

**CALIFORNIA INSTITUTE**  
**SPECIAL REPORT:**  
**Immigrant Accountability Executive Action**  
**Impacts Millions of Californians**  
**December 2014**

On November 20, 2014, President Obama announced Immigrant Accountability Executive Action to address the nation's broken immigration system. According to the White House, these executive actions will i) secure the border by deploying more resources to strengthen enforcement, ii) reprioritize deportation enforcement by focusing on the deportation of recent arrivals and felons, iii) temporarily grant deportation relief, or deferred action, to the undocumented parents of U.S. citizens and legal permanent residents who have been in the United States for five or more years, pass a background check, and who pay taxes as well as expand the Deferred Action for Childhood Arrivals program originally initiated in 2012, and iv) expand work authorization for high –skilled workers and promote naturalization. Those who qualify for protection from deportation will be eligible for a three-year work permit.(1)

Unauthorized immigrants accounted for 3.5% of the 2012 U.S. population of nearly 316 million.(2) Of the 11.2 million illegal immigrants, 3.9 million have become eligible for deportation relief as a result of the most recent executive actions, totaling 5.4 million who now have protected status from deportation. This report will outline the details of the most recent executive actions on immigration and provide a profile of the effected population, especially in California.

In his address to the nation, the President stated, "I know some of the critics of this action call it amnesty. Well, it's not."(3) Indeed, temporary deportation relief is the most controversial aspect of the executive actions for a reason that is two-fold: a) opponents believe that the President has taken the opportunity to re-write the law, which mandates the deportation of anyone illegally present in the United States and b) only Congress has the legal authority to make law. More protests arise when the scope of the presidential action is taken into consideration – nearly half of the undocumented population is protected by executive actions.(4) Therefore, in the week following the President's address, Republican leaders in Congress denounced the President for executive overreach and labeled his actions unconstitutional. According to an NBC News/Wall Street Journal

survey, 48% of the general public disagrees with President Obama's use of executive action on immigration(5)

The legal rationale cited by the administration for the President's executive actions rests on prosecutorial discretion, the executive's ability to decide who to investigate, arrest, detain, charge, and prosecute. While 11.3 million undocumented immigrants reside in the country, the Department of Homeland Security (DHS) has the capability to remove only 400,000 of them annually.(6) "Due to limited resources, DHS and its Components cannot respond to all immigration violations or remove all persons illegally in the United States. As is true of virtually every other law enforcement agency, DHS must exercise prosecutorial discretion in the enforcement of the law," explained Secretary of DHS, Jeh Johnson, in a memorandum released on November 20 entitled, "Policies for the Apprehension, Detention and Removal of Undocumented Immigrants."(7) Additionally, the extension of DACA and the initiation of a similar program for parents of citizens and legal permanent residents do not grant legal status or provide a pathway to legal permanent residence or citizenship. For these reasons, the Office of Legal Counsel of the Department of Justice concluded that the proposed prioritization policy and expansion of deferred action are permissible exercises of DHS's discretion to exercise immigration laws.(8)

### **Border Security and Deportation Priorities**

In testimony before the House Committee on Homeland Security, Secretary Johnson announced a plan to end the Secure Communities Program, which limits immigration enforcement's reliance on state and local law enforcement. (9) Additionally, he announced the initiation of a "Southern Border Campaign Strategy," which will create three new immigration task forces to protect ports of entry on a regional basis.(10)

The new policies outlined by DHS designate three tiers of deportation priorities. Tier 1 applies to threats to national security, border security, and public safety by designating that spies, gang members, felons, or those apprehended at the border are the first to be deported. Tier 2 applies to misdemeanants and new immigration violators, defined as those convicted of significant misdemeanors, such as domestic violence, driving under the influence, unlawful possession of a firearm, and drug trafficking. In addition, Tier 2 also applies to those who have entered the country since January 1, 2014. Lastly, Tier 3, the lowest

deportation priority, applies to individuals who do not qualify under Tier 1 or Tier 2 and who have been issued a final order of removal.(11)

### **The Deferred Action for Childhood Arrivals (DACA) Program**

The DACA program announced in 2012 uses prosecutorial discretion to temporarily defer removal actions for certain individuals brought unlawfully to the United States as children and who meet certain qualifications. Those who qualify are eligible for a work permit, but are not eligible for legal status. The following individuals are eligible to apply for DACA:

- i. Were under the age of 31 as of June 15, 2012;
- ii. Came to the United States before reaching his or her 16th birthday
- iii. Have continuously resided in the United States since June 15, 2007, up to the present time
- iv. Were physically present in the United States on June 15, 2012, and at the time of making a request for consideration of deferred action with USCIS;
- v. Had no lawful status on June 15, 2012;
- vi. Is currently in school, has graduated or obtained a certificate of completion from high school, has obtained a general education development (GED) certificate, or is an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; and
- vii. Had not been convicted of a felony, significant misdemeanor, or three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety.(12)

The President's executive actions taken on November 20, 2014 extended the eligibility timeline and age requirement for DACA. Those older than 30 who arrived before January 1, 2010 (previously June 15, 2007) are newly eligible to apply. . Additionally, the work authorization period was extended from two years to three years. According to the Pew Research Center, 702,000 individuals have been approved for DACA with an application approval rate of 95% since 2012.(13) California has 162,000 deferred action recipients, although Arizona has the highest application rate. (14) The new executive action makes .3 million individuals newly eligible through the expanded DACA program on a national scale. One and a half million were previously eligible.(15)

Some from the activist community have criticized the initial DACA results, claiming that hundreds of thousands of those initially eligible

for deportation relief in 2012, have still not applied.(16) Potential explanations include general distrust of the government at a time when there is not a pathway to legalization for these individuals, thus leaving them exposed to a change in policy that could result in their deportation. Even though there hasn't been full participation from those eligible for DACA, others consider the results a success that can be duplicated in a similar program for parents of legal permanent residents and citizens.(17)

### **Deferred Action for Parents**

In testimony before the House Committee of Homeland Security, Secretary Johnson stated that parents of U.S. citizens or lawful permanent residents will be eligible to apply for deferred action as long as they meet the following conditions:

- (i) are not removal priorities under the new policy;
- (ii) have been in this country at least 5 years; and
- (iii) present no other factors that would make a grant of deferred action inappropriate.(18)

The Pew Research Center estimates that 4 million unauthorized immigrant parents, or 38% of adults in this population, lived with their U.S.-born children, either minors or adults, in 2012.(19). According to the University of Southern California Center for the Study of Immigrant Integration, "In California, our analysis suggests that roughly 1.5 million children live with at least one unauthorized immigrant parent – 1.2 million of whom are citizens (81 percent)." Stated another way, nearly 1/6 of Californian children have at least one undocumented parent.(20) More eligible parents live apart from their children. However, not all of them have been in the United States for over five years. Three and a half million parents nationally are expected to be eligible for parental deferred action. California leads the way for the number of undocumented parents who will become eligible at 1.1 million.(21)

### **The Remaining Ineligible**

Five and a half million unauthorized immigrants, slightly more than half of the undocumented population currently present in the United States, remain ineligible for deportation relief and work authorization.(22) Nationwide, 350,000 remain ineligible for the expanded version of DACA because they entered the U.S. within the past five years.(23) Additionally, 250,000 illegal immigrant adults with

U.S.-born children entered the country within the past five years and are thus ineligible.(24)

Furthermore, the parents of DREAMers, those eligible for the 2012 DACA program, also remain ineligible unless they have a child who was born in the United States. According to the Office of Legal Counsel opinion, to confer deportation relief on the parents of undocumented children would intentionally defy legislative intent. The current law shows concern for the unification of families as it pertains to those with legal presence in the United States. DACA recipients do not have legal status, although they have been granted deportation relief. Therefore, the opinion concludes, "the parents of DACA recipients are differently situated from the parents of U.S. citizens and LPRs [Legal Permanent Residents] under the family-related provisions of the immigration law." For this reason, the administration did not include the parents of DACA recipients as eligible for deportation relief under the executive actions.(25)

No relief was categorically granted to farm workers and very little was changed for H1-B visa seekers. Additionally, illegal immigrants without children are ineligible for deportation relief. Finally, a path to legalization is not an aspect of these executive actions as only Congress has the ability to determine legal status and naturalization. The White House is calling upon Congress to "finish the job."(26)

### **Spotlight on California**

According to the Pew Research Center, in 2012 California had nearly 2.5 million unauthorized immigrants with 1.25 million initially eligible for DACA. With the most recent executive actions, an additional 950,000 individuals (39%) are newly eligible for protection. A total of 52% of California's unauthorized immigrant population is now eligible for relief.(27)

The various regions of California experience immigration differently. According to the California Immigrant Policy Center, of the 4.4 million immigrants of the greater Los Angeles area, nearly 1.1 million are undocumented.(28) In the Central Valley, 38% of its immigrant population is undocumented, amounting to 330,000 individuals.(29) Of the Bay Area's 2.1 million immigrants, over 420,000, or 20%, are undocumented. (30)

A study conducted by the USC Center for the Study of Immigrant Integration found that "The undocumented are 7 percent of the state's

population, 8 percent of all adults, and 9 percent of the workforce... And they are deeply connected to the state's citizenry: more than 13 percent of the state's children are citizens who have at least one undocumented immigrant parent.”(31) The study concludes that the well-being of the state is intrinsically tied to the well-being of the undocumented population, particularly children with undocumented parents, affecting health, educational, and economic outcomes.(32)

California has a vested interest in immigration reform and remains a trendsetter for immigration policy. For example, California passed the state DREAM Act before President Obama's 2012 executive action on immigration. In 2013, Governor Brown signed legislation to permit undocumented immigrants to obtain a driver's license. Additionally, he also signed the Trust Act into law, a measure to limit cooperation with DHS' Secure Communities Program – which has been discontinued as part of the President's most recent actions on immigration.(33) Furthermore, State Senator Ricardo Lara reintroduced his Healthcare for All bill (SB 4), a measure that would allow those newly eligible for deferred action to enroll in Medi-Cal, the state's Medicaid program for low-income individuals.(34) While California can take some actions towards immigrant integration on its own, the federal government still has supremacy over immigration matters and only Congress can control matters of legalization and naturalization. Deferred action can be revoked at any time.

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  - (2) [http://dornsife.usc.edu/assets/sites/731/docs/whats\\_at\\_st-ake\\_for\\_the\\_state.pdf](http://dornsife.usc.edu/assets/sites/731/docs/whats_at_st-ake_for_the_state.pdf)
  - (3) <http://www.whitehouse.gov/issues/immigration/immigrati-on-action#>
  - (4) <http://www.pewresearch.org/fact-tank/2014/11/21/immigrants-in-western-states-most-likely-to-benefit-from-obamas-executive-action/>
  - (5) <http://www.msnbc.com/msnbc/nearly-half-americans-disapprove-obama-immigration-plan>
  - (6) [http://www.justice.gov/sites/default/files/olc/opinions/atta-chments/2014/11/20/2014-11-19-auth-prioritize-removal.pdf](http://www.justice.gov/sites/default/files/olc/opinions/attachments/2014/11/20/2014-11-19-auth-prioritize-removal.pdf)
  - (7) [http://www.dhs.gov/sites/default/files/publications/14\\_11\\_20\\_memo\\_prosecutorial\\_discretion.pdf](http://www.dhs.gov/sites/default/files/publications/14_11_20_memo_prosecutorial_discretion.pdf)

- (8) <http://www.justice.gov/sites/default/files/olc/opinions/attachments/2014/11/20/2014-11-19-auth-prioritize-removal.pdf>
- (9) <http://docs.house.gov/meetings/HM/HM00/20141202/102762/HHRG-113-HM00-Wstate-JohnsonJ-20141202.pdf>
- (10) <http://www.usatoday.com/story/news/politics/2014/11/19/jeh-johnson-immigration-reform-border-security/19271021/>
- (11) [http://www.dhs.gov/sites/default/files/publications/14\\_11\\_20\\_memo\\_prosecutorial\\_discretion.pdf](http://www.dhs.gov/sites/default/files/publications/14_11_20_memo_prosecutorial_discretion.pdf)
- (12) <http://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-daca>
- (13) <http://www.pewresearch.org/fact-tank/2014/12/05/if-original-daca-program-is-a-guide-many-eligible-immigrants-will-apply-for-deportation-relief/> and [http://www.washingtonpost.com/politics/obamas-2012-daca-move-offers-a-window-into-pros-and-cons-of-executive-action/2014/11/30/88be7a36-7188-11e4-893f-86bd390a3340\\_story.html](http://www.washingtonpost.com/politics/obamas-2012-daca-move-offers-a-window-into-pros-and-cons-of-executive-action/2014/11/30/88be7a36-7188-11e4-893f-86bd390a3340_story.html)
- (14) <http://www.pewresearch.org/fact-tank/2014/08/15/5-facts-about-the-deferred-action-for-childhood-arrivals-program/>
- (15) <http://www.pewresearch.org/fact-tank/2014/11/20/those-from-mexico-will-benefit-most-from-obamas-executive-action/>
- (16) [http://www.washingtonpost.com/politics/obamas-2012-daca-move-offers-a-window-into-pros-and-cons-of-executive-action/2014/11/30/88be7a36-7188-11e4-893f-86bd390a3340\\_story.html](http://www.washingtonpost.com/politics/obamas-2012-daca-move-offers-a-window-into-pros-and-cons-of-executive-action/2014/11/30/88be7a36-7188-11e4-893f-86bd390a3340_story.html)
- (17) Ibid
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- (21) [www.latimes.com/.../la-me-ln-1-million-immigrant-parents-california-20141121-story.html](http://www.latimes.com/.../la-me-ln-1-million-immigrant-parents-california-20141121-story.html)
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- (29) <http://www.scribd.com/doc/238496078/Looking-Forward-Central-Valley>
- (30) <http://www.scribd.com/doc/238493716/Looking-Forward-Bay-Area-insert>
- (31) [http://dornsife.usc.edu/assets/sites/731/docs/whats\\_at\\_stake\\_for\\_the\\_state.pdf](http://dornsife.usc.edu/assets/sites/731/docs/whats_at_stake_for_the_state.pdf)
- (32) Ibid
- (33) [http://www.huffingtonpost.com/2013/10/05/trust-act-signed\\_n\\_4050168.html](http://www.huffingtonpost.com/2013/10/05/trust-act-signed_n_4050168.html)
- (34) [http://www.huffingtonpost.com/wendy-lazarus/the-time-is-right-for-california-to-extend-health-care\\_b\\_6258546.html](http://www.huffingtonpost.com/wendy-lazarus/the-time-is-right-for-california-to-extend-health-care_b_6258546.html)