enlist in the U.S. Armed Forces.

Increasing access to U.S. citizenship. We will undertake options to promote and increase access to naturalization and consider innovative ways to address barriers that may impede such access, including for those who lack resources to pay application fees. To enhance access to U.S. citizenship, we will (i) permit the use of credit cards as a payment option, and (ii) enhance public awareness around citizenship. USCIS will also include the feasibility of a partial fee waiver as part of its next biennial fee study.

Supporting U.S. business and high-skilled workers. Finally, DHS will take a number of administrative actions to better enable U.S. businesses to hire and retain qualified, highly skilled foreign-born workers. For example, because our immigration system suffers from extremely long waits for green cards, we will amend current regulations and make other administrative changes to provide needed flexibility to workers with approved employment-based green card petitions.

Overall, the executive actions the President announced last week will not only bolster our border security, they will promote family unity, increase access to U.S. citizenship, grow and strengthen the competitiveness of the U.S. economy, and create jobs, particularly in the high-skilled labor sectors.

Again, the President views these actions as a first step toward the reform of our immigration system and he continues to count on Congress for the more comprehensive reform that only legislative changes can provide. In the meantime, we will use our executive authority to fix as much of our broken immigration system as possible.

I look forward to answering your questions.