

The President's Immigration Accountability Executive Actions

#immigrationaction

Based on a briefing on 11/20/14 by the White House, the following is a summary of the elements expected to be part of the Administration's announcement of executive actions on immigration. Our understanding is that details (and memos) are still being worked on at this time. Many items are still unclear, and the merits of many may not be known until the details are known. Some will require regulations, but others can be done by memo.

Here are the principal components as we currently understand them:

1. **Enforcement Priorities.** Many of the existing memos on enforcement priorities and prosecutorial discretion will be replaced by a new memo that will name three enforcement priorities, which will be operational immediately:
 1. Suspected terrorists, convicted felons (including aggravated felonies), convicted gang members, and people apprehended on the border;
 2. People convicted of serious or multiple misdemeanors, and very recent entrants (i.e., those who entered after 1/1/14);
 3. Those who, after 1/1/14, failed to leave under a removal order or returned after removal.

The memo will contain "strong language" on using prosecutorial discretion appropriately. While most other memos on the subject will be rescinded, the victims of crime memo and the USCIS memo on issuance of NTAs will stand.

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.
3. **State and Local.** Secure Communities will be discontinued and replaced by a Priority Enforcement Program (PEP). What it means that Secure Communities will be discontinued is unclear. Unclear if they will stop fingerprinting people and unplug the technology and interoperability of the federal and local databases. Detainers will be discontinued for all except national security cases. Instead of detainers, there will be a request for notification when a law enforcement entity is about to release a convicted criminal.
4. Nothing on family detention will be included in this package.
5. No changes to Operation Streamline which targets immigration entry and reentry for federal prosecution.
6. Two deferred action initiatives that combined are estimated to benefit 4.4 million:
 - a. **Deferred Action for Parents (DAP).** Parents of U.S. citizens and lawful permanent residents (of any age) who have been continuously present since 1/1/10, and who pass background checks and pay taxes, will be eligible to apply for deferred action, which will

be granted for a 3-year period. The plan is to stand this up within 180 days (for applications to be accepted). Note that parents of DACA recipients are not eligible.

- b. **Expansion of DACA.** DACA will be revised to get rid of the age cap, and to change the date that continuous presence must have started to 1/1/10. It also will be granted for 3 years (including those with pending renewal applications). Ready in 90 days.
7. **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.
8. **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.
9. **U/T Visas.** Three more types of offenses will be added to the list of offenses for which DOL can certify for U status. No specifics were available regarding which offenses will be added. T visa eligibility may also come into play with respect to DOL.
10. **Worksite Enforcement.** DOL will coordinate with other agencies regarding worksite enforcement activities.
11. **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 (no further details at this time). This will be done by regulation. Also, entrepreneurs, researchers, inventors, and founders will be eligible for national interest waivers. This will be implemented through policy guidance.
12. **Timing of Filing for Adjustment of Status.** 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. This will be done by regulation.
13. **AC21.** "Same or similar" will be clarified.
14. **L-1B.** The guidance will be released.
15. **H-4 EADs.** The regulation will be finalized, probably in December or January.
16. **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. This will be done by regulation.
17. **PERM.** A full rulemaking will be undertaken to modernize the PERM program.
18. **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.

19. **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.
20. **Parole in Place.** PIP will be expanded to include families of individuals trying to enlist in the armed forces.
21. **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.
22. **Integration.** A second Presidential Memorandum will set up a Task Force on New Americans.