



UPDATE ON EXECUTIVE ACTION

MARCH 24, 2015

AGENDA

- I. Intro/welcome – Ignacia Rodriguez, NILC**
- II. Congressional activities – Kelly Richter, NILC**
- III. Texas v. U.S. lawsuit – Alvaro Huerta, NILC**
- IV. DAPA/DACA+ implementation – Shiu-Ming Cheer, NILC**
- V. Enforcement priorities – Paromita Shah, National Immigration Project of the National Lawyers Guild**
- VI. Executive Action working groups – Josh Stehlik, NILC**
- VII. Q&A**

CONGRESSIONAL ACTIVITIES

RECENT DEVELOPMENTS IN CONGRESS

Attempts to block DACA/DAPA implementation & DHS appropriations

Attempts to undermine DACA/DAPA

- Grassley/McHenry bills and denial of tax credits
- Sen. Sasse and denial of SSNs
- House Oversight and Government Reform Committee hearing on alleged costs
- **Executive action-related immigration hearings**
 - Sen. Sessions hearing on DAPA implementation
 - House and Senate Judiciary Committee hearings on legality of executive action
 - ICE Director Saldana testimony
- **This week's budget resolution**
- **House Judiciary Committee-passed bills**
 - SAFE Act
 - Legal Workforce Act
 - Asylum and unaccompanied children-related bills
 - What's next?

TEXAS V. U.S. LAWSUIT

EFFECT OF THE DISTRICT COURT'S RULING IN *TEXAS V. UNITED STATES*

- **Texas and 25 other states** sued Obama, claiming that his executive actions on immigration should not be allowed to proceed.
- On February 16, 2015, a federal district court in the Southern District of Texas **temporarily blocked** the **DAPA and expanded DACA programs**.



- **NOTE:** The **original 2012 DACA** program is **NOT** affected by the decision, nor are the federal government's new "enforcement priorities," which were announced on November 20, 2014.
- Also, people may still request deferred action under longstanding procedures that require the person to send a deferred action request to his or her local USCIS or ICE office.

WHAT ARE THE NEXT STEPS?



EMERGENCY STAY

- The Department of Justice (DOJ) has asked the U.S. Court of Appeals for the Fifth Circuit to allow President Obama's DAPA and DACA expansion initiatives to take effect while the court considers the formal appeal of the injunction.
- There is a high legal bar for granting an emergency stay, but if it is granted, the government could continue to prepare for DACA expansion and DAPA implementation, and, if ready, begin to accept applications.

Key dates:

- Texas and other suing states filed a response to DOJ's request on March 23
- DOJ has asked for the Fifth Circuit to decide whether they will grant the stay by March 27
- We don't know when the Circuit Court will issue a decision



APPEAL TO THE FIFTH CIRCUIT

- The Department of Justice has also appealed the district court decision to block implementation of DAPA and Expanded DACA.
- They have requested that the Court of Appeals expedite this appeals process. If the court sides with the Department of Justice on its appeal, the DAPA and Expanded DACA initiatives would be allowed to take effect.

Key dates:

- The Department of Justice will file its opening brief on March 30
- Texas and the states will file an opposing brief 33 days after March 30
- The earliest the Fifth Circuit will hear oral argument on this case would be in June, and a decision on the appeal could come days, weeks, or months after the oral argument.



BACK AT THE DISTRICT COURT...



- **Obama's immigration actions allowed people who seek DACA (including both the original DACA program and Expanded DACA) or DAPA to apply for three year work permits.**
- **Before the injunction was issued by the federal court, more than 100,000 people who applied under the original DACA program (which is not challenged in this lawsuit) received three year work authorization cards.**
- **The district court held a hearing on March 19th to determine whether the federal government somehow misled the court by issuing these work permits (note that the federal government stopped issuing three year work permits after the Feb. 16 injunction issued). This is something the states have alleged.**

Here are a couple things the court could order the federal government to provide to plaintiffs (through discovery):

- **Permit plaintiffs to conduct depositions, or on the record questioning, of high and low level officials**
- **Require the government to respond to the States' written questions and requests for documents**



Timeline: From Texas to #ImmigrationAction

What Just Happened and
What's Next for DAPA/DACA+



Nov. 20, 2014

President Obama announces new executive action on immigration.

Dec. 3, 2014

Texas and other states file lawsuit in a federal court in TX against Obama's executive action.

Feb. 16, 2015

No surprise: Ultra-conservative Judge Hanen in Texas rules to grant the injunction blocking DAPA/DACA+.



Feb. 25, 2015

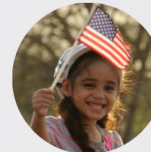
Pres. Obama in a televised immigration town hall: "We are going to appeal aggressively... the law is on our side."

Feb. 23, 2015

Department of Justice (DOJ) strikes back with an "emergency stay" to lift the judge's injunction against DAPA/DACA+.

Feb. 17, 2015

Families & advocates hold actions across the country: Si Se Puede! #IAmAmerica



Mar. 9, 2015

As expected, Judge Hanen refuses to rule on DOJ's "stay." Sets a hearing for March 19th.

Mar. 12, 2015

Undeterred, DOJ takes next step, asks the 5th Circuit Court of Appeals to lift order against DAPA/DACA+ as 14 states and D.C. file an amicus brief in support of the #ImmigrationAction

Coming Soon...

DACA+ and DAPA will prevail in the courts!
#IAmReady
Are you?

WHAT CAN BE DONE TO HELP THE LEGAL EFFORTS?



- Line up legal experts and elected officials from your city/state to issue statements & participate in your events
- Gather and conduct research on the economic benefits that immigrants bring to their states
- Highlight stories of people who qualify for DAPA and expanded DACA
- Highlight stories about DACA recipients and how the program has improved their lives and the community
- Promote implementation efforts, info sessions, workshops, etc.



DAPA/DACA+

IMPLEMENTATION

WHAT CAN APPLICANTS DO TO PREPARE?



1. **Save money for filing fees (at least \$465)**
2. **Gather evidence to show you qualify**
 - <http://www.nilc.org/toptenwaystoprep.html>
3. **Gather any immigration and criminal records that you have**
 - <http://www.weownthedream.org/library/attachment.244832>
4. **Consult with a licensed immigration lawyer or a BIA accredited representative**

WHAT CAN GROUPS DO TO PREPARE?



- **Organizations should create plans to:**
 - Train staff
 - Recruit volunteers (incl. attorneys)
 - Apply for BIA recognition & accreditation
 - Outreach to potential applicants
 - Messaging & media outreach
 - Create a service model (incl. fee structure)
 - Use DACA/DAPA to build membership & campaigns

IMPLEMENTATION COALITIONS

- **National**
 - Committee for Immigration Reform Implementation (CIRI)
 - Iamerica
- **State**
 - Ready CA, Illinois is Ready, etc.
- **Local**
- **Hotlines**
 - 844-411-*i*America or 844-411-4263 (National)
 - 844-31-READY or 844-317-3239 (CA)



ENFORCEMENT PRIORITIES

ENFORCEMENT PRIORITIES MEMO

Policies for the Apprehension, Detention and Removal of Undocumented Immigrants ("Priorities Memo").

- Binds ICE, CBP, and USCIS
- Effective date: January 5, 2015.
- **NOT** impacted by injunction

Secretary
U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

November 20, 2014

MEMORANDUM FOR: Thomas S. Winkowski
Acting Director
U.S. Immigration and Customs Enforcement

R. Gil Kerlikowske
Commissioner
U.S. Customs and Border Protection

Leon Rodriguez
Director
U.S. Citizenship and Immigration Services

Alan D. Bersin
Acting Assistant Secretary for Policy

FROM:

Jeh Charles Johnson
Secretary

A handwritten signature in dark ink, appearing to read "Jeh Charles Johnson", written over the printed name.

SUBJECT:

**Policies for the Apprehension, Detention and
Removal of Undocumented Immigrants**

This memorandum reflects new policies for the apprehension, detention, and removal of aliens in this country. This memorandum should be considered Department-wide guidance, applicable to the activities of U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS). This memorandum should inform enforcement and removal activity, detention decisions, budget requests and execution, and strategic planning.

DHS ACTIVITY

- **Nationwide raid: Operation Cross Check, nearly 3,100 people**
<http://www.ice.gov/news/releases/2059-convicted-criminals-arrested-ice-nationwide-operation>
- **3/18: ICE: “enhanced oversight and release proceduresinvolving detainees with criminal convictions”**
<http://www.ice.gov/news/releases/ice-announces-enhanced-oversight-and-release-procedures-custody-determinations>

SECURE COMMUNITIES AND PEP

Detainers and Priority Enforcement Priority (PEP):

- 3/19 ICE testimony by new ICE director Saldaña's "Amen"
- Clarified subsequent statement:
<http://www.ice.gov/news/releases/statement-us-immigration-and-customs-enforcement-ice-director-saldana>
- "Any effort at federal legislation now to mandate state and local law enforcement's compliance with ICE detainers will, in our view, be a highly counterproductive step and lead to more resistance and less cooperation in our overall efforts to promote public safety."

WHAT HAVE WE HEARD?

- **People with final orders who have a pending or old criminal matter**
 - People with pending or old DUIs were a major target
- **Home visits by ICE and CBP officers**
- **Changes in supervision orders**
- **Legal permanent residents arrested**
- **Cursory review of requests to exercise prosecutorial discretion**
- **Major confusion in ICE offices and inflexibility from ICE TAs**
- **Different types of detainers**

PROSECUTORIAL DISCRETION

In the immigration context, prosecutorial discretion applies to many decisions. Examples include:

- Decision to issue, serve, file, or cancel an NTA
- Deciding whom to stop, question and arrest
- Deciding whom to detain or release
- Whether to settle, dismiss, appeal, or join in a motion
- Whether to grant deferred action, parole, or a stay of removal
- People who don't meet the stringent criteria for DACA/DAPA but who are not enforcement priorities are good candidates for prosecutorial discretion

WHAT ARE THE ENFORCEMENT PRIORITIES?

Priority 1

- Convicted of:
 - a felony in the convicting jurisdiction i.e. state law
 - an aggravated felony (as defined under immigration law)
 - an offense with an element of participation in a criminal street gang
- 16 or older and intentionally participated in an organized criminal gang to further the illegal activity of the gang
- Engaged in or suspected of terrorism or espionage, or otherwise pose a threat to national security
- Apprehended at a border or port of entry trying to unlawfully enter (after the effective date of the memo, Jan. 5, 2015)

Priority 2

- Convicted of:
 - three or more non-significant misdemeanors
 - one significant misdemeanor
- Apprehended after unlawfully entering or reentering the U.S. *and* cannot show continuous physical presence since Jan. 1, 2014
- Significantly abused the visa or visa waiver programs

Priority 3

- Issued a final order of removal on or after Jan. 1, 2014

EXCEPTIONS

Someone is not an Enforcement Priority IF:

1. The person qualifies for asylum or another form of relief

OR

2. Meets exceptions laid out in each triggered priority (see next slide)

	Priority 1	Priority 2	Priority 3
Who is the DHS decision maker?	ICE Field Office Dir. CBP Sector Chief CBP Dir. of Field Ops	ICE Field Office Dir. CBP Sector Chief CBP Dir. of Field Ops USCIS District Dir. USCIS Service Center Dir.	An immigration officer
What is the standard?	Compelling and exceptional factors that clearly indicate person is not a threat to national security, border security, or public safety.	Factors indicating person is not a threat to national security, border security, or public safety.	Not a threat to integrity of the immigration system or factors suggesting person should not be a priority.

EXCEPTIONS CONT...

In exercising prosecutorial discretion, DHS personnel should consider factors such as:

- *Extenuating circumstances involving the offense of conviction;*
- *Extended length of time since the offense of conviction;*
- Length of time in the United States;
- Military service;
- Family or community ties in the United States;
- Status as a victim, witness or plaintiff in civil or criminal proceedings;
- Compelling humanitarian factors such as poor health, age, pregnancy, a young child, or a serious ill relative.
- (NOTE: You can reference extended DACA/DAPA eligibility, but don't make it the heart of your PD request).

REMOVAL AUTHORIZED IF IN “FEDERAL INTEREST”

The Enforcement Memo authorizes the removal of even non-priority aliens if, in the judgment of an **ICE Field Office Director**, “removing such an alien would serve an **important federal interest...**”

-Office of Legal Counsel (DOJ lawyers) says this standard has been left “open-ended.” (OLC memo, P. 11)

-Some guesses

- Suspected of drug trafficking, but has no conviction
- domestic or foreign policy concerns? (see INA § 212(f))

DETENTION

“Absent extraordinary circumstances or the requirement of mandatory detention, field office directors should not expend detention resources on aliens who are known to be suffering from serious physical or mental illness, who are disabled, elderly, pregnant, or nursing, who demonstrate that they are primary caretakers of children or an infirm person, or whose detention is otherwise not in the public interest.

To detain aliens in those categories who are not subject to mandatory detention, DHS officers or special agents must obtain approval from the ICE Field Office Director.”

OTHER MEMOS IN EFFECT

Janet Napolitano, Secretary of Homeland Security, “Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children,” June 15, 2012.

John Morton, Director of Immigration and Customs Enforcement, “Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs,” June 17, 2011.

Donald Neufeld, “Guidance Regarding Surviving Spouses of Deceased U.S. Citizens and their Children,” June 15, 2009.

Bo Cooper, General Counsel, INS, “INS Exercise of Prosecutorial Discretion,” (undated).

Doris Meissner, INS Commissioner, “Exercising Prosecutorial Discretion,” Nov.17, 2000.

WHO DO YOU SEND THE REQUEST TO?

ICE webpage – instructions on how to file for prosecutorial discretion; they say they are not using DACA/DAPA guidelines;

USCIS – no formal process

EOIR (immigration judges) instructed to ask questions about prosecutorial discretion (see *Matter of Avetisyan*, 2012)

SOME TIPS

- 1) Request prosecutorial discretion and DAPA/DACA, <http://www.legalactioncenter.org>
- 2) If removal proceedings are pending, consider requesting termination or, in the alternative, Administrative Closure. See advisory and sample motion at www.nationalimmigrationproject.org
- 3) If the individual has a final order of removal, consider filing a Stay of Removal or a Motion to Reopen. (www.nationalimmigrationproject.org); (federal court stay)
- 4) Removal proceedings: File bond motion
- 5) Motion to Suppress
- 6) Seek post conviction relief
- 7) ADVOCACY!!

END HOTLINE



EXECUTIVE ACTION WORKING GROUPS

INTERAGENCY WORKING GROUP FOR THE CONSISTENT ENFORCEMENT OF FED LABOR, EMPLOYMENT, AND IMMIGRATION LAWS

Working group comprised of DHS and all federal labor/employment agencies, including DOL, EEOC, NLRB, and OSC

Purposes:

- Promote workers' cooperation with labor/employ agencies without fear of retaliation;
- Minimize immigration enforcement that would undermine worker protection laws by enmeshing immigration authorities in labor disputes; and
- Ensure consistent enforcement of federal labor, employment, and immigration laws

Stakeholder meeting held in January 2015

No clear timeline/process for working group

WHITE HOUSE TASK FORCE ON NEW AMERICANS

- Chaired by Director of Domestic Policy Council and Homeland Security Secretary
- Members include more than a dozen federal agency directors
- Purpose: facilitate civic, economic, and linguistic integration of new Americans so they can contribute fully to their communities
- Timeline for Task Force:
 - By March 20, 2015, submit a National Integration Plan to President with recs for agency actions to facilitate integration
 - By November 21, 2015, report on progress made in implementing Plan

Q&A

RESOURCES

- www.nilc.org/relief.html
- www.adminrelief.org
- www.iamerica.org

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