

THE WHITE HOUSE
WASHINGTON
1/23/2017

ACTION

MEMORANDUM FOR THE PRESIDENT

THROUGH: ANDREW BREMBERG

SUBJECT: Executive Order – Ending Unconstitutional, Executive Amnesties

Purpose

The purpose of this Executive Order is to protect Congress's plenary power over immigration under the Constitution, the separation of powers under the Constitution, and the President's obligation to "take Care that the Laws be faithfully executed" (Article II, Section 3).

Background

Two programs established by DHS memoranda — "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children," (DACA) and "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Residents" (DAPA) — abandon the President's obligation to enforce federal law. By authorizing administrative amnesties, they encourage illegal immigration and give certain illegal aliens affirmative benefits such as lawful presence in the United States, work authorization, access to the Social Security Trust Fund and the Earned Income Tax Credit, and a reprieve from deportation in two-year, renewable increments. Between August 2012 and September 30, 2016, the Obama Administration granted DACA to 752,154 illegal aliens.

Discussion

This Executive Order fulfills several key campaign promises related to immigration by, among other things: (1) rescinding the DAPA program entirely, which is currently subject to a federal court injunction; (2) ceasing the processing of new DACA applications, and allowing current recipients to retain their work permits until they expire at some point in the next two years.

Recommendation

I recommend that you sign the attached Executive Order.

Approve _____
Disapprove _____
Needs more discussion _____

Executive Order—Ending Unconstitutional Executive Amnesties

EXECUTIVE ORDER

ENDING UNCONSTITUTIONAL EXECUTIVE AMNESTIES

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), and to ensure that the Nation's immigration laws are faithfully executed, I hereby order as follows:

Section 1. *Purpose.* Two programs established by Department of Homeland Security memoranda—“Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children” (June 15, 2012), and “Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Residents” (November 20, 2014)—unlawfully provide illegal aliens with affirmative benefits such as lawful presence, work authorization, access to the Social Security Trust Fund, and access to the Earned Income Tax Credit.

These programs violate the separation of powers inherent in the Constitution by usurping Congress's plenary power “to establish a uniform Rule of Naturalization,” Art. I, sec. 8, cl. 4, and violate the President's obligation under Article II, section 3 to “take Care that the Laws be faithfully executed.”

Sec. 2. *Policy.* It is the policy of the United States to:

- (a) Abide by the separation of powers established in the Constitution;
- (b) Respect Congress's plenary power under the Constitution to establish immigration laws; and
- (c) Fulfill the President's constitutional responsibility to take care that the laws be faithfully executed.

Sec. 3. *Rescission of June 15, 2012, Memorandum, “Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children.”* (a) The Secretary of Homeland Security (Secretary) shall rescind the June 15, 2012, memorandum entitled, “Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children” (June 15 Memorandum).

(b) In furtherance of this rescission, the Secretary shall:

- (i) ensure that any Employment Authorization Document (EAD) issued pursuant to the June 15 Memorandum shall remain valid until the date of expiration and not be extended except where required by law; and

(ii) ensure that no individual issued an EAD pursuant to the policy implemented based on the June 15 Memorandum, shall be granted advance parole.

(c) The Director of the Office of Management and Budget (Director) and the heads of executive departments and agencies (agencies) shall promptly rescind any orders, rules, regulations, guidelines, or policies implementing or enforcing the June 15 Memorandum, to the extent consistent with law.

Sec. 4. *Rescission of November 20, 2014, Memorandum, "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Residents."* (a) The Secretary shall rescind the November 20, 2014, memorandum entitled, "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Residents."

(b) The Director and the heads of agencies shall promptly rescind any orders, rules, regulations, guidelines, or policies implementing or enforcing the memorandum described above, to the extent consistent with law.

Sec. 5. *Effect of Department of Justice Legal Advice.* From this day forward, unless the Attorney General provides further advice, officers and employees of the United States Government may not, in enforcing the immigration laws, rely upon the November 19, 2014, Memorandum Opinion of the Office of Legal Counsel for the Secretary of Homeland Security and Counsel to the President entitled, "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."

Sec. 6. *Reporting.* Except as otherwise provided in this order, the Secretary and the Attorney General shall each submit to me a report on the progress of the directives contained in this order within 90 days and 180 days of the date of this order, respectively.

Sec. 7. *Authority of the Secretary.* Nothing in this order shall be construed to impair or otherwise affect the Secretary's authority to set enforcement priorities or to exercise prosecutorial discretion, on a case-by-case basis, in connection with aliens who received an EAD pursuant to the June 15 Memorandum.

Sec. 8. *General Provisions.*

(a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof, or the status of that department or agency within the Federal Government; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability

of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.