

AN ANALYSIS OF PRESIDENT OBAMA'S EXECUTIVE ACTION ON IMMIGRATION ANNOUNCED NOVEMBER 20, 2014



Attorney Susan Pai www.StrongVisa.com
ENFORCEMENT, DETAINERS, SCOMM, U/T VISAS, ARABALLY YERABELLY
"SAFE ON THE STREETS: ENFORCEMENT/STATE/LOCAL"



Attorney Laurel Scott www.scottimmigration.net/
DACA, 601A, 485 PENDING IV, APPROVAL
"RELIEF: DACABELLY AND/OR 601A"



Attorney Mayra Calo www.caloimmigration.us
DAPA, EOIR REFORMS & CASE REVIEWS, MILITARY PIP
"RELIEF: DAPA"

*THIS IS BASED ON AVAILABLE INFORMATION AT THE TIME OF THE UPDATE. PLEASE NOTE THESE MAY
CHANGE IN THE FUTURE. CHECK BACK FOR UPDATES.*

1. Enforcement Priorities.
 - a. Effective January 5, 2015
 - b. Via Memoranda
 - i. Apprehension, Detention and Removal Enforcement Priorities
http://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf
 - ii. PEP
http://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf

- c. Although the stated implementation date is January 5, 2015 the below Internal Department of Homeland Security (DHS), Enforcement and Removal (Deportation) Office was leaked on November 25, 2014. It appears ICE may have been instructed to begin releasing aliens as instructed on this November 21, 2014 checklist.



ICE ERO Deferred Action for Parental Accountability Checklist
 Checklist for NOT Arresting/Removing Individuals Under Deferred Action Expansion

Subject name: _____ Date: _____

A#: _____

	Yes	No
1. On November 20, 2014, did the individual have a U.S. citizen or lawful permanent resident son or daughter?	<input type="checkbox"/>	<input type="checkbox"/>
2. Has s/he resided continuously in the United States since January 1, 2010?	<input type="checkbox"/>	<input type="checkbox"/>
3. Was s/he physically present in the United States on November 20, 2014?	<input type="checkbox"/>	<input type="checkbox"/>
4. Was s/he without lawful immigration status on November 20, 2014?	<input type="checkbox"/>	<input type="checkbox"/>
5. Does the individual otherwise fall outside DHS's enforcement priorities?	<input type="checkbox"/>	<input type="checkbox"/>
Priority 1: <ul style="list-style-type: none"> • Aliens engaged in or suspected of terrorism or espionage, or who otherwise pose a danger to national security • Aliens apprehended at the border or port of entry while attempting to unlawfully enter the United States • Aliens with a conviction for active participation in a criminal street gang or who intentionally participated in a gang to further its illegal activities not younger than 16 years of age • Aliens convicted of a felony (crime punishable by more than one year), other than a state or local offense for which an essential element was the alien's immigration status • Aliens convicted of an aggravated felony as defined in INA § 101(a)(43) Priority 2: <ul style="list-style-type: none"> • Aliens convicted of three or more misdemeanors (crimes punishable by less than one year) arising out of at least three separate incidents, other than minor traffic offenses or offenses of which immigration status was an element • Aliens convicted of a "significant misdemeanor"* • Aliens apprehended after unlawfully entering or re-entering the United States and unable to establish continuous physical presence since January 1, 2014 • Aliens who, in the FOD's judgment, have significantly abused the visa or visa waiver programs Priority 3: <ul style="list-style-type: none"> • Aliens with final orders of removal issued on or after January 1, 2014 		

**Significant misdemeanor* means: an offense of domestic violence; sexual abuse or exploitation; burglary; unlawful possession or use of a firearm; drug distribution or trafficking; or driving under the influence; or an offense for which the individual was sentenced to time in custody (not including suspended sentences) of 90 days or more. Domestic violence-related crimes should be carefully assessed to determine whether, as a mitigating factor, the individual was also the victim of domestic violence. Feel free to consult your local OPLA office if you have questions about whether the subject's criminal history meets this definition or whether the individual is otherwise a DHS enforcement priority.

If the answers to 1 – 5 are "yes," the individual should be released from custody or not removed, and referred to USCIS to seek deferred action.

Officer name: _____ Signature: _____ Date: _____

Supervisor name: _____ Signature: _____ Date: _____

Revised Nov. 21, 2014

- d. Existing Enforcement Priority/Prosecutorial Discretion Memos, including the Morton Memos of 2011, will be replaced by a new memo that will name three enforcement priorities
 - i. Suspected terrorists
 - ii. Convicted felons (including aggravated felonies),
 - iii. Convicted gang members
 - iv. Migrants apprehended on the border
 - v. Migrants convicted of serious misdemeanors
 - vi. Migrants convicted of multiple misdemeanors
 - vii. Recent border crossers who entered after 1/1/14
 - viii. Those who, after 1/1/14, failed to leave under a removal/deportation order
 - ix. Those who, after January 1, 2014, returned to the US illegally after being removed/deported
- e. The memo will contain “strong language” on using prosecutorial discretion appropriately.
- f. While most other memos on the subject will be rescinded, the following will remain as they are:
 - i. victims of crime memo
 - ii. USCIS memo on issuance of NTAs

2. Border Security: The Secretary of DHS will announce a South Border “command and control” campaign to coordinate and better use resources at the border.

- a. Effective Date November 20, 2014
- b. Via Memorandum
http://www.dhs.gov/sites/default/files/publications/14_1120_memo_southern_border_campaign_plan.pdf

3. Secure Communities 287(g) to be Replaced by Priority Enforcement Program (PEP)

- a. Effective Date January 5, 2015
- b. Via Memoranda
 - i. Apprehension, Detention and Removal Enforcement Priorities
http://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf
 - ii. PEP
http://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf
- c. At this time, we presume Interoperability of Identification Systems will continue. DHS, DOJ/FBI and DOS/Bureau of Consular Services entered into a Memorandum of Understanding (MOU) for Improved Information Sharing Services (Interoperability MOU) in 2008. There is no indication either on the FBI website nor the above two DHS memoranda that the Interoperability of FBI identification system IAFIS/NGI will cease interoperability with DHS’ IDENT or other relevant databases.
<http://www.fbi.gov/foia/privacy-impact-assessments/iafis-ngi-interoperability-1>

4. Detainers

- a. Effective Date January 5, 2015
- b. Via Memoranda
 - i. Apprehension, Detention and Removal Enforcement Priorities
http://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf
 - ii. PEP
http://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf
- c. Will be discontinued for all except national security cases.
- d. Instead of detainers, there will be a request for notification when a law enforcement entity is about to release a convicted criminal.

5. No change to family detention

6. No changes to Operation Streamline which targets immigration entry and reentry for federal prosecution.

Two deferred action initiatives that combined are estimated to benefit 4.4 million:

- 7. Deferred Action for Parents (DAPA) for Parents of US Citizens and Lawful Permanent Residents/Green Card Holders will be eligible to apply for deferred action for 3 years
 - a. Effective Date 5/20/2015
http://www.dhs.gov/sites/default/files/publications/14_1120_memo_deferred_action.pdf
 - b. By USCIS website
 - c. Parents of U.S. citizens and lawful permanent residents
 - i. of any age
 - ii. who have been continuously present in the US since 1/1/10,
 - iii. who pass background checks
 - iv. who have paid all their taxes
- 8. No Relief for Parents of Current DACA recipients/Dreamers (except for possible future legalization via Arabally Yerabelly, depending upon the forthcoming DHS Office of Legal Counsel's Advisory Opinion)
- 9. Expansion of DACA for Dreamers. Qualified Childhood Arrivals will be eligible to apply for deferred action for 3 years (including pending renewals of DACA)
 - a. Effective Date 2/20/2015.
 - b. By USCIS website
 - c. Elimination of the age cap
 - d. Must prove you have been continuously present in the US since 1/1/2010
- 10. Pending Proceedings: There will be a review of cases currently under proceedings to see who is prima facie eligible for the relief stated in this program, and those cases will be closed.
 - a. Effective Date Unknown
 - b. Via Unknown

11. Immigration Court Reforms. There will be a package of immigration court reforms that will include qualification of accredited representatives and ineffective assistance of counsel issues.
 - a. Effective Date Unknown
 - b. Via Unknown

12. U/T Visas.
 - a. Effective Immediately
 - b. Via <http://www.dol.gov/dol/fact-sheet/immigration/u-t-visa.htm>

13. Worksite Enforcement. DOL will coordinate with other agencies regarding worksite enforcement activities. Cross Reference #12 above.
 - a. Effective Date Unknown
 - b. Via <http://www.dol.gov/dol/fact-sheet/immigration/u-t-visa.htm> and TBD

14. Foreign Entrepreneurs. Certain investors will be able to be paroled into the U.S., or be granted parole in place if already in the United States, for job creation.
http://www.dhs.gov/sites/default/files/publications/14_1120_memo_business_actions.pdf
 - a. Effective Date TBD
 - b. Via USCIS Policy Memoranda

15. Entrepreneurs, researchers, inventors, and founders will be eligible for national interest waivers.
http://www.dhs.gov/sites/default/files/publications/14_1120_memo_business_actions.pdf
 - a. Effective Date TBD
 - b. Via USCIS Policy Memoranda

16. Timing of Filing for Adjustment of Status. *NOTE: #16 is as reported by the American Immigration Lawyers Association but reference to this action can not be found in any reference materials released either by the White House or DHS as of this updated Analysis. The ability of individuals with an approved employment-based immigrant petition who are caught in the quota backlogs to file for adjustment of status will be advanced to permit them to obtain the benefits of a pending adjustment. This is expected to impact about 410,000 people.

17. AC21. "Same or similar" will be clarified.
http://www.dhs.gov/sites/default/files/publications/14_1120_memo_business_actions.pdf
 - a. Effective Date TBD
 - b. Via USCIS Policy Memoranda

18. L-1B. Guidance will be released.
http://www.dhs.gov/sites/default/files/publications/14_1120_memo_business_actions.pdf
 - a. Effective Date TBD
 - b. Via USCIS Policy Memoranda

19. H-4 EADs. The regulation will be finalized. The comment period for this proposed rulemaking was closed July 11, 2014. Over 12k comments were received.
 - a. Effective Date Estimated to be 12/14 or 1/15
 - b. Via Finalization of Pending Regulation
<http://www.regulations.gov/#!documentDetail;D=USCIS-2010-0017-0001>

20. OPT. The length of time in OPT for STEM graduates will be expanded and the relationship between the student and the school will be strengthened for this period. Other changes, such as allowing STEM OPT post-master's degree where only the first degree is in a STEM field is under consideration

http://www.dhs.gov/sites/default/files/publications/14_1120_memo_business_actions.pdf

- a. Effective Date TBD
- b. Via USCIS Policy Memoranda

21. PERM. A full rulemaking will be undertaken to modernize the PERM program.

<http://www.dol.gov/dol/fact-sheet/immigration/perm.htm>

- c. Effective Date 30 Days After Publication in CFR
- d. Via Regulation
- e. “[The] Department [of Labor] will be initiating a review of the PERM program and relevant regulations. As part of this review, the Department will seek input on the current regulation, including how it could be modernized to be more responsive to changes in the national workforce. Specifically, the Department will seek input on the following:
 - i. Options for identifying labor force occupational shortages and surpluses and methods for aligning domestic worker recruitment requirements with demonstrated shortages and surpluses;
 - ii. Methods and practices designed to modernize U.S. worker recruitment requirements;
 - iii. Processes to clarify employer obligations to insure PERM positions are fully open to U.S. workers;
 - iv. Ranges of case processing timeframes and possibilities for premium processing; and
 - v. Application submission and review process and feasibility for efficiently addressing nonmaterial errors.
 - vi. ETA may also examine other aspects of the existing PERM regulations to further align the program design with the objectives of the U.S. immigration system and needs of workers and employers, and to enhance the integrity of the labor certification process

22. I-601a Waivers. The provisional waiver will be expanded to include spouses and children of LPRs. The definition of extreme hardship will be expanded and clarified.

http://www.dhs.gov/sites/default/files/publications/14_1120_memo_i601a_waiver.pdf

- f. Effective Date of Expansion of I-601a Waivers to below classes TBD
 - i. The spouses and children of lawful permanent residents and
 - ii. The adult children of U.S. citizens and lawful permanent residents
 - iii. By Regulation: “I [Jeh Johnson] direct DHS to amend its 2013 regulation [re I-601a Waivers] to expand access to the provisional waiver program to all statutorily eligible classes of relatives for whom an immigrant visa is immediately available. The purpose behind today's announcement remains the same as in 2013-family unity.
- g. Effective Date of Clarification of “Extreme Hardship” including when a presumption of “Extreme Hardship” exists

- i. "I [Jeh Johnson] hereby direct USCIS to provide additional guidance on the definition of "extreme hardship."
 - h. USCIS should clarify the factors that are considered by adjudicators in determining whether the "extreme hardship" standard has been met. Factors that should be considered for further explanation include, but are not limited to:
 - i. family ties to the United States and the country of removal,
 - ii. conditions in the country of removal,
 - iii. the age of the U.S. citizen or permanent resident spouse or parent,
 - iv. the length of residence in the United States,
 - v. relevant medical and mental health conditions,
 - vi. financial hardships, and
 - vii. educational hardships
 - i. "I [Jeh Johnson] further direct USCIS to consider criteria by which a presumption of extreme hardship may be determined to exist. Such a presumption was previously adopted by regulations implementing the 1997 Nicaraguan Adjustment and Central American Relief Act. Pub. L. No. 105-100. 8 C.F.R. 240.64(d).
23. Advance Parole. There will be a new advance parole memo that will address the issues raised in Matter of Arrabally Yerrabelly and make clear that CBP should honor the advance paroles issued by USCIS.
- j. Effective Date TBD
 - k. By DHS Legal Memorandum "I [Jeh Johnson] have asked the Department's General Counsel to issue written legal guidance on the meaning of the *Arrabally* decision, which will clarify that in all cases when an individual physically leaves the United States pursuant to a grant of advance parole, that individual shall not have made a 'departure' within the meaning of section 212(a)(9)(B)(i) of the INA."
24. Parole in Place. PIP will be expanded to include families of individuals trying to enlist in the armed forces.
- http://www.dhs.gov/sites/default/files/publications/14_1120_memo_parole_in_place.pdf
- l. Effective Date TBD
 - m. Via Policy
25. Visa Modernization. There will be a Presidential Memorandum directing the agencies to look at modernizing the visa system, with a view to making optimal use of the numbers of visa available under law. Issues such as whether derivatives should be counted and whether past unused visa numbers can be recaptured will be included in this effort.
- http://www.dhs.gov/sites/default/files/publications/14_1120_memo_business_actions.pdf
- n. Effective Date TBD
 - o. Via USCIS Policy Memoranda
26. Integration. A second Presidential Memorandum will set up a Task Force on New Americans.