

# The Immigration Accountability Executive Actions



# President's Authority to Act

- Deferred action is one of the many long-standing forms of prosecutorial discretion available to the Executive Branch.
- Every U.S. President has used their authority to offer temporary immigration relief to groups in need since at least 1956. George W. Bush exercised prosecutorial discretion in the aftermath of Hurricane Katrina for over 40 percent of the then-unauthorized population.
- President Obama has signed fewer executive orders than any president in 130 years.
- The President has been clear that he can't stop all deportations or fix the immigration system on his own, but he has also been clear that he has some power to address immigration within existing legal authorities – just as numerous Presidents before him have done.

# Deferred Action for Parents (DAP)

- Undocumented parents of U.S. citizens or lawful permanent residents (LPRs) can apply for deferred action for a 3 year period that can be renewed if they:
  - have continuously been in the U.S. since before Jan 1, 2010
  - AND have a USC or LPR child on the date of announcement
- Receive a social security number & can work and travel legally
- No path to permanent residence or citizenship
- Must pass a background check & pay \$465 fees
- Completely discretionary and may be revoked any time
- DHS must identify persons in their custody who meet DAP criteria, review pending removal cases, and refer such individuals to USCIS.

# Expansion of Deferred Action for Childhood Arrivals (DACA)

- Currently DACA allows individuals under 31 who came to the U.S. before June 15, 2007 and before they turned 16 to apply for deferred action
- The administration is expanding eligibility for DACA by:
  - removing the 31 year age cap
  - permitting children under 15 years of age to apply
  - moving the date of entry to Jan 1, 2010
- 3-year period that can be renewed
- Receive social security number & work and travel authorization
- Must pass background check and pay \$465 in fees
- No path to permanent residence or citizenship
- Completely discretionary and may be revoked any time

# Improvements to 3 and 10 Year Bar Waivers

- Many undocumented immigrants who otherwise qualify for permanent residence must leave the country first before they can get a green card. However, when they leave the U.S. they trigger a 3- or 10-year bar to re-entry.
- Last year, USCIS announced that the spouses and minor children of U.S. citizens can apply for a waiver while still in the U.S. if they demonstrate that separation would cause “extreme hardship” to a U.S. citizen spouse or parent.
- The administration will now permit spouses and children of LPRs and adult children of U.S. citizens to seek waivers.
- Criteria for “extreme hardship” under revision

# Enforcement Priorities & Prosecutorial Discretion

DHS issued a memo on Nov. 20, 2014, that will take the place of the June 2011 PD memo. The Nov. 20 memo creates new “priority” levels:

- Priority 1:
  - Suspected terrorists
  - National security threats
  - People apprehended at the border/ports of entry while attempting to enter
  - Certain people with felony convictions (not state/local offenses predicated on immigration status)
  - Certain gang crimes
  - Aggravated felonies

# Enforcement Priorities & Prosecutorial Discretion

- Priority 2:
  - Persons convicted of 3 or more misdemeanors (not traffic offenses or state/local offenses predicated on immigration status) or significant misdemeanors
  - Those who entered or re-entered the country unlawfully after Jan 1, 2014
  - Those who “significantly abused visa or waiver programs”
- Priority 3:
  - Issued a final removal order on or after Jan 1, 2014

# Enforcement Priorities & Prosecutorial Discretion

- People in all three categories will be prioritized for deportation unless they qualify for a way to remain in the U.S. legally or can show that they are not a threat to public safety or national security.
- DHS should balance positive and negative equities, including:
  - eligibility for relief from removal
  - extenuating circumstances involving the offense
  - extended length of time since the offense
  - length of time in the U.S.
  - military service
  - U.S. family or community ties
  - status as a victim, witness, plaintiff in civil or criminal case
  - compelling humanitarian factors such as poor health, age, pregnancy, a young child, or a seriously ill relative



# Replacement of S-Comm

- The Secure Communities (S-Comm) program mandated that local police collaborate with Immigration and Customs Enforcement (ICE), reducing community trust in police
- S-Comm will end and be replaced with the Priority Enforcement Program (PEP)
- Under PEP, ICE will continue to receive fingerprint information from all persons at the time of booking. However, ICE is directed to take enforcement action only against persons who have been convicted of a criminal offense that makes them a priority for removal.
- In most cases, ICE will request notification of someone's release, rather than detention. It is still unclear, however, how this will be implemented.

# Integration & Citizenship

- White House Task Force on New Americans, additional outreach to promote English learning and citizenship
- Fee study to determine whether it can offer a partial fee waiver for applicants with an incomes slightly above the current cutoff for fee waivers.
- Credit cards can now be used for naturalization fees

# Family Separation will Continue to be a part of our Immigration System



# More work needed

- Individuals who will likely not qualify
  - People living in the U.S. for less than 5 years
  - People without U.S. citizen, LPR children, e.g., DREAMer parents
  - People with certain infractions – illegal re-entry, past crimes – need for redemption
- Emphasis on border enforcement
  - Border resources seen as having “effectively reduced the number of unaccompanied children crossing the border illegally this summer.”
- Access to protection for asylum seekers, including children and families fleeing violence in Central America
- Family detention

# Immigration Court Reforms

- The Department of Justice will issue immigration court reforms to address the current backlog of pending cases by working with DHS to more quickly adjudicate cases of individuals who meet new DHS-wide enforcement priorities and close cases of individuals who are low priorities.
- The Department of Justice will also pursue regulations that adopt best practices for court systems to use limited court hearing time more efficiently.

# Local and State Initiatives

- The next congress is not expected to move immigration legislation that the President could actually sign.
- Immigration policy will move to the local and state levels in protecting administrative action and the ability to get a license with deferred action
- Push forward with state driver's license, equitable tuition, municipal IDs, local detainer policies, Sanctuary City Ordinances and more
- Focusing on civic engagement to build power for 2016 elections, future Congressional immigration reform