

# EXECUTIVE ACTION ON IMMIGRATION REFORM: POSSIBLE SCENARIOS



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# What Is “Executive Action”?

- Executive order: formal presidential order, based on constitutional or delegated authority, with force of law
- (Other) executive action: any policy enacted by the executive branch, based on constitutional, statutory, or delegated authority, including e.g.-
  - Regulations
  - Statements of policy
  - Agency guidelines
  - Enforcement priorities

# Executive Actions on Immigration

- Historical examples
  - Humanitarian Parole: discretionary authority for Attorney General (now DHS) to permit the temporary entry of individuals into the United States for urgent human reasons or significant public benefit (INA §212(d)(5))
    - 1956 Hungarians
    - 1959-72 Cubans
    - 1962-65 China
    - 1975-79 Vietnamese, Cambodians, Laotians
    - 1977-80 Soviets
    - 1980 Cubans and Haitians
    - 1989 Soviets

# Executive Actions on Immigration

- Historical examples
  - Extended Voluntary Departure: temporary suspension of removal of people from a particular country because of political strife, natural disasters, or other crises (prior to 1990, pursuant to president's constitutional authority and INA §103)
    - 1960 Cubans
    - 1976 Lebanese
    - 1977-82 Ethiopians
    - 1978 Ugandans
    - 1979 Nicaraguans
    - 1979 Iranians
    - 1980 Afghans
    - 1981-87 Poles

# Executive Actions on Immigration

- Historical examples
  - Temporary Protected Status (TPS): Since 1990, DHS may designate nationals from a country for temporary relief from removal and work authorization on the basis of ongoing armed conflict, natural disaster, or other “extraordinary and temporary” conditions (INA §244)
    - 1991 Somalia
    - 1997 Sudan
    - 1998 Nicaragua and Honduras
    - 2001 El Salvador and Southern Sudan

# Executive Actions on Immigration

- Historical examples
  - Deferred Enforced Departure: Since 1990, similar to Extended Voluntary Departure, pursuant to executive order or formal presidential memorandum
    - 1990 Chinese
    - 1991 Kuwaitis
    - 1992 Salvadorans
    - 1997 Haitians
    - 1999-2009 Liberians

# Executive Actions on Immigration

- Historical examples
  - Deferral of Deportation/Deferred Action: administrative policy (agency guidance or statement of policy) to not pursue deportation proceedings against a particular individual
    - 1987 Nicaraguans
    - 1987-90 IRCA families
    - 1989 Chinese
    - 1997 VAWA beneficiaries
    - 1998 Central Americans affected by Hurricane Mitch
    - 2005 Foreign students affected by Hurricane Katrina

# Executive Actions on Immigration

- Obama administration
  - DED extension for Liberians (2009 and 2011)
  - TPS for Haitians affected by 2010 earthquake (60,000) + parole for Haitian orphans being adopted by U.S. citizens
  - Parole in place for parents, spouses, and children of U.S. citizens in the military
  - Formalization of DHS enforcement priorities and grounds for prosecutorial discretion
    - DHS-DOJ review of removal docket (38,000)
  - Deferred Action for Childhood Arrivals (DACA) program (590,000)



# Additional Possible Scenarios

- Changes to DHS enforcement priorities
  - Focus on serious criminals instead of noncitizens convicted of any crime
  - Restrict the definition of recent entrants and “immigration obstructionists”
  - Could reduce removals by 10,000 – 30,000 people per year (or more if changes to CBP border removal policies)

# Additional Possible Scenarios

- Expansion of existing DACA program
  - 1.2 million currently eligible
  - 1.9 million arrived as children prior to 2011 and meet education requirement
  - 3.1 million arrived as children prior to 2011

# Additional Possible Scenarios

- New DACA-style program for other groups
  - 3.6 million unauthorized parents of U.S. citizens or LPRs
    - 3.3 million here > 5 years
    - 2.5 million here > 10 years
  - 1.5 million unauthorized spouses of U.S. citizens or LPRs
    - 1.2 million here > 5 years
    - 900,000 here > 10 years

# Additional Possible Scenarios

- Parole in place for immediate relatives of U.S. citizens
  - Potentially eligible for non-preference visas, but may be blocked by 3- and 10- year bars
  - 770,000 unauthorized spouses of U.S. citizens
  - 560,000 unauthorized parents of adult (over 21) U.S. citizens



For more Information

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