



## LEGISLATIVE ALERT

February 25, 2015

Dear Senator,

The AFL-CIO urges you to vote against the “Immigration Rule of Law Act of 2015” (S. 534). S. 534 is a callous and anti-immigrant bill that would strip away protections from the millions of working families who will benefit from the Deferred Action for Parents of American Citizens and Legal Permanent Residents (DAPA) program and the Deferred Action for Childhood Arrivals (DACA) program that were announced by President Obama on November 20. It also undermines efforts to clarify enforcement priorities and inappropriately uses the Affordable Care Act (ACA) as an excuse to strip away much-needed rights and protections.

We firmly believe that President Obama’s administrative actions represent an important step toward rational and humane enforcement of our nation’s immigration laws. By extending relief and work authorization to an estimated 4 million people, the new deferred action programs will help prevent unscrupulous employers from using unprotected workers to drive down wages and conditions for all workers in our country. Although this fix will be temporary, it will allow millions of people to live and work without fear, and afford them the status to assert their rights on the job.

### **The Administration has clear authority to provide deferred action and work authorization.**

S. 534 rests on the incorrect finding that “President Obama’s grant of deferred action...is without any constitutional or statutory basis.” The Department of Homeland Security (DHS) has clear legal authority to exercise discretion to decide whom to prosecute or not and determine how to utilize limited resources.<sup>1</sup> Virtually every modern administration has used prosecutorial discretion to provide administrative relief to particular categories of undocumented immigrants. This same legal authority permits DHS to exercise prosecutorial discretion under the new policies announced on November 20.

The Secretary of Homeland Security also has explicit statutory authority to grant employment authorization to individuals with deferred action.<sup>2</sup> The substance of this regulation dates back over three decades and is firmly grounded in the statutory text of the Immigration and Nationality Act.

The DHS memo announcing the new DAPA program and DACA expansion provides guidance for case-by-case use of deferred action for parents of U.S. citizens or lawful permanent residents who have been in the country since January 1, 2010 and to individuals who entered the U.S. as children under the age

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<sup>1</sup> See D. Meissner, INS Commissioner, Exercising Prosecutorial Discretion 3-4 (Nov. 17, 2000) (quoting Heckler v. Chaney, 470 U.S. 821, 831 (1985)); S. Bernsen, INS General Counsel, Legal Opinion Regarding Service Exercise of Prosecutorial Discretion (July 15, 1976) (discussing federal government’s exercise of prosecutorial discretion in immigration matters dating back to 1909); J. Morton, ICE Director, Exercising Prosecutorial Discretion Consistent with the Civil Immigration Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens 2 (June 17, 2011) (reaffirming continuing vitality of principles of prosecutorial discretion set forth in Meissner and Bernsen memos).

<sup>2</sup> 29 C.F.R. § 274a.12(c)(14).

of 16 before January 1, 2010. It also directs the U.S. Citizenship and Immigration Services to create an application process for individuals to apply for deferred action, submit biometrics and undergo background checks. The memo clearly states deferred action “does not confer any form of legal status in the country, much less citizenship.”<sup>3</sup>

**Work authorization is a key protection that will help ALL workers.**

The AFL-CIO strongly objects to efforts in S. 534 to broadly deny work authorization and deferred action to qualifying immigrants. Eight million of the current 11 million undocumented immigrants are already in the work force. Too often, these workers suffer from wage theft, sexual harassment, and death and injury on the job. Providing work authorization to those who qualify for the new DAPA program and expanded DACA program will help millions of workers stand up for their rights and demand a safe workplace. When employers exploit undocumented workers, steal wages or cut corners, ALL workers suffer.

**S. 534 includes yet another attack on the ACA.**

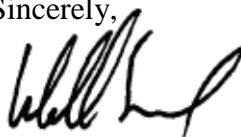
S. 534 asserts that employers, in an effort to evade employer requirements under the ACA, will adopt recruitment strategies based on immigration status. Such strategies would likely violate Title VII of the Civil Rights Act of 1964 and federal anti-discrimination laws and subject employers to substantial legal liability. The bill also implies that employers will offer health care coverage but intentionally offer coverage that fails to meet the affordability or minimum value requirements of the ACA, which would put them at risk for both discrimination violations and minimum coverage penalties. The notion that we should prevent discrimination by denying work authorization to immigrants is misguided and callous. Rather, our nation’s laws should seek to prevent discrimination by mandating that all workers be afforded equal benefits and protections.

**Rather than rollback relief, the House should pass immigration reform.**

In the eighteen months since a bipartisan majority of the Senate passed S. 744, Republican Leadership has failed to schedule a vote or move any comprehensive immigration reform bill, like H.R. 15, through any House committee. This failure to act, combined with increased enforcement efforts, has created a crisis in our nation’s immigrant communities and in workplaces across the country. Rather than providing a solution, the Republican Leadership is advancing a bill that will deny millions of aspiring Americans the opportunity to live and work without fear.

For the reasons stated above, the AFL-CIO urges you to vote NO on S. 534.

Sincerely,



William Samuel, Director  
Government Affairs Department

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<sup>3</sup> J. Johnson, DHS Secretary, Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Whose Parents are U.S. Citizens or Permanent Residents 2 (Nov. 20, 2014).