



August 5, 2014

Dear President Obama:

I write as one member of the eight-member U.S. Commission on Civil Rights and not on behalf of the Commission as a whole. It has been widely reported in the press that you are preparing to issue an executive order that purports to grant legal status and work authorization to millions of illegal immigrants. I write to remind you of the disastrous effect of illegal immigration on the employment of all Americans, but particularly black Americans. Any grant of legal status will serve as a magnet to prospective illegal immigrants and further depress employment opportunities and wages for African-Americans. Given that the labor force participation rate is at an historic low, the unemployment rate is 6.2 percent, and there has been a precipitous decline in household wealth, the timing for such a grant of legal status could not be worse.¹

Public debate has increasingly focused on the effect of illegal immigration, and low-skilled immigration generally, on the employment and wages of low-skilled American workers.² You are undoubtedly familiar with this debate, but I will briefly review the data.

In 2008, the U.S. Commission on Civil Rights held a briefing regarding the impact of illegal immigration on the wages and employment opportunities of African-Americans.³ The testimony at the briefing indicated that illegal immigration disproportionately impacts the wages and employment opportunities of African-American men.⁴

The briefing witnesses, well-regarded scholars from leading universities and independent groups, were ideologically diverse. All the witnesses acknowledged that

¹ Anna Bernasek, *The Typical Household, Now Worth a Third Less*, N.Y. Times, July 26, 2014, http://www.nytimes.com/2014/07/27/business/the-typical-household-now-worth-a-third-less.html?_r=0.

² Press Release, Senator Jeff Sessions, *Sessions: A Vote for the Reid/Schumer Immigration Plan is a Vote Against the American Worker* (May 14, 2014), <http://www.sessions.senate.gov/public/index.cfm/2014/5/sessions-a-vote-for-the-reid-schumer-immigration-plan-is-a-vote-against-the-american-worker>.

³ U.S. COMMISSION ON CIVIL RIGHTS, *THE IMPACT OF ILLEGAL IMMIGRATION ON THE WAGES AND EMPLOYMENT OPPORTUNITIES OF BLACK WORKERS* [hereinafter *THE IMPACT OF ILLEGAL IMMIGRATION*], available at http://www.usccr.gov/pubs/IllegImmig_10-14-10_430pm.pdf.

⁴ *Id.* at 3, Finding 5:

Illegal immigration to the United States in recent decades has tended to depress both wages and employment rates for low-skilled American citizens, a disproportionate number of whom are black men. Expert economic opinions concerning the negative effects range from modest to significant. Those panelists that found modest effects overall nonetheless found significant effects in industry sectors such as meatpacking and construction.



illegal immigration has a negative impact on black employment, both in terms of employment opportunities and wages. The witnesses differed on the extent of that impact, but every witness agreed that illegal immigration has a discernible negative effect on black employment. For example, Professor Gordon Hanson's research showed that "Immigration . . . accounts for about 40 percent of the 18 percentage point decline [from 1960-2000] in black employment rates."⁵ Professor Vernon Briggs writes that illegal immigrants and blacks (who are disproportionately likely to be low-skilled) often find themselves in competition for the same jobs, and the huge number of illegal immigrants ensures that there is a continual surplus of low-skilled labor, thus preventing wages from rising.⁶ Professor Gerald Jaynes's research found that illegal immigrants had displaced U.S. citizens in industries that had traditionally employed large numbers of African-Americans, such as meatpacking.⁷

Illegal immigration has a disparate impact on African-American men because these men are disproportionately represented in the low-skilled labor force. The Census Bureau released a new report on educational attainment after the Commission issued its report. This report, released in February 2012, found that 50.9 percent of native-born blacks had not continued their education beyond high school.⁸ The same report found that 75.5 percent of foreign-born Hispanics had not been educated beyond high school, although it does not disaggregate foreign-born Hispanics who are legal immigrants from those who are illegal immigrants.⁹ However, Professor Briggs estimated that illegal immigrants or former illegal immigrants who received amnesty constitute a third to over a half of the total foreign-born population.¹⁰ Foreign-born Hispanics who are in the United States illegally are disproportionately male.¹¹ African-Americans who have not pursued education beyond high school are also disproportionately male.¹² These poor educational attainment levels usually relegate both African-American men and illegal

⁵ *Id.*, at 26.

⁶ *Id.* at 37, 38-39

⁷ *Id.* at 31.

⁸ CAMILLE L. RYAN & JULIE SIEBENS, U.S. CENSUS BUREAU, EDUCATIONAL ATTAINMENT IN THE UNITED STATES: 2009 (Feb. 2012), at 7, available at <http://www.census.gov/prod/2012pubs/p20-566.pdf>.

⁹ *Id.*

¹⁰ THE IMPACT OF ILLEGAL IMMIGRATION, *supra* note 1, at 35-36.

¹¹ Peter Skerry, *Splitting the Difference on Illegal Immigration*, NATIONAL AFFAIRS (Winter 2013), at 5 ("Of the undocumented immigrants over the age of 18 currently residing in the U.S., there are approximately 5.8 million males, compared to 4.2 million females."), available at http://www.nationalaffairs.com/doclib/20130102_Skerry.pdf.

¹² THE IMPACT OF ILLEGAL IMMIGRATION, *supra* note 3, at 52; see also Anne McDaniel, Thomas A. DiPrete, Claudia Buchmann & Uri Shwed, *The Black Gender Gap in Educational Attainment: Historical Trends and Racial Comparisons*, 48 DEMOGRAPHY 889, 890 (2011) ("It is well known that black males trail black females on a range of key educational outcomes, including high school graduation, college enrollment, and college completion."), available at <http://jrnetserver.shorensteincenter.netdna-cdn.com/wp-content/uploads/2011/10/fulltext.pdf>.



immigrant men to the same low-skilled labor market, where they must compete against each other for work.¹³

Your proposed executive order will also have a negative effect on young African-Americans at the outset of their working lives. Young, low-skilled workers are facing enormous difficulties in this economy. A recent study from the Brookings Institution found, “Only about half of high school graduates not enrolled in post-secondary education and less than 30 percent of high school dropouts worked in a given month in 2011.”¹⁴ Black teens had the highest labor underutilization rate (defined as encompassing the unemployed, the unemployed who desire employment but are not actively looking, and the underemployed) of any ethnic group – 60 percent.¹⁵ Furthermore, “Several variables were negatively associated with teen employment rates in a given metropolitan area. ... [including] the presence of immigrants with less than a bachelor’s degree.”¹⁶ This will affect young people for the rest of their lives, as those who work during their teenage years have more successful careers than those who did not.¹⁷

Granting legal status to millions of people who are in the United States illegally will continue to depress the wages and employment opportunities of African-American men and teenagers. It also will depress the wages and employment opportunities of African-Americans going forward. Since 1986, we have seen that granting legal status to illegal immigrants, or even mere rumors that legal status will be granted, increases illegal immigration. Likewise, the evidence indicates that the flood of illegal immigrants across our southern border is mostly attributable to your directive granting temporary legal

¹³ THE IMPACT OF ILLEGAL IMMIGRATION, *supra* note 3, *Statement of Vernon M. Briggs, Jr.*, at 37.

[I]t is not everywhere that there is likely to be significant competition between low skilled black workers and illegal immigrant workers, but there are ample circumstances where there is – such as the large metropolitan labor markets of Los Angeles, New York, San Francisco, Chicago, Miami and Washington-Baltimore. Moreover, some of the fastest growing immigrant concentrations are now taking place in the urban and rural labor markets of the states of the Southeast – such as Georgia, North Carolina and Virginia, which never before were significant immigrant receiving states in previous eras of mass immigration. Indeed, about 26 percent of the nation’s foreign-born population are now found in the states of the South – the highest percentage ever for this region. There is mounting evidence that many of these new immigrants in this region are illegal immigrants.

¹⁴ Andrew Sum *et al.*, *The Plummeting Labor Market Fortunes of Teens and Young Adults*, THE BROOKINGS INSTITUTION, March 2014, at 4, available at http://www.brookings.edu/~media/Research/Files/Reports/2014/03/14%20youth%20workforce/Youth_Workforce_Report_FINAL.pdf.

¹⁵ *Id.* at 7.

¹⁶ *Id.* at 11.

¹⁷ Lydia DePillis, The other unemployment crisis: Teenagers are being left out of the recovery, *Wash. Post*, May 1, 2014, <http://www.washingtonpost.com/blogs/wonkblog/wp/2014/05/01/the-other-unemployment-crisis-teenagers-are-being-left-out-of-the-recovery/>.



status to people allegedly brought to the United States as children. This is unsurprising. When you incentivize bad behavior, you get more of it.

The irony is that your administration's policies operate at cross-purposes. In 2013, the EEOC issued guidance regarding the use of criminal background checks as part of a prisoner re-entry effort.¹⁸ The guidance was premised on the fact that African-American males are more likely to have a criminal record, and therefore, according to the EEOC, are more likely to be harmed by the use of criminal background checks.¹⁹ Yet you are planning on issuing an executive order that will harm the employment prospects of African-American workers now and for years to come. In one part of the executive branch, the EEOC issues misguided policies in an attempt to increase employment opportunities for African-American men, and in another part of the executive branch, you prepare to issue an executive order that will decrease employment opportunities and wages for those very same African-American men.

Additionally, your proposed executive order will have a disparate impact on the basis of national origin. As you know, disparate impact theory holds that a facially neutral policy can nonetheless constitute unlawful discrimination if it disproportionately affects a particular group. The proposed executive order will do just that. It will necessarily disproportionately benefit people who are Mexican and Central American, which means that it will disproportionately disadvantage other ethnic groups. In other contexts, this would be considered a violation of Title VII.

Lastly, the proposed executive order is unfair to people who are attempting to immigrate legally. The legal immigration process is cumbersome, time-consuming, and expensive. It took Pablo Pilco, for example, eleven years to receive permanent legal status, even though he was a skilled employee at a religious television network.²⁰ Even bringing a spouse or fiancée to the United States is difficult and expensive.²¹ Through no fault of their own, people get caught in situations where their families cannot sponsor them for green cards.²² Many of these people are professionals for whom remaining in the country illegally would constitute a black mark on their record that would harm their future career chances. Most of the illegal immigrants who would benefit from your

¹⁸ EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, ENFORCEMENT GUIDANCE ON THE CONSIDERATION OF ARREST AND CONVICTION RECORDS IN EMPLOYMENT DECISIONS UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 [hereinafter GUIDANCE] at note 16, *available at* http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm.

¹⁹ See GUIDANCE at 8-10.

²⁰ Bryan Lyman, *Immigrants find legal paths to U.S. long, difficult*, USA TODAY, Oct. 24, 2011, <http://usatoday30.usatoday.com/news/nation/story/2011-10-24/legal-immigration-usa/50895150/1>.

²¹ Kelsey Harris, *These Newlyweds explain why U.S. immigration system needs fixing*, THE DAILY SIGNAL, July 6, 2014, <http://dailysignal.com/2014/07/06/newlyweds-explain-u-s-immigration-system-needs-fixing/>.

²² Brandon Macknofsky, *I Played by the Rules on Immigration. Why is the U.S. Making it so Hard for Me to Become a Doctor?*, THE DAILY SIGNAL, July 28, 2014, <http://dailysignal.com/2014/07/28/played-rules-immigration-u-s-making-hard-become-doctor/>.



UNITED STATES COMMISSION ON CIVIL RIGHTS

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executive order have no skills, so they lose nothing by coming here illegally. Yet your proposed executive order is unlikely to make the visa process less cumbersome for legal immigrants or alleviate visa backlogs.

For all these reasons, I urge you to reconsider your proposed executive order.

Sincerely,

A handwritten signature in black ink, appearing to read "P. Kirsanow", with a long horizontal stroke extending to the right.

Peter Kirsanow
Commissioner