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**STATEMENT OF THE AMERICAN IMMIGRATION COUNCIL**

**SUBMITTED TO THE COMMITTEE ON OVERSIGHT & GOVERNMENT REFORM,  
SUBCOMMITTEES ON NATIONAL SECURITY & HEALTH CARE, BENEFITS AND  
ADMINISTRATIVE RULES**

**HEARING ON “THE FISCAL COSTS OF THE PRESIDENT’S EXECUTIVE ACTIONS  
ON IMMIGRATION”**

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The American Immigration Council is a non-profit organization which for over 25 years has been dedicated to increasing public understanding of immigration law and policy and the role of immigration in American society. We write to (1) share our analysis and research regarding the ample legal and historical authority for the President’s recent deferred action programs, Deferred Action for Childhood Arrivals (DACA) and Deferred Action for Parental Accountability (DAPA); (2) detail the significant economic benefits; and (3) detail some of the significant social benefits of the action.

After decades of congressional neglect, in November 2014, President Obama took a crucial and courageous step toward reforming our immigration system. He announced that he will provide temporary relief for many of those impacted by our broken system.<sup>1</sup> Like his predecessors who took executive action on immigration, President Obama is not providing anyone a permanent legal status—only Congress can do that. But his action will provide benefits not only to those individuals who receive deferred action and their families, but to society as a whole.

**I. Legal and Historical Authority for Immigration Executive Action**

Presidents have ample legal authority—and abundant historical precedent—supporting their discretion to take action in immigration matters.<sup>2</sup> The president’s broad executive authority to shape the enforcement and implementation of immigration laws includes the exercising of

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<sup>1</sup> American Immigration Council, *A Guide to the Immigration Accountability Executive Action* (December 2014), at <http://www.immigrationpolicy.org/special-reports/guide-immigration-accountability-executive-action>.

<sup>2</sup> American Immigration Council, *Executive Grants of Temporary Immigration Relief, 1956-Present* (October 2014), at <http://www.immigrationpolicy.org/just-facts/executive-grants-temporary-immigration-relief-1956-present>.

prosecutorial discretion to defer deportations and streamline certain adjudications.<sup>3</sup> 135 law professors from around the nation<sup>4</sup> and four former chief counsels of USCIS and INS<sup>5</sup> have affirmed that the DACA and DAPA programs are well within the President’s authority.

Under this authority, since at least 1956, every U.S. president since Eisenhower has granted temporary immigration relief to one or more groups in need of assistance. Our report *Executive Grants of Temporary Immigration Relief, 1956-Present* (Attachment A) collects 39 examples, including large scale actions, actions designed to protect immigrant families, and actions taken while legislation was pending.<sup>6</sup>

Perhaps the most striking historical parallels to President Obama’s action are the “Family Fairness” deferred actions implemented by Presidents Ronald Reagan and George Bush, Sr. between 1987 and 1990, set out in our report *Reagan-Bush Family Fairness: A Chronological History* (Attachment B).<sup>7</sup> The 1986 Immigration Reform and Control Act (IRCA) made roughly 3 million unauthorized immigrants eligible for lawful permanent residence, but did not allow spouses and children to apply as derivatives. The ensuing controversy over “split-eligibility” families ultimately led the Reagan administration to announce, in 1987, that it would defer deportation for children under 18 who were living in a two-parent household with both parents legalizing, or with a single parent who was legalizing. Then, in July 1989, the Senate passed legislation to protect a larger group—prohibiting deportation of all spouses and children of those who were legalizing under IRCA. But the legislation stalled in the House. In 1990, President Bush Sr. extended deferred action to cover spouses and children.

Our research regarding Family Fairness demonstrates three points, among others:

- The use of executive branch authority in immigration does not constitute a constitutional crisis. Rather, temporary deferral programs may provide “breathing room” for Congress to further debate a more lasting solution for undocumented immigrants.
- That said, Family Fairness was not “ancillary to” or a “mere cleanup of” Congressional action. Both Presidents Reagan and Bush took action for spouses and

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<sup>3</sup> Hiroshi Motomura, *The President’s Discretion, Immigration Enforcement, and the Rule of Law* (Washington, DC: American Immigration Council, August 2014), at <http://www.immigrationpolicy.org/perspectives/president%E2%80%99s-discretion-immigration-enforcement-and-rule-law>.

<sup>4</sup> <https://pennstatelaw.psu.edu/sites/default/files/documents/pdfs/Immigrants/executive-action-law-prof-letter.pdf>.

<sup>5</sup> Stephen Legomsky, Roxana Bacon, Paul W. Virtue, and Bo Cooper, Letter to chairs of Judiciary Committees (Nov. 29, 2014) (affirming arguments in law professors’ letter).

<sup>6</sup> *Executive Grants of Temporary Immigration Relief, 1956-Present*.

<sup>7</sup> American Immigration Council, *Reagan-Bush Family Fairness: A Chronological History* (December 2014), at <http://www.immigrationpolicy.org/just-facts/reagan-bush-family-fairness-chronological-history>; see also Mark Noferi, *When Reagan and GHW Bush Took Bold Executive Action on Immigration*, The Hill (Oct. 2, 2014), at <http://thehill.com/blogs/congress-blog/foreign-policy/219463-when-reagan-and-ghw-bush-took-bold-executive-action-on>.

children despite explicit Congressional intent to leave them out of IRCA reform, as stated by both of IRCA's primary drafters,<sup>8</sup> and recognized by the INS.<sup>9</sup>

- Additionally, when President Bush took action, INS officials, legislators, and those in the policy debate such as the Center for Immigration Studies director all understood the potential impact to be large—impacting up to 1.5 million immigrants.<sup>10</sup>

Yet no lawsuits or allegations of a constitutional crisis ensued. Today's debate may be indicative of a more polarized political environment, rather than a change in the constitutional underpinnings.

## II. Economic Benefits

Our recent report, *Only the Beginning: The Economic Potential of Executive Action on Immigration*, details the significant economic benefits from President Obama's recent action.<sup>11</sup> (Attachment C) Those benefits include:

- The White House Council of Economic Advisers (CEA) estimates that the executive actions would, over the next 10 years, increase GDP by between 0.4 percent and 0.9 percent (\$90-\$210 billion), and decrease federal deficits between \$25 billion and \$60 billion.<sup>12</sup>
- The Center for American Progress (CAP) estimated that an executive action scenario in which 4.7 million unauthorized immigrants with a minor child in the United States received deferred action and work authorization would increase payroll tax revenues by \$2.9 billion in the first year, and up to \$21.2 billion over five years.<sup>13</sup>
- The Fiscal Policy Institute (FPI) estimates a 5 to 10 percent increase in wages over a five-year period for the almost 5 million workers potentially eligible to gain work authorization through expanded deferred action under the President's executive action.<sup>14</sup>

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<sup>8</sup> *Reagan-Bush Family Fairness: A Chronological History* at 2, citing Sen. Alan Simpson (R-WY) and Rep. Romano Mazzoli (D-KY).

<sup>9</sup> *Id.* at 2, 4.

<sup>10</sup> *Id.* at 3-5.

<sup>11</sup> American Immigration Council, *Only the Beginning: The Economic Potential of Executive Action on Immigration* (December 11, 2014), at <http://www.immigrationpolicy.org/just-facts/only-beginning-economic-potential-executive-action-immigration>. Statistics cited in this statement are provided therein.

<sup>12</sup> White House Council of Economic Advisers, "The Economic Effects of Administrative Action on Immigration" (Washington, DC: Executive Office of the President of the United States, November 2014), at [http://www.whitehouse.gov/sites/default/files/docs/cea\\_2014\\_economic\\_effects\\_of\\_immigration\\_executive\\_action.pdf](http://www.whitehouse.gov/sites/default/files/docs/cea_2014_economic_effects_of_immigration_executive_action.pdf).

<sup>13</sup> Patrick Oakford, "Administrative Action on Immigration Reform: The Fiscal Benefits of Temporary Work Permits" (Washington, DC: Center for American Progress, September 2014), p. 3, at <http://cdn.americanprogress.org/wp-content/uploads/2014/09/OakfordAdminRelief.pdf>.

<sup>14</sup> Fiscal Policy Institute, "President's Immigration Action Expected to Benefit Economy" (New York, NY: Fiscal Policy Institute, November 21, 2014), at <http://fiscalpolicy.org/presidents-immigration-action-expected-to-benefit-economy>; personal communication with David Dyssegaard Kallick, December 10, 2014.

Also, the CEA estimates that the executive actions would raise average wages for U.S.-born workers by 0.3 percent, or \$170 in today's dollars, over the next 10 years.<sup>15</sup>

- Moreover, the CEA anticipates that the executive actions would have no impact on employment of U.S.-born workers.<sup>16</sup> In other words, it is unlikely that the changes announced by President Obama would cause jobs to be taken away from native-born workers.

Preliminary evidence from the National UnDACAmented Research Project suggests that even a temporary legal status can improve economic opportunities for undocumented individuals.<sup>17</sup> That said, there is significant evidence that permanent legalization would provide critical economic benefits, while by nature, deferred action is a temporary status—a mechanism that provides a measure of relief and protection from removal during the allotted time period.

### III. Social Benefits

Additionally, an *amicus* brief submitted by the American Immigration Council and other organizations in pending litigation against the executive action, details stories of the other benefits of executive action to the United States and impacted individuals.<sup>18</sup> (Attachment D) These benefits include:

- The ability to focus enforcement on lower-priority individuals.
- For those now eligible for DACA, the ability to support themselves through work, better pursue higher education, and follow their dreams.
- For those now eligible for DAPA, the ability to work and support their children who are U.S. citizens and lawful permanent residents.

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We urge Congress to work to fix our broken immigration system and provide individuals, families and communities across America a functional system that meets our needs and reflects our proud history as a nation of immigrants.

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<sup>15</sup> White House Council of Economic Advisers, note 12.

<sup>16</sup> *Ibid.*

<sup>17</sup> Roberto G. Gonzales and Angie M. Bautista-Chavez, *Two Years and Counting: Assessing the Growing Power of DACA* (Washington, DC: American Immigration Council, June 2014), at <http://www.immigrationpolicy.org/special-reports/two-years-and-counting-assessing-growing-power-daca>.

<sup>18</sup> *Amici Curiae* Brief of American Immigration Council, American Immigration Lawyers Association, Define American, National Immigrant Justice Center, National Immigration Law Center, New Orleans Workers' Center For Racial Justice, Service Employees International Union, Southern Poverty Law Center, and United We Dream in Opposition to Plaintiffs' Motion For Preliminary Injunction, *Texas, et. al. v. United States, et. al.*, No. 14-cv-254, Dkt # 39 (S.D. Tex. Dec. 29, 2014), available at <http://www.legalactioncenter.org/sites/default/files/Texas%20v.%20US%20amicus%20brief.pdf>.

ATTACHMENT A

October 2014

## **Executive Grants of Temporary Immigration Relief, 1956-Present**

Much has been made of President Obama’s Deferred Action for Childhood Arrivals (DACA) program, through which he deferred deportation for young adults brought to the U.S. as children. But as immigration legal scholar Hiroshi Motomura has noted, the president has broad executive authority to shape the enforcement and implementation of immigration laws, including exercising prosecutorial discretion to defer deportations and streamline certain adjudications.<sup>1</sup> In fact, a look at the history books reveals that President Obama’s action follows a long line of presidents who relied on their executive branch authority to address immigration challenges.

A chart of these decisions [below] makes clear that presidents have ample legal authority—and abundant historical precedent—to exercise their discretion in immigration matters. Since at least 1956, every U.S. president has granted temporary immigration relief to one or more groups in need of assistance. This chart collects 39 examples, which span actions large and small, taken over many years, sometimes by multiple administrations.<sup>2</sup> Some presidents announced programs while legislation was pending. Other presidents responded to humanitarian crises. Still others made compelling choices to assist individuals in need when the law failed to address their needs or changes in circumstance.

Perhaps the most striking historical parallel to today’s immigration challenges is the “Family Fairness” policy implemented by Presidents Ronald Reagan and George Bush, Sr. The story behind the fairness policy begins on November 6, 1986, when President Reagan signed the 1986 Immigration Reform and Control Act (IRCA), which gave up to 3 million unauthorized immigrants a path to legalization if they had been “continuously” present in the U.S. since January 1, 1982. But the new law excluded their spouses and children who didn’t qualify and forced them to wait in line, creating “split-eligibility” families, as they were called. The U.S. Catholic bishops and immigration groups criticized President Reagan for separating families.

In 1987, Reagan’s Immigration and Naturalization Service (INS) commissioner announced a blanket deferral of deportation (logistically similar to today’s DACA program) for children under 18 who were living in a two-parent household with both parents legalizing, or with a single parent who was legalizing. Then, in July 1989, the Senate passed legislation to protect a bigger group—prohibiting deportation of all spouses and children of those who were legalizing under IRCA.

But the legislation stalled in the House, and in 1990 President Bush Sr. administratively implemented the Senate bill’s provisions. His INS commissioner, saying “We can enforce the law humanely,” expanded the blanket deferral to as many as 1.5 million spouses and children of immigrants who were legalizing, provided they met certain criteria. President Bush thus protected over 40 percent of the then-unauthorized population from deportation. The House then passed legislation, and President Bush signed it later that year.

The Family Fairness program is only one example of the common characteristics of presidential decisions to act on immigration. Several decisions were large-scale actions potentially affecting hundreds of thousands or millions of immigrants. Some presidents focused on the necessity of keeping families together. And other presidents acknowledged the absurdity of trying to deport people for whom major legislation in Congress was pending. Some of these examples include:

- **Large-scale actions:** In addition to Family Fairness, other large-scale actions include paroles of up to 600,000 Cubans in the 1960s and over 300,000 Southeast Asians in the 1970s, President Carter’s suspension of deportations for over 250,000 visa-holders, and President Reagan’s deferral of deportations for up to 200,000 Nicaraguans.
- **Family-based actions:** Other actions to protect families include the suspended deportations of families of visa-holders (Carter), parole of foreign-born orphans (Eisenhower, Obama), deferred action to widows of U.S. citizens and their children (Obama), and parole-in-place to families of military members (Obama).
- **Actions while legislation was pending:** Other actions taken while legislation was pending include parole of Cuban asylum seekers fleeing Castro (Nixon, Kennedy, Johnson), deferred action to battered immigrants whom the Violence Against Women Act (VAWA) would protect (Clinton), parole of orphans (Eisenhower), and DACA (Obama).

## Endnotes

<sup>1</sup> Hiroshi Motomura, *The President’s Discretion, Immigration Enforcement, and the Rule of Law* (Washington, DC: American Immigration Council, August 2014), <http://immigrationpolicy.org/perspectives/president%E2%80%99s-discretion-immigration-enforcement-and-rule-law>.

<sup>2</sup> This data is compiled from Marshall Fitz, *What the President Can Do on Immigration If Congress Fails to Act* (Washington, DC: Center for American Progress, July 2014), <http://www.americanprogress.org/issues/immigration/report/2014/07/01/93042/what-the-president-can-do-on-immigration-if-congress-fails-to-act/>; Andorra Bruno, Todd Garvey, Kate Manuel, and Ruth Ellen Wasem, *Analysis of June 15, 2012 DHS Memorandum, Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children* (Washington, DC: Congressional Research Service, July 13, 2012), <http://edsources.org/wp-content/uploads/Deferred-Action-Congressional-Research-Service-Report.pdf>; Arthur C. Helton, “Immigration Parole Power: Toward Flexible Responses to Migration Emergencies,” *Interpreter Releases* 71, no. 1637 (December 12, 1994); John W. Guendelsberger, “Family Fairness: A Status Report,” *In Defense of the Alien* 15 (1992):45-57, <http://www.jstor.org/stable/23143114>; and other media reports, press releases, and articles, linked to here where publicly available.

**Executive Grants of Temporary Immigration Relief, 1956-Present**

<b>Year(s)</b>	<b>1956</b>	<b>1956-58</b>	<b>1959-72</b>	<b>1962-65</b>	<b>1975-79</b>
<b>Relief Covered:</b>	923 orphans were paroled into the custody of military families seeking to adopt them, pending Congressional legislation providing them permanent resident status	Parole of Hungarians who escaped after 1956 uprising against Soviets failed	Parole for Cuban asylum seekers fleeing Cuban revolution	Executive parole of Chinese who fled to Hong Kong in early 1962	Executive parole of Indochinese from Vietnam, Cambodia, and Laos, in 10 authorizations or extensions from 1975-79
<b># Affected:</b>	923	31,915 granted parole.	621,403 received, vast majority granted parole	15,100 paroled	360,000 arrived in US, most under parole authorization
<b>President(s):</b>	Eisenhower	Eisenhower	Eisenhower, Kennedy, Johnson, Nixon	Kennedy, Johnson	Ford, Carter
<b>Other Notes:</b>	<u>Press release</u> , Oct. 26, 1956: "The Secretary of State and the Attorney General have just reported to me that this can be done."		Legislation was pending during <u>this time</u> (i.e. the Cuban Adjustment Act of 1966). In FY 1972, a total of 17,109 Cuban asylum seekers were paroled into the U.S. via airlift		Some also eligible under conditional entry, but since not enough entries statutorily available, most were paroled. Most of 130,000 refugees who were evacuated during 1975 U.S. withdrawal from Vietnam were paroled

Year(s)	1976	1977	1977-82	1977-1980	1978
<b>Relief Covered:</b>	Extended Voluntary Departure (EVD) for Lebanese	AG temporarily suspended expulsion of “ <i>Silva</i> letterholders,” who were suing because the State Department incorrectly calculated a visa cap, while their litigation and legislation moved forward	Extended Voluntary Departure (EVD) for <u>Ethiopians</u>	Parole for Soviet refugees	Extended Voluntary Departure (EVD) for Ugandans
<b># Affected:</b>	Unknown (although 14,000 fled Lebanon to US)	Ultimately 250,000 (500,000 including dependents)	15,000+	50,000 + (9,000 in Jan. and Dec. 1977; 12,000 in June 1978; 36,000 in 1979)	Unknown
<b>President(s):</b>	Ford	Carter	Carter, Reagan	Carter	Carter
<b>Other Notes:</b>	Extended Voluntary Departure (EVD) is an administrative process by which designated nationals of a country were protected from deportation and provided work authorization. See 563 F. Supp. 157 (D.D.C. 1983)		Reagan extended this policy in 1982, after Reps. Dixon (D-CA) and Kemp (R-NY) cosponsored resolution	From 1972-on, parole was used frequently for Soviet refugees when not enough conditional entries were statutorily available	



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Year(s)	1979	1979	1980	1980	1981-1987
<b>Relief Covered:</b>	Extend Voluntary Departure (EVD) for <u>Nicaraguans</u>	Extended Voluntary Departure (EVD) for Iranians	Extended Voluntary Departure (EVD) for Afghans	<u>Parole</u> of Cubans and Haitians during <u>Marief boatlift</u>	Extended Voluntary Departure (EVD) for <u>Poles</u>
<b># Affected:</b>	3,600	Unknown	Unknown	123,000 paroled in US by 1981	7,000 (as of 1987)
<b>President(s):</b>	Carter	Carter	Carter	Carter	Reagan
<b>Other Notes:</b>		In response to Iranian Revolution against Shah.			In response to Polish Communist government declaring martial law in 1981, after crackdown on Solidarity strikes. Initiated in 1981, extended in 1984 and <u>1987</u>

Year(s)	1987	1987	1989	1989	1990
<b>Relief Covered:</b>	AG Meese directed INS not to deport <u>Nicaraguans</u> and to grant them work authorizations, if they demonstrated a “well-founded fear of persecution,” even if denied asylum	Unauthorized <u>children</u> of some noncitizens who applied to legalize after 1986 immigration reform	<u>Executive directive</u> of deferred action for Chinese nationals following Tiananmen Square	Parole of Soviets and Indochinese, even though denied refugee status	Further <u>executive order</u> formalizing <u>Deferred Enforced Departure (DED)</u> for Chinese nationals following Tiananmen Square
<b># Affected:</b>	Up to 200,000	More than <u>100,000 families</u>	80,000	2,225 Indochinese in 1989; 5,000 Soviets as of 1989	80,000
<b>President(s):</b>	Reagan	Reagan	Bush Sr.	Bush Sr.	Bush Sr.
<b>Other Notes:</b>	Legislation was <u>pending</u> . Ultimately, the Nicaraguan Adjustment and Central American Relief Act ( <u>NACARA</u> ) passed	Reagan’s AG Meese also authorized INS to defer deportation proceedings for “compelling or humanitarian factors”	Visa overstays had to report to INS to benefit from deferred action and apply for work authorization. <u>Bush</u> : “I reemphasize my commitment... to never allow any action that would force the return of Chinese students if their lives or liberty are at risk.”		“Deferred Enforced Departure” is a stay of deportation, and often provision of work authorization, within the President’s foreign relations power. Bush’s executive order suspended deportations, provided work authorization for all Chinese nationals in the US as of 6/5/89, and waived a regulation to allow adjustment of status

Year(s)	1990	1991	1992	1994	1997
<b>Relief Covered:</b>	Deferred deportation of <u>unauthorized spouses and children</u> of individuals legalized under 1986 Immigration Reform and Control Act (IRCA)	President <u>directed AG</u> to grant deferred enforced departure (DED) to Persian Gulf evacuees who were airlifted to US after 1990 Kuwait invasion	Bush Administration granted <u>DED</u> to certain <u>El Salvadorans</u> , even though and because their statutory TPS grant expired	Parole of further Cubans into the US.	<u>Deferred Enforced Departure (DED)</u> for <u>Haitians</u> in the US since before 1995
<b># Affected:</b>	Up to <u>1.5 million</u>	2,227	190,000	~28,000	40,000
<b>President(s):</b>	Bush Sr.	Bush Sr.	Bush Sr., Clinton	Clinton	Clinton
<b>Other Notes:</b>	Bush INS Commissioner issued blanket “Family Fairness” policy, and dropped “compelling or humanitarian factors” requirement in prior executive order. Legislation had passed the Senate, but not the House, providing similar relief	Criteria: Those who had US citizen relatives or harbored US citizens during the invasion. Allowed evacuees to apply for permanent residency. A Kuwaiti doctor said, "I feel the President has finally put a happy ending on this tragic story."	President Clinton subsequently extended the DED grant until Dec. 31, 1994	Included Cubans on the immigrant visa waiting list, unmarried sons and daughters of Cubans issued immigrant visas or granted refugee status, and family members who reside in the same household. Also paroled Cubans detained at Guantanamo and Panama	Legislation was pending to help these Haitians ( <u>Haitian Refugee Immigration Fairness Act of 1998</u> allowed these Haitians to obtain green card)

Year(s)	1997	1998	1999	2002	2005
<b>Relief Covered:</b>	Deferred action to noncitizens who might gain relief through <u>Violence Against Women Act (VAWA)</u> , if it passed	Attorney General temporarily <u>suspended deportations</u> to El Salvador, Guatemala, Honduras, and Nicaragua, in response to Hurricane Mitch	<u>Deferred Enforced Departure (DED)</u> for <u>Liberians</u> for 1 year	Executive order of expedited naturalization for <u>green card holders who enlisted in military</u>	Deferred action for <u>foreign academic students</u> who were affected by Hurricane Katrina
<b># Affected:</b>	Unknown	150,000	10,000	Unknown	Unknown
<b>President(s):</b>	Clinton	Clinton	Clinton	Bush	Bush
<b>Other Notes:</b>	VAWA legislation was pending. Criteria: Battered noncitizens with approved LPR self-petitions, and their derivative children			Order eliminated a three-year wait, let the soldiers seek citizenship immediately and applied to anyone on active duty as of Sept. 11, 2001. Included <u>Lance Cpl. José Gutiérrez</u> , a Guatemalan who received U.S. status through SIJ and died in Iraq	Bush also suspended employer verification rules. Congress was <u>considering legislation</u> at the time

Year(s)	2006	2007	2009	2009	2010
<b>Relief Covered:</b>	Established <u>Cuban Medical Parole Program</u> , to allow Cuban doctors conscripted abroad to apply for parole at US embassies	Deferred Enforced Departure (DED) for Liberians in 2007, whose TPS had statutorily expired	<u>Extended Deferred Enforced Departure (DED)</u> for qualified Liberians	Extended deferred action to <u>widows and widowers of U.S. citizens</u> , and their unmarried children under 21	Parole-in-place to spouses, parents, and children of <u>U.S. citizen military members</u>
<b># Affected:</b>	<u>1,574</u> , as of Dec. 2010	3,600	Unknown	Unknown	Unknown
<b>President(s):</b>	Bush	Bush	Obama	Obama	Obama
<b>Other Notes:</b>	Program <u>still in place</u>				Granted on case-by-case basis. <u>First grant</u> of parole-in-place was under Bush Administration

Year(s)	2010	2011	2012	2013
<b>Relief Covered:</b>	<u>Parole to Haitian orphans</u> who were in the process of being adopted by U.S. citizens	Extended <u>Liberian DED</u> through March 2013	<u>Deferred action for childhood arrivals</u> (DACA)	Revised parole-in-place policy to spouses, parents, and children of U.S. citizen military members
<b># Affected:</b>	Unknown	3,600	<u>Up to 1.8 million</u>	Unknown
<b>President(s):</b>	Obama	Obama	Obama	Obama
<b>Other Notes:</b>	Actions followed Haitian earthquake on January 12, 2010		Legislation was pending (i.e. the <u>DREAM Act</u> ). Provided for a two-year renewable reprieve from deportation, and work authorization, for those meeting certain criteria. USCIS took significant <u>actions</u> to process applications	<u>Revised policy</u> so that “ordinarily” granted

ATTACHMENT B

December 2014

## REAGAN-BUSH FAMILY FAIRNESS: A Chronological History

From 1987 to 1990, Presidents Ronald Reagan and George Bush, Sr. used their executive authority to protect from deportation a group that Congress left out of its 1986 immigration reform legislation—the spouses and children of individuals who were in the process of legalizing. These “Family Fairness” actions were taken to avoid separating families in which one spouse or parent was eligible for legalization, but the other spouse or children living in the United States were not—and thus could be deported, even though they would one day be eligible for legal status when the spouse or parent legalized. Publicly available estimates at the time were that “Family Fairness” could cover as many as 1.5 million family members, which was approximately 40 percent of the then-unauthorized population.<sup>1</sup> After Reagan and Bush acted, Congress later protected the family members. This fact sheet provides a chronological history of the executive actions and legislative debate surrounding Family Fairness.

**November 6, 1986:** President Reagan signs the Simpson-Mazzoli Immigration Reform and Control Act (IRCA).<sup>2</sup> The legislation makes certain immigrants eligible for temporary legal status and eventually green cards, primarily (1) those “continuously” present in the U.S. since January 1, 1982 (the general legalization provisions),<sup>3</sup> and (2) special agricultural workers (SAW).<sup>4</sup> At the time, roughly 3 million people are thought to be eligible to legalize, although that number will rise by 1990, due to an unexpectedly large number of SAW applicants, and litigation by several hundred thousand persons who claimed eligibility for the general legalization provisions.<sup>5</sup>

IRCA does not contain language regarding spouses and children who don’t independently qualify for legalization. As a Senate Judiciary Committee report accompanying the legislation stated, “the families of legalized aliens will obtain no special petitioning right by virtue of the legalization. They will be required to ‘wait in line’.”<sup>6</sup>

When the Senate-passed bill moved to the House, IRCA’s legalization provisions survived an amendment to strike them by seven votes.<sup>7</sup>

**1987:** The plight of “split-eligibility” families immediately becomes a key issue post-IRCA.<sup>8</sup> For example, the National Conference of Catholic Bishops criticizes the separation of families, and urges Reagan’s intervention.”<sup>9</sup>

The Los Angeles Catholic archdiocese reports that up to 30 percent of the legalization applications it was assisting involved “split-eligibility” families.<sup>10</sup>

**October 7, 1987:** In an effort to address “split-eligibility” families, Sen. John Chafee (R-RI) offers an amendment to an unrelated bill that would give spouses and children excluded from IRCA a path to legalization.<sup>11</sup> The Senate defeats the amendment by a 55-45 vote.<sup>12</sup>

Among others, IRCA’s lead Senate sponsor, Sen. Alan K. Simpson (R-WY), opposes Chafee’s amendment as a “second amnesty” that “destroys the delicate balance of the recently passed immigration reform legislation.” Citing the Senate Judiciary Committee’s report, Simpson stated “[t]here is no question about what the legislative intent is or was.”<sup>13</sup>

**October 21, 1987:** Two weeks later, Reagan’s INS Commissioner Alan C. Nelson announces INS’ “Family Fairness” executive action.<sup>14</sup> The INS’ memo explains the “clear” Congressional intent in 1986 to exclude family members from the legalization program.<sup>15</sup> Nevertheless, the INS defers deportation for children living in a two-parent household with both parents legalizing, or living with a single parent who was legalizing. As to spouses, though, the INS directs that similar relief “generally not be granted”—only if “compelling or humanitarian factors” exist on top of marriage alone.<sup>16</sup>

**October 27, 1987:** The *Washington Post* editorial board, among other news outlets, applauds INS’ policy. Citing IRCA’s Congressional history and the recent Senate defeat of Chafee’s amendment, the Post argues that “If Congress will not be moved, the INS should have a heart.”<sup>17</sup>

**October 27, 1987:** Sen. Chafee and eight other Senators criticize INS’ policy for not going far enough to cover spouses and ineligible children.<sup>18</sup>

**October 29, 1987:** The House Appropriations Committee reports a continuing resolution (CR) on appropriations to the House floor.<sup>19</sup> The CR includes an amendment by Rep. Edward Roybal (D-CA)—narrower than Chafee’s, but broader than INS’ Family Fairness policy—to block funding for deportation of *both* spouses and children of legalizing families.<sup>20</sup>

**December 3, 1987:** IRCA’s lead House sponsor, Rep. Romano Mazzoli (D-KY), among others, criticizes Roybal’s amendment during the House floor’s CR debate because it “reverses the whole idea of the Immigration Reform and Control Act of 1986.”<sup>21</sup> Rep. Hal Rogers (R-KY) also states, “[I]f my colleagues were concerned last year... about the amnesty portion of that bill, and it only carried by six votes... this continuing resolution violates completely the amnesty provisions delicately worked out last year.”<sup>22</sup> Rep. Bill McCollum (R-FL) argues the amendment “means another 50 percent

or better expansion of the number of illegals who are immediately going to come into this country.”<sup>23</sup> Nevertheless, the CR passes the House with Roybal’s amendment included.

**December 22, 1987:** The Senate appropriations bill does not include Roybal’s amendment, and the amendment does not survive House-Senate conference negotiations.<sup>24</sup>

**August 23, 1988:** House Judiciary Committee testimony details the still-large problem of “split-eligibility” families. Vanna Slaughter of Catholic Charities in Texas testifies that about one-third of Catholic Charities’ applicants had ineligible family members.<sup>25</sup> Another witness testifies that Slaughter’s numbers are “going to be the tip of the iceberg,” since many applying have no lawyer and might not know family could qualify for Family Fairness.<sup>26</sup>

**January 20, 1989:** President George H.W. Bush takes office.

**June 16, 1989:** INS Commissioner Alan C. Nelson leaves office.

**July 13, 1989:** The Senate passes immigration legislation.<sup>27</sup> The legislation includes an amendment by Sen. Chafee to protect both ineligible spouses and children from deportation—scaled back from his prior amendment that provided a path to legalization.<sup>28</sup>

Despite Chafee scaling back the amendment, Sen. Simpson repeats his objections based on the Congressional intent behind IRCA.<sup>29</sup> He states that Chafee’s amendment “is not quite the same but yet it is,” and calls it “a *de facto* second amnesty.”<sup>30</sup>

However, Sen. Pete Wilson (R-CA) switches his vote and speaks for Chafee’s amendment. Echoing the current debate, Wilson argues that “this country was built on certain values” like the “value of the family unit,” and in any event, “we simply do not have the manpower” to enforce the law as written.<sup>31</sup> Chafee’s amendment passes 61-38.<sup>32</sup>

Sen. Chafee’s office publicly estimates that about 1.5 million family members would be affected, based on several recent immigration reports made available to senators.<sup>33</sup>

**August 1989:** The INS releases its *Statistical Yearbook 1988*, which provides demographic information on the legalizing individuals whose family members are under debate.<sup>34</sup>

The *Yearbook* reports that INS had received nearly 3.1 million legalization applications.<sup>35</sup> Of those that had applied for legalization by 1988, about 41.5 percent of those seeking general legalization were married, with another 9.8 percent separated, divorced, widowed or unknown. Of those

applying for SAW legalization, 42.5 percent were married.<sup>36</sup> Combined, these categories indicate that a large pool of potential Family Fairness applicants exists (i.e. spouses and children of legalizing individuals, whom themselves are ineligible for IRCA).

**August 1989:** Additionally, a California study which surveyed a sample of the legalizing population finds that 68 percent of those applying for general legalization, and 43 percent of SAW applicants, were married. Only 30 percent of those applying for general legalization, and 63 percent of SAW applicants, reported no children living with them.<sup>37</sup>

**October 26, 1989:** New INS Commissioner Gene McNary is sworn into office.

**November 9, 1989:** The House Judiciary Committee's immigration subcommittee holds a hearing on Rep. Bruce Morrison's (D-CT) H.R. 3374, which includes a provision echoing Chafee's amendment to protect both ineligible spouses and children from deportation.<sup>38</sup>

The INS (among others) strongly opposes the provision as creating a "second legalization program contrary to the intent of Congress," and "outside the carefully crafted balance" of IRCA.<sup>39</sup> Other groups support the provision,<sup>40</sup> arguing that individuals are afraid to apply for Family Fairness because the INS would put applicants into deportation proceedings.<sup>41</sup>

The INS' counsel testifies it is "correct" that potentially eligible spouses and children constituted a "lot of people," although he didn't "have the numbers."<sup>42</sup> Now-former INS Commissioner Nelson states "the potential number is obviously enormous."<sup>43</sup> The Director of the Center for Immigration Studies also cites "immense demographic consequences," and that Chafee's provision "would grant de facto residence status to some 1.5 million."<sup>44</sup>

H.R. 3374 does not move forward.

**February 2, 1990:** President Bush's INS now expands Reagan's Family Fairness policy to all ineligible spouses *and* children under 18 of legalizing family members, provided they meet certain criteria.<sup>45</sup> The INS also provides them eligibility to apply for work authorization. INS Commissioner McNary noted that Bush's executive policy matched the Senate provisions,<sup>46</sup> even though the House had not yet acted.

The Commissioner also states, "We can enforce the law humanely... To split families encourages further violations of the law as they reunite."<sup>47</sup>

The *San Francisco Chronicle* reports that INS officials said the policy “is likely to benefit more than 100,000 people,” while the *Washington Post* reports that it could “prevent the deportation of as many as 100,000 illegal aliens.”<sup>48</sup> That said, an INS spokesman also said that the number of immigrants affected “may run to a million,” and did not dispute large estimates from immigrant advocacy groups.<sup>49</sup> The unpredictability appears to depend on whether immigrants overcome their fear and apply.<sup>50</sup>

- February 6, 1990:** The *Washington Post* editorial board, among others, applauds INS’ expanded Family Fairness policy, calling it “sensible, humane and fair.”<sup>51</sup> The Post notes it is “not an extension of amnesty, which would have required legislation,” but calls it “in line with traditional policy to favor immigration that reunites families.”
- February 6, 1990:** Senator Chafee applauds Bush’s Family Fairness action, which largely mirrored the Senator’s own legislative proposal. He says, “Mr. President... the family unit is sacred,” and “I am delighted, after four years of hard work, to see this principle triumph through the new Family Fairness guidelines.”<sup>52</sup>
- February 8, 1990:** An INS internal Decision Memorandum to Commissioner McNary states that Family Fairness “provides voluntary departure and employment authorization to potentially millions of individuals,” and discusses processing options given the “large workload.”<sup>53</sup>
- An INS “Draft Processing Plan,” also dated this day, states that “current estimates are that greater than one million IRCA-ineligible family members will file for” Family Fairness.<sup>54</sup> The plan calculates the financial resources required to process 1 million applications in 100 workdays.<sup>55</sup>
- February 12, 1990:** The INS releases Family Fairness processing guidelines. The filing fee for a work authorization application is \$35.<sup>56</sup>
- February 21, 1990:** INS Commissioner McNary testifies before the House Judiciary Committee.<sup>57</sup> McNary states to Rep. Morrison that there are about 1.5 million ineligible family members covered by Family Fairness here in the United States. McNary also states that there are another 1.5 million ineligible family members of the legalizing population, presumably outside the United States.<sup>58</sup>
- February 26, 1990:** A bulletin reports that the INS statistics office estimates that of the 3.1 million IRCA applicants at that point, 42 percent (1.3 million) were married.<sup>59</sup> The INS conceded that it lacked “reliable data” regarding children.<sup>60</sup> (Using current estimation tools, as many as 600,000 children of IRCA applicants may have been residing in the U.S in 1990).<sup>61</sup>

The INS also notes that over 740,000 legalization applications are pending or on appeal, and other class-action litigants are suing to legalize as well.<sup>62</sup> Their relatives cannot yet apply for Family Fairness protection.<sup>63</sup> However, once their legalization applications are approved, their family members will be eligible to apply.<sup>64</sup>

- March 5, 1990:** The *New York Times* reports McNary's February 21 testimony that "as many as 1.5 million illegal aliens could be affected by the new policy."<sup>65</sup>
- March 19, 1990:** Rep. Morrison introduces legislation which again includes a provision to defer deportations of the Family Fairness relatives.<sup>66</sup>
- September 1990:** The INS updates its statistics on the legalizing population in its *Statistical Yearbook 1989*.<sup>67</sup> The INS reports that over 3 million have applied for legalization through general provisions or SAW.<sup>68</sup> Of those whom applied for general legalization, 41.2 percent are married, and 9.9 percent are separated, divorced, widowed, or unknown. Of those whom applied for SAW, 41.7 percent are married, and 4.6 percent are separated, divorced, widowed, or unknown.<sup>69</sup> The INS does not report data on children.
- October 27, 1990:** The House and Senate conference agrees to a combined Immigration Act of 1990, which includes the provisions to defer deportation of the Family Fairness relatives (now called "Family Unity" provisions).<sup>70</sup>
- November 29, 1990:** President Bush signs the combined Immigration Act of 1990.<sup>71</sup> He salutes its "support for the family as the essential unit of society,"<sup>72</sup> and "respect for the family unit."<sup>73</sup> He also issues a signing statement, preserving the "authority of the executive branch to exercise prosecutorial discretion in suitable immigration cases."<sup>74</sup>
- Congress' "Family Unity" provisions supersede the executive "Family Fairness" policy, as of Oct. 1, 1991.<sup>75</sup> Those Family Unity provisions are still in place today.<sup>76</sup>
- The Immigration Act of 1990 also dramatically increases the number of visas available to spouses and minor children of those with lawful permanent resident status (i.e. a green card).<sup>77</sup>
- 1990-1995:** Although it is unclear how many spouses and children of the legalizing population ultimately apply for the "family fairness" or "family unity" provisions, large numbers likely apply directly for green cards that were made available under the Immigration Act of 1990. For example, the 1995 report of the State Department's Office of Visa Services estimated that spouses or children of those legalized under IRCA represented 80 percent of the 1.1 million applications by immediate relatives of lawful permanent residents, at that time (about 880,000 people).<sup>78</sup>

Family Fairness continued through Oct. 1, 1991. As of October 1, 1990, INS had received 46,821 applications.<sup>79</sup> Explanations for low application rates included fear and stringent documentary requirements.<sup>80</sup> As to Family Unity protection, it is unclear how many applied. About 140,000 individuals likely applied for a related “legalization dependent” visa, made available to the class of individuals eligible for Family Unity protection, and outside the normal visa caps.<sup>81</sup> One reason for relatively low rates of application for Family Fairness/Unity protection may be that many decided to apply directly for a green card, rather than making two applications.<sup>82</sup>

## Endnotes

<sup>1</sup> Jeffrey S. Passel, D’Vera Cohn, Jens Manuel Krogstad, and Ana Gonzalez-Barrera. “As Growth Stalls, Unauthorized Immigrant Population Becomes More Settled” Washington, D.C.: Pew Research Center’s Hispanic Trends Project (September 2014), [http://www.pewhispanic.org/files/2014/09/2014-09-03\\_Unauthorized-Final.pdf](http://www.pewhispanic.org/files/2014/09/2014-09-03_Unauthorized-Final.pdf).

<sup>2</sup> The Immigration Reform and Control Act of 1986 (IRCA), P. L. 99-603, at <http://www.gpo.gov/fdsys/pkg/STATUTE-100/pdf/STATUTE-100-Pg3445.pdf>.

<sup>3</sup> *Ibid.* Sec. 201, creating new Sec. 245A(a)(2)(A).

<sup>4</sup> *Ibid.* Sec. 302. IRCA also made legalization possible for certain Cubans and Haitians, *see* Sec. 202, and those whom had entered before 1972, by updating the registry date under INA § 249, *see* Sec. 203.

<sup>5</sup> Charles Kamasaki, *Doubling Down on a Grievous Error* (Dec. 4, 2014), p. 2, available at NCLR Blog, *Setting the Washington Post Straight on Executive Action* (Dec. 4, 2014), <http://blog.nclr.org/2014/12/04/setting-washington-post-straight-executive-action/>.

<sup>6</sup> S. Rep. No. 99-132, 99th Cong., 1 Sess. 343 (1985); *see also Angeles v. Ilchert*, 700 F. Supp. 1048, 1051 (N.D. Cal. 1988) (it is “clear” that “Congress did not intend to extend this legalization program to aliens who entered the United States after January 1, 1982—including the families of legalized aliens.”), at [http://www.leagle.com/decision/19881748700FSupp1048\\_11564](http://www.leagle.com/decision/19881748700FSupp1048_11564).

<sup>7</sup> *See* H.Amdt 1291 to H.R. 3810, 99<sup>th</sup> Cong. (offered Oct. 9, 1986) (amendment, sponsored by Rep. Bill McCollum (R-FL), to strike provisions in the bill permitting aliens who entered this country illegally prior to 1982, and who are otherwise eligible for admission, to apply for temporary resident status). The amendment failed 192-199. Record Vote No. 455.

<sup>8</sup> 64 Interpreter Releases 1191 (Oct. 26, 1987) (“The family unity issue has been an area of serious concern”); Doris M. Meissner & Demetrious G. Papademetriou, *The Legalization Countdown: A Third-Quarter Assessment*, 36 (February 1988) (the family unity issue has become “the most polarized of the disagreements between the government and immigrant advocates”), at <http://files.eric.ed.gov/fulltext/ED291836.pdf>.

<sup>9</sup> Marita Hernandez, *Qualifying for Amnesty--a House Divided by Law*, Los Angeles Times (May 25, 1987), at [http://articles.latimes.com/1987-05-25/news/mn-1459\\_1\\_family-unity/3](http://articles.latimes.com/1987-05-25/news/mn-1459_1_family-unity/3).

<sup>10</sup> 64 Interpreter Releases 1191 (Oct. 26, 1987), citing “Family Unity Called Need of Immigrants,” *San Diego Tribune*, August 8, 1987, at C4, col. 1. The diocese said it had analyzed over 6,000 applications.

<sup>11</sup> S. Amdt 894 to S. 1394, 100<sup>th</sup> Cong., at <https://www.congress.gov/amendment/100th-congress/senate-amendment/894>.

<sup>12</sup> Record Vote No. 311. <https://www.congress.gov/amendment/100th-congress/senate-amendment/894/actions>.

<sup>13</sup> 133 Cong. Rec. S13727 et. seq. (Oct. 7, 1987). *See also* *ibid.* (Sen. Chafee: “this bill passed the Senate 69 to 30... Frankly, I do not think many of us realize that we are possibly breaking up families in giving this amnesty.”); (Sen. Thurmond: “a decision was consciously made to require everyone to qualify individually for the amnesty program.... Simply because one member of the family qualifies does not mean you have to bring in all members of the family. It just does not make sense. That was never the intention of the bill.... Without this requirement I do not believe the amnesty program would have been passed in the first place.”); (Sen. Simpson: “indeed the bill did pass

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the Senate by a better margin than in the House. But the issue of legalization is what I was saying passed the House by only 7 votes.”).

<sup>14</sup> 64 Interpreter Releases 1191 (Oct. 26, 1987).

<sup>15</sup> U.S. Immigration and Naturalization Service Commissioner Alan C. Nelson, *Legalization and Family Fairness – An Analysis* (Oct. 21, 1987), at [http://www.prwatch.org/files/ins\\_family\\_fairness\\_memo\\_oct\\_21\\_1987.pdf](http://www.prwatch.org/files/ins_family_fairness_memo_oct_21_1987.pdf). This contrasts the Washington Post’s December 3, 2014 argument that President Bush’s executive action “was in step with legislation recently and subsequently enacted by Congress.” Washington Post, *President Obama’s unilateral action on immigration has no precedent* (Dec. 3, 2014), at [http://www.washingtonpost.com/opinions/president-obamas-unilateral-action-on-immigration-has-no-precedent/2014/12/03/3fd78650-79a3-11e4-9a27-6fdb612bff8\\_story.html](http://www.washingtonpost.com/opinions/president-obamas-unilateral-action-on-immigration-has-no-precedent/2014/12/03/3fd78650-79a3-11e4-9a27-6fdb612bff8_story.html).

<sup>16</sup> *Ibid.* at pp. 4-5. This was true even for the parents of U.S.-citizen children. *Ibid.* at p. 5.

<sup>17</sup> Washington Post, *Amnesty Families*, p. A18 (Oct. 27, 1987) (op-ed), at <http://pqasb.pqarchiver.com/washingtonpost/doc/306940299.html?FMT=FT>.

<sup>18</sup> Senators Alan Cranston, John H. Chafee, Claiborne Pell, Robert T. Stafford, Barbara A. Mikulski, Daniel P. Moynihan, Spark M. Matsunaga, Albert Gore, Jr., and Brock Adams, *Letter to Alan C. Nelson, INS Commissioner* (Oct. 27, 1987), reported at 133 Cong. Rec. S15999 et. seq. (Nov. 6, 1987) (statement of Sen. Cranston).

<sup>19</sup> H.J. Res. 395, 100<sup>th</sup> Cong.

<sup>20</sup> H.J. Res. 395, 100<sup>th</sup> Cong., Sec. 110; see also 133 Cong. Rec. H11996 et. seq. (Dec. 21, 1987) (Rep. Roybal (D-CA) statements).

<sup>21</sup> 133 Cong. Rec. H10900-03, 100<sup>th</sup> Cong. (Dec. 3, 1987) (Rep. Mazzoli: “Many of you who were here in the 99th and now in the 100th Congresses remember my saying so often that the legalization section of the immigration bill was not meant to be an amnesty but was meant to be a case-by-case examination.... “[I]t goes too far.... [T]hose individuals could be felons. They could be criminals.... under the amendment of the gentleman from California now in the bill, they could not be deported.”).

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*

<sup>24</sup> P.L. 100-202 (Dec. 22, 1987); 133 Cong. Rec. H11996 et. seq. Notably, Sen. Orrin Hatch (R-UT) supported the Roybal amendment, in a Dec. 15, 1987 letter. *Ibid.*

<sup>25</sup> Vanna K. Slaughter, North Texas Immigration Coalition, Hearing, Committee on the Judiciary, House of Representatives, *Family Unification, Employer Sanctions and Anti-Discrimination under IRCA* (Aug. 23, 1988), p. 4, at <http://www.loc.gov/law/find/hearings/pdf/00005124906.pdf>. Slaughter had analyzed five thousand cases to date. *Ibid.* “Very few” would benefit from Reagan’s policy alone. P. 33.

<sup>26</sup> Fernando Dubove, Assistant Director, Texas Project, National Immigration, Refugee, And Citizenship Forum, Hearing, Committee on the Judiciary, House of Representatives, *Family Unification, Employer Sanctions and Anti-Discrimination under IRCA* (Aug. 23, 1988), p. 92.

<sup>27</sup> S. 358, 101<sup>st</sup> Cong., 1<sup>st</sup> session. The legislation passed 81-17. See [http://www.senate.gov/legislative/LIS/roll\\_call\\_lists/vote\\_menu\\_101\\_1.htm](http://www.senate.gov/legislative/LIS/roll_call_lists/vote_menu_101_1.htm).

<sup>28</sup> *Ibid.*, sec. 108. Sen. Chafee argued that this provision was narrower than his prior amendment. See 135 Cong. Rec. S7748 et. seq. (July 12, 1989) (Sen. Chafee: “This is a modest solution... I offered an amendment similar to this in 1987 that was defeated, 55 to 45. But it was different. It was broader than this. That amendment would have granted legal status to the spouses and children of the legalized aliens. There is a lot of difference between granting legal status and what my bill does.... My bill does not confer legal status on the spouse or children who benefit from this legislation. My bill only applies to spouses and minor unmarried children. It does not apply to the whole family of brothers and sisters and cousins and parents.”

<sup>29</sup> 135 Cong. Rec. S7748 et. seq. (July 12, 1989) (Sen. Simpson: “[I] oppose this amendment because to me it disturbs the delicate balance of the 1986 Immigration Reform and Control Act.... In the Judiciary Committee report we stated it very clearly.”)

<sup>30</sup> *Ibid.* (“It does not grant this actual legal status, but, as I say, it grants the thing that is most primed.... I promised all my colleagues during the presentation of the immigration bill over the course of 6 to 8 years that legalization is and will be a one-time-only program.”)

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<sup>31</sup> Ibid. (Sen. Wilson: “[T]he law as it now stands has produced unintended hardship in my State and in many others.... [T]he time has come for us to say if this is to be regarded as such an expansion of amnesty, then so be it.... [L]et us not continue with a situation that is both unworkable, inhumane, and one that does not benefit the present citizens of the United States.”); *ibid.* (“This is ridiculous in the sense that we are talking about setting a standard that cannot be enforced in any case. There is not the ability to enforce the law. The law should not be enforced as it is being proposed by the Senator from Wyoming... it is also... I reemphasize... an unworkable situation now. We simply do not have the manpower to expend but the threat of deportation remains.”).

<sup>32</sup> S. Amdt. 244, Record Vote No. 107. *See* Helen Dewar, *Senate Votes Protection for Aliens’ Kin*, Washington Post (July 13, 1989), at <http://pqasb.pqarchiver.com/washingtonpost/doc/307193985.html>.

<sup>33</sup> Josh Getlin, *Senate Acts to Protect Families in Amnesty Plan*, Los Angeles Times (July 13, 1989) (lead of story: “In an action that could affect more than 1.5 million illegal aliens...”), at [http://articles.latimes.com/1989-07-13/news/mn-4478\\_1\\_family-members](http://articles.latimes.com/1989-07-13/news/mn-4478_1_family-members).

<sup>34</sup> 1988 Statistical Yearbook of the Immigration and Naturalization Service (August 1989), *available at* <http://babel.hathitrust.org/cgi/pt?id=uc1.l0062135033;view=1up;seq=9>.

<sup>35</sup> *Ibid.* at p. xxii (as of May 12, 1989, the INS had received applications from 1,768,089 legalization applicants and 1,301,804 Special Agricultural Worker (SAW) applicants). The *Yearbook* did not report numbers of Cuban-Haitian applicants, nor those whom had entered before 1972. *Ibid.*

<sup>36</sup> *Ibid.* at xxii-xxiii.

<sup>37</sup> Comprehensive Adult Student Assessment System, *Highlights: A Survey of Newly Legalized Persons in California* (August 1989), *included in* Hearing, Subcommittee on Immigration, Refugees, and International Law, House Judiciary Committee, *On H.R. 3374* (Nov. 9, 1989), at pp. 127-31.

<sup>38</sup> 101<sup>st</sup> Cong., H.R. 3374, IRCA Amendments of 1989, Sec. 205 (introduced Sept. 28, 1989), at <https://www.congress.gov/bill/101st-congress/house-bill/3374>. Sec 205 of Rep. Morrison’s bill was broader, in that it applied to spouses and children in the United States as of January 1, 1989, rather than November 6, 1986.

<sup>39</sup> Statement of Paul W. Virtue, Acting General Counsel, U.S. Immigration and Naturalization Service, Hearing, Subcommittee on Immigration, Refugees, and International Law, House Judiciary Committee, *On H.R. 3374* (Nov. 9, 1989), at p. 25; *see also* Prepared Statement, at p. 37 (IRCA “was never intended to place all illegal aliens within a legal status”). Former INS Commissioner Alan C. Nelson testified similarly. *Ibid.* at p. 171 (Statement of Alan C. Nelson, Former Commissioner, U.S. Immigration and Naturalization Service, Member of the National Board of Advisors and Consultant to the Federation for American Immigration Reform).

<sup>40</sup> *See, e.g.*, Statement of Lavina Limon, Steering Committee Member, Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA), at *ibid.*, pp. 111-12 (“INS under pressure to respond created the family fairness policy, but in our experience it doesn’t work.”).

<sup>41</sup> Statement of Carolyn Waller, Director, Alien Rights Project, Washington Lawyers’ Committee for Civil Rights Under Law (Nov. 9, 1989), at *ibid.*, pp. 216-20.

<sup>42</sup> *Ibid.* at 48 (Rep. Morrison: “On this issue of minor children and spouses, you would agree that most of the individuals in this class are receiving indefinite voluntary departure?” A: “Although I don’t have the numbers, I think that’s correct.” Rep. Morrison: “Very large numbers.... [I]t’s a lot of people?” A: “My sense is that’s correct.”)

<sup>43</sup> Section 205 “codifies an extraordinary expansion of the amnesty granted by IRCA.... I am aware of no reliable estimate of how many people will be made eligible for amnesty by this section....” [But] “[s]ince over three million illegal aliens were granted legalization by IRCA, the potential number is obviously enormous.” Testimony of Alan C. Nelson, Consultant to the Federation for American Immigration Reform, Member, National Board of Advisors, FAIR, and Former Commissioner of the U.S. Immigration and Naturalization Service, *On H.R. 3374* (Nov. 9, 1989), at *ibid.*, p. 179.

<sup>44</sup> Prepared Statement of David Simcox, Director, Center for Immigration Studies (Nov. 9, 1989), at *ibid.*, p. 209-10 (“[T]his proposal would be tantamount to a massive second stage amnesty...”). Simcox also criticized the administrative burden of adjudicating “millions of claims for such status.” *Ibid.* at 210. Simcox argued that Section 205 of Rep. Morrison’s bill was broader than Sen. Chafee’s provision, and that a recent Center for Immigration Studies study estimated the number of unlegalized spouses and children of legalized aliens, including Special

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Agricultural Workers, who would settle here if permitted to be 2.6 million. *Ibid.* at 209-10. CIS called this a “conservative” figure, since it did not include spouses and children acquired subsequent to legalization. *Ibid.*

<sup>45</sup> INS Commissioner Gene McNary, Memorandum, *Family Fairness: Guidelines for Voluntary Departure under 8 C.F.R. 242.5 for the Ineligible Spouses and Children of Legalized Aliens* (Feb. 2, 1990) (hereinafter “McNary Memo”). Bush’s INS memo built upon Reagan’s (see p. 1, referring to 1987 guidelines). The criteria were that the ineligible alien was otherwise admissible, had not been convicted of a felony or three misdemeanors, and had not assisted in persecution. *Ibid.*

<sup>46</sup> 67 Interpreter Releases 153, 154 (Feb. 5, 1990).

<sup>47</sup> *Ibid.*

<sup>48</sup> Tim Schreiner, *INS Reverses Policy That Split Alien Families*, San Francisco Chronicle (Feb. 3, 1990), at A1.

<sup>49</sup> Paul Anderson, *New Policy on Illegal Immigrants*, Philadelphia Inquirer (Feb. 3, 1990), at [http://articles.philly.com/1990-02-03/news/25883655\\_1\\_illegal-immigrants-rick-swartz-american-immigration-reform](http://articles.philly.com/1990-02-03/news/25883655_1_illegal-immigrants-rick-swartz-american-immigration-reform). The article reported that McNary and his top INS aides “said they could not predict how many dependents would come forward.” *Ibid.*

<sup>50</sup> Schreiner, *supra* note 48. For example, the San Francisco INS deputy district director stated, “I would not expect a big flood of people.” He stated that his office had only granted 150 families permission to stay under the previous, narrower family fairness policy. *Ibid.* Meanwhile, immigrants’ rights advocates said that the number would increase significantly under the new policy, because districts had been granting Family Fairness only if the applicant was already in deportation proceedings. “People could not come in and apply for it,” Charles Wheeler of the National Center for Immigrants’ Rights said. “Now they can. This will take the fear out of it.” Or, Kip Steinberg, an attorney with the National Lawyers Guild’s National Immigration Project, said that many family members had not been applying “because once it was explained to them that they could be deported if they did not qualify, a lot of people were not willing to take the risk.” *Ibid.*

<sup>51</sup> Washington Post, *Amnesty and Compassion* (Feb. 6, 1990), p. A24, at <http://pqasb.pqarchiver.com/washingtonpost/doc/307234315.html>.

<sup>52</sup> Cong. Record, 101<sup>st</sup> Cong., (Feb. 6., 1990), p. S929.

<sup>53</sup> Decision Memo to Gene McNary, Commissioner, “*The implementation of the Family Fairness Policy—Providing For Voluntary Departure under 8 CFR 242.5 and Employment Authorization under 8 CFR 274a.12 for the spouses and children of legalized aliens (section 245a and section 210)*” (February 8, 1990), cited in Cong. Record, 113<sup>th</sup> Cong., H8636 (Dec. 4, 2014), at <https://www.congress.gov/crec/2014/12/04/CREC-2014-12-04-pt1-PgH8632.pdf>.

<sup>54</sup> T. Andreotta, “Draft Processing Plan RPF Processing of Family Fairness Applications Utilizing Direct Mail Procedures” (Feb. 8, 1990), cited in Cong. Record, 113<sup>th</sup> Cong., H8635-36 (Dec. 4, 2014), at <https://www.congress.gov/crec/2014/12/04/CREC-2014-12-04-pt1-PgH8632.pdf>.

<sup>55</sup> *Ibid.*

<sup>56</sup> Michael T. Lempres, Executive Commissioner, U.S. INS, *Guidelines for Implementation: Family Fairness Policy for Ineligible Spouses and Children of Legalized Aliens* (Feb. 12, 1990), available at 67 Interpreter Releases 204, 230-33 (February 26, 1990).

<sup>57</sup> INS Commissioner Gene McNary, House Committee on the Judiciary, Hearing, *S. 358, H.R. 672, H.R. 2448, and H.R. 2646, Immigration Act of 1989* (Feb. 21, 1990), at <https://www.scribd.com/doc/248088098/Feb-21-1990-hearing-House-subcommittee-on-Immigration>.

<sup>58</sup> *See ibid.*, p. 49, 52, 56 (Mr. Morrison: “Mr. McNary, you used the number 1.5 million IRCA relatives who are undocumented but who are covered by your family fairness policy. Do I have that number right?” Mr. McNary: “Yes.... We think you are right as to the 1.5 million being here. There is an estimate of another 1.5 million that would come as a result of this change in definition [ED NOTE: through new legislation]... They are not here.”) This echoes other estimates of 3 million ineligible relatives of the IRCA-legalized. *Binational Study: Migration Between Mexico and the United States* (1997), p. 10, at <https://www.utexas.edu/lbj/uscir/binational/full-report.pdf>.

The Washington Post called McNary’s testimony a “misunderstanding,” based on Commissioner McNary’s comments to the paper 24 years later. Washington Post, *President Obama’s unilateral action, supra* note 15. The Post does not explain the misunderstanding, however. Glenn Kessler, *Obama’s claim that George H.W. Bush gave relief to ‘40 percent’ of undocumented immigrants* (Nov. 24, 2014, subsequently revised), at <http://www.washingtonpost.com/blogs/fact-checker/wp/2014/11/24/did-george-h-w-bush-really-shield-1-5-million->

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illegal-immigrants-nope/. Kessler’s “Fact Check” refers to the “different category of 1.5 million people,” but does not explain that McNary’s testimony referred to 1.5 million outside the United States. *Ibid.*

<sup>59</sup> 67 Interpreter Releases 204, 206 (February 26, 1990). Kamasaki estimates that about 840,000 spouses were likely ineligible. Kamasaki, *Doubling Down*, *supra* note 5, at p. 2.

<sup>60</sup> 67 Interpreter Releases 204, 206 (February 26, 1990). The bulletin reports that “No one knows how many people will apply for the family fairness program” (emphasis added), and that “[i]nformal estimates range from the thousands up to one million.” Among the uncertainties are “how many will not apply because of the lack of confidentiality.” The bulletin also reports that INS’ current “guesstimate” is that no more than 250,000 aliens will apply for” Family Fairness, without citation. *Ibid.*

<sup>61</sup> Kamasaki, *Doubling Down*, *supra* note 5, at p. 2, citing, e.g., Jeanne Batalova, Sarah Hooker, and Randy Capps, *DACA at the Two-Year Mark: A National and State Profile of Youth Eligible and Applying for Deferred Action* (Migration Policy Institute: Washington DC, August 2014), at <http://www.migrationpolicy.org/research/daca-two-year-mark-national-and-state-profile-youth-eligible-and-applying-deferred-action>. Kamasaki thus estimated that nearly 1.5 million immigrants likely were, in fact, ineligible to legalize but potentially eligible for Family Fairness at that time. *Ibid.*

Glenn Kessler’s Washington Post “Fact Check” omitted children from its analysis, and erroneously argued that the 1.5 million estimate “is a rounded-up estimate of the number of illegal immigrants who were married.” Kessler, *supra* note 58. The Post also argued that “no underlying data or methodology to justify the 1.5 million figure has been uncovered.” Washington Post, *President Obama’s unilateral action*, *supra* note 15.

<sup>62</sup> 67 Interpreter Releases 204, 205-06 (February 26, 1990). There were several hundred thousand class action litigants at the time. Kamasaki, *Doubling Down*, *supra* note 5, at p. 2.

<sup>63</sup> *Ibid.*

<sup>64</sup> Kessler’s “Fact Check” erroneously argued that these relatives should be excluded from then-estimates of potential Family Fairness applicants at the time. Kessler, *supra* note 58.

<sup>65</sup> Marvine Howe, *New Policy Aids Families of Aliens*, N.Y. Times (Mar. 5, 1990), at <http://www.nytimes.com/1990/03/05/nyregion/new-policy-aids-families-of-aliens.html>.

<sup>66</sup> H.R. 4300, Family Unity and Employment Opportunity Immigration Act of 1990, Sec. 104 (“Prohibition of Deportation of Spouses and Children of Legalized Aliens”), 101<sup>st</sup> Cong., 2d session. As introduced, Sec. 104 applied to those in the United States as of Jan. 1, 1990. Sec. 104(a)(1).

<sup>67</sup> 1989 Statistical Yearbook of the Immigration and Naturalization Service (September 1990), available at <http://babel.hathitrust.org/cgi/pt?id=uc1.l0055031603;view=1up;seq=15>.

<sup>68</sup> *Ibid.* pp. xxiv-xxv (1,762,143 legalization applications)

<sup>69</sup> *Ibid.*

<sup>70</sup> S. 358, sec. 301, “Family Unity,” 101<sup>st</sup> Cong., 2d session. The final bill applied to those in the United States as of May 5, 1988. Sec. 301(a).

<sup>71</sup> P.L. 101-649, at <http://www.justice.gov/eoir/IMMACT1990.pdf>.

<sup>72</sup> President George H.W. Bush, *Statement on Signing the Immigration Act of 1990* (Nov. 29, 1990), at <http://bush41library.tamu.edu/archives/public-papers/2514>.

<sup>73</sup> President George H.W. Bush, *Remarks on Signing the Immigration Act of 1990* (Nov. 29, 1990), <http://bush41library.tamu.edu/archives/public-papers/2513>.

<sup>74</sup> President George H.W. Bush, *Statement on Signing the Immigration Act of 1990* (Nov. 29, 1990), at <http://bush41library.tamu.edu/archives/public-papers/2514>.

<sup>75</sup> Sec. 301(g). However, Congress stated that the delayed implementation “shall not be construed as reflecting a Congressional belief that the existing family fairness program should be modified in any way before such date.” *Ibid.* President Obama’s Office of Legal Counsel argued that this provision evidenced “Congress’s implicit approval” of President Bush’s executive action to defer deportations, and thus “some indication” of “congressional understandings about the permissible uses of deferred action.” U.S. Department of Justice, Office of Legal Counsel, *The Department of Homeland Security’s Authority to Prioritize Removal of Certain Aliens Unlawfully Present in the United States and to Defer Removal of Others* (Nov. 19, 2014), pp. 29-30 & n. 15, available at

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<http://www.justice.gov/sites/default/files/olc/opinions/attachments/2014/11/20/2014-11-19-auth-prioritize-removal.pdf>.

<sup>76</sup> United States Citizenship and Immigration Services, *Adjudicator's Field Manual - Redacted Public Version, Chapter 24.4, Family Unity Program* (Family Unity program under IMMACT 1990 Sec. 301 “supersedes the administrative Family Fairness Program”); 8 C.F.R. §§ 236.10-18.

<sup>77</sup> Immigration Act of 1990, Sec. 111.

<sup>78</sup> Kamasaki, *Doubling Down*, *supra* note 5, at 1 (reporting that 80 percent of the 1.1 million applicants for immediate relative visas were spouses and children of those legalized under IRCA, according to a 1995 U.S. State Department report).

<sup>79</sup> David Hancock, *Few immigrants use family aid program*, Miami Herald (Oct. 1, 1990), at 1B (noting that relatively few immigrants had applied for Family Fairness because of fear or documentary requirements).

<sup>80</sup> *Ibid.*

<sup>81</sup> Immigration Act of 1990, sec. 112 (creating a separate visa category for the spouses and children of the legalizing, and capping those visas at 55,000 per year for FY 1992 through FY 1994). *See The Immigration Act of 1990 and Legal Immigration*, (1994) at Table 4 (reporting 52,272 “legalization dependent” visas in FY 1992, 55,344 in FY 1993, and estimating 34,400 in FY 1994), at <https://migration.ucdavis.edu/mn/cir/94report/immact.htm>.

<sup>82</sup> Kamasaki, *Doubling Down*, *supra* note 5, at 1.

ATTACHMENT C

December 2014

## ONLY THE BEGINNING: THE ECONOMIC POTENTIAL OF EXECUTIVE ACTION ON IMMIGRATION

The series of executive actions on immigration which President Obama announced on November 20, 2014,<sup>1</sup> would have a beneficial—if modest—impact on the U.S. economy. Specifically, the president’s actions are likely to increase Gross Domestic Product (GDP), reduce the federal deficit, and raise both tax revenue and average wages—all without having any appreciable impact on native-born employment. Most, though not all, of these economic gains would flow from two actions in particular: creation of a new Deferred Action for Parental Accountability (DAPA) program, which would grant temporary relief from deportation, as well as work authorization, to some unauthorized parents of U.S. citizens or lawful permanent residents; and expansion of the Deferred Action for Childhood Arrivals (DACA) program, which offers relief from deportation and work authorization to qualified young adults who were brought to the United States as children.<sup>2</sup> However, research suggests that comprehensive immigration reform legislation would yield even greater economic benefits than the programs created through executive action.<sup>3</sup>

### Increasing GDP and Reducing the Deficit

- The White House Council of Economic Advisers (CEA) estimates<sup>4</sup> that the executive actions would, over the next 10 years, increase GDP by at least 0.4 percent (\$90 billion) or as much as 0.9 percent (\$210 billion).<sup>5</sup> The increase in GDP is the result of several factors:

“An expansion in the size of the American labor force by nearly 150,000 workers over the next ten years, largely as a result of higher labor force participation; and an increase in the productivity of American workers, both because of increased labor market flexibility and reduced uncertainty for workers currently in the United States and because of increased innovation from high-skilled workers.”<sup>6</sup>

- The CEA also estimates that the executive actions would lead to a decrease in federal deficits by somewhere between \$25 billion and \$60 billion over the next 10 years.<sup>7</sup>

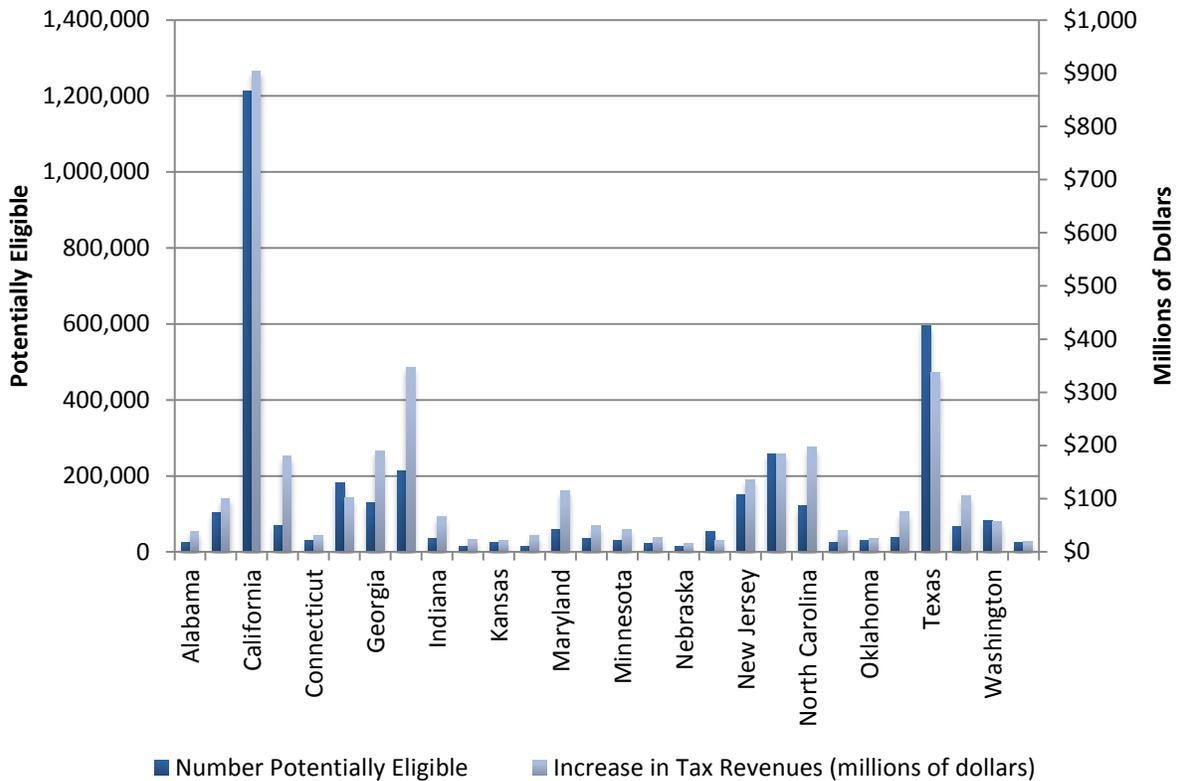
### Raising Tax Revenue

- The CEA estimates that the executive actions would expand the country’s tax base by billions of dollars over the next 10 years. The CEA states that to the degree “the administrative actions increase tax compliance for undocumented workers, they would

raise additional revenue above and beyond the impact they would have on measured GDP, since undocumented workers are already contributing to GDP.”<sup>8</sup>

- The Center for American Progress (CAP) estimates that an executive action scenario in which 4.7 million unauthorized immigrants with a minor child in the United States received deferred action and work authorization would increase payroll tax revenues by \$2.9 billion in the first year, and up to \$21.2 billion over five years.<sup>9</sup>
- According to the North American Integration and Development (NAID) Center at the University of California, Los Angeles, deferred action for 3.8 million undocumented immigrants who are (1) the parents of minors who are U.S. citizens or legal permanent residents, or (2) eligible for the expanded DACA program, would result in new tax revenue of \$2.6 billion over the first two years.<sup>10</sup>
- Individual states would also experience tax gains as unauthorized immigrants begin to work legally and file taxes on slightly higher wages, according to CAP (Figure 1).<sup>11</sup>
- The Fiscal Policy Institute (FPI) found that the net gain from administrative relief in New York State could be around \$100 million per year in added state and local tax revenues.<sup>12</sup>

**Figure 1: Fiscal Benefits of Deferred Action Under the November 2014 Executive Action Announcement**



Source: Center for American Progress, “Topline Fiscal Impact of Executive Action Numbers for 28 States” (Washington, DC: Center for American Progress, November 2014). Center for American Progress [analysis](#) of data from the Institute for Taxation and Economic Policy and the Migration Policy Institute. Due to data limitations, estimates for all 50 states are not available.

## **Raising Average Wages**

- The CEA [estimates](#) that the executive actions would raise average wages for U.S.-born workers by 0.3 percent, or \$170 in today’s dollars, over the next 10 years.<sup>13</sup> CEA’s estimates of changes to native-born wages are based on their analysis of administrative changes related specifically to high-skilled immigration and deferred action. When examined separately, the deferred action component of administrative relief would increase the wages of all native-born workers by 0.1 percent on average by 2024.<sup>14</sup>
- CAP estimates wages would increase an average of [8.5 percent](#) over one year for individuals potentially eligible for new and expanded deferred action.<sup>15</sup> Such individuals would see wage gains as they become eligible for work permits, find better job matches, and become less likely to be taken advantage of by employers.
- FPI estimates a [5 to 10 percent](#) increase in wages over a five-year period for the almost 5 million workers potentially eligible to gain work authorization through expanded deferred action under the President’s executive action.<sup>16</sup>
- According to the NAID Center, deferred action for 3.8 million undocumented immigrants who are (1) the parents of minors who are U.S. citizens or legal permanent residents, or (2) eligible for the expanded DACA program, would result in an increase in labor income of [\\$7.1 billion](#) over the first two years.<sup>17</sup>

## **No Impact on Native-Born Employment**

- The CEA also anticipates that the executive actions would have no impact on employment of U.S.-born workers. As they [explain](#):

“Theory suggests that these policy changes would not have an effect on the long-run employment (or unemployment) rate...as the additional demand associated with the expanded economy would offset the additional supply of workers. Consistent with the theory, much of the academic literature suggests that changes in immigration policy have no effect on the likelihood of employment for native workers...Consequently, we estimate that these actions will have no effect on the likelihood of employment of native workers in the long run.”<sup>18</sup>
- In other words, it is unlikely that the changes announced by President Obama would cause jobs to be taken away from native-born workers. Empirical [research](#) has demonstrated repeatedly that there is no correlation between immigration and unemployment.<sup>19</sup> Immigrants—including the unauthorized—create jobs through their purchasing power and [entrepreneurship](#), buying goods and services from U.S. businesses and creating their own businesses, both of which sustain U.S. jobs.<sup>20</sup> The presence of new

immigrant workers and consumers in an area spurs the expansion of businesses, which also creates new jobs.

- According to the NAID Center, deferred action for 3.8 million undocumented immigrants who are (1) the parents of minors who are U.S. citizens or legal permanent residents, or (2) eligible for the expanded DACA program, would result in 167,000 jobs created through an increase in direct, indirect, and induced employment over the first two years.<sup>21</sup> “Indirect employment” is a change in employment in one industry that is caused by a change in another as a result of interaction between the two. “Induced employment” is a change in employment based on changes in household spending (i.e., as wages increase, people have more money to spend, which supports more jobs).<sup>22</sup>

## Conclusion

Economic analyses estimate that the President’s executive actions on immigration—particularly expanding deferred action—would have modest positive fiscal and economic impacts at the national, state, and local levels through increases in tax revenue and average wages. Additionally, the President’s executive actions include many other components related to high-skilled immigrants and their spouses, employment-based immigration, encouraging entrepreneurship and innovation, expanding optional practical training for foreign students graduating from U.S. universities, exploring ways to modernize the visa system, and creating welcoming communities. Such changes are also expected to have a positive economic impact. Research shows that the entire package of executive actions would raise average wages for U.S.-born workers and have no impact on their employment prospects. However, congressional action on comprehensive immigration reform holds the promise of much greater economic benefits both nationally and locally.<sup>23</sup>

## Endnotes

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<sup>1</sup> American Immigration Council, *A Guide to the Immigration Accountability Executive Action* (Washington, DC: American Immigration Council, November 2014).

<sup>2</sup> According to the White House, almost 5 million unauthorized immigrants would be impacted by these changes. Office of the Press Secretary, “Fact Sheet: Immigration Accountability Executive Action” (Washington, DC: The White House, November 20, 2014). A recent analysis from the Migration Policy Institute estimates that as many as 3.7 million unauthorized immigrants could get relief from deportation under a new Deferred Action for Parental Accountability (DAPA) program. With the expanded Deferred Action for Childhood Arrivals (DACA) program included, which could include up to 1.5 million people, anticipated actions could benefit more than 5.2 million people in total—nearly half of the unauthorized population in the United States. Migration Policy Institute, “MPI: As Many as 3.7 Million Unauthorized Immigrants Could Get Relief from Deportation under Anticipated New Deferred Action Program” (Washington, DC: Migration Policy Institute, November 20, 2014). The Pew Research Center estimates that a smaller number of people—around 3.9 million—could be affected by the administrative actions of DAPA and DACA. Specifically, they estimate that around 700,000 parents with U.S.-born children over age 18 who have lived in the country at least 5 years, around 2.8 million parents with U.S.-born children under age 18 who have lived in the country at least 5 years, and around 300,000 people potentially eligible for expanded DACA—a total of 3.9 million—could benefit from the deferred action components of executive action. Jens Manuel Krogstad and Jeffrey S. Passel, “Those from Mexico will benefit most from Obama’s executive action” (Washington, DC: Pew Research Center, November 20, 2014).

<sup>3</sup> American Immigration Council, “The Power of Reform: CBO Report Quantifies the Economic Benefits of the Senate Immigration Bill” (Washington, DC: American Immigration Council, 2013).

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<sup>4</sup> White House Council of Economic Advisers, *The Economic Effects of Administrative Action on Immigration* (Washington, DC: Executive Office of the President of the United States, November 2014), p. 2. Note: Estimates are based on the economic literature, including (wherever possible) the methods and studies that the Congressional Budget Office employed in its analysis of Senate immigration bill S.744 in June 2013. Specifically, overall estimates of the economic impact of administrative action on immigration are based on the following set of actions included in the President's announcement: providing deferred action to low-priority individuals with significant family ties; expanding immigration options for foreign entrepreneurs who have created American jobs or attracted significant investments; extending on-the-job training for science, technology, engineering, and mathematics (STEM) graduates of U.S. universities through reforms to the existing Optional Practical Training (OPT) program; providing work authorization to spouses of individuals with H-1B status who are on the path to Legal Permanent Resident (LPR) status; and providing portable work authorization for high-skilled workers awaiting processing of LPR applications.

<sup>5</sup> White House Council of Economic Advisers, *The Economic Effects of Administrative Action on Immigration* (Washington, DC: Executive Office of the President of the United States, November 2014), p. 7.

<sup>6</sup> *Ibid.*, p. 2.

<sup>7</sup> *Ibid.*, p. 12.

<sup>8</sup> *Ibid.*, p. 12.

<sup>9</sup> Patrick Oakford, *Administrative Action on Immigration Reform: The Fiscal Benefits of Temporary Work Permits* (Washington, DC: Center for American Progress, September 2014), p. 3.

<sup>10</sup> Raul Hinojosa-Ojeda and Maksim Wynn, *From the Shadows to the Mainstream: Estimating the Economic Impact of Presidential Administrative Action and Comprehensive Immigration Reform -- Special Update* (Los Angeles, CA: North American Integration and Development Center, University of California-Los Angeles, November 2014); personal communication with Raul Hinojosa-Ojeda, December 10, 2014.

<sup>11</sup> Center for American Progress, "Topline Fiscal Impact of Executive Action Numbers for 28 States" (Washington, DC: Center for American Progress, November 2014).

<sup>12</sup> Fiscal Policy Institute, "President's Immigration Action Expected to Benefit Economy" (New York City, NY: Fiscal Policy Institute, November 21, 2014).

<sup>13</sup> White House Council of Economic Advisers, *The Economic Effects of Administrative Action on Immigration* (Washington, DC: Executive Office of the President of the United States, November 2014), p. 11.

<sup>14</sup> *Ibid.*, p. 11.

<sup>15</sup> Patrick Oakford, *Administrative Action on Immigration Reform: The Fiscal Benefits of Temporary Work Permits* (Washington, DC: Center for American Progress, September 2014), p. 3.

<sup>16</sup> Fiscal Policy Institute, "President's Immigration Action Expected to Benefit Economy" (New York, NY: Fiscal Policy Institute, November 21, 2014); personal communication with David Dyssegaard Kallick, December 10, 2014.

<sup>17</sup> Raul Hinojosa-Ojeda and Maksim Wynn, *From the Shadows to the Mainstream: Estimating the Economic Impact of Presidential Administrative Action and Comprehensive Immigration Reform -- Special Update* (Los Angeles, CA: North American Integration and Development Center, University of California-Los Angeles, November 2014); personal communication with Raul Hinojosa-Ojeda, December 10, 2014.

<sup>18</sup> White House Council of Economic Advisers, *The Economic Effects of Administrative Action on Immigration* (Washington, DC: Executive Office of the President of the United States, November 2014), p. 9.

<sup>19</sup> Rob Paral and Associates, *Untying the Knot: Parts I, II, and III* (Washington, DC: Immigration Policy Center, American Immigration Law Foundation, 2009).

<sup>20</sup> Marcia Hohn, *Immigrant Entrepreneurs: Creating Jobs and Strengthening the Economy* (Washington, DC: U.S. Chamber of Commerce & American Immigration Council, January 2012).

<sup>21</sup> Raul Hinojosa-Ojeda and Maksim Wynn, *From the Shadows to the Mainstream: Estimating the Economic Impact of Presidential Administrative Action and Comprehensive Immigration Reform -- Special Update* (Los Angeles, CA: North American Integration and Development Center, University of California-Los Angeles, November 2014); personal communication with Raul Hinojosa-Ojeda, December 10, 2014.

<sup>22</sup> Raul Hinojosa-Ojeda and Maksim Wynn, *From the Shadows to the Mainstream: Estimating the Economic Impact of Presidential Administrative Action and Comprehensive Immigration Reform* (Los Angeles, CA: North American Integration and Development Center, University of California-Los Angeles, November 2014), p. 18.

<sup>23</sup> American Immigration Council, "The Power of Reform: CBO Report Quantifies the Economic Benefits of the Senate Immigration Bill" (Washington, DC: American Immigration Council, 2013).

ATTACHMENT D

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION

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STATE OF TEXAS, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	CASE No. 1:14-CV-00254
	)	
UNITED STATES OF AMERICA, <i>et al.</i> ,	)	
	)	
Defendants.	)	

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**AMICI CURIAE BRIEF OF AMERICAN IMMIGRATION COUNCIL, AMERICAN IMMIGRATION LAWYERS ASSOCIATION, DEFINE AMERICAN, NATIONAL IMMIGRANT JUSTICE CENTER, NATIONAL IMMIGRATION LAW CENTER, NEW ORLEANS WORKERS' CENTER FOR RACIAL JUSTICE, SERVICE EMPLOYEES INTERNATIONAL UNION, SOUTHERN POVERTY LAW CENTER, AND UNITED WE DREAM IN OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES .....ii

INTRODUCTION AND SUMMARY OF ARGUMENT .....1

STATEMENT OF THE NATURE AND STAGE OF THE PROCEEDING .....1

STATEMENT OF THE ISSUES TO BE RULED UPON BY THE COURT .....2

ARGUMENT .....3

    I.    The Requested Injunction Would Harm The Economy .....3

    II.   The Requested Injunction Would Harm Individuals .....6

        A. The Economic Effects On Individuals Granted Deferred Action .....6

        B. Examples Of Benefits From Deferred Action .....8

            1. Individuals brought to the United States as children .....9

            2. Parents of U.S. citizens and lawful permanent residents .....11

CONCLUSION.....15

**TABLE OF AUTHORITIES**

**Other Authorities**

Center for American Progress, *Executive Action on Immigration Will Benefit State Economies* .....6

Fiscal Policy Institute, *President’s Immigration Action Expected to Benefit Economy*.....7

Roberto G. Gonzales and Veronica Terriquez, *How DACA is Impacting the Lives of Those who are now DACAmented: Preliminary Findings from the National UnDACAmented Research Project* (American Immigration Council, 2013).....8

Michael Greenstone and Adam Looney, *Ten Economic Facts About Immigration*, (The Hamilton Project, Brookings Inst., Policy Memo, 2010).....4

Dr. Raul Hinojosa-Ojeda with Maksim Wynn, *From the Shadows to the Mainstream: Estimating the Economic Impact of Presidential Administrative Action and Comprehensive Immigration Reform*, Appendix A (NAID, Nov. 21, 2014) .....5, 8

Patrick Oakford, *Administrative Action on Immigration Reform, The Fiscal Benefits of Temporary Work Permits* (CAP, 2014) .....5, 7

Gianmarco I.P. Ottaviano and Giovanni Peri, *Rethinking the Effects of Immigration on Wages* (Nat’l Bureau of Econ. Research, Working Paper No. 12497, 2006, revised 2008).....4

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Jack Strauss, *Does Immigration, Particularly Increases in Latinos, Affect African American Wages, Unemployment and Incarceration Rates?*, Dec. 8, 2012.....3

U.S. Chamber of Commerce, *Immigration Myths and Facts* (2013) .....5

White House Council of Economic Advisors, *The Economic Effects of Administrative Action on Immigration* (Nov. 2014) .....4, 5, 6, 7

## **INTRODUCTION AND SUMMARY OF ARGUMENT**

*Amici* American Immigration Council, American Immigration Lawyers Association, Define American, National Immigrant Justice Center, National Immigration Law Center, New Orleans Workers' Center for Racial Justice, Service Employees International Union, Southern Poverty Law Center, and United We Dream oppose Plaintiffs' request for a preliminary injunction against Defendants' new deferred action initiative. The initiative, which is described in Secretary Jeh Johnson's November 20, 2014 memorandum (Defendants' Exhibit 7), and referred to below as the "Deferred Action Initiative," should be instituted without delay.

In this brief, *amici* supplement Defendants' brief by presenting information within their expertise that supports Defendants' position on the harms that an injunction would cause and where the public interest lies. *Amici* demonstrate that the Deferred Action Initiative promises to have significant and widespread benefits to the U.S. economy, raising wages, increasing tax revenue, and creating new jobs. In addition, *amici* show the benefits of the Deferred Action Initiative to individual immigrants, their families, and the communities in which they play an integral role.

## **STATEMENT OF THE NATURE AND STAGE OF THE PROCEEDING**

The parties to this case have addressed the nature and stage of the proceeding in their motion and opposition. *Amici* do not agree with all of their statements, but address only two key issues here. First, as Defendants have explained, the U.S. Department of Homeland Security ("DHS") maintains prosecutorial discretion under the Deferred Action Initiative to decide on a case-by-case basis whether to grant any particular individual's request. Dkt. 38 at 12, 40-41. Plaintiffs are incorrect that DHS simply rubber stamps Deferred Action for Childhood Arrivals ("DACA") requests. According to the latest statistics, almost six percent of DACA applications

were denied. *Id.* at 41. (It is hardly surprising that more than 90 percent of DACA applications are approved, as individuals with stronger equities have a greater incentive to pay the DACA application fee and identify themselves to the very government agency empowered to initiate removal proceedings.) In the experience of *amici*, many of whom have been integrally involved in advising DACA applicants and their lawyers, some DACA denials are based solely on prosecutorial discretion. That is, individuals who meet all of the DACA eligibility requirements are still denied deferred action. Indeed, the DHS National Standard Operating Procedures for DACA contain a form used for denial of DACA applications that includes a box specifically allowing denials on the basis of discretion: “You do not warrant a favorable exercise of prosecutorial discretion because of other concerns.”<sup>1</sup>

Second, all of the individuals who are eligible for the Deferred Action Initiative will have been in the country for at least five years. Dkt. 38 at 11. Accordingly, there is no reason to believe that this initiative will lead to a wave of new entries. Indeed, following implementation of the initial DACA program, unauthorized immigration to the United States declined slightly and the average length of time that undocumented immigrants in the country have been here has increased.<sup>2</sup>

#### **STATEMENT OF THE ISSUES TO BE RULED UPON BY THE COURT**

*Amici* agree with Defendants’ presentation of the issues before the Court. *See* Dkt. 38 at 12-13.

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<sup>1</sup> The form is Appendix F on page 249, and is available at: <http://legalactioncenter.org/sites/default/files/DACA%20Standard%20Operating%20Procedures.pdf>.

<sup>2</sup> Pew Research, *As Growth Stalls, Unauthorized Immigrant Population Becomes More Settled*, available at: <http://www.pewhispanic.org/2014/09/03/as-growth-stalls-unauthorized-immigrant-population-becomes-more-settled/>.

## ARGUMENT

*Amici* demonstrate below that a preliminary injunction would harm the U.S. economy, as well as individuals who would otherwise be granted deferred action, their families, and their communities. Incurring this harm would also be against the public interest.

### **I. The Requested Injunction Would Harm The Economy**

Numerous studies by the government, think-tanks, non-profit advocacy organizations, and academic researchers have shown that granting deferred action to the individuals covered by the November 20, 2014 executive action on immigration would have beneficial effects on the U.S. economy and U.S. workers. Temporary work authorization for those immigrants who are eligible for deferred action will raise not only their wages, but the wages of all Americans, which will in turn increase government tax revenue and create new jobs.

The overwhelming consensus of economists is that immigration has a positive impact on the U.S. economy. For instance, Dr. Giovanni Peri has concluded that “immigrants expand the U.S. economy’s productive capacity, stimulate investment, and promote specialization that in the long run boosts productivity,” and that “there is no evidence that these effects take place at the expense of jobs for workers born in the United States.”<sup>3</sup> Because immigrants and native-born workers tend to fill different kinds of jobs that require different skills, they complement each

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<sup>3</sup> Giovanni Peri, *The Effect of Immigrants on U.S. Employment and Productivity*, FRBSF Econ. Letter 2010-26, Aug. 30, 2010, <http://www.frbsf.org/economic-research/publications/economic-letter/2010/august/effect-immigrants-us-employment-productivity>; *see also* Jack Strauss, *Does Immigration, Particularly Increases in Latinos, Affect African American Wages, Unemployment and Incarceration Rates?*, Dec. 8, 2012, available at Social Science Research Network, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2186978](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2186978) (finding that cities with higher levels of immigration from Latin America experience lower unemployment rates, lower poverty rates, and higher wages among African Americans).

other rather than compete.<sup>4</sup> This increases the productivity, and therefore the wages, of native-born workers.<sup>5</sup> Further, the increased spending power of both immigrants and native-born workers bolsters U.S. businesses, which are then able to invest in new ventures. The end result is more jobs for more workers, as well as upward pressure on wages created by higher demand for labor.<sup>6</sup>

Deferred action and temporary work authorization would amplify the positive impact that immigration has on the U.S. economy. As the White House Council of Economic Advisors (“CEA”) explains, “better task specialization and occupational reallocation as a result of work authorization for undocumented workers granted deferred action would allow for greater productivity – and thus higher wages – for native workers as well.”<sup>7</sup> Although small, the benefits for native-born American workers are real. CEA estimates the wage gains to be 0.3

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<sup>4</sup> Giovanni Peri, *supra* n.3; *see also* Heidi Shierholz, *Immigration and Wages: Methodological advancements confirm modest gains for native workers*, at 10-11 (Econ. Policy Inst., Briefing Paper No. 255, 2010), <http://www.epi.org/files/page/-/bp255/bp255.pdf>; Gianmarco I.P. Ottaviano and Giovanni Peri, *Rethinking the Effects of Immigration on Wages*, at 3-4 (Nat’l Bureau of Econ. Research, Working Paper No. 12497, 2006, revised 2008), <http://www.nber.org/papers/w12497.pdf>; Michael Greenstone and Adam Looney, *Ten Economic Facts About Immigration*, at 5 (The Hamilton Project, Brookings Inst., Policy Memo, 2010).

<sup>5</sup> Giovanni Peri, *supra* n.3; *see also* Heidi Shierholz, *supra* n.4, at 19 (estimating that, from 1994 to 2007, immigration increased the wages of native-born workers by 0.4 percent); Gianmarco I.P. Ottaviano and Giovanni Peri, *supra* n.4, at 4 (estimating that, from 1990 to 2004, immigration increased the wages of native-born workers by 0.7 percent); Michael Greenstone and Adam Looney, *supra* n.4, at 5.

<sup>6</sup> Giovanni Peri, *Rethinking the Effects of Immigration on Wages: New Data and Analysis from 1990-2004*, 5 *Immigration Policy In Focus*, No. 8, at 1 (American Immigration Law Foundation (now, American Immigration Council), Oct. 2006), <http://www.immigrationpolicy.org/sites/default/files/docs/IPC%20Rethinking%20Wages,%2011-2006.pdf>; White House Council of Economic Advisors (“CEA”), *The Economic Effects of Administrative Action on Immigration*, at 9 (Nov. 2014), available at [http://www.whitehouse.gov/sites/default/files/docs/cea\\_2014\\_economic\\_effects\\_of\\_immigration\\_executive\\_action.pdf](http://www.whitehouse.gov/sites/default/files/docs/cea_2014_economic_effects_of_immigration_executive_action.pdf).

<sup>7</sup> CEA, *The Economic Effects of Administrative Action on Immigration*, *supra* n.6, at 9.

percent over the next ten years as a result of all of the executive actions (including that concerning highly-skilled workers); 0.1 percent of these gains is attributable to deferred action.<sup>8</sup>

The federal government, as well as state and local governments, will enjoy higher tax revenues as a result of the Deferred Action Initiative. Not only will previously unauthorized workers be brought into the formal workforce, with much higher rates of tax compliance, but they will also be able to obtain better jobs and earn higher wages. Estimates vary, but all agree that the effect on tax revenue will be substantial. The North American Integration and Development Center (“NAID”) at the University of California, Los Angeles, estimates that if 3.8 million people are eligible to receive deferred action, tax revenues would increase by approximately \$2.6 billion over the first two years.<sup>9</sup> Similarly, the Center for American Progress (“CAP”) estimates that if 4.7 million individuals are eligible to receive deferred action, payroll tax revenues will increase by \$2.87 billion in the first year and \$21.24 billion over the first five years.<sup>10</sup> The effects on individual states are striking. For instance, CAP estimates that in Texas

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<sup>8</sup> *Id.* at 9-11; *see also* U.S. Chamber of Commerce, *Immigration Myths and Facts*, at 4-5 (2013), available at

[https://www.uschamber.com/sites/default/files/legacy/reports/Immigration\\_MythsFacts.pdf](https://www.uschamber.com/sites/default/files/legacy/reports/Immigration_MythsFacts.pdf). (discussing 10-year projections (2010-2020) for retirement and economic growth, which make immigration “invaluable” in sustaining the U.S. work force).

<sup>9</sup> Dr. Raul Hinojosa-Ojeda with Maksim Wynn, *From the Shadows to the Mainstream: Estimating the Economic Impact of Presidential Administrative Action and Comprehensive Immigration Reform*, Appendix A at 32 (NAID, Nov. 21, 2014),

[http://www.naid.ucla.edu/uploads/4/2/1/9/4219226/ucla\\_naid\\_center\\_report\\_-\\_estimating\\_the\\_economic\\_impact\\_of\\_presidential\\_administrative\\_action\\_and\\_comprehensive\\_immigration\\_reform.pdf](http://www.naid.ucla.edu/uploads/4/2/1/9/4219226/ucla_naid_center_report_-_estimating_the_economic_impact_of_presidential_administrative_action_and_comprehensive_immigration_reform.pdf).

<sup>10</sup> Patrick Oakford, *Administrative Action on Immigration Reform, The Fiscal Benefits of Temporary Work Permits*, at 9 (CAP, 2014), <http://cdn.americanprogress.org/wp-content/uploads/2014/09/OakfordAdminRelief.pdf>.

alone, granting deferred action and a temporary work permit to those individuals who would be eligible would result in a \$338 million increase in tax revenues over five years.<sup>11</sup>

As a result of these particular benefits, deferred action will have the effect of growing the economy generally. Researchers predict that over the next 10 years the executive actions will have the effect of increasing GDP by at least 0.4 percent (\$90 billion) or as much as 0.9 percent (\$210 billion).<sup>12</sup> The CEA explains that this growth will be the result of (1) “An expansion in the size of the American labor force by nearly 150,000 workers over the next ten years, largely as a result of higher labor force participation”; and (2) “An increase in the productivity of American workers, both because of increased labor market flexibility and reduced uncertainty for workers currently in the United States and because of increased innovation from high-skilled workers.”<sup>13</sup> Moreover, as a result of high GDP and higher tax revenue, the CEA estimates that the executive actions on immigration will decrease federal deficits by between \$25 and \$60 billion over the next 10 years.<sup>14</sup>

## **II. The Requested Injunction Would Harm Individuals**

### **A. The Economic Effects On Individuals Granted Deferred Action**

The Deferred Action Initiative will create access to better jobs and improve the working conditions of many undocumented individuals now employed in the United States. Because undocumented immigrants seek out jobs that minimize their risk of being identified and deported, they often do not work in jobs that best fit their skills and abilities, which would

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<sup>11</sup> Center for American Progress, *Executive Action on Immigration Will Benefit State Economies*, available at <http://www.scribd.com/doc/248189539/Topline-Fiscal-Impact-of-Executive-Action-Numbers-for-28-States>, at 3.

<sup>12</sup> CEA, *The Economic Effects of Administrative Action on Immigration*, *supra* n.6, at 2.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

maximize their earning potential.<sup>15</sup> Making workers eligible for deferred action and work permits will allow them greater occupational mobility, enabling them to seek out a wider range of potential jobs. Moreover, as CAP has explained, “[t]he interaction between our broken immigration system and employment and labor laws have made undocumented workers more susceptible to exploitation in the workplace, leading them to earn lower wages than they otherwise could.”<sup>16</sup> Eliminating the fear of retaliatory reporting and potential deportation will allow these workers to better protect their own workplace rights, leading to higher real wages and fewer violations of employment and labor laws and regulations.<sup>17</sup>

The increased wage benefit to those eligible for deferred action will be much larger. CAP estimates that “[t]emporary work permits would increase the earnings of undocumented immigrants by about 8.5 percent as they are able to work legally and find jobs that match their skills.”<sup>18</sup> Similarly, the Fiscal Policy Institute estimates that wages for those eligible for legal work status will increase by 5 to 10 percent.<sup>19</sup> Overall, one estimate suggests that the individuals

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<sup>15</sup> Patrick Oakford, *supra* n.10, at 6.

<sup>16</sup> *Id.* at 5. Additionally, deferred action will not have a negative impact on employment for native-born workers. The CEA explains: “Theory suggests that these policy changes would not have an effect on the long-run employment (or unemployment) rate . . . as the additional demand associated with the expanded economy would offset the additional supply of workers. . . . Consistent with the theory, much of the academic literature suggests that changes in immigration policy have no effect on the likelihood of employment for native workers.” CEA, *The Economic Effects of Administrative Action on Immigration*, *supra* n.6, at 9.

<sup>17</sup> Indeed, enabling undocumented workers to better protect their workplace rights will have a positive effect on all U.S. workers. Not only will more workers have the opportunity to bring employers’ violations to light, but diminishing the exploitation of these workers will prevent a race-to-the-bottom in workplace conditions. See Patrick Oakford, *supra* n.10, at 6.

<sup>18</sup> *Id.* at 3.

<sup>19</sup> Fiscal Policy Institute, *President’s Immigration Action Expected to Benefit Economy*, <http://fiscalpolicy.org/presidents-immigration-action-expected-to-benefit-economy>.

eligible to receive deferred action through this initiative “will experience a labor income increase of \$7.1 billion dollars.”<sup>20</sup>

The benefits of the Deferred Action Initiative for upward mobility are apparent from the impact of the initial DACA program, announced in June 2012. According to the findings of a national survey of 1,402 young adults across the country who were approved for DACA through June 2013:

Since receiving DACA, young adult immigrants have become more integrated into the nation’s economic institutions. Approximately 61% of DACA recipients surveyed have obtained a new job since receiving DACA. Meanwhile, over half have opened their first bank account, and 38% have obtained their first credit card.<sup>21</sup>

In short, DACA created greater levels of contribution to the workforce by educated individuals who previously had limited employment opportunities.

### **B. Examples Of Benefits From Deferred Action**

The stories of the individuals described below highlight the benefits of permitting the Executive Branch to roll out the Deferred Action Initiative unimpeded by judicial intervention. As Defendants have explained, the Deferred Action Initiative allows DHS to focus its limited resources on such priorities as national security and public safety. Dkt. 38 at 51-53. The initiative does so by identifying individuals who are low priority – because they were brought to the United States as children or have long-standing ties to the country and to U.S. citizen and lawful permanent resident children, and have no history of serious crimes – and allowing them to submit an application (including a fee) to remain in the country for a limited period of time,

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<sup>20</sup> Dr. Raul Hinojosa-Ojeda with Maksim Wynn, *supra* n.9, Appendix A at 32.

<sup>21</sup> Roberto G. Gonzales and Veronica Terriquez, *How DACA is Impacting the Lives of Those who are now DACAmended: Preliminary Findings from the National UnDACAmended Research Project* (American Immigration Council, 2013), <http://www.immigrationpolicy.org/just-facts/how-daca-impacting-lives-those-who-are-now-dacamended>.

thereby freeing up enforcement resources for high priorities. *See* Defendants' Exhibit 7. The following are descriptions of some individuals who stand to benefit from deferred action.

**1. Individuals brought to the United States as children**

Expanded DACA, like its predecessor, is designed to allow individuals who were brought to the United States as children, pursued educational opportunities, and lack a viable means to legalize their status, to apply for a temporary reprieve from deportation and obtain work authorization. The eligible individuals often know only the United States as their home but, despite having been raised and educated here, lack the ability to work legally. The original DACA program limited relief to individuals who were under age 31 as of June 15, 2012. This cut-off date excluded numerous individuals.

**Jose Antonio Vargas.** For example, Jose Antonio Vargas, who is now age 33, arrived in the United States at the age of 12 from Antipolo, Philippines. He currently lives in California. Jose Antonio is a well-known journalist and filmmaker who was part of the *Washington Post* team that won the Pulitzer Prize for coverage of the Virginia Tech shootings in 2011. He is also a filmmaker and founder of the nonprofit media and culture campaign, "Define American," which seeks to elevate the immigration conversation in the United States. Jose Antonio discovered he was undocumented at the age of 16 when he attempted to apply for a driver's license. He is the only undocumented member of his family. He missed the age cutoff for the original DACA program by a few months. Jose Antonio is already an American entrepreneur and business owner who has made tremendous contributions to society through his films and advocacy work. He has created numerous jobs for U.S. citizens despite lacking his own work

authorization, for which the expanded DACA initiative would finally allow Jose Antonio to apply.<sup>22</sup>

**Aly.** Aly has lived in the United States for 25 years. He arrived in 1985 from Dakar, Senegal at the age of 8. He currently lives in Syracuse, New York, where he is an established community organizer. He originally came to the United States as the son of a diplomat who worked at the United Nations. He eventually traded his diplomatic visa for a student visa, graduated from Georgetown Preparatory School, attended the University of Pennsylvania, and completed his studies with a Bachelor of Arts in Political Science from Le Moyne College in Syracuse. He missed the age cutoff for the original DACA program, but would be able to apply under the recent expansion.<sup>23</sup>

**Juan Carlos.** Juan Carlos is 21 years old and lives in North Carolina. He is originally from El Salvador but came to the United States when he was 15 years old. He was detained while crossing into the United States in 2008 and has a final order of removal. Following his high school graduation in June 2012, Juan Carlos was accepted into five colleges. However, he could not afford to attend because North Carolina does not provide in-state tuition for undocumented students. To make ends meet, Juan Carlos started working with his father in construction. After he fell on his third day of work, he did not return to that job because he knew that if he suffered a more serious workplace injury, he would not be able to afford the medical costs.

Juan Carlos is a community organizer who serves on the National Coordinating Committee of United We Dream and is a part of the Dream Organizing Network. He was not eligible for the original DACA program because he came to the United States in 2008, but he

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<sup>22</sup> Information on file with Karen Tumlin, NILC.

<sup>23</sup> Information on file with Karen Tumlin, NILC.

would qualify for the Deferred Action Initiative under the November 20, 2014 memorandum. Receiving deferred action would not only remove the constant fear of deportation that Juan Carlos faces but also would allow him to pursue higher education, to follow his dream of becoming an architect, and to better support his parents through lawful employment.<sup>24</sup>

**Dani.** Dani entered the U.S. lawfully from the Philippines at the age of 13 with her mother, who had a visa to work in a domestic capacity for a World Bank employee. She has lived in the United States since November 2008, attended school in the United States, and received her diploma from a high school in the District of Columbia. Despite having good grades, Dani could not qualify for financial aid due to her immigration status. The original announcement of DACA did not help Dani as she entered after the June 15, 2007 cutoff. She met the other eligibility criteria for DACA at that time. The recent expansion of DACA to those who entered between June 15, 2007, and January 1, 2010, would allow Dani to apply.<sup>25</sup>

## **2. Parents of U.S. citizens and lawful permanent residents**

Certain other individuals with strong ties to the United States will become eligible for deferred action based on the immigration status of their children.

**Nery.** For example, Nery is a 33-year-old citizen of El Salvador who has been in the United States since 2007 and currently resides in Illinois. He is the father of two U.S. citizen sons, one of whom has been diagnosed with Fragile X syndrome, developmental delays, and a heart murmur. Nery's son is completely dependent on therapy, constant care, and access to hospitals and cardiologists in the United States. His son cannot communicate his needs, cannot feed himself, and has limited mobility.

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<sup>24</sup> See Letter from Julieta Garibay, Co-founder and Deputy Advocacy Director of United We Dream, to Karen Tumlin, NILC (Dec. 29, 2014) (on file with NILC).

<sup>25</sup> See Letter from Andres C. Benach, Esq., to Melissa Crow, American Immigration Council (Dec. 29, 2014) (on file with Immigration Council).

In 2008, Nery was in a car accident in which another driver hit his car. Because Nery did not have a driver's license, he was arrested and subsequently transferred to immigration custody. On the day of his immigration court hearing, his wife went into labor. Birth complications made it impossible for Nery to leave his wife's side. He contacted his attorney who incorrectly advised him that he could stay with his wife during her labor. As a result, he received an *in absentia* order of removal.

In 2011, Nery was arrested after being pulled over for speeding when he was driving his sick son to the hospital. The police took Nery, but left his wife and two children on the curb with no way to get to the hospital for timely medical help. With the assistance of the National Immigrant Justice Center in Chicago, Nery was able to benefit from a temporary exercise of prosecutorial discretion. However, Nery still needs to renew his status and could be deported at any time, which would have a disastrous impact on his family. Nery is eligible to apply for deferred action and work authorization, which would enable him to provide for his family with more stability and a reduced fear of separation.<sup>26</sup>

**Denis and Reina.** Denis has lived in the U.S. for eleven years. His wife, Reina, has lived in the U.S. since 2007. Both are from Honduras. Denis left Honduras in 2003 because he feared for his life. His grandmother was murdered in front of their home in retaliation for filing a police complaint, and he was afraid that he would also be targeted.

Denis has lived in the New Orleans area since Hurricane Katrina devastated the Gulf Coast South. A skilled roofer and construction worker, he came to the city to contribute to the rebuilding of New Orleans after the storm. Denis and Reina are the parents of a one-year-old son who is a U.S. citizen. Unfortunately, their young son has been diagnosed with respiratory

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<sup>26</sup> See Letter from Charles Roth, Esq., to Karen Tumlin, NILC (Dec. 29, 2014) (on file with NILC).

complications that require regular physician visits as well as emergency care. Denis' income is the family's main source of financial support, and multiple physicians have advised him that his continued presence in the United States is critical to ensuring that his son receives adequate medical care. Denis is subject to a final removal order, which was issued following proceedings that he did not adequately understand and at which he was forced to represent himself. Reina has had no contact with immigration authorities. Neither Denis nor Reina has a criminal record.

Last year, Denis was arrested during an immigration sweep at an apartment complex where the couple was searching for a new home. Denis was granted a temporary stay of removal, for which he must reapply every few months, leaving him and his family in constant fear that he will be deported. The Deferred Action Initiative would protect Denis and Reina from deportation, allowing their family to remain together and maximizing the chances for a safe, healthy future for their son. Moreover, deferred action would enable them to continue to contribute to the economy and their community. If granted deferred action, Denis plans to expand his construction business, and Reina plans to open a coffee and pastry business. Deferred action would also allow the couple to continue their work as leading members of the New Orleans Workers' Center for Racial Justice and its community project, the Congress of Day Laborers.<sup>27</sup>

**Rebeca.** Rebeca (a pseudonym to protect her identity) entered the United States from Mexico in 2000 and currently resides in Indiana. She has six children, four of whom are U.S. citizens. One of her children has DACA. During her time in the United States, Rebeca suffered years of physical and verbal abuse at the hands of her domestic partner. Her abuser, who was often drunk, would yell at her and beat her in front of her children. On one occasion he punched

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<sup>27</sup> See Letter from Yihong "Julie" Mao, Esq., to Karen Tumlin, NILC (Dec. 29, 2014) (on file with NILC).

her in the stomach while she was pregnant; on another occasion, he threatened her with a knife. The abuser was arrested for felony battery and eventually deported. As the mother of U.S. citizen children, Rebeca could benefit from deferred action, which would enable her to continue to raise her children in the only country they have ever known.<sup>28</sup>

**Rosa Maria.** Rosa Maria is 61 years old and was born in Hermosillo, Mexico. She came to the United States more than 15 years ago on a tourist visa to visit California. She stayed after her visa expired hoping that she could improve her life by earning a better living and helping her children get access to a good education. She originally came to the United States alone without her children, who remained in Mexico in the care of her adult children. Her youngest daughter, Dulce, came to join her in July 2000 and they moved to Arizona.

Living in the United States has allowed Rosa Maria's daughter to get a good education and to succeed professionally. Dulce graduated from Arizona State University in 2009 with a degree in electrical engineering and has been a leader in the Arizona Dream Act Coalition, which helps promote the rights of undocumented youth in Arizona. However, living in the United States has also been challenging for Rosa Maria, who has been separated from her family in Mexico. Because of her lack of immigration status, she has had to miss the funerals of three of her siblings and one of her parents as well as the university graduation of one of her children. Rosa Maria has U.S. citizen siblings, and her daughter Dulce is now a lawful permanent resident, which qualifies Rosa Maria to apply for the Deferred Action Initiative. If granted deferred action, Rosa Maria would be in a better position to support her family.<sup>29</sup>

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<sup>28</sup> See Letter from Charles Roth, Esq., to Karen Tumlin, NILC (Dec. 29, 2014) (on file with NILC).

<sup>29</sup> Information on file with Nora Preciado, NILC.

**Sara and Juan.** Sara and Juan are the parents of four children, two of whom are U.S. citizens. They currently live in Austin, Texas, where they are involved in their church. Sara and Juan are originally from Guanajuato, Mexico, and have lived in the United States for 12 years and 14 years, respectively. Both of them would be eligible to apply for deferred action because of their two U.S. citizen children. If Sara and Juan are approved for deferred action, their children would no longer have to worry about the possibility that their parents might be deported while they are at school or merely going about their daily activities. To Sara and Juan, having deferred action would mean a sense of peace and opportunity for their family. They would also finally feel able to invest in a home without the fear of losing it.<sup>30</sup>

These stories illustrate the strong benefits the Deferred Action Initiative will provide to our nation's families, communities, and economy. These benefits, as well as those Defendants discuss, demonstrate that a preliminary injunction would cause significant harms and would be against the public interest.

## CONCLUSION

For the reasons in Defendants' brief and the reasons above, the preliminary injunction should be denied.

Dated: December 29, 2014

Respectfully submitted,

/s/ Jonathan Weissglass

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<sup>30</sup> See Letter from Julieta Garibay, Co-founder and Deputy Advocacy Director of United We Dream, to Karen Tumlin, NILC (Dec. 29, 2014) (on file with NILC).

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**CERTIFICATE OF SERVICE**

I hereby certify that service of the foregoing motion and the proposed order will be delivered electronically on December 29, 2014, to counsel for Plaintiffs and Defendants through the District's Electronic Case Filing system.

/s/ Jonathan Weissglass