

CHAPTER 1

INTRODUCTION

This chapter includes:

§ 1.1	Introduction	1-1
§ 1.2	Overview	1-1
§ 1.3	About This Manual.....	1-4

§ 1.1 Introduction

In light of the continued failure of the U.S. Congress to pass meaningful immigration reform and the continued dysfunction of our immigration system, former President Obama announced a series of immigration policy changes through executive action during his presidency. The use of executive action to implement immigration policy is by no means new. Every President since Eisenhower issued an executive action on immigration in some capacity.¹ Nevertheless, the breadth and impact of the changes President Obama sought to implement were unprecedented. As of January 2017, some of the changes outlined by the 2014 executive action have been implemented; others have been blocked indefinitely. Even the policies that have been enacted may be vulnerable to change. Those that were enacted by executive action only can be changed or canceled by the new administration; those implemented by regulation could be changed, but only under the processes outlined by the Administrative Procedures Act. All immigration law evolves; the law covered in this manual only more so.

This manual seeks to explain the parts of former President Obama’s executive action that have been implemented as of the time of this writing. These new changes, even if short-lived, can help many. They can provide individuals with much-needed immigration relief, and also provide a blueprint for future immigration policy and legislation.

§ 1.2 Overview

On November 20, 2014, former President Obama announced a series of changes that his administration would undertake to modify immigration policy. The Department of Homeland Security (DHS) issued twelve memoranda to make changes to immigration enforcement priorities, Secure Communities, Deferred Action for Childhood Arrivals, deferred action, provisional waivers, advance parole, parole-in-place, and more. In general, the reforms fall into three categories: (i) changes to immigration enforcement policy; (ii) deferred action expansion; and (iii) changes to our legal immigration system.

¹ Charles Kamasaki, “Critics Say Executive Action on Immigration Would Be Unprecedented. They Forget their History,” *The Atlantic* (Oct. 1, 2014), available at www.theatlantic.com/politics/archive/2014/10/critics-say-executive-action-on-immigration-would-be-unprecedented-they-forget-their-history/431352/.

Changes to Immigration Enforcement Policy. DHS restructured its immigration enforcement priorities, directing all of its agencies (including Immigration and Customs Enforcement, Citizenship and Immigration Services, and Customs and Border Protection) to focus attention on national security threats, immigrants with certain criminal convictions, and recent unlawful entrants.² DHS replaced the controversial Secure Communities program with the new Prioritized Enforcement Program.³ This new program facilitates cooperation among federal, state, and local law enforcement with the stated goal to focus on convicted criminals. Additionally, DHS further strengthened its approach to border security, adding personnel at the southern border and developing three new inter-agency task forces to coordinate their efforts.⁴

Deferred Action Expansion. Recognizing the need to address the millions of unauthorized immigrants who currently live in the United States without access to lawful status, the President authorized DHS to expand its use of deferred action. This expansion sought to take two forms, the expansion of the current Deferred Action for Childhood Arrivals (DACA) program, and the creation of a new deferred action program, Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA). In broad strokes, the expanded DACA program was for people who came to the United States before age 16, lived here since January 1, 2010, and met certain educational and criminal background requirements.⁵ DAPA was for people who as of November 20, 2014 had U.S. citizen or lawful permanent resident (green-card holders) children, lived in the United States since January 1, 2010, and were not enforcement priorities.⁶

Unfortunately, both of these programs were blocked by federal litigation,⁷ and at the time of this manual's writing, remain indefinitely suspended. Although these were the two biggest, and boldest, parts of the 2014 Executive Action, they were by no means the only parts. This manual focuses on the other parts of the executive action that did take effect, and the ways in which they impact immigrants in the United States. In addition, the original DACA program as enacted in 2012 remains, at least for now; this manual also covers existing DACA and advance parole options for DACA recipients.

Deferred action under any program does not confer legal status, nor a path to permanent residency. As such, it was never intended to be a permanent solution for the millions of unauthorized immigrants living in limbo in the United States. It may also cease to exist under a new presidential administration; the executive branch may modify or terminate the DACA

² DHS, *Policies for the Apprehension, Detention, and Removal of Undocumented Immigrants*, (Nov. 20, 2014), available at

www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf.

³ DHS, *Secure Communities*, (Nov. 20, 2014), available at www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf.

⁴ DHS, *Southern Border and Approaches Campaign*, (Nov. 20, 2014), available at www.dhs.gov/sites/default/files/publications/14_1120_memo_southern_border_campaign_plan.pdf.

⁵ DHS, *Exercising Prosecutorial Discretion with Respect to Certain Individuals who Came to the United States as Children and with Respect to Certain Individuals who are Parents of U.S. Citizens or Permanent Residents*, (Nov. 20, 2014), available at www.dhs.gov/sites/default/files/publications/14_1120_memo_deferred_action.pdf.

⁶ *Id.*

⁷ *United States v. Texas*, 579 U.S. ____; 136 S.Ct. 2271 (2016).

program at any time. Because of this, advocates should keep up-to-date on the current deferred action policies and practices, and always ensure that they are screening their clients for more permanent forms of relief as well.

Changes to Our Legal Immigration System. The President’s executive action on immigration reform also made numerous changes to existing processes within the legal immigration system. These changes include a directive to expand the eligibility for provisional waivers, parole-in-place, and advance parole; calls to modernize and streamline the visa processing system, such as proposed changes to employment-based visas; and efforts to encourage and increase access to naturalization. The expansions of provisional waivers and parole opportunities warrant particular attention given the ways they could reduce some of the obstacles unauthorized immigrants face in obtaining lawful status.

Under current law, certain unauthorized family members living in the United States who are eligible for a family-based immigrant visa must leave to be interviewed and processed at U.S. consulates in their home countries. A provisional waiver provides certain family members in the United States the ability to apply to waive their unlawful presence in the United States before they leave to consular process. The opportunity to apply for the waiver from within the United States reduces the amount of time that the family members have to spend outside of the country and decreases the risk they will be unable to return. U.S. Citizenship and Immigration Services (USCIS) expanded the family members eligible for the provisional waiver process, previously limited to spouses and children of U.S. citizens, to include spouses and minor children of LPRs and adult children of U.S. citizens and LPRs. USCIS also issued guidance on how it interprets the hardship waiver criteria.⁸

A grant of parole-in-place can allow an unauthorized immigrant to adjust status to permanent residency, and thus avoid the need to depart the country to consular process, if the person is otherwise eligible. Parole-in-place is a highly discretionary opportunity used to benefit family members of current and previous U.S. military members. The executive action directs DHS to consider expanding eligibility for parole-in-place to family members of people *seeking to enlist* in the U.S. military as well, and to explore granting deferred action to family members of U.S. military members who have overstayed their visas.⁹

Advance parole is a discretionary grant of permission for someone living in the United States in temporary status to travel abroad without losing her temporary status. The Board of Immigration Appeals (BIA) has held that an adjustment applicant who leaves the United States pursuant to advance parole has not made a “departure” for purposes of triggering certain unlawful presence inadmissibility grounds that ordinarily apply when someone departs after living here unlawfully.¹⁰ DHS asked its general counsel to provide legal guidance clarifying that anyone leaving the country on advance parole will not trigger these unlawful presence bars. DHS directed

⁸ DHS, *Expansion of the Provisional Waiver Program*, (Nov. 20, 2014), available at www.dhs.gov/sites/default/files/publications/14_1120_memo_i601a_waiver.pdf.

⁹ DHS, *Families of U.S. Armed Forces Members and Enlistees*, (Nov. 20, 2014), available at www.dhs.gov/sites/default/files/publications/14_1120_memo_parole_in_place.pdf.

¹⁰ *Matter of Arrabally, Yerabelly*, 25 I&N Dec. 771 (BIA 2012).

*Immigrant Legal Resource Center
December 2016*

its agencies to apply this policy (once issued) to all noncitizens, not just adjustment applicants, who leave pursuant to advance parole.¹¹

§ 1.3 About This Manual

This manual is intended as a practical guide to understand the implemented parts of the 2014 executive action. This manual is designed for attorneys, advocates, paralegals and other staff at nonprofit organizations, government agencies, and other organizations who serve immigrant communities. The manual is divided into ten chapters and three parts, as follows:

Part 1: Strategies for Family-Based Immigration Using the 2014 Immigration Executive Action

Chapters 2 through 6 discuss the effects of the 2014 executive action to expand eligibility for family-based immigration. Family-based immigration is the most common way for people to gain immigration status in the United States, and the changes implemented by executive action expand this eligibility further. **Chapter 2** provides an overview of family-based immigration, including explanations of the preference system, the Child Status Protection Act, the visa petitioning process, how to fill out the necessary forms and obtain the required documentation, and the reasons for visa revocation. **Chapter 3** discusses the adjustment of status process, including who is eligible, how to submit the application, what will happen at the adjustment interview, and a thorough discussion of conditional residence. **Chapter 4** covers consular processing, including an overview of the process, how to obtain documents, and what to expect at the interview. These three chapters lay the groundwork to understand how the expansions to the waiver and parole process afforded by the 2014 executive action impact the immigrant community.

In **Chapter 5**, this manual explains the provisional waiver and the expansion of the waiver, as directed by the 2014 executive action, and later as implemented by regulation. This chapter discusses the new regulations, the requirements for the waiver, and how to apply.

Chapter 6 provides an analysis of parole-in-place, the benefits of obtaining parole for adjustment-eligible immigrants, eligibility requirements, and how to apply.

Part Two: Existing DACA

The second part of the manual focuses on the 2012 executive action creating DACA. **Chapter 7** covers DACA and the DACA eligibility requirements. **Chapter 8** discusses advance parole, focusing on its use for DACA applicants and recipients and explaining both the benefits and risks.

Part Three: Screening for Other Immigration Relief

This part of the manual provides information on screening immigrant clients for more permanent forms of relief, as well as screening them for the risk of enforcement. **Chapter 9** provides an overview of other potential ways in which immigrant clients may be able to obtain lawful status

¹¹ DHS, *Directive to Provide Consistency Regarding Advance Parole*, (Nov. 20, 2014), www.dhs.gov/sites/default/files/publications/14_1120_memo_arrabally.pdf.

including through U nonimmigrant status, the Violence Against Women Act, asylum, T nonimmigrant status, Temporary Protected Status, cancellation of removal, Special Immigrant Juvenile Status, the Nicaraguan Adjustment and Central American Relief Act, and others. Finally, **Chapter 10** discusses the 2017 enforcement priorities that were issued as this manual went to press. These priorities provide advocates with information about which clients may currently be at the greatest risk of enforcement.

Many programs mentioned in this manual, such as parole, DACA, and the enforcement priorities, are in flux, particularly after the 2016 election. At the time this manual is being published, President Trump has begun issuing executive orders on immigration policy, with potentially more to follow. We therefore invite you to visit the Immigrant Legal Resource Center's website at www.ilrc.org for updates and to join our education listserv by subscribing at www.ilrc.org/subscribe to receive email messages about updates to this manual as well as in-person and webinar trainings opportunities related to immigration executive actions.

