

Federal Court Halts DAPA and Expanded DACA Programs

On Monday, February 16, 2015, Judge Andrew S. Hanen of the US District Court for the Southern District of Texas, Brownsville Division **issued** a **preliminary injunction** to temporarily prevent the federal government from implementing the **Deferred Action for Parental Accountability (DAPA) and the expanded Deferred Action for Childhood Arrivals (DACA)** programs.

The order was issued as Judge Hanen continues to consider the lawsuit brought in December 2014 by twenty-six states **seeking** declaratory and injunctive relief against the United States and certain federal officials. The plaintiffs aver that the DAPA and expanded DACA programs violate the Take Care Clause of the US Constitution and the Administrative Procedure Act (APA). In ordering the injunction, Judge Hanen found that the federal government failed to fulfill the APA's "notice and comment requirement." Judge Hanen has not yet issued a final decision on the merits of the case, including whether or not the executive measures violate the US Constitution.

US Citizenship and Immigration Services (USCIS) had planned to begin accepting applications for the expanded DACA program on Wednesday, February 18, 2015. The DAPA program was expected to open sometime in May 2015. Department of Homeland Security (DHS) Secretary Jeh Johnson has **announced** that, pending an appeal, DHS "will not begin accepting requests for the expansion of DACA...as originally planned." Johnson also said, "Until further notice, we will also suspend the plan to accept requests for DAPA."

The DAPA and expanded DACA programs would have provided temporary relief from deportation and work authorization for up to 5.2 million unauthorized immigrants in the US (Warren

2014). The order will not affect unauthorized immigrants eligible for the DACA program implemented in 2012 because the lawsuit does not challenge the original DACA program (Lind 2015).

In a [statement](#) released on February 17th, the White House stated, “The Department of Justice, legal scholars, immigration experts, and the district court in Washington, D.C. have determined that the President’s actions are well within his legal authority.” The federal government is expected to appeal the injunction to the Fifth U.S. Circuit Court of Appeals in New Orleans (Koppel and Meckler 2015; Lind 2015). Should the federal government win its appeal, it is possible that enrollment may open for the DAPA and expanded DACA programs.

Regardless of the success of the appeal or Judge Hanen’s final decision, officials, experts, and advocates anticipate an extremely long legal battle that may reach the Supreme Court. Meanwhile, service organizations remain optimistic and are continuing to prepare immigrants for the two programs (Koplowitz 2015; Hennessy-Fiske 2015; Solís 2015).

- The Complaint for Declaratory and Injunctive Relief is available at <https://www.texasattorneygeneral.gov/files/epress/files/20141203ImmigrationExecutiveOrderLawsuit.pdf>.
- Judge Hanen’s Memorandum Opinion and Order is available at <https://www.scribd.com/doc/255994067/Memorandum-Opinion-Texas-v-United-States>. His Order of Temporary Injunction is available at <https://www.scribd.com/doc/255992850/Order-of-Temporary-Injunction-Texas-v-United-States>.

Obama's immigration executive order: Here are the details

Under President Barack Obama's immigration executive order, announced on Thursday, November 20, 2014, illegal immigrants who have minor run-ins with law enforcement will not have to worry about the incident triggering deportation.

Obama is ordering a series of administrative changes in rules and refocusing enforcement priorities and prosecutorial discretion. Combined, these actions, are in line with past presidential precedents and therefore can survive a legal challenge.

Here are some of the changes that will allow about 5 million illegal immigrants to remain in the U.S. *A full copy of the White House fact sheet is at the end of this post.*

ENFORCEMENT

The Department of Homeland Security, which enforces immigration laws through a branch nicknamed "ICE" – Immigration and Customs Enforcement – will be shifting priorities.

DHS Secretary Jeh Johnson will be issuing a memo ordering law enforcement officials to focus on illegal immigrants with criminal convictions and recent illegal arrivals – especially those who pose threats, such as gang members and terrorists or other criminals. They will be at "the top of the deportation

priority list.”

“This is very basic prosecutorial discretion, “ a White House official said. “. . . the same sort of choice prosecutors use every day.”

Immigration officials have enormous “latitude to pick and chose who they go after.”

EXPANDING DEFERRED ACTIONS

For parents of citizens or permanent residents...

Some four million illegal immigrants may be impacted in a new program intended to help the parents of U.S. citizens or permanent residents. They will be allowed to stay if they have lived in the U.S. for five years or longer, register, pass a criminal background check and pay taxes.

From a White House fact sheet: “Individuals will have the opportunity to request temporary relief from deportation and work authorization for three years at a time if they come forward and register, submit biometric data, pass background checks, pay fees, and show that their child was born before the date of this announcement. By providing individuals with an opportunity to come out of the shadows and work legally, we will also help crack down on companies who hired undocumented workers, which undermines the wages of all workers, and ensure that individuals are playing by the rules and paying their fair share of taxes.”

DACA provisions...

Under a program known as “DACA” – Deferred Action for Childhood Arrivals – created under an Obama June 15, 2012 order, youths known as “DREAMers,” illegally in the U.S. through no fault of their own, were eligible to be granted a low priority enforcement status allowing them to stay in the U.S. and not worry about deportation.

Obama's order eliminates the age cap and expands the universe of people who can stay. Immigration officials, using prosecutorial discretion, will put a low priority enforcement of low risk law abiding illegal immigrants.

As in the 2012 DACA, this is not a pathway to citizenship and it does not grant a legal status. For three years, law enforcement officials will not go after DREAMers who pass a criminal background check and other criteria. This will allow them to work legally and and pay taxes. **It is temporary and it is revocable.**

From a White House fact sheet: "Under the initial DACA program, young people who had been in the U.S. for at least five years, came as children, and met specific education and public safety criteria were eligible for temporary relief from deportation so long as they were born after 1981 and entered the country before June 15, 2007. DHS is expanding DACA so that individuals who were brought to this country as children can apply if they entered before January 1, 2010, regardless of how old they are today. Going forward, DACA relief will also be granted for three years."

Nothing in the executive order covers the parents of DREAMers.

OTHER CHANGES TO THE CURRENT IMMIGRATION SYSTEM

Foreign students studying in the science and technology fields in the U.S. will find it easier to obtain a visa to allow them to stay.

A new program will be created to let entrepreneurs come to the U.S. if they can demonstrate they have investors and will create jobs in the U.S.

TIMETABLE

The range of actions Obama is announcing on Thursday have different timelines for implementation. The deferred action

programs could be up and running by the spring. The DACA expansions may kick in next spring. The tech and entrepreneur visa waivers have to go through a rule making process which could take a year or 18 months.

BELOW, FROM THE WHITE HOUSE

THE WHITE HOUSE

Office of the Press Secretary

FOR IMMEDIATE RELEASE

November 20, 2014

FACT SHEET: Immigration Accountability Executive Action

The President's Immigration Accountability Executive Actions will help secure the border, hold nearly 5 million undocumented immigrants accountable, and ensure that everyone plays by the same rules. Acting within his legal authority, the President is taking an important step to fix our broken immigration system.

These executive actions crack down on illegal immigration at the border, prioritize deporting felons not families, and require certain undocumented immigrants to pass a criminal background check and pay their fair share of taxes as they register to temporarily stay in the U.S. without fear of deportation.

These are common sense steps, but only Congress can finish the job. As the President acts, he'll continue to work with Congress on a comprehensive, bipartisan bill—like the one passed by the Senate more than a year ago—that can replace these actions and fix the whole system.

Three critical elements of the President's executive actions are:

- *Cracking Down on Illegal Immigration at the Border:* The President's actions increase the chances that anyone attempting to cross the border illegally will be caught and sent back. Continuing the surge of resources that effectively reduced the number of unaccompanied children crossing the border illegally this summer, the President's actions will also centralize border security command-and-control to continue to crack down on illegal immigration.

- *Deporting Felons, Not Families:* The President's actions focus on the deportation of people who threaten national security and public safety. He has directed immigration enforcement to place anyone suspected of terrorism, violent criminals, gang members, and recent border crossers at the top of the deportation priority list.

- *Accountability – Criminal Background Checks and Taxes:* The President is also acting to hold accountable those undocumented immigrants who have lived in the US for more than five years and are parents of U.S. citizens or Lawful Permanent Residents. By registering and passing criminal and national security background checks, millions of undocumented immigrants will start paying their fair share of taxes and temporarily stay in the U.S. without fear of deportation for

three years at a time.

The President's actions will also streamline legal immigration to boost our economy and will promote naturalization for those who qualify.

For more than a half century, every president—Democratic or Republican—has used his legal authority to act on immigration. President Obama is now taking another commonsense step. As the Administration implements these executive actions, Congress should finish the job by passing a bill like the bipartisan Senate bill that: continues to strengthen border security by adding 20,000 more Border Patrol agents; cracks down on companies who hire undocumented workers; creates an earned path to citizenship for undocumented immigrants who pay a fine and taxes, pass a background check, learn English and go to the back of the line; and boosts our economy and keeps families together by cutting red tape to simplify our legal immigration process.

CRACKING DOWN ON ILLEGAL IMMIGRATION AT THE BORDER

Under the Obama Administration, the resources that the Department of Homeland Security (DHS) dedicates to security at the Southwest border are at an all-time high. Today, there are 3,000 additional Border Patrol agents along the Southwest Border and our border fencing, unmanned aircraft surveillance systems, and ground surveillance systems have more than doubled since 2008. Taken as a whole, the additional boots on the ground, technology, and resources provided in the last six years represent the most serious and sustained effort to secure our border in our Nation's history, cutting illegal border crossings by more than half.

And this effort is producing results. From 1990 to 2007, the

population of undocumented individuals in the United States grew from 3.5 million to 11 million people. Since then, the size of the undocumented population has stopped growing for the first time in decades. Border apprehensions—a key indicator of border security—are at their lowest level since the 1970s. This past summer, the President and the entire Administration responded to the influx of unaccompanied children with an aggressive, coordinated Federal response focused on heightened deterrence, enhanced enforcement, stronger foreign cooperation, and greater capacity for Federal agencies to ensure that our border remains secure. As a result, the number of unaccompanied children attempting to cross the Southwest border has declined precipitously, and the Administration continues to focus its resources to prevent a similar situation from developing in the future.

To build on these efforts and to ensure that our limited enforcement resources are used effectively, the President has announced the following actions:

- Shifting resources to the border and recent border crossers. Over the summer, DHS sent hundreds of Border Patrol agents and U.S. Immigration and Customs Enforcement (ICE) personnel to the Southwest border, and the Department of Justice (DOJ) reordered dockets in immigration courts to prioritize removal cases of recent border crossers. This continued focus will help keep our borders safe and secure. In addition, Secretary Johnson is announcing a new Southern Border and Approaches Campaign Plan which will strengthen the efforts of the agencies who work to keep our border secure. And by establishing clearer priorities for interior enforcement, DHS is increasing the likelihood that people attempting to cross the border illegally will be apprehended and sent back.

- Streamlining the immigration court process. DOJ is

announcing a package of immigration court reforms that will address the backlog of pending cases by working with DHS to more quickly adjudicate cases of individuals who meet new DHS-wide enforcement priorities and close cases of individuals who are low priorities. DOJ will also pursue regulations that adopt best practices for court systems to use limited court hearing time as efficiently as possible.

- Protecting victims of crime and human trafficking as well as workers. The Department of Labor (DOL) is expanding and strengthening immigration options for victims of crimes (U visas) and trafficking (T visas) who cooperate in government investigations. An interagency working group will also explore ways to ensure that workers can avail themselves of their labor and employment rights without fear of retaliation.

DEPORTING FELONS, NOT FAMILIES

By setting priorities and focusing its enforcement resources, the Obama Administration has already increased the removal of criminals by more than 80%. These actions build on that strong record by:

- Focusing on the removal of national security, border security, and public safety threats. To better focus on the priorities that matter, Secretary Johnson is issuing a new DHS-wide memorandum that makes clear that the government's enforcement activity should be focused on national security threats, serious criminals, and recent border crossers. DHS will direct all of its enforcement resources at pursuing these highest priorities for removal.

- Implementing a new Priority Enforcement Program. Effectively identifying and removing criminals in state and local jails is a critical goal but it must be done

in a way that sustains the community's trust. To address concerns from Governors, Mayors, law enforcement and community leaders which have undermined cooperation with DHS, Secretary Johnson is replacing the existing Secure Communities program with a new Priority Enforcement Program (PEP) to remove those convicted of criminal offenses. DHS will continue to rely on biometric data to verify individuals who are enforcement priorities, and they will also work with DOJ's Bureau of Prisons to identify and remove federal criminals serving time as soon as possible.

ACCOUNTABILITY – CRIMINAL BACKGROUND CHECKS AND TAXES

Every Democratic and Republican president since Dwight Eisenhower has taken executive action on immigration. Consistent with this long history, DHS will expand the existing Deferred Action for Childhood Arrivals (DACA) program to include more immigrants who came to the U.S. as children. DHS will also create a new deferred action program for people who are parents of U.S. Citizens or Lawful Permanent Residents (LPRs) and have lived in the United States for five years or longer if they register, pass a background check and pay taxes.

The President is taking the following actions to hold accountable certain undocumented immigrants:

- Creating a mechanism that requires certain undocumented immigrants to pass a background check to make sure that they start paying their fair share in taxes. In order to promote public safety, DHS is establishing a new deferred action program for parents of U.S. Citizens or LPRs who are not enforcement priorities and have been in the country for more than 5 years. Individuals will have the opportunity to request temporary relief from deportation and work authorization for three years at a time if they come

forward and register, submit biometric data, pass background checks, pay fees, and show that their child was born before the date of this announcement. By providing individuals with an opportunity to come out of the shadows and work legally, we will also help crack down on companies who hired undocumented workers, which undermines the wages of all workers, and ensure that individuals are playing by the rules and paying their fair share of taxes.

- Expanding DACA to cover additional DREAMers. Under the initial DACA program, young people who had been in the U.S. for at least five years, came as children, and met specific education and public safety criteria were eligible for temporary relief from deportation so long as they were born after 1981 and entered the country before June 15, 2007. DHS is expanding DACA so that individuals who were brought to this country as children can apply if they entered before January 1, 2010, regardless of how old they are today. Going forward, DACA relief will also be granted for three years.

The President's actions will also streamline legal immigration to boost our economy and promote naturalization by:

- Providing portable work authorization for high-skilled workers awaiting LPR status and their spouses. Under the current system, employees with approved LPR applications often wait many years for their visa to become available. DHS will make regulatory changes to allow these workers to move or change jobs more easily. DHS is finalizing new rules to give certain H-1B spouses employment authorization as long as the H-1B spouse has an approved LPR application.

- Enhancing options for foreign entrepreneurs. DHS will expand immigration options for foreign entrepreneurs who meet certain criteria for creating jobs, attracting investment, and generating revenue in the U.S., to ensure that our system encourages them to grow our economy. The criteria will include income thresholds so that these individuals are

not eligible for certain public benefits like welfare or tax credits under the Affordable Care Act.

- Strengthening and extending on-the-job training for STEM graduates of U.S universities. In order to strengthen educational experiences of foreign students studying science, technology, engineering, and mathematics (STEM) at U.S. universities, DHS will propose changes to expand and extend the use of the existing Optional Practical Training (OPT) program and require stronger ties between OPT students and their colleges and universities following graduation.

- Streamlining the process for foreign workers and their employers, while protecting American workers. DHS will clarify its guidance on temporary L-1 visas for foreign workers who transfer from a company's foreign office to its U.S. office. DOL will take regulatory action to modernize the labor market test that is required of employers that sponsor foreign workers for immigrant visas while ensuring that American workers are protected.

- Reducing family separation for those waiting to obtain LPR status. Due to barriers in our system, U.S. citizens and LPRs are often separated for years from their immediate relatives, while they wait to obtain their LPR status. To reduce the time these individuals are separated, DHS will expand an existing program that allows certain individuals to apply for a provisional waiver for certain violations before departing the United States to attend visa interviews.

- Ensuring that individuals with lawful status can travel to their countries of origin. DHS will clarify its guidance to provide greater assurance to individuals with a pending LPR application or certain temporary status permission to travel abroad with advance permission ("parole").

- Issuing a Presidential Memorandum on visa

modernization. There are many ways in which our legal immigration system can be modernized to reduce government costs, eliminate redundant systems, reduce burdens on employers and families, and eliminate fraud. The President is issuing a Memorandum directing an interagency group to recommend areas for improvement.

- Creating a White House Task Force on New Americans. The President is creating a White House Task Force on New Americans to create a federal strategy on immigrant integration.

- Promoting Citizenship Public Awareness: DHS will launch a comprehensive citizenship awareness media campaign in the 10 states that are home to 75 percent of the overall LPR population. USCIS will also expand options for paying naturalization fees and explore additional measures to expand accessibility, including studying potential partial fee waiver for qualified individuals.

- Ensuring U.S. Citizens Can Serve: To further our military's needs and support recruitment efforts, DHS will expand an existing policy to provide relief to spouses and children of U.S. citizens seeking to enlist in the military, consistent with a request made by the Department of Defense.

Comments or questions are welcome.

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The mass media is lying about Obama's immigration plan

"Obama's Plan Legalizes Millions!"... "Obama's Executive Action will Legalize up to 5 Million," "Obama's Plan to Legalize Millions is Unconstitutional"...

As an immigration consultant, these headlines (and the debate that follows) makes my blood boil. Why? Because the headlines are wrong, they are lies. The rightwing conservatives (Republicans) are lying as usual to the people in the United States.

These headlines, these sound bites, printed and repeated across the media spectrum (TV and radio) over the last few days are not only plain wrong, they are a distortion of the truth (something what the Republicans do on a regular basis); they misinform and bring false hope to the population that the plan will actually benefit.

As with the 2012 Deferred Action for Childhood Arrivals (DACA) program before it, I will spend hours talking with clients and trying to re-inform and re-educate about what the President's new plan actually is, what benefits the plan actually provides, and most importantly, what it is not.

This will be my spiel – "I know that you have probably heard that this plan makes you legal in the United States. But that is not correct, it is plain and simple not true. This program does not give you a green card (lawful permanent residence),

it does not give you U.S. citizenship, it does not give you a path or way to receive a green card or U.S. citizenship. **In fact, this program does not provide any legal 'status' at all.**"

"What this benefit is, is an agreement between you and the U.S. government. You agree to come forward and let the government know you are here, and, if you are eligible for the program, the government agrees not to take any action to deport you for a period of three years. During this three-year period, you will have permission to work in the United States."

"You cannot travel outside of the United States on this program and then return to this country. You cannot file a separate petition for your spouse or your parents using this benefit. You must pass a criminal background check to be eligible for this benefit. If you have any serious crimes on your record – a DUI, a serious drug offense, a domestic violence offense, theft, and many other crimes, you will be ineligible for any relief under this plan."

"Can this benefit be taken away, you ask? Yes, yes it can. It could be taken away at any time."

This plan provides a very significant benefit to the parents of U.S. citizens and lawful permanent residents, it grants them a reprieve from the threat of deportation for three years, permission to work during this reprieve, and in most states will render them eligible for a driver's license so that they can drive without fear of being pulled over and potentially placed in deportation proceedings. This is most certainly a significant change for this population, and a very positive one at that.

But it is not legalization. Not even close.

The way the immigration laws have developed over the past 50

years has left us with an unworkable morass of laws that interact with each other in extremely complicated ways. We all understand that the immigration system is broken. The complexity of these laws does not obviate the media's responsibility to get it right and characterize these benefits accurately.

Obama's plan does not legalize millions. Deferred Action for Parental Accountability (DAPA) does not legalize a single individual. It will give a temporary, and potentially fleeting benefit to a group of people that have lived in our country, worked in our country, contributed to our economy, and parented our citizen and resident children.

Conclusion

Obama's time in office is limited. What happens to Obama's Executive Orders when he is not anymore in office? A new president can rescind Obama's Executive Actions at any time. Should a republican president be voted into office it is nearly guaranteed that this president will rescind Obama's Executive Orders. What happens to the people who have benefitted from Obama's Executive Orders? One very believable scenario is, that now that all these people are registered with the government, the government knows where they live and work, that these people are picked up and deported. The Republicans and those morons from the Tea Party cannot wait to kick all these people out of the country. It is really not that far fetched.

A few years ago something similar happened. Indonesia is a country where the Islam is the predominant religion. Protestantism and Catholicism is the minority. Because the Muslims put pressure on the Christians (you could say the Christians are persecuted by the Muslims) a lot of Christians from Indonesia came to the United States looking for a safe place to live. The problem is that most of them stayed

“illegally” in the United States. Sometimes after 9/11 the U.S. government devised an evil-genius plan to get rid of these people. The plan was actually simple. Most of these illegals from Indonesia were devout Christians, which means they are very simple minded and uneducated morons. With the help of a catholic priest the U.S. government spread the word that in order to avoid to be labeled as a Muslim terrorist all “good” Christian Indonesians should register with the U.S. government in order to avoid prosecution as a Muslim terrorist. Don’t forget it is the time right after 9/11. And guess what. Those stupid Christian imbeciles (= people with moderate to severe intellectual disability) followed the call of this priest and registered with the U.S. government. Now they all felt better, being recognized as “good” Christians, having nothing to do with the Muslims. Not long after that the U.S. government started to pick up these idiots and deported them to Indonesia.

What should someone do who could benefit from Obama’s Executive Orders? This question is nearly impossible to answer when looking at the whole picture. My advice: Be smart about it. Apply for these Executive Orders. Reap in their benefits, but don’t trust the United States government. **These benefits can be taken away at any time.** While you have these benefits like a Social Security Number, a driver’s license and a work permit, work on a plan “B”. This plan “B” can be anything. Find the love of your life, marry him or her. When he or she is a United States citizen that puts you in a much better position not to be deported after Obama’s Executive Orders are rescinded. You still cannot get a green card in a marriage to a USC when you entered this country illegally, without inspection but maybe you can file for a waiver of inadmissibility. Another form of plan “B” can be that you go to college in the United States. Get a good education while you are here. In case of a deportation you will have excellent job opportunities in the country where you were born.

Depending on your personal situation there might be so many other plan "B's". Just don't stop with applying for those benefits from Obama's Executive Orders. Don't be lazy. Don't hope that everything will turn out good. Don't just sit on your couch. You have to take action. Do something. When Obama's Executive Orders are rescinded you might not get deported [immediately]. But your work permit and your driver's license will expire. You will be back where you started. An illegal without any papers. No job and no future. Organize yourself with other people in the same situation. Demonstrate in the streets. Point your situation out to people who can vote. Ask them to support politicians who are in favor of immigrants. I know that all sounds pretty lame. I don't have all the answers. When you depend on Obama's Executive Orders you are pretty much fucked. So, do something, anything.

Comments or questions are welcome.

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“Anchor Babies” in the News: The Pregnancy Path to U.S. Citizenship

Every law seems to have unintended consequences. The original intent of granting citizenship to every baby born on U.S. soil (done within the 14th Amendment to the U.S. Constitution) was to avoid creating an underclass, particularly among people who were brought to the U.S. as slaves.

(Congress was responding to the infamous [Dred Scott](#) decision of 1857, in which the U.S. Supreme Court denied citizenship rights to freed slaves.)

Now, however, a cottage industry has seemingly developed to assist people from outside the U.S. – particularly from Asia – to come here on temporary visas in order to give birth to new little U.S. citizens.

The price tag for such “maternity hotel” services tends toward the tens of thousands of dollars. The fee covers travel and visa arrangements, medical care, and more. (See, for instance, [“Giving birth in U.S. to get babies citizenship draws suspicion”](#) and [“In suburbs of L.A., a cottage industry of birth tourism”](#) and [“Chinese birth tourism booms in Southern California.”](#))

One such service reportedly advertises, “We guarantee that each baby can obtain a U.S. passport and related documents.” That’s not a hard guarantee to make, given the Constitutional backing!

Some of the reasons expectant parents give for wanting to give birth in the U.S. have immediate or short-term utility. For example, interviewees from China mentioned goals such as as

circumventing that country's one-child restrictions, or wanting to ensure that their child will be able to study in the U.S. or have the protection of the U.S. government in times of difficulty.

Other reasons, however, are remarkably long-term in scope. The families are creating an "anchor" for future U.S. immigration – and it's one that can't help them until the child turns 21.

To be clear, having a child who is a U.S. citizen does NOT provide any immediate rights to live or gain status in the United States. Only a U.S. citizen who is age 21 or over can petition his or her parents for U.S. lawful permanent residence (a green card). That application process alone will likely take at least a year.

What's more, if the little citizens' parents were to take a chance and attempt to remain in the U.S. illegally for the requisite 21 years, they'd become "inadmissible" – that is, ineligible for a green card – based on their history of unlawful presence here. (In fact, the "birth tourism" agencies likely warn the parents of this, since reports have it that they fly home soon after the births.)

There's nothing in U.S. immigration law that expressly forbids birth tourism. Arguments could be made that the parents are committing visa fraud by claiming to enter as "tourists." Still, even if the immigration enforcement authorities push this point, a finding that the parents' committed visa fraud won't negate the children's status as citizens. (It will, however, make the parents inadmissible and unable to receive any U.S. visa or green card in the future.)

Whatever one might think of the practice of birth tourism, we've got to admire that level of long-term planning!

Comments or questions are welcome.

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[Why Give Birth in the U.S. When a Surrogate Can Do It For You?!](#)

It was only a matter of time, really. First, there was “birth tourism,” in which people from around the world who are interested in gaining a foothold in the U.S. arrange to enter as tourists and have a child here – their own little U.S. citizen “anchor baby.”

Now, some parents are avoiding that nerve-wracking plane ride while pregnant, and simply arranging to have surrogate women in the U.S. give birth and cede their parental rights to them. For real. You can read about it in [California Lawyer](#) magazine.

This strategy doesn't work in every U.S. state (because many state legislatures have made surrogacy contracts illegal or unenforceable), but it works in California, which is plenty convenient for the many Asian couples going this route.

I do need to take issue with one statement in the article on ["Having a Citizen Baby,"](#) however. It says that, "At \$100,000 to \$200,000—which includes legal fees, insurance, medical care, and \$30,000 to \$45,000 for the surrogate—hiring a surrogate is still much cheaper than taking another fast track to legal residency: paying \$500,000 or more for an entrepreneur visa."

The surrogacy route is no "fast track" to legal residency, other than for the baby, who wasn't exactly worried about immigrating to the U.S. in the first place. Mom and dad still must wait 21 years outside the U.S. before gaining any rights here (also described in my earlier blog post). The entrepreneur or investor visa, by contrast, allows parents and children to enter the U.S. right away.

But the surrogacy route offers certainty for at least one member of the family, and doesn't carry the risk that the business upon which the investor visa was based will fail within the first two years – in which case green card eligibility is lost.

Comments or questions are welcome.

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When Lawyers for the Other Side Reveal Your Immigration Status

Lawyers tend to take very seriously their duty to keep their own client's confidential information – otherwise known as secrets – to themselves.

But guess what: They get a little fuzzier on the question of whether that duty extends to the clients on the other side of a case, for example in a divorce or other civil case, or in a criminal case.

And in a particularly ugly example of how this can play out, the State of Washington's Latino/a Bar Association (LBAW) has been investigating cases of "immigration retaliation" – in which an attorney "harasses, coerces, or intimidates another person using that person's actual or perceived immigration status."

This comes from an article called, "[The Unethical Use of Immigration Status in Civil Matters](#)," by M. Lorena Gonzales and Daniel Ford, in the March, 2014 issue of *NYLawyer*.

Put in starker terms, immigration retaliation encompasses actions like notifying immigration enforcement authorities that an undocumented person is expected to arrive at a certain courthouse on a certain date; or that a woman participating in the prosecution of a domestic violence case may have no legal status. ("May" being the operative term here – the article discusses cases where the U.S. authorities, after being "tipped off," wrongly detain the immigrant.)

Thankfully for immigrants in the State of Washington, the state bar association issued a formal ethics opinion several years ago prohibiting lawyers from threatening to report someone to the immigration authorities in order to “gain an advantage in a civil matter.”

A fat lot of good that opinion seems to have done since then, but to drive the point home, the LBAW got the Washington State Supreme Court to issue a formal comment in 2013. That comment prohibits lawyers from making inquiries into or assertions about someone’s immigration status for purposes of intimidation, coercion, or obstruction of justice.

I wonder what’s going on in the other 49 states?

In the meantime, this is a good opportunity to remind immigrants and their counsel of the availability of the U-Visa, which can provide temporary lawful immigration status to non-citizens assisting law enforcement.

Comments or questions are welcome.

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Want to Know Who's Actually Getting DACA Approval?

U.S. Citizenship and Immigration Services (USCIS) just published its first-ever report summarizing the ["Characteristics of Individuals Requesting and Approved for Deferred Action for Childhood Arrivals \(DACA\)."](#)

[Download \(PDF, Unknown\)](#)

The report supplies demographic information about people who requested DACA between August 2012 to September 2013 and were approved by January 2014, in these categories:

- age range
- gender
- country of birth
- marital status
- state of residence

Citizens of Mexico are, to no one's surprise, the largest pool of applicants by far, followed by El Salvador, Honduras, and Guatemala. But plenty of other countries' citizens applied, as well. Even the bottom four countries on the list Poland, Nicaragua, Nigeria, and Guyana, had over 1,000 applicants each.

As for age, the majority are 19 and under, followed closely by the 20 to 24 age group. This isn't too surprising either, given the age-related requirements for DACA. There was no clear winner between number of male and female applicants and DACA recipients.

And you get no points for guessing which state most applicants applied from: California, of course! Texas a close second.

Comments or questions are welcome.

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Name:*

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[Need to Find a Relative Arrested by Immigration? See Online Detainee Locator](#)

Sometimes what's going on in the headlines becomes all too personal. That's what happened for me recently, when a friend called to say that her cleaning woman from El Salvador was in a panic, having received word that her sisters had been arrested by immigration authorities after crossing the border into Texas. They're apparently part of the flood of young people fleeing countries beset by violence, attempting to cross the Mexican border into the United States.

The first question then becomes, "Where are they?"

Back in the day, this question could take days of calling detention centers and desperately begging information out of

disinterested guards and officials. But now there's an "[Online Detainee Locator](#)" provided by Immigration and Customs Enforcement (ICE).

Would it work?

At first, no. (Probably not too surprising – data entry may not be the first thing on the to-do list after an immigrant is arrested.) But within about 15 hours, voila – we entered a name and birth date and received the name of the detention facility where one sister was being held, as well as a phone number for reaching that facility. The U.S.-based sister was able to call the facility and get more information about the status of her sister's case.

Whether the online system is always this workable, I can't say. It's easy to imagine situations where the name might be misspelled, or a birth date taken down inaccurately, leading to a complete info void.

And an even more difficult aspect of the system is that it's mostly in English. Yes, you can choose other languages from a dropdown menu when you first perform the search, but as far as I could tell, this doesn't lead to any different screens when it's time for the results.

Still, it was immensely satisfying to see the name pop up and know that, as alarming as the news of the arrest was, the sister hadn't just disappeared into the system. Now, if Congress would only come up with an intelligent and humane way to deal with this influx.

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Legal Reasons a U.S. Immigrant May Be Deported

The U.S. immigration laws contain numerous grounds upon which non-citizens, including green card holders, may be deported back to their country of origin.

There are several reasons for the U.S. immigration authorities to deport an immigrant – that is, send the person back to his or her country of origin. One of the most obvious is that the immigrant simply did not have a right to be in the United States to begin with, having crossed the border or otherwise entered illegally, or stayed beyond the departure date required by his or her visa.

However, even people who have a temporary or permanent right to remain in the United States, such as with an unexpired visa or a Green Card, can be removed or deported. Here are some of the common causes of deportation.

Failure to Obey the Terms of Your Visa or Otherwise Maintain Your Status

If you are in the U.S. as a nonimmigrant (most likely with a visa), various conditions apply to your stay. For example, if you're a tourist, you're not allowed to work. If you fail to abide by these conditions and maintain your nonimmigrant status, you become deportable.

Failure to Advise USCIS of Change of Address

It sounds harsh, but it's a crime for immigrants not to submit immediate notifications to U.S. Citizenship and Immigration Services (USCIS) of their changes of address. You've got ten days. Use the "[Online Change of Address](#)" form on the USCIS website.

Commission of a Crime

A number of crimes – though not all – can result in an immigrant's becoming deportable from the United States. The full list is at Section 237(a) of the Immigration and Nationality Act, or I.N.A. For example, crimes that can get a green card holder or nonimmigrant deported include alien smuggling, document fraud, domestic violence, crimes of "moral turpitude," drug or controlled substance offenses firearms trafficking, money laundering, fraud, espionage, sabotage, terrorism, and of course the classic serious crimes such as rape, murder, and any other "aggravated felonies."

Be aware that, if you are convicted of a crime, the court is not likely to label it a "crime of moral turpitude" or an "aggravated felony." You may simply be told that the crime is classified as, for example, a "misdemeanor" in your state. However, the immigration authorities will make their own judgment about how the crime is classified for immigration law

purposes, with the result that certain misdemeanors can, in fact, make you deportable.

Violation of Immigration Laws

Someone who violates the immigration laws by, for example, participating in a fraudulent marriage or helping smuggle other aliens into the United States, may be found deportable.

Receiving Public Assistance

Anyone who has received a green card knows that proving that you would not become a “public charge” – that is, have to rely on need-based government assistance – was an important part of proving that you were not inadmissible to the United States and get your green card. The immigration laws follow this up with the statement that, “Any alien who, within five years after the date of entry; has become a public charge from causes not affirmatively shown to have arisen since entry is deportable.” (See Section 237(a)(5) of the I.N.A.)

If you have a green card, your petitioner, and any other financial sponsor, are supposed to follow through with their promises to support you (and can also be asked to reimburse any agencies from which the immigrant received public assistance.)

Getting Help

If you are facing deportation due to one of the above mentioned reasons or for any other reason, consider speaking with an immigration attorney as soon as possible.

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[Green Cards for Your Family: Sponsorship Categories](#)

Can relatives come to the U.S.? It depends on how the family member is related.

Many people in the United States have family members living in other countries, and wonder whether they can bring them here. It's a myth that if one immigrant settles in the United States, that one can get green cards (permanent residence) for the whole extended family, and so on. The truth is both more limited and more complex.

Who You Can Help Immigrate

You can petition to bring family members to the United States (often called "sponsoring" them) only if you are a U.S. citizen or a permanent resident (green card holder). Even then, you can bring in only those family members listed on the chart below. Before reading the chart, see below the

explanations of the meanings of “immediate relative” and “preference relative.”

Immediate Relative: Although the common meaning of this is a close family relation, it has a more specific meaning in immigration law. Immediate relatives are a category of prospective immigrants who include a U.S. citizen’s spouse, minor children (under the age of 21), and parents (so long as the citizen is at least 21 years old). Immediate relatives have an immediate right to apply for U.S. permanent residence (assuming their U.S. family member agrees to start the process on their behalf) – unlike more distant relatives, they aren’t subject to yearly limits on the numbers who can apply for permanent residence.

Preference Relative: An immigration term for certain people who may be eligible for U.S. permanent residence (a “green card”) based on family relationships. Preference relatives include the married children of U.S. citizens, children over 21 of U.S. citizens, the spouses or children of U.S. green card holders, and brothers and sisters of U.S. citizens where the U.S. citizen is at least 21 years old. Preference relatives must usually wait to get a green card, because only around 480,000 are available to them in total each year. They must wait in line based on their priority date, which is the date when their U.S. citizen or permanent resident petitioner first filed a visa petition indicating willingness to sponsor the immigrant.

Who Can Sponsor Who

Who You Are	Immigrants You Can Petition	The Immigrant's Category
U.S. citizen age 21 or older	Parents	Immediate relative
U.S. citizen (at least age 18, for financial sponsorship purposes)	Spouse	Immediate relative
U.S. citizen (at least age 18, for financial sponsorship purposes)	Minor, unmarried children	Immediate relative
U.S. citizen	Married children or adult children	Preference relative (1st preference)
U.S. citizen age 21 or older	Brothers and sisters	Preference relative (4th preference)
U.S. permanent resident	Unmarried children	Preference relative (2nd preference – 2A or 2B)
U.S. permanent resident	Spouse	Preference relative (2nd preference)

Notice who is not on this list: grandparents, cousins, aunts,

uncles, parents-in-law, and other extended family members.

However, if allowed to immigrate to the United States, most of the people on the above list will be permitted to bring their own spouses and children with them. And it is true that once someone has a green card, they can sponsor other people on the list.

How Long Must Relatives Wait?

Immediate relatives can get green cards without worrying about waiting periods or numerical limits. Preference relatives may have to wait between approximately four and 23 years before being allowed to apply for their visa or green card.

Also, only a certain percentage of the green cards go to any one country each year. That means if a particularly high number of people from certain countries submit petitions – as is often the case with India, Mexico, China, and the Philippines – their family members end up waiting even longer than others.

Because of the annual limits on how many green cards (immigrant visas) are given out, and the unpredictability of how many people submit petitions each year, no one can say exactly how long each applicant will wait.

As a general rule, applicants in higher preference categories wait less time. The average wait these days from most countries (excluding India, Mexico, China, the Dominican Republic and the Philippines) is as follows:

Current Average Waiting Period

Type of Preference Relative	Preference Category	Average Wait
Adult, unmarried children of U.S. citizens	First preference	Seven years
Spouses or children of permanent residents	Second preference	Four years for spouses and for minor children (2A); eight years for adult children age 21 or over (2B)
Married children of U.S. citizens	Third preference	Ten years
Brothers and sisters of U.S. citizens	Fourth preference	Eleven years

The longest waits are endured by siblings of U.S. citizens (4th preference) from the Philippines – currently a staggering 23 years.

How to Start the Application Process

The family member who you will sponsor will have to go through a multi-step application process. It's your job as a U.S. citizen or green card holder to start the process, by submitting a visa petition. Your family member can't enter the U.S. until both the petition and subsequent applications have been approved.

Sponsor vs. Petitioner

Although the term commonly used to describe a U.S. citizen or resident who helps someone immigrate is "sponsor," this isn't the technical term. You "petition" for your family member, so you're a "petitioner." Your incoming family member is called a "beneficiary."

There are some important steps you can take to speed up your family member's progress toward a green card.

Apply for U.S. Citizenship

If you are a U.S. permanent resident, not a citizen, you can help by applying for citizenship as soon as you're eligible. That's usually five years after getting your green card. For more information, see my article [Applying for U.S. Citizenship](#).

As soon as you're a citizen, your family members can move to a speedier immigration category. For example, your spouse would become an "immediate relative," and could apply for a green card right away. Your parents would go from having no immigration rights to being immediate relatives, and your children would become immediate relatives or move to higher preference categories, depending on their age and whether they are married.

Warn Your Waiting Children Not to Marry

Children who marry have it tough when it comes to immigrating. If you're a permanent resident and you have petitioned for an unmarried child, that child's marriage will destroy the right to immigrate under your petition. If you're a U.S. citizen and your child marries, that will drop the child down into the third preference category, meaning a long wait.

Make sure your children know these risks before they marry. It won't matter that they were unmarried when you started the immigration process for them; they have to be unmarried when they pick up their immigrant visa or green card.

Have Multiple U.S. Family Members Sponsor the Same Immigrant

Hopeful immigrants (beneficiaries) shouldn't pin all of their hopes on one petitioner. If something goes wrong – for example, the petitioner dies or divorces the beneficiary

before the beneficiary gets a green card – the opportunity is, in most cases, lost.

There is no harm in having more than one U.S. citizen or resident file visa petitions for a waiting immigrant. For instance, both parents could file for a child, to insure against the death of one parent. Or a person married to a permanent resident could have both the resident and their U.S. citizen parent file a visa petition for them.

Comments or questions are welcome.

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