

PENNSYLVANIA STATE UNIVERSITY
The Dickinson School of Law

Interdisciplinary Roundtable on Immigration about Administrative Relief Program for Immigrants

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What is Prosecutorial Discretion?

Prosecutorial discretion is the authority of an agency charged with enforcing a law to decide whether to enforce, or not to enforce, the law against someone.

The President's announcement to defer the deportations for certain people is a form of prosecutorial discretion. It is not a new law.



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Theory of prosecutorial discretion

Economic	Humanitarian
<ul style="list-style-type: none"> ■ 11 million unauthorized noncitizens ■ Resources to deport about 400,000 or less than 4% of 11 million 	<ul style="list-style-type: none"> ■ Service in the U.S. military ■ Long-term presence in the United States ■ USC dependents ■ Serious medical condition ■ Intellectual promise ■ Advanced or tender age



The President's Executive Action on Immigration

- Deferred for Parental Accountability (DAPA)
- Deferred Action for Childhood Arrivals (expanded) (Expanded DACA)
- Revised Removal Priorities



Who will qualify for affirmative relief or deferred action?

- **Deferred Action for Parental Accountability (DAPA):** undocumented parents who have a U.S. citizen or LPR son or daughter, if the parent was physically present in the U.S. on November 20, 2014 and at the time of request and continuously resided in the U.S. since January 1, 2010 and are not an enforcement priority.
- **Deferred Action for Childhood Arrivals (Expanded DACA):** noncitizens who entered the U.S. before their 16th birthday and have continuously resided in the U.S. since January 1, 2010, and are not an enforcement priority. No age cap.



Benefits and Limits of DAPA and Expanded DACA

Limits

- No path to permanent residency or citizenship
- No legal status
- No ability to petition family members
- Discretionary, limited review

Benefits

- Protection from deportation for a three year period
- Deferred action grant
- Work authorization
- Social security number
- Driver's License in some states
- May be able to request to travel abroad



Highlights of Removal Priorities

Priority 1: Noncitizens who pose a national security threat, have been convicted of a felony or aggravated felony, or apprehended attempting to unlawfully reenter

Priority 2: Noncitizens convicted of 3 or more misdemeanors or a significant misdemeanor, or who illegally entered after January 1, 2014

Priority 3: Noncitizens issued a final order of removal on or after January 1, 2014



DACA-DAPA Lawsuit

- December 3: States filed a lawsuit challenging DAPA + and DACA
- February 16, Texas judge issued a preliminary injunction that temporarily blocks the implementation of DACA + and DAPA
- February 17: DHS announces that it will not begin processing DACA+ as originally planned but would appeal the Texas et. al. lawsuit
- February 20: DOJ announced it would file a stay to lift the injunction



What message do we send to communities and clients?

- The Obama administration does not agree with the Hanen ruling and will appeal the decision to the higher court.
- The decision does not affect DHS's revised enforcement priorities.
- The decision does not affect applications and renewals under the 2012 DACA program
- People who want to apply should be ready with documents and applications fees.

Thank you!
