

STATE OF TENNESSEE

Office of the Attorney General



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Senator Lamar Alexander
455 Dirksen Senate Office Building
Washington, D.C. 20510

Senator Bob Corker
425 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Alexander and Senator Corker:

On June 29, 2017, a coalition of state attorneys general, including Tennessee, sent a letter to U.S. Attorney General Jeff Sessions requesting the Trump administration phase out the Deferred Action for Childhood Arrivals (DACA) program. Created by executive order under President Obama, DACA confers lawful presence and work permits for approximately 800,000 people who are unlawfully present in the United States. The request made by the States did not ask the federal government to deport anyone or rescind DACA permits that have already been issued.

This request was made for many of the same reasons Tennessee successfully challenged the Deferred Action for Parents of Americans (DAPA) program. Notably, the leading sentences in that complaint were "This lawsuit is not about immigration. It is about the rule of law, presidential power, and the structural limits of the U.S. Constitution." While characterized often as anti-immigration, this action was really an attempt to preserve the authority of Congress to make policy and pass legislation. Stated simply, the executive branch lacks the authority to issue directives contrary to laws passed by Congress.

The States argued successfully that the executive branch by simply composing a written directive could not grant wholesale deferral of prosecution to over 4.5 million people who were not in the country legally. Prosecutorial discretion is exercised on a case by case basis, not with wholesale grants of years of immunity to a class, and prosecutors certainly have no authority to grant rights like work permits and lawful presence declarations. The federal district court granted

the nationwide injunction requested by the States; the Fifth Circuit Court of Appeals affirmed that decision; and last year the U.S. Supreme Court denied any further appeal.

We have every reason to believe the States' legal challenge to the DACA program would yield a similar outcome. It suffers from the same constitutional infirmities. Our Office has a track record of consistently challenging actions when we believe the federal executive branch has overreached its authority and adversely affected Tennessee's interests.

There is a human element to this, however, that is not lost on me and should not be ignored. Many of the DACA recipients, some of whose records I reviewed, have outstanding accomplishments and laudable ambitions, which if achieved, will be of great benefit and service to our country. They have an appreciation for the opportunities afforded them by our country.

As of the sending of this letter, the Administration has not agreed to rescind the June 15, 2012 DACA memorandum and order as requested by the coalition of States. At this time, our Office has decided not to challenge DACA in the litigation, because we believe there is a better approach that we outline below.

So the problem in immigration is that we have about 11.5 million people who are not legally living in the U.S. Over the years the executive branch has not enforced the existing laws; parents outside the U.S. have sent their children, often in very dangerous circumstances to the U.S.; and Congress has done virtually nothing.

There is another way: Your colleagues, Sen. Lindsey Graham (R- S.C) and Sen. Richard Durbin (D-Ill), have introduced legislation addressing the DACA program (S.1615). Whether this particular legislation is a viable solution is a matter for congressional debate. It is not a comprehensive answer to our immigration policy challenges, but it would be a very good start. As I have admired your careers over the years, I have perhaps been most impressed at how you take on difficult problems and lead us to a better place. I encourage your serious consideration of this proposed legislation.

It is my sincere hope that the important issues raised by the States will be resolved by the people's representatives in the halls of Congress, not in a courtroom. As always, thank you for your studied consideration and for your service to our state and our country.

Sincerely,



Herbert H. Slatery III