

# The Obama Administration's Announced Immigration Initiative: A Primer

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On November 20, [President Obama announced](#) the commencement of a multi-pronged immigration initiative that could, among other things, enable a substantial portion of the unlawfully present alien population to obtain temporary relief from removal and work authorization. The new initiative also involves other actions, including narrowing the scope of aliens prioritized by federal immigration authorities for removal; using "parole" authority to allow certain aliens to enter or remain in the United States; and modifying rules relating to visa eligibility (or processing). This Sidebar provides a brief overview of the major components of the announced initiative. A CRS Report providing more extensive analysis is in preparation.

**Expanding Scope of Aliens Eligible for Grants of Relief under the Deferred Action for Childhood Arrivals (DACA) Initiative:** In 2012, the [executive branch launched the DACA initiative](#), enabling many unlawfully present aliens who came to the United States as children to be granted "[deferred action](#)" (a type of relief from removal which does not confer immigration status) and work authorization. On November 20, the Department of Homeland Security (DHS) announced [modifications to these eligibility requirements](#). Under the expanded version of DACA, qualified applicants must have entered the United States before the age of 16, on or before January 1, 2010. Previously, to be eligible for DACA relief, an alien must have entered the country before the age of 16, and also have been born after June 20, 1981, and have been present in the country since June 15, 2007 (i.e., five years before the 2012 version of DACA was initially announced). Under the revised DACA initiative, first-time DACA applicants and those seeking renewal may be granted deferred action and work authorization for a three-year period, rather than a two-year period as had previously been the case. These modifications to the duration of DACA relief apply to all new DACA applications, as well as applications for renewal of DACA relief, [beginning November 24, 2014](#). DHS intends to begin accepting applications [under the new DACA criteria within 90 days of the announcement](#) of this initiative.

**Establishment of a DACA-like Initiative for Unlawfully Present Alien Parents of U.S. Citizens and Lawful Permanent Residents (LPRs):** The Administration has also announced the creation of a [new, DACA-like initiative for unlawfully present aliens who are parents of U.S. citizens or LPRs](#) (sometimes referred to as legal immigrants) and continuously resided in the United States since before January 1, 2010. To obtain relief under this initiative, the applicant must not fall under any of DHS's enforcement prioritization categories (e.g., has not been convicted of a serious crime), and "present no other factors that, in the exercise of discretion, makes the grant of deferred action inappropriate." Applicants must also pay a processing fee for a background check and work authorization. DHS intends to begin accepting applications [no later than 180 days after the announcement](#) of this initiative.

**Modifying Immigration Enforcement Priorities:** [DHS has also issued a new guidance identifying](#) categories of aliens whom DHS immigration officers should prioritize for apprehension and removal from the United States on account of immigration violations. The new Department-wide guidance identifies a narrower scope of aliens as removal priorities than some [earlier prioritization guidelines](#) issued by DHS components. Aliens who are deemed a public safety threat or who have engaged in serious criminal activity remain top removal priorities. However, aliens without legal immigration status who have been in the United States since 2013, and who have not engaged in specified criminal activity or violated a prior order of removal, are unlikely to be considered a removal priority.

**Replacing Secure Communities with the Priority Enforcement Program (PEP):** The [Secure](#)

[Communities](#) program has been employed by Immigration and Customs Enforcement (ICE) within DHS to identify potentially removable aliens in state and local custody, using fingerprint information of booked individuals which has been electronically submitted to the FBI for criminal background checks. Using this information, ICE may seek to pursue enforcement action against a removable alien in state or local custody, and issue a [detainer](#) requesting the state or locality continue to hold for up to 48 hours the alien until ICE may take custody. Secure Communities and the related use of detainers have proven controversial, with some states and localities [declining to honor detainers](#) for at least some categories of aliens (e.g., those not convicted of crimes deemed serious) and [some federal courts](#) finding constitutional limitations on state and local authorities' ability to honor detainers.

[The PEP program would replace Secure Communities](#). While relying on the same technological system as Secure Communities, PEP is primarily intended for use in taking custody of aliens in state or local custody who had been [convicted of certain crimes](#) (e.g., felonies and "significant" misdemeanors). The use of detainers to acquire custody of aliens would be substantially restricted; instead, state or local entities would generally be requested to simply notify ICE when they intended to release an alien whom ICE had targeted for removal.

**Expanding Provisional Waiver of 3/10-Year Bar to Admission:** Aliens unlawfully present in the United States for more than 180 days are, following their departure from the country, generally barred from re-admission for 3 or 10 years, depending upon the length of their unlawful presence. Accordingly, an unlawfully present alien who departs the United States in order to satisfy requirements to obtain an immigrant visa (e.g., being interviewed at a U.S. consulate abroad) could be barred from returning to the United States for a considerable period of time. The Immigration and Nationality Act (INA) provides that the 3/10-year bar to admission [may be waived](#) if immigration authorities determine that refusing to admit an alien would result in "extreme hardship" to the alien's spouse or parent, when the spouse or parent is either a U.S. citizen or LPR. In 2013, DHS promulgated regulations establishing a process by which the unlawfully present alien who was either the [spouse or minor child of a U.S. citizen could obtain a "provisional" waiver to the 3/10-year bar](#), prior to departing from the United States.

As part of the Administration's new initiative, DHS Secretary Jeh Johnson has [instructed DHS to amend this regulation](#) to expand possible access to provisional waivers to all unlawfully present alien children (regardless of whether they are minors or adults) and spouses of U.S. citizens and LPRs, for whom an immigrant visa is immediately available. The DHS Secretary has also instructed immigration authorities to provide greater guidance to administrative adjudicators as to the factors used in determining whether the ["extreme hardship"](#) standard for granting a waiver has been satisfied. Significantly, the Secretary has instructed U.S. Citizenship and Immigration Services (USCIS) to consider criteria where a *presumption* of extreme hardship may be found to exist.

**Use of Parole Authority:** The INA confers immigration authorities with the ability, on a case-by-case basis, to [parole aliens into the United States "for urgent humanitarian reasons or significant public benefit."](#) Parole does not constitute "admission" into the United States for immigration purposes and does not involve the conferral of immigration status. Despite the paroled alien's physical presence in the country, the alien is ["still in theory of law at the boundary line"](#) of the United States. However, some paroled aliens might be able to adjust to LPR status while present in the United States. [Parole has historically been used in a number of variations](#), including "advance parole," under which some non-LPRs may be permitted to temporarily leave the United States without re-applying for admission; and "parole-in-place," by which some aliens who unlawfully entered the country may be permitted to temporarily remain in the country.

As part of the new immigration initiative, the Obama Administration has announced the expanded use of parole authority. Certain ["inventors, researchers, and founders of start-up enterprises,"](#) who might not presently be able to obtain an employment-based visa, may be temporarily paroled into the country as part of a new program to be established by USCIS. Additionally, the [current use of "parole-in-place" for immediate relatives of current and former members of the U.S. armed services](#) would be expanded. An unlawfully present alien may now be eligible to receive parole-in-place (or deferred action, when parole is not available) if the alien is the [spouse, parent, or child of a U.S. citizen or LPR "who seeks to enlist" in the U.S. Armed Forces](#). Finally, DHS Secretary Johnson has instructed DHS to issue [guidance concerning the treatment of aliens granted advance parole](#), regarding such aliens not being deemed to have "departed" the

country for immigration purposes when such aliens return to the United States and are inspected by Customs and Border Protection officials at a port of entry.

**Visa Eligibility and Processing:** The Obama Administration has also announced a number of actions related to visa eligibility and processing. It [characterizes many of these actions](#) as being intended to “support our country’s high-skilled businesses and workers by better enabling U.S. businesses to hire and retain highly skilled foreign workers while providing these workers with increased flexibility to make natural advancement with their current employers or seek similar opportunities elsewhere.” This includes [taking steps to ensure that all immigrant visas authorized by Congress for issuance each year are issued to eligible individuals](#) when there is demand for such visas. Another action involves [expanding the duration of any “optional practical training” \(OPT\)](#) engaged in by foreign nationals who are studying science, technology, engineering, and mathematics (STEM) fields in the United States on student visas, as well as expand eligibility for OPT to additional fields. The Administration announced several other actions, including [modifying or clarifying DHS interpretation](#) of certain INA terms relevant to visa eligibility and processing, and [establishing an inter-agency working group to “modernize” and “streamline” the immigrant visa system](#).

**Other Measures:** A number of other immigration-related measures have been announced by the Obama Administration, and further action might be forthcoming. Among the actions announced last week include:

- the allocation of additional enforcement personnel along the U.S.-Mexico border and the [establishment of new border security task forces](#);
- [personnel reform](#) affecting officers within the ICE’s Office of Enforcement and Removal Operations;
- [modifying the fee payment process for naturalization](#) and studying the feasibility of altering the fee waiver process; and
- action by the Department of Labor (DOL), including [providing additional assistance](#) to certain aliens who are seeking [T visas or U visas](#) on account of having been victims of human trafficking or other crimes; and [reviewing the so-called PERM program](#), whereby DOL certifies that the issuance of an employment-based immigrant visa will not displace U.S. workers, or adversely affect the wages or working conditions of similarly employed U.S. workers.

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