

Prepared Statement by Senator Chuck Grassley of Iowa
Chairman, Senate Judiciary Committee
Hearing on Oversight of the Administration's Decision to End DACA
October 3, 2017

Good morning. We're here to consider how to address the problem created by President Obama's unconstitutional executive action known "Deferred Action for Childhood Arrivals." In September, President Trump gave Congress six months to act in accordance with the Constitution on an issue that impacts millions of Americans and hundreds of thousands of unauthorized immigrants.

We have been debating this issue for 16 years – what type of legal status, if any, that unauthorized immigrants who were brought here as children should have.

Since 2001, successive Congresses have considered this question and always refused to address it. In both 2007 and 2013, Congress considered what we called "comprehensive" immigration reform that would've legalized millions of unauthorized individuals. However, these misguided efforts at mass amnesty failed.

The reason is simple. Remembering what happened in 1986, the American people recognized that legalization without enforcement and a way to address increasing demand for cheap foreign labor would only continue a cycle of illegal immigration.

That's why for years, Congress, in a bi-partisan fashion, worked together to strengthen our nation's border security and interior enforcement, but has struggled to address some of the thorniest elements of immigration.

Nothing better highlights Congress's bipartisan commitment to preventing illegal immigration than the Secure Fence Act. That bill authorized the Government to construct almost 700 miles of fencing on the U.S-Mexican border. It passed with overwhelming bi-partisan support, including from then Senators Obama, Biden and Clinton, and from our current Ranking Member, Ms. Feinstein. As President George W. Bush said, that bill was an "important step towards immigration reform."

Why? Because the Secure Fence Act was an effort to restore the American people's trust in the integrity of our lawful immigration system by taking a real step in protecting our borders.

As recently as 2010 both Democrats and Republicans agreed that the only lawful action that could be taken was by Congress. President Obama himself summed it up best when he said he "wasn't a King" and was "obliged to execute the law . . . [and] can't just make the laws [himself]."

To paraphrase novelist T.H. White, a King President Obama was not, but a King he decided to be. On June 15, 2012, President Obama decided to bypass the Constitution and use his "pen and phone" to create DACA: a large-scale executive action for hundreds of thousands of unauthorized immigrants.

Not only did President Obama abuse prosecutorial discretion by staying deportation for these cases, he also allowed recipients to apply for work permits.

And they did, in the hundreds of thousands. Since 2012, Citizenship and Immigration Services has issued more than 1.7 million work permits to DACA recipients. Granting these permits was a clear violation of the law and of the constitution.

From the beginning, President Obama's executive action was riddled with numerous loopholes that allowed for fraud and abuse. Since 2012, victims and whistleblowers have contacted me to explain how criminals benefitted from this program.

Thanks to their courage, I, along with several of my colleagues, sent over a dozen letters to the Obama Administration about the program's vulnerabilities to exploitation and abuse.

In one such case, a DACA recipient was granted work authorization despite being under investigation by Homeland Security Investigations for child exploitation. After receiving his work permit, the beneficiary was hired by a summer camp in California where he was eventually arrested for distributing and possessing hundreds of images of child pornography, and for molesting children in his care.

Although considered to be a "potentially egregious public safety threat" months before his arrest, he was nonetheless given a work permit by Citizenship and Immigration Services.

Whistleblowers also reported how once-eligible beneficiaries could fraudulently continue employment once their DACA was terminated.

Although work authorizations are invalid after benefits are discontinued, a recipient could work until the work document itself expires, unless the employer is aware of the termination.

But, in spite of this clear abuse of power, and the multiple examples of fraud in the program, we were at least comforted by President Obama's assurances that, "this is not immunity. This is not a path to citizenship." Even this assurance, however, was untrue.

Preliminary data released to my office from Citizenship and Immigration Services indicate that by the time the Trump Administration made its announcement on DACA, almost 40,000 beneficiaries had adjusted to lawful permanent resident status and were on a pathway to citizenship.

It's clear that from the beginning President Obama's program, while not ill-intentioned, never operated in the way it was supposed to. Worst of all, the program created a false sense of hope among DACA beneficiaries.

Thousands of them, in reliance on President Obama's ill-conceived "pen and phone" promises, started working jobs, pursuing education, and making steps towards productive contribution in American society. Now, that's all at risk.

On September 5, 2017, Attorney General Sessions announced that President Trump had decided to rescind President Obama's program. In reaching this decision, Attorney General Sessions acknowledged what many of us had known all along, that DACA was, plain and simple, an "unconstitutional exercise of authority by the Executive Branch."

We all have empathy for these young people, who came to this country through no fault of their own. And, for many of them, it is the only country they know.

And, the Administration isn't without empathy. In recognition of the fact that almost 700,000 young people relied on President Obama's false promise, the Trump Administration didn't immediately terminate the program.

Instead, they created a six month wind down and allowed anyone who currently has DACA to keep their work authorization until their two year DACA status expires.

This wind down is simple: to get Congress to adopt a long term solution—a legislative one.

So here we are, almost a month after the Administration's announcement, and now's the time to start considering a path forward in earnest.

First, and foremost, any potential deal on DACA has to include robust border security, and by that, I don't mean a wall. Of course, tactical infrastructure like fencing is a part of the answer, but border security is more than that.

Border security is an all-of-the-above approach and includes fencing, technology, funding for more law enforcement personnel and equipment, changes to substantive law so that "catch-and-release" and other misguided policies are ended, and we need to require that the administration finally complete the biometric entry and exit systems that Congress has continually demanded—and allocated money for—for more than 15 years.

Second, and equally as important as robust border security, we've got to make sure any deal includes meaningful interior enforcement. The simplest, most common sense way to ensure that we eliminate the root causes of illegal immigration is to make the e-Verify system mandatory for all employers.

This system helps employers confirm that job applicants are here legally, but until it is mandatory, it has almost no impact.

I know that this is a controversial and difficult step, and some big corporate interests are going to object, but we know that jobs are the number one reason people come here and stay here unlawfully.

But, E-Verify isn't the only answer. We also need to make it easier for law enforcement to deport gang members, dangerous felons, sex offenders, and human traffickers. We need to fix the Zadvydas decision that requires us to release dangerous criminal aliens.

Finally, we need to take a hard look at our asylum and immigration court backlogs, and take steps to ensure speedy deportation for those who deserve it while preserving lawful claims for those truly in need.

It would be a dereliction of our duty if we fail to take steps to end at least some of the illegal immigration as we know it, and kick the can down the road so that a future Congress has to address this very same problem again in another fifteen years. I'm confident that if everyone is reasonable, we can find a solution.

Our hearing today is the first step in finding that solution. We're going to hear from two panels today.

The first panel is composed of government witnesses, and I hope they will be able to provide some insight into what measures the Trump Administration thinks we should take to secure the border and the homeland.

I know the Administration is currently engaged in ongoing litigation, and witnesses may be restricted in questions they can answer. I can appreciate that, and I hope my colleagues will do the same. However, to the extent questions can be answered and guidance can be given, we would expect your forthrightness.

The second panel will include an outside expert, a beneficiary, and a victim. I hope they can provide some insight into what the American people expect from us.

I want to thank the second panel for their courage in testifying today, especially Mr. Bill Hartzell, whose 93 year old grandmother was brutally raped and murdered by an unauthorized immigrant. His story, although difficult to hear, represents many victims who have lost loved ones due to poor immigration policies.

I look forward to the testimony today, and to the dialogue this hearing will inevitably produce among my colleagues. Thank you to everyone for being here, and I now turn to Ranking Member Feinstein for her opening remarks.