

*For Immediate Release*

## **The Case for Discretion and Proportionality in our Immigration System**

**July 18, 2011**

**Washington D.C.** - It has long been the case that those responsible for carrying out and enforcing our nation's laws do so with a measure of discretion and proportionality. Every day, law enforcement officials and judges exercise discretion in charging and sentencing decisions, weighing differing priorities and social values, and matching punishments with crimes. Consequently, minors are treated differently in the criminal system, and traffic violators and murderers receive different punishments. The use of judgment and proportionality is so ingrained in our legal system—with the exception of immigration law—that we take it for granted. Today, the need for discretion and proportionality is needed more than ever in our antiquated and over-burdened immigration system to ensure that the government spends its limited resources on high priority cases, and that immigrants who have a strong case for remaining in the U.S. are able to do so if current law provides for an avenue of relief.

To that end, a wide range of organizations, including the American Immigration Council, have been asking the Obama Administration to use its executive authority to exercise discretion in the immigration context. In June, Director John Morton of Immigration and Customs Enforcement (ICE) issued a [memo outlining](#) new guidance on the use of prosecutorial discretion in a wide range of circumstances. The memo signals a greater commitment to using limited resources to enforce immigration law with an understanding of the need for measured action and fairness in the immigration context.

Unfortunately, House Judiciary Committee Chairman Lamar Smith has decided that the long accepted ideals of discretion and proportionality should not apply to immigration. Smith has introduced the “Hinder the Administration’s Legal Immigration Temptation Act” (HALT) of 2011, which attempts to invalidate the long tradition and legal authority of the executive branch to use its discretion and other powers to improve and implement laws. Apparently Smith believes a different administration will be worthy of such discretion because the bill would sunset on January 21, 2013—the day after the next inauguration. The HALT Act goes beyond limiting prosecutorial discretion and seeks to suspend long respected forms of immigration relief including Temporary Protected Status (TPS) (which was granted to Haitians after the recent devastating earthquakes) and family unity waivers (such as those that allow U.S. citizen military members to reunite with their undocumented spouses).

What’s most disappointing is that Chairman Smith has advocated for the use of prosecutorial discretion in the past. *The New York Times* [recently noted](#):

Back in 1999, Mr. Smith was one of several members of Congress who wrote the attorney general and the head of the Immigration and Naturalization Service, arguing that ‘unfair’ deportations had caused ‘unjustifiable hardship’ for otherwise law-abiding immigrants who had jobs and families and close citizen relatives. ‘True hardship cases call for the exercise of discretion,’ the letter said.

Why the change in heart? Only Mr. Smith can answer that. However, as it becomes increasingly clear that large numbers of people are no longer migrating to the U.S., our focus must turn to those who are living, working, and raising families in America. The Administration's understanding that immigration agencies need to prioritize enforcement activities and exercise discretion when considering deportation should be encourage by Congress and the public.

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