

Statement of Senator David Vitter

Before the House of Representatives
Committee on the Judiciary
Subcommittee on Immigration Policy and Enforcement

Hearing on the “Hinder the Administration’s Legalization Temptation Act”

July 26, 2011

Good afternoon, Chairman Smith, Chairman Gallegly, Vice-Chairman King, Ranking Member Lofgren, and members of the Committee. Thank you for inviting me to testify before this Committee today on the “Hinder the Administration’s Legalization Temptation Act,” which would prevent the Obama administration from abusing its authority by granting mass amnesty by administrative fiat. I am happy to join you today for a discussion about this important legislation, which I have introduced in the Senate as a companion to H.R. 2497.

I offer my views in my capacity as a United States Senator and as the Chairman of the U.S. Senate Border Security and Enforcement First Immigration Caucus. I founded the Caucus during my first Senate term in response to escalating illegal immigration and the failure of our federal government to address the consequences of this serious problem. The principle mission of the Caucus is to promote a true, achievable alternative to mass amnesty for illegal aliens: attrition through enforcement. Living illegally in the United States will become more difficult and less satisfying over time when the government enforces all of the laws already on the books.

We face many challenges in dealing with illegal immigration in Congress. First, we can all agree that we need to better protect our borders. Additionally, we must enact measures that remove and reduce incentives for illegal immigration. We need to ensure that only citizens and those in our country legally can be hired for jobs. There are a myriad of loopholes within current law that allow illegal aliens to take advantage of benefits intended for American citizens and

legal residents. For example, our misguided practice of birthright citizenship currently serves as a magnet for further illegal immigration and does a disservice to every would-be citizen who is following the rules.

Perhaps our toughest challenge in Congress is to oppose and defeat amnesty in all its forms. Poll after poll has proven that the overwhelming majority of the American public is opposed to amnesty. In the Senate I have had the opportunity to fight and help defeat amnesty measures such as so-called comprehensive immigration reform and the DREAM Act. As Congress continues to respect the will of the people by rejecting such attempts at granting amnesty for illegal aliens, I have noticed that amnesty advocates have modified their tactics. Out of desperation to push their amnesty agenda, the Obama administration has made the stunning decision to bypass Congress completely. We now face a new challenge as Members of Congress: we must prevent the Obama administration from abusing its authority by granting mass amnesty by administrative fiat.

We recently learned of the Administration's plan through the release of internal memos from Immigration and Customs Enforcement (ICE) Director John Morton, one of which essentially creates backdoor amnesty through agency policy. Under the guise of "prosecutorial discretion," Morton provides factors that would warrant dismissal of an order of removal for almost every illegal alien except known terrorists and convicted criminals. Far from prosecutorial discretion, Morton's proposed policy is an invitation to ignore the law. The clear implication is that President Obama's Department of Homeland Security (DHS) does not intend to fully enforce our immigration laws. The Obama administration is picking and choosing which laws it will enforce in order to grant amnesty to a sweeping number of illegal aliens.

This policy not only undermines the stability of our immigration system, but has severe fiscal consequences. Should ICE move forward with plans to grant “deferred action” to an unrestricted number of illegal aliens who would otherwise be removed, those illegal and deportable aliens would then be eligible for work authorization. I am not suggesting that DHS officials do not have the authority to exercise prosecutorial discretion in making decisions to grant parole in specific cases, but I am concerned that this authority is being abused. In 1996, Congress clearly limited the Administration’s parole authority to be used “only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.”¹ However, these memos make clear that DHS plans to abuse these powers to grant mass legalization without any Congressional authorization.

It is astounding that the executive branch of the U.S. government has adopted a practice that allows, even encourages, individuals to exploit the loopholes of our immigration system. It is clear that Congress has the authority and the obligation to put a stop to it once and for all. The Constitution grants Congress the authority to determine our immigration policies and the Supreme Court has long upheld our authority to do so. Awarding backdoor amnesty over the objections of Congress and the American people would be a slap in the face to taxpayers and legal immigrants. I would like to thank Mr. Smith for allowing me to join him in addressing this critical issue.

Chairman Gallegly, Vice-Chairman King, Ranking Member Lofgren, and distinguished Members of the Subcommittee, thank you again for the opportunity to testify today. I look forward to working together to enact the HALT Act.

¹ Section 212(d)(5)(A) of the Immigration and Nationality Act