



H. J. Res. 35 — Making further continuing appropriations for fiscal year 2015, and for other purposes. (Rogers, R-KY)

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FLOOR SCHEDULE: H. J. RES. 35 IS EXPECTED TO BE CONSIDERED ON THE FLOOR ON FEBRUAR 27, 2015, UNDER A CLOSED [RULE](#).

TOPLINE SUMMARY: [H. J. Res. 35](#) is a continuing resolution (CR) that would fund the Department of Homeland Security (DHS) at current levels through March 19, 2015.

CONSERVATIVE CONCERNS: Conservatives have expressed concern that this legislation does not to stop the president’s executive amnesty.

COST: The joint resolution would continue appropriations for the Department of Homeland Security at [current levels](#).

This CR would not fund the president’s executive amnesty actions as the U.S. Citizenship and Immigration Services receives mandatory funding from fees outside of the regular appropriations process. In addition, this CR contains no policy provision to stop the implementation.

A federal judge in the Southern District of Texas recently [enjoined](#) the Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) and the expanded Deferred Action for Childhood Arrivals (DACA) amnesty programs announced in November 2014, which prohibit the implementation of the two programs. However, [some have expressed concerns that federal resources](#) are being used to prepare for implementation of executive amnesty in spite of the court’s action.

In addition, some conservatives may be concerned that the text of H. J. Res 35 was only made available on [docs.house.gov](#) at 7:52 pm on February 26, 2015, hours before the vote, in violation of House Republicans’ three day rule.

- **Expand** the Size and Scope of the Federal Government?: **No**
- **Encroach** into State or Local Authority?: **No**
- **Delegate** Any Legislative Authority to the Executive Branch?: The bill continues current law for funding DHS, which allows mandatory spending for certain accounts funded by fees without Congressional review.
- **Contain** Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: **No**

DETAILED SUMMARY AND ANALYSIS: Without enactment of an appropriations bill, funding for the DHS will lapse at midnight on February 27, 2015.

The Antideficiency Act prohibits many government activities for which funding has not been provided. There is an exception for activities related to the "the safety of human life or the protection of property." A CRS report on the issue can be found [here](#).

According to [CRS](#), "roughly 85% of the [DHS] department's workforce continued with their duties," during the partial government shutdown in October 2013. Of DHS's 231,117 employees, 199,822 continued their work and 31,295 were furloughed. DHS's official planning document for procedures in case of a funding lapse can be found [here](#).

JUDICIAL RESPONSE TO THE PRESIDENT'S ACTIONS:

[Twenty-six states](#) led by Texas [filed a lawsuit](#) on December 3, 2014, to block the Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) and the expanded Deferred Action for Childhood Arrivals (DACA) amnesty programs announced in November 2014.

On February 16, 2015, a federal judge in the Southern District of Texas enjoined in full the two actions. In issuing the ruling, the Judge [stated](#) that "the DHS Secretary is not just rewriting the laws; he is creating them from scratch," and that "the public interest factor that weighs the heaviest is ensuring that actions of the Executive Branch (and within it, the DHS – one of the nation's most important law enforcement agencies) comply with this country's laws and its Constitution."

Given the President's statements leading up to his actions, the House's responses, and the Court's ruling, [all three branches of the Federal government have indicated](#) that they believe that what the President did was wrong.

CONGRESSIONAL RESPONSE TO THE PRESIDENT'S ACTIONS:

House Vote to Prohibit Funding for Morton Memos in FY 2013 DHS Appropriations

On June 7, 2012, the House passed [an amendment](#) from Rep. King (R-IA) to the FY 2013 Homeland Security Appropriations bill that would have prohibited funds to implement 3 of the Morton Memos by a [238 – 175](#) vote.

House Vote to Prohibit Funding for Morton Memos in FY 2014 DHS Appropriations

On June 6, 2013, the House passed [an amendment](#) from Rep. King (R-IA) to the FY 2014 Homeland Security Appropriations bill that would have prohibited funds to implement 6 of the Morton Memos by a [224 – 201](#) vote.

House Vote to Prohibit Federal Funding for Deferred Action for any Class of Alien Not Lawfully Present

On August 1, 2014, the House passed legislation ([H.R.5272](#)) to prohibit the use of Federal funds or resources to authorize deferred action for any class of alien not lawfully present in the United states or to authorize any alien to work in the United States that not in lawful legal status by a [216 – 192](#) vote. However, the Senate failed to take action on this issue.

House Vote to Prohibit Executive Amnesty to Any Class of Aliens that are Unlawfully Present

On December 4, 2015, the House passed [H.R. 5759](#), the Preventing Executive Overreach on Immigration Act of 2014, by a [219 – 197](#) vote. The bill would have prohibited the executive branch from:

- (1) Exempting or deferring the removal of categories of aliens that are unlawfully present in the United States by Executive order, regulation, or any means.
- (2) Treating unlawfully present aliens as if they were lawfully present or had a lawful immigration status.
- (3) Treating unlawfully present aliens as anything other than unauthorized aliens.

The bill would have been retroactive as if it were enacted on November 20, 2014. However, the Senate failed to take action on this issue.

House Votes to Prohibit Funding for the President's Executive Actions

On January 14, 2015, the House approved [five amendments to H.R. 240](#) that would have addressed the President's actions:

The [Aderholt/Mulvaney/Barletta](#) amendment would have prohibited the use of any fees or funds made available to any federal agency, by any Act, for any Fiscal Year, including specifically the USCIS Immigration Examinations Fee Account, to implement, administer, enforce, or carry out the four Morton Memos issued in 2011 and 2012 and the 11 executive actions taken in November 2014. The amendment would prohibit the funding of any substantially similar policies to those specified. The amendment stated that the specified policies have no statutory or constitutional basis and therefore have no legal effect. The amendment would have prohibited the use of funds to confer any alien under the specified policies. The amendment was passed by a [237 – 190](#) vote.

The [Blackburn](#) amendment would have prohibited the use of federal funding or resources by any federal agency to consider or adjudicate any new, renewal, or previously denied application for Deferred Action for Childhood Arrivals (DACA) on or after January 9, 2015. The amendment was passed by a [218 – 209](#) vote.

The [DeSantis/Roby](#) amendment would have prohibited the use of funds or fees made available to the Secretary of Homeland Security by any Act in any Fiscal Year to implement, administer, enforce, or carry out any policy relating to the apprehension, detention, or removal of aliens that does not treat aliens convicted of domestic violence, sexual abuse, child molestation, or child exploitation as within the highest priorities for immigration enforcement. The amendment was passed by a [278 – 149](#) vote.

The [Salmon/Thompson](#) amendment would have inserted findings that aliens that have been granted deferred action and work authorization under the President's executive actions are exempt from the Individual and Employer Mandates under Obamacare. The amendment was passed by a [253 – 171](#) vote.

The [Schock](#) amendment would have established the sense of Congress that the U.S. Citizenship and Immigration Services (USCIS) should stop putting the interests of unlawfully present aliens ahead of the interests of aliens that are following immigration laws. When USCIS resources are used to process petitions and applications for unlawful aliens, a backlog is created and it is unfair to use the fees paid by aliens following the law to cover the costs of those aliens that are unlawfully present. The amendment was passed by a [260 – 167](#) vote.

THE PRESIDENT'S ACTIONS ON AMNESTY:

Morton Memos

In 2011 and 2012, former Immigration and Customs Enforcement (ICE) Director John Morton issued a series of memorandums to limit the federal government's enforcement of immigration law. Collectively, these memorandums are referred to as the "Morton Memos." Links to the major memorandums can be found below:

- [Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens](#), dated March 2, 2011.
- [Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens](#), dated June 17, 2011.
- [Case by Case Review of Incoming and Certain Pending Cases](#), dated November 17, 2011.
- [Civil Immigration Enforcement: Guidance on the Use of Detainers in the Federal, State, Local, and Tribal Criminal Justice Systems](#), dated December 21, 2012.

The Federation for American Immigration Reform (FAIR) has links and descriptions of other Morton Memos available [here](#).

Deferred Action for Childhood Arrivals (DACA)

DACA was created by President Obama on June 15, 2012. This policy allows people who have resided in the United States continuously since June 15, 2007, arrived in the U.S. before June 15, 2012, came to the U.S. before the age of 16, and were under 31 years old as of June 15, 2012, to apply for deferred action for removal proceedings for a period of two years, during which they cannot be removed. During this time they are also eligible for work authorization. Detailed information about DACA can be found on the United States Customs and Immigration (USCIS) website [here](#). According to [U.S. Citizenship and Immigration Services](#), “as of April 2014, more than 560,000 individuals have received DACA.”

The President Expands Amnesty

On November 20, 2014, President Obama [announced](#) a [series of executive actions](#) regarding the nation’s immigration system. The executive actions will primarily be carried out by the [Department of Homeland Security](#) through several memorandums. Links to the different memorandums can be found below:

- [Strengthen Border Security](#)
- [Revise Removal Priorities](#)
- [End Secure Communities and Replace it with New Priority Enforcement Program](#)
- [Personnel Reform for ICE Officers](#)
- [Expand Deferred Action for Childhood Arrivals \(DACA\) Program](#)
- [Extend Deferred Action to Parents of U.S. Citizens and Lawful Permanent Residents](#)
- [Expand Provisional Waivers to Spouses and Children of Lawful Permanent Residents](#)
- Revise Parole Rules
 - [Entrepreneurs](#)
 - [Parole-in-Place and Deferred Action](#)
 - [Advance Parole](#)
- [Promote the Naturalization Process](#)
- [Support High-skilled Business and Workers](#)

The Department of Justice Office of Legal Counsel released a [legal opinion](#) justifying the Department of Homeland Security’s authority to prioritize removal of certain aliens unlawfully present in the United States and to defer removal of others.

The Speaker’s office has documented [22 Times President Obama Said He Couldn’t Ignore or Create His Own Immigration Law](#).

CRS has a report available titled [Executive Discretion as to Immigration: Legal Overview](#).

Implementing the Executive Actions

According to the [USCIS](#), the President's expanded Deferred Action for Childhood Arrivals (DACA) program will go into effect "Approximately 90 days following the President's November 20, 2014, announcement." That timeframe would be February 18, 2015.

According to the [USCIS](#), the President's deferred action for parents of U.S. citizens and lawful permanent residents program will go into effect "Approximately 180 days following the President's November 20, 2014, announcement." That timeframe would be May 19, 2015.

It has been [reported](#) that USCIS is opening a new operational center and hiring 1,000 full time employees to process amnesty applications. It has been [further reported](#) that this effort will cost \$48 million per year.

According to [CBO](#), defunding the executive amnesty actions would block \$14.9 billion in new welfare spending that would otherwise occur if the amnesty were allowed to be implemented. This includes \$815 million in Social Security payments, \$330 million for Medicare, \$811 million for Food Stamps, \$1 billion in SSI payments, \$1.5 billion for Obamacare and Medicaid, and \$10.2 billion in earned income and child tax credits.

COMMITTEE ACTION: H. J. Res. 35 was introduced on February 26, 2015. The joint resolution was made publically available on docs.house.gov at 7:52 pm.

ADMINISTRATION POSITION: A statement of administration policy is not available at this time.

CONSTITUTIONAL AUTHORITY: A constitutional authority statement is not available at this time.

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