

November 10, 2017

Dear Friend,

Thank you for contacting me to express your concerns about President Trump's decision to rescind the Deferred Action for Childhood Arrivals (DACA) program. I understand this issue is important to you and I appreciate the time you have taken to share your thoughts.

Like you, I am sympathetic to "Dreamers," foreign-born individuals who were brought to this country illegally as children through no fault of their own and who now face legal uncertainty and difficulties obtaining permanent resident status, education and employment. I have met with Dreamers who live in the Sixth District, I admire them for their hard work, determination and aspiration to achieve the American Dream, and I want to help find a legal, meaningful and permanent solution for them and others similarly situated elsewhere in our country. Unfortunately, DACA offered nothing more than false hope to Dreamers since it was neither constitutional nor a permanent solution.

First, President Obama's Executive Order creating DACA violated the separation of powers embedded in our Constitution by attempting to unilaterally change federal immigration law without Congress, which under Article I, Section 8 of the Constitution is vested with the exclusive authority to establish and exercise control over the nation's immigration laws. As a constitutional law expert testified to Congress: "Few enumerated powers are more fundamental to the sovereignty of the United States than the control of the ingress and egress of aliens." The Supreme Court has concurred with this analysis, upholding Congress's exclusive authority over naturalization and recognizing that Congress has plenary power over immigration policy decisions pertaining to aliens' ability to enter and remain in the United States.

During an interview in May 2011, President Obama himself admitted that "I can't just bypass Congress and change the [immigration] law myself...that's not how a democracy works." The following year, however, the Obama Administration reversed itself and created DACA unilaterally, arguing that its extra-constitutional lawmaking fell within its prosecutorial discretion — an agency's authority to prioritize resources by declining to institute investigative or enforcement proceedings in certain individual cases. But prosecutorial discretion has substantial limits and is constrained by Article II, Section 3 of the Constitution, which requires the President to "take care that the laws are faithfully executed." Prosecutorial discretion, properly applied, requires a case-by-case determination whether a particular individual should be subject to an enforcement action, rather than categorical exemptions. Because DACA was a blanket categorical exemption of an entire class of people, it was not a proper exercise of prosecutorial discretion.

Second, DACA did not permanently resolve the legal uncertainty of Dreamers and therefore did not offer them a meaningful solution. On its face, DACA granted only temporary immunity from prosecution and removal proceedings and because it rested on dubious legal underpinnings, it never provided substantive legal protection. Indeed, in 2016, the U.S. Court of Appeals for the Fifth Circuit upheld an injunction blocking President Obama's Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) program, which was created by Executive Order under same flawed legal analysis as DACA. The Fifth Circuit held that the President does not have the power to unilaterally grant legal status to an entire category of unlawful immigrants without an act of Congress. Earlier this year, 10 state Attorneys General filed a lawsuit challenging the constitutionality of DACA, citing the Fifth Circuit decision and arguing that if DAPA is illegal, then DACA is equally illegal.

Because the lawsuit represented an imminent threat to Dreamers' status, I supported the Trump Administration's decision on September 5, 2017 to rescind DACA and provide Congress six months to consider a permanent and constitutional legislative solution. I have spoken with advocates for Dreamers in the Sixth District who agree with me that the President's decision now gives us an opportunity to solve this problem in a more durable and meaningful way.

Going forward, it is important that Congress approaches reform in recognition of the fact that the United States is both a nation of immigrants and a nation of laws. Congress must take into account the reasons why we have so many undocumented immigrants in the United States and why Dreamers are stuck in this unfair position in the first place. Those reasons include a broken immigration system and the failure to secure our borders. So my hope is that as Congress considers a permanent solution for the Dreamers, we also honor the millions of legal immigrants who have come to this country in accordance with our laws and Constitution by securing our borders, enhancing interior enforcement and improving our guest worker programs.

To advance all of these objectives, I have cosponsored H.R. 3548, the Border Security for America Act, which has been marked up out of the Homeland Security Committee, a bill to strengthen interior enforcement pending in the Judiciary Committee and several bills that would streamline and improve our guest worker programs.

I am also an original cosponsor of H.R. 60, the Encourage New Legalized Immigrants to Start Training Act (ENLIST) Act, introduced by Congressman Jeff Denham (CA-10), which would allow qualified, undocumented immigrants, brought to the United States through no fault of their own, the ability to earn legal status through military service.

Finally, I have spoken at length with my good friend and colleague, Congressman Carlos Curbelo (FL-26), about his legislation, H.R. 1468, the Recognizing America's Children Act, which would provide conditional permanent residence for undocumented immigrants brought to the United States as children upon vetting by the Department of Homeland Security. It would further create a path to permanent legal status after five years through the means of higher education, military service or work authorization. I support this bill subject to the condition that it is passed in conjunction with the other reforms referenced above.

The Senate has indicated it will not consider any immigration reform proposals in connection with the year end spending bill or until next year. Nevertheless, I am hopeful the Congress will take up these issues as soon as possible after tax reform and legislation to fund the government have been passed. While I do not serve on any of the committees of jurisdiction for these legislative proposals, should they come to the full House of Representatives for consideration, I will keep your views in mind.

As Attorney General Jeff Sessions stated, the “compassionate thing is to end the lawlessness, enforce our laws, and, if Congress chooses to make changes to those laws, to do so through the process set forth by our Founders in a way that advances the interests of the nation.” I look forward to working with my colleagues to reform all aspects of our broken immigration system, including enactment of a permanent, meaningful and constitutional solution for Dreamers.

Thank you again for taking the time to contact me about this important issue. If you are personally affected by the deficiencies of DACA and the decision to rescind it, and would like to access personalized assistance, please feel free to contact Shelby Williams, my immigration law caseworker in our District Office, at (859) 219-1366.

I hope you will never hesitate to contact my office if we can ever be of assistance. For example, if you are facing a challenge working with a federal agency or would like to get together with me or my staff, please be in touch with my office in Lexington or visit us during the regular office hours we hold in your county. A list of my office hours can be found on my website at [www.barr.house.gov](http://www.barr.house.gov).

If you plan to visit our nation’s capital, my office can be of assistance scheduling tours of the Capitol building and other historic landmarks. You can find out more about other services my office provides on my website as well.

Finally, if you would like to stay informed on what is happening in Washington, D.C. and around the Sixth Congressional District, I encourage you to sign up to receive my e-newsletter by visiting <http://barr.house.gov/ENews>.

Thank you again for contacting me and please stay in touch. My office is here to help.

Sincerely,

A large, stylized blue letter 'M' used as a signature.

Andy Barr  
Member of Congress