

Congress of the United States
House of Representatives
Washington, DC 20515-0301

March 4, 2015

The Honorable Gene Dodaro
Comptroller General of the United States
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Re: Potential Department of Homeland Security (DHS) Antideficiency Act Violations

Dear Mr. Dodaro,

Through this letter, we are requesting that the Government Accountability Office (GAO) provide a comprehensive review and report of the Department of Homeland Security's expenditures related to enforcement of the executive actions announced by President Obama—set forth in official memoranda from Secretary of Homeland Security Jeh Charles Johnson on November 20, 2014—that seek to grant deferred action and provide amnesty to certain unlawful aliens. Specifically, we request review of potential violations of the Antideficiency Act (ADA) relative to the administration's plans to lease office space and hire 1,000 workers to process “cases filed as a result of the executive actions on immigration announced on Nov. 20, 2014.”¹

Background

The genesis of the ADA is Article I, Section 9, Clause 7 of the Constitution, which mandates that “No money shall be drawn from the treasury, but in consequence of appropriations made by law.” The ADA was originally enacted in 1884 and is now codified in several sections of the U.S. Code (31 U.S.C. 1341-1342 and 31 U.S.C. 1501-1519). The law's primary purpose is to prohibit federal government employees and officers from incurring obligations and making expenditures in excess of congressional appropriations.

According to the GAO website, “Federal employees who violate the ADA are subject to two types of sanctions: administrative and penal. Employees may be subject to appropriate administrative discipline including, when circumstances warrant, suspension from duty without pay or removal from office. In addition, employees may also be subject to fines, imprisonment, or both.”²

The Obama Administration has acknowledged its understanding of the ADA, and has previously instructed its employees in an 8-page memo to adhere to the law's provisions.³

1. http://www.sessions.senate.gov/public/_cache/files/2c9235db-069f-4355-8ad6-b1a65ab7ddd7/uscis-email.pdf
2. <http://www.gao.gov/legal/lawresources/antideficiencybackground.html>
3. http://www.whitehouse.gov/sites/default/files/omb/assets/all_current_year/s145.pdf

The ADA was originally passed because unaccountable bureaucrats would intentionally spend all of their budgeted money early, and then enter into contracts with vendors for more services, thus obligating Congress to honor the contracts. By doing so they would simply increase their actual budgets and force Congress to spend more.

On November 21, 2014, just one day after the president made his announcement regarding his executive actions on immigration, the Department of Homeland Security (DHS) posted 1,000 job openings—many of them permanent positions—signaling that the plans to make expenditures had been in place well before the president’s announcement. In addition to the job postings, the administration plans to lease an office building in Crystal City (Arlington), Virginia to house the new employees. The total anticipated costs for leasing and staff are \$48 million.⁴ Without congressional authorization and appropriation of money to hire staff and rent buildings to process these applications, we are concerned that some in the administration may be violating the ADA.

On February 16, 2014, federal judge Andrew Hanen issued an injunction barring President Obama and his administration from implementing “any and all aspects or phases of”⁵ the November 20, 2014 executive actions. The president initially stated he would comply with the court’s ruling. But then, almost in the same breath, he declared he will ignore Hanen’s orders and remarked, “But we are doing the preparatory work because this is a big piece of business.”⁶

Requests

In light of the above, we request that GAO closely review and issue a report on the following:

1. What funds does USCIS possess to implement these actions? What statutory authorities does USCIS cite in justifying these actions? What expenses have been incurred to-date?
2. Has USCIS made or authorized “an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation” in violation of 31 U.S.C. 1341(a)(1)(A)?
3. Has USCIS involved the government in an obligation for payment of money before Congress had appropriated those funds in violation of 31 U.S.C. 1341(a)(1)(B)?
4. Has USCIS “employed personal services exceeding that authorized by law” in violation of 31 U.S.C. 1342, be it before or after the November 20, 2014 announcement of the executive memoranda?
5. Has USCIS made or authorized “an expenditure or obligation exceeding an apportionment; or the amount permitted by regulations” in violation of 31 U.S.C. 1517?
6. Have any monies been spent to implement the executive actions following judge Hanen’s February 16th injunction?

4. <http://dailycaller.com/2014/12/26/feds-to-hire-1000-spend-48-million-to-process-executive-amnesty-applications/>

5. <http://www.whitehouse.gov/the-press-office/2015/02/17/remarks-president-after-meeting-secretary-defense-ash-carter>

6. <http://www.documentcloud.org/documents/1668197-hanen-opinion.html>

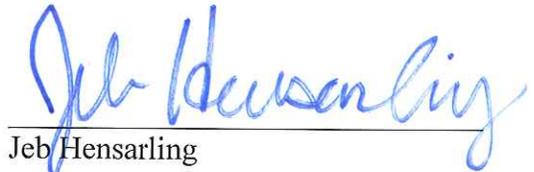
Thank you for your attention to this matter. If you have any questions, please feel free to contact us.

Sincerely,

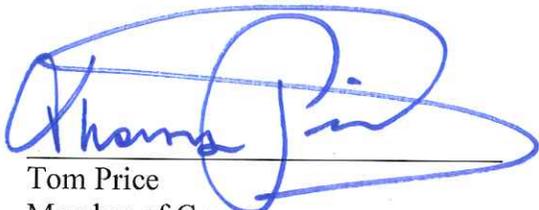


Paul A. Gosar, DDS
42-04

Paul A. Gosar
Member of Congress



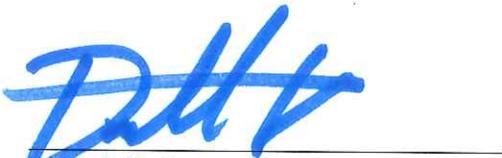
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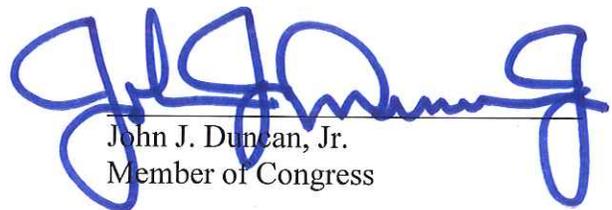
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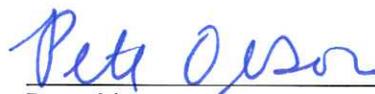
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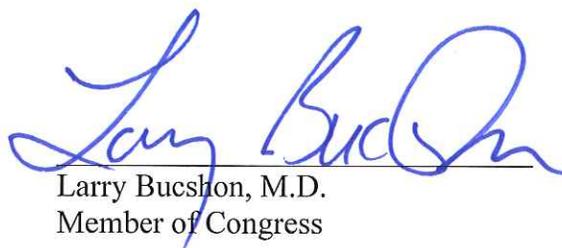
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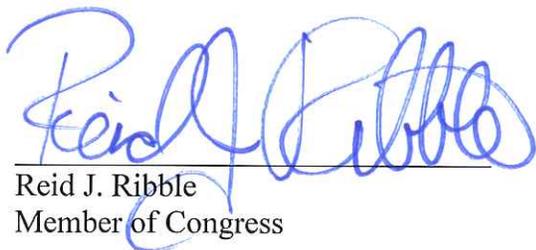
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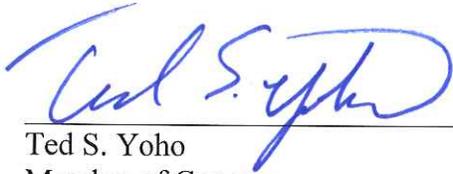
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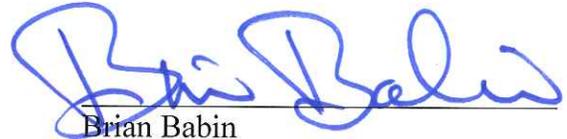
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