

## *Understanding United States v. Texas*

On November 20, 2014, President Obama announced a new Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) program and expanded the Deferred Action for Childhood Arrivals (DACA)<sup>i</sup> program (originally created in June 2012). These programs would allow qualifying parents whose children are United States Citizens and Lawful Permanent Residents, and those individuals who entered the United States as children to apply for a form of prosecutorial discretion known as deferred action.

In response to President Obama's announcement, Texas, along with twenty-five other states, filed a lawsuit to enjoin the Federal Government from implementing both the DAPA and the expanded DACA programs. The District Court of the Southern District of Texas issued an injunction on February 16, 2015, preventing the government from implementing the programs.

The Department of Justice (representing the Administration) filed an appeal to the Fifth Circuit Court of Appeals. On November 9, 2015, the Fifth Circuit affirmed the District Court's preliminary injunction. On January 19, 2016, the Supreme Court granted certiorari to hear the case. Oral arguments are scheduled for April 18, 2016.<sup>ii</sup> The issues before the Supreme Court are as follows:

"(1) Whether a state that voluntarily provides a subsidy to all aliens with deferred action has Article III standing and a justiciable cause of action under the Administrative Procedure Act (APA) to challenge the Secretary of Homeland Security's guidance seeking to establish a process for considering deferred action for certain aliens because it will lead to more aliens having deferred action; (2) whether the guidance is arbitrary and capricious or otherwise not in accordance with law; (3) whether the guidance was subject to the APA's notice-and-comment procedures; and (4) whether the guidance violates the Take Care Clause of the Constitution, Article II, section 3."<sup>iii</sup>

### What are DAPA and DACA?

According to DHS, "Deferred action is a discretionary determination to defer a removal action of an individual as an act of prosecutorial discretion... An individual who receive[s] deferred action is authorized by DHS to be present in the United States, and is therefore considered by DHS to be lawfully present during the period deferred action is in effect. However, deferred action does not confer **lawful status** upon an individual, nor does it excuse any previous or subsequent periods of unlawful presence."<sup>iv</sup>

DACA, originally created in 2012, grants two year periods of deferred action to certain children who arrived into the United States before age sixteen. This period of deferred action can be renewed after two years and recipients may be eligible to apply for employment authorization. Individuals who may be eligible for original DACA include those who: (1) were under the age of 31 as of June 15, 2012; (2) came to the United States before reaching age 16; (3) have continuously resided in the United States since June 15, 2007 up to the present time; (4) were physically present in the United States on June 15, 2012, and at the time of requesting consideration of DACA with USCIS; (5) had no lawful status on June 15, 2012; (6) are currently in school, or have graduated from high school; and (7) have not been convicted of a felony,

significant misdemeanor, three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety.<sup>v</sup>

Under the expanded DACA program, the age cap (31 years on date of announcement) has been removed, periods of deferred action have been increased to three years, and the date-of-entry requirement has been adjusted.<sup>vi</sup>

To be eligible for DAPA, applicants must: (1) have, as of November 20, 2014, a son or daughter who is a U.S. citizen or lawful permanent resident; (2) have resided in the United States since before January 1, 2010; (3) be physically present in the United States on November 20, 2014 and at the time of filing the application; (4) have no lawful immigration status on November 20, 2014; (5) are not an enforcement priority, and; (6) have no other factors that make the grant of deferred action inappropriate.<sup>vii</sup>

The expanded DACA and new DAPA programs are on hold because of an injunction, but noncitizens who qualify for the original DACA program can and should continue to apply.<sup>viii</sup>

### Examples of People Affected by the Injunction

*Jose Antonio Vargas* is a filmmaker, a Pulitzer Prize-winning journalist, and founder of the nonprofit “Define American” media and culture campaign. Through his work, he has created at least 23 jobs for US citizens. Vargas came to the US at the age of 12 and is undocumented. He missed the age cut-off for the original DACA program by only a few months, and would be eligible for the expanded DACA program.<sup>ix</sup>

*Dr. Alina Kipchumba* is a citizen of Kenya who holds a Ph.D in Biological Sciences and, during the six years that she had work authorization, she worked as a teacher in Florida. Her 11 year old US citizen son has a serious heart condition. Her son’s doctor has told her that it would be impossible for her son to receive the necessary treatment in Kenya, and returning to Kenya would be “a death sentence” for him. Dr. Kipchumba would be eligible for DAPA, which would allow her to obtain work authorization so that she could support her son.<sup>x</sup>

### Involvement of Center for Immigrants’ Rights Clinic

In fall 2015, the Center collaborated with the Office of the Mayor of State College, State College Borough Council, and Police Chief Thomas King to deliver a presentation on local police and immigration enforcement. The Center has also collaborated with the Office of the Mayor to educate the community on DACA and DAPA. The Center provided legal analysis and support to Mayor Elizabeth Goreham on the issues surrounding the injunction by Texas District Judge Andrew Hanen against DAPA and DACA, which laid the groundwork for the mayor’s endorsement of amicus briefs to the Fifth Circuit Court of Appeals and to the Supreme Court signed by mayors, cities, county executives, and counties from across the country in support of the president’s executive actions on immigration.<sup>xi</sup>

In response to this litigation, students from the Center will be conducting two related presentations discussing how local communities are affected by immigration issues and, specifically, how they are affected by this litigation. Students presented to the Penn State College Democrats on Monday, April 11, 2016 at 8:00 PM, and will present to the State College Borough Council on April 18, 2016 at 7:00 PM. The public is invited to attend these presentations.

*Last updated: April 14, 2016*

## Resources

[Memorandum from Jeh Charles Johnson \(November 20, 2014\)](#)

[Preliminary Injunction issued by Texas District Court \(February 16, 2015\)](#)

[Fifth Circuit Decision Affirming the Preliminary Injunction \(November 9, 2015\)](#)

[Petition For Writ of Certiorari \(November 20, 2015\)](#)

[Brief of Petitioners United States \(March 1, 2016\)](#)

[Brief Amici Curiae of Mayors of New York, et al. \(including State College\) \(March 7, 2016\)](#)

[Brief Amici Curiae of American Immigration Council, et al. \(March 8, 2016\)](#)

[Brief Amici Curiae of 186 Members of the U.S. House of Representatives and 39 Members of the U.S. Senate \(March 8, 2016\)](#)

[Brief for the States](#)

[Reply Brief for the Administration](#)

---

<sup>i</sup> Memorandum from Jeh Charles Johnson, Secretary, on Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Residents (November 20, 2014), [https://www.dhs.gov/sites/default/files/publications/14\\_1120\\_memo\\_deferred\\_action.pdf](https://www.dhs.gov/sites/default/files/publications/14_1120_memo_deferred_action.pdf).

<sup>ii</sup> “United States v. Texas”, SCOTUSblog <http://www.scotusblog.com/case-files/cases/united-states-v-texas/> (last visited April 14, 2016).

<sup>iii</sup> “United States v. Texas,” SCOTUSBlog, <http://www.scotusblog.com/case-files/cases/united-states-v-texas/>, (last visited March 18, 2016).

<sup>iv</sup> Consideration of Deferred Action for Childhood Arrivals Process: Frequently Asked Questions, U.S. Citizenship and Immigration Services (June 15, 2015), <http://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-process/frequently-asked-questions>.

<sup>v</sup> *Id.*

<sup>vi</sup> Memorandum from Jeh Charles Johnson, Secretary, on Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Residents (November 20, 2014), [https://www.dhs.gov/sites/default/files/publications/14\\_1120\\_memo\\_deferred\\_action.pdf](https://www.dhs.gov/sites/default/files/publications/14_1120_memo_deferred_action.pdf).

<sup>vii</sup> Memorandum from Jeh Charles Johnson, Secretary, on Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Residents (November 20, 2014), [https://www.dhs.gov/sites/default/files/publications/14\\_1120\\_memo\\_deferred\\_action.pdf](https://www.dhs.gov/sites/default/files/publications/14_1120_memo_deferred_action.pdf).

<sup>viii</sup> Texas v. United States, 787 F.3d 733, (5th Cir. Tex. 2015).

<sup>ix</sup> Brief of American Immigration Council et al. as Amici Curiae Supporting Petitioners, at 11, United States v. Texas, 2016 U.S. LEXIS 841 (2016) (No. 15-674).

<sup>x</sup> *Id.* at 18.

<sup>xi</sup> *In Our Community*, Center for Immigrants’ Rights Clinic, <https://pennstatelaw.psu.edu/practice-skills/clinics/center-immigrants%E2%80%99-rights-clinic/our-community> (last visited March 29, 2016).