

# Executive Action on Immigration The Latest Developments

Presented

by

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# TAKEAWAY OBJECTIVES

Takeaway objectives from my remarks are to demonstrate

1. the breadth of executive action and the issues being debated
2. that the issues don't change over time
3. that all three branches of government, Executive, Legislative & Judicial play a role as well as the states and federal government
4. That both separation of powers and federal preemption issues are involved.

# Historical Perspective

- From a historical perspective, what's interesting is that the issues don't change. Whatever we do, or don't do, the discussion will continue.
- That's because Immigration policy is all about drawing lines. And no matter where you draw the line, some will argue the lines should be different.

# The Issues – then and now

- The integrity of the border
- Labor –assuring we have enough while protecting existing labor force (so we don't depress wages or cause unemployment)
- Legal immigration Where to draw the line (1 million/yr LPRs) --who can come, how many, how long can they stay?
- Illegal immigration/ “amnesty” - what to do with those here with long term ties
- Keeping out undesirable elements: terrorists, criminals & infectious diseases (in 1952 the big concern was keeping out Communists)

The Immigration & Nationality Act  
called the Walter McCarran Act  
was enacted in 1952  
over President Truman's veto

- Consolidated the immigration laws in 1 statute
- Limited the numbers who could immigrate from Communist controlled countries

President Truman's veto was over ridden by wide margins in both houses of Congress

The Act has been amended several times, but continues as the basic immigration law

# Components of *comprehensive* “reform”

1. Border security
2. Dealing with the estimated millions here without lawful status (some type of amnesty)

*Note, the estimates are mere estimates . – The actual figures are unknown.*

3. Lawful immigration – amending the categories
  - --changes to immigrant visa preferences
  - --changes to non immigrant categories
    - Skilled/high tech workers
    - Guest workers for seasonal/temporary work

# Issues frequently mentioned as areas of concern

- Integrity of our immigration law
- too few visa numbers?
- insecure borders?
- backlogs – waiting lists too long?
- Large numbers in US in violation of the law?
- Too many living in the shadows of society?
- Employer sanctions not working
- Fraud
- Terrorists
- The role of State/Local law enforcement vis a vis immigration status

# Legislative Action last Congress

- In 2013 the Senate passed a bipartisan comprehensive bill.
- The House of Representatives did not vote on it.



# The current discussion

Some say we should have comprehensive reform that addresses many aspects of the law.

Others say we should make piecemeal legislative changes

- such as beef up border security
- Dream Act (an “amnesty” for undocumented brought to the USA as children)

# Executive Action

In a televised address on November 20, President Obama announced that he was taking Executive Action on immigration.

Currently the debate is more about whether his actions are constitutional than about immigration policy.

- Some argue that his actions constitute legislating in violation of the separation of powers

# The Executive Action

2 Presidential Memoranda

*no executive order*

10 point plan issued by DHS

# Presidential immigration Memoranda of 2014

1. He Directed agency heads to consult and report on ways to streamline the immigrant visa issuing process
2. He created a task force to assure a welcoming environment for new Americans

# The 10 point plan

DHS created a 10 point plan on immigration

HR voted to fund DHS but included amendments which would prohibit funding for 9 of the 10 points & the 2 Presidential memos.

# 10 POINT PLAN

summarized

1. Strengthen Border Security
2. Revise Removal Priorities
3. End Secure Communities and Replace it with New Priority Enforcement Program
4. Personnel Reform for ICE Officers
5. Expand Deferred Action for Childhood Arrivals (DACA) Program
6. Extend Deferred Action to Parents of Americans and Lawful Permanent Residents (DAPA)
7. Expand Provisional Waivers to Spouses and Children of Lawful Permanent Residents
8. Revise Parole Rules
9. Promote the Naturalization Process
10. Support High-skilled Business and Workers

[http://www.dhs.gov/immigration-action?utm\\_source=hp\\_feature&utm\\_medium=web&utm\\_campaign=dhs\\_hp](http://www.dhs.gov/immigration-action?utm_source=hp_feature&utm_medium=web&utm_campaign=dhs_hp)

# 1. Strengthen Border Security

- DHS –
  - 3 task forces of law enforcement agencies re maritime & land southern border & investigations
  - continue “surge of resources” that reduced the number of unaccompanied children crossing our border
- DOJ – reordering dockets of immigration courts

## 2. Revise Removal Priorities

1. national security threats, convicted felons, gang members, and illegal entrants apprehended at the border
2. Those with misdemeanor convictions that are “significant” or multiple, and EWI after 1-1-14
3. Those who did not comply with deportation orders issued after 1-1-14



### 3. End Secure Communities and Replace it with New Priority Enforcement Program

Continuing to use fingerprint data reported to FBI by law enforcement agencies, both State & Federal, will identify the above priorities clearly to those agencies. The objective is to focus on individuals deemed threats to national security, border security, or public safety.

- DHS will end the Secure Communities program, and [replace it with the Priority Enforcement Program](#) (PEP) that will closely and clearly reflect DHS's new top enforcement priorities. The program will continue to rely on fingerprint-based biometric data submitted during bookings by state and local law enforcement agencies and will **identify to law enforcement agencies the specific criteria for which we will seek an individual in their custody**. The list of largely **criminal offenses** is taken from Priorities 1 and 2 of our new enforcement priorities. In addition, we will formulate plans to engage state and local governments on enforcement priorities and will enhance Immigration and Customs Enforcement's (ICE) ability to arrest, detain, and remove individuals deemed **threats to national security, border security, or public safety**.

## 4. Personnel Reform for ICE Officers

Improve pay for ICE officers  
(not subject to defunding provisions of HR bill)

- Related to these enforcement and removal reforms, we will support [job series realignment and premium ability pay coverage for ICE ERO](#) officers engaged in removal operations. These measures are essential to bringing ICE agents and officers [pay](#) in line with other law enforcement personnel.

# 5. & 6. Expanded DACA & DAPA

Will be covered in detail by panelist Steve Weller. See his separate power point.

## Summary

### 5. DACA Expansion:

expanded eligibility for 2012 DACA program to cover all undocumented immigrants who entered the U.S.

- Before the age of 16 & before January 1, 2010
- Instead of max age of 31 on 6/15/12 (born 1981) & entry before 6/15/07

### 6. Extend Deferred Action to Parents of Americans and Lawful Permanent Residents (DAPA)

Accords deferred action to parents of US citizens and Lawful Permanent Residents, if

- in US 5 years,
- not in one of removal priorities
- no adverse discretionary factors

# For DACA & DAPA

## What is covered ?

- Deferral of deportation
  - Have to register
- Work authorization for 3 years
- Advance parole (not considered an absence)

## 7. Expand Provisional Waivers to Spouses and Children of Lawful Permanent Residents

Somewhat technical – makes it easier for those who qualify for immigrant visas to get their visas and come back w/o lengthy stays outside the US

Allows 601 waiver applications (for relatives subject to lengthy waits abroad before allowed to return to US with Immigrant visas) to be adjudicated before departure from US for spouses and children of LPRs (as well as of USCs – per 2013 reg). Provisional Waiver program announced 2013 to allow applications to be adjudicated for UsCs of required 3/10 years wait outside US extended to undocumented spouses & children of UsCs and LPRs

- The [provisional waiver program](#) DHS announced in January 2013 for undocumented spouses and children of U.S. citizens will be expanded to include the spouses and children of lawful permanent residents, as well as the adult children of U.S. citizens and lawful permanent residents. At the same time, we will further clarify the “extreme hardship” standard that must be met to obtain the waiver.

## 8. Revise Parole Rules

DHS will begin **rulemaking** to identify the conditions under which

- talented entrepreneurs should be paroled into the United States, on the ground that their entry would yield a significant public economic benefit.
- DHS will also support the military and its recruitment efforts by working with the Department of Defense to address the availability of parole-in-place and deferred action to spouses, parents, and children of U.S. citizens or lawful permanent residents who seek to enlist in the U.S. Armed Forces.
- DHS will also issue guidance to clarify that when anyone is given “advance parole” to leave the country – including those who obtain deferred action - they will not be considered to have departed. Undocumented aliens generally trigger a 3- or 10-year bar to returning to the United States when they depart.

# 9. Promote the Naturalization Process

- allow credit card payments for natz applications &
- Expand criteria for fee waivers

# 10. Support High-skilled Business and Workers

Backlogs for approved work visa petitions  
Clarify terms for “national interest” waivers, etc.  
expand practical training period

1. Make it easier for highly skilled workers to stay here in temp status while applying for LPR status
2. lengthen practical training period (now 18months) for students after they complete their studies

DHS will take a number of administrative actions to better [enable U.S. businesses to hire and retain highly skilled foreign-born workers and strengthen and expand opportunities for students to gain on-the-job training](#). For example, because our immigration system suffers from extremely [long waits for green cards](#), we will amend current regulations and make other administrative changes to provide needed flexibility to workers with approved employment-based green card petitions.



# Separation of Powers

- Constitutional arguments are being raised concerning respective authority of the Executive & Congress
  - Dept Justice Office of Legal Counsel memo
  - Prior Supreme court decisions
  - Texas v United States – suit by 26 states

# Recent Legislative Developments concerning immigration legislation

- DHS Funding
  - **HR 240** The Act does not include House-passed amendments that would have prohibited funding from being used for several immigration policies that the Administration is implementing by executive action.
- Confirmation vote on Loretta Lynch, nominee for Attorney General, is being delayed because some Senators disagree with the Executive Actions.
- Talk of law suit by Congress challenging Presidential authority to take the executive actions announced

# Pending Bills

- **H.399/S. 208**– Secure the Border First Act of 2015 – a bill to strengthen the border, is pending in both houses of Congress
- Bills introduced by H.R. Judiciary Committee
  - H.R. 1147 **The Legal Workforce Act**
  - H.R. 1149 **The Protection of Children Act of 2015**
  - H.R. 1153 **The Asylum Reform and Border Protection Act of 2015**
  - H.R. 1148 **In Honor of State and Local Law Enforcement Act**

# Stay on Executive Action

- Texas v United States, US DC SD TX (Brownsville Div)

The Plaintiffs: 26 States

The Complaint ¶2 states : “This lawsuit is not about immigration. It is about the rule of law, presidential power, and the structural limits of the U.S. Constitution.”

A temporary Injunction staying implementation of DACA expansion and DAPA was issued 2/16/2015 .

Implementation of DACA expansion & DAPA, scheduled to begin Feb. 18, was halted.



<http://www.uscis.gov/immigrationaction>

**Executive Actions on Immigration**Update: Due to a federal court order, USCIS will not begin accepting requests for the expansion of DACA on February 18 as originally planned and has suspended implementation of Deferred Action for Parents of Americans and Lawful Permanent Residents. The court's temporary injunction, issued February 16, does not affect the existing DACA. Individuals may continue to come forward and request an initial grant of DACA or renewal of DACA under the original guidelines. Please check back for updates.

**STAY TUNED**