

EXECUTIVE ACTION ON IMMIGRATION REFORM: POSSIBLE SCENARIOS



Marc Rosenblum

Migration Policy Institute

October 21, 2014

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

Marc Rosenblum

Deputy Director,
U.S. Immigration Policy Program
MPI

mrosenblum@migrationpolicy.org

(202) 266-1919

www.migrationpolicy.org