



Deferred Action for DREAMers

The New York Immigration Coalition

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June 15, 2012 Announcement

- Certain young people brought to U.S. thru no fault of their own and
- Who meet key criteria
- Will be eligible for Deferred Action
 - For period of two years subject to renewal
- It is NOT a permanent resolution of the case!

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What is the DREAM Act?

- The Development, Relief, and Education of Alien Minors (DREAM) Act.
- Bill in Congress each year since 2001.
- Pathway to permanent residence for certain young people who, before they turned 16, came to the United States through no fault of their own and who met other requirements.
- It is not yet law.

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Deferred Action for DREAMers

- Because the DREAM Act is not law yet, President Obama took *executive action* and ordered Deferred Action for certain young people who came to the United States at a young age through no fault of their own.
- It's for people who would qualify under the DREAM Act if Congress were to pass it into law.

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Immigration & Customs Enforcement

- Only has resources to remove 400,000 people per year (i.e., < 4% of estimated undocumented alien population).
- Must prioritize its limited enforcement resources to ensure that deportations reflect ICE's highest enforcement priorities:
 - National security
 - Public safety
 - Border security

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What is Prosecutorial Discretion?

- The authority of an agency charged with enforcing the law to decide to what degree to enforce the law against a particular individual.
 - E.g., whether to charge a person,
 - What charge to bring against a person,
 - Whether to drop charges in an on-going case,
 - Whether to agree to administratively close a case or to terminate a case, etc.

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What are the Priorities for Immigration Enforcement?

- **Priority #1:** (Highest priority to remove)
- Aliens who pose a danger to national security or a risk to public safety.
- **Priority #2:** Recent Illegal Entrants
- **Priority #3:** Aliens who are *fugitives* or otherwise obstruct immigration controls

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Examples of Priority #1

- Terrorism/Espionage or pose danger to national security
- Convicted of crimes, w/ particular emphasis on violent criminals, felons, & repeat offenders
- 16 or older and involved with criminal gangs
- Subject to outstanding criminal warrants
- Otherwise pose risk to public safety

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3 Offense Levels for convictions

- **Level 1 offenders:** convicted of Aggravated Felonies OR 2 or more crimes each punishable by more than 1 year (felonies)
- **Level 2 offenders:** convicted of any felony or 3 or more crimes punishable by less than 1 yr.
- **Level 3 offenders:** convicted of crimes punishable by less than 1 year.

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Priority #2

- **Recent Illegal Entrants**
 - At the border
 - At ports of entry, or
 - Through knowing abuse of the visa and visa waiver programs

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Priority #3

- Aliens who are fugitives or otherwise obstruct immigration controls

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What is an ICE “Fugitive”?

- An ICE fugitive is defined as an alien who has failed to leave the United States based upon a final order of removal, deportation or exclusion, or who has failed to report to ICE after receiving notice to do so.
 - E.g., fail to report after Bag & Baggage order

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Examples of Priority #3

- Fugitive Aliens (in descending priority):
 - Who pose a danger to national security
 - Convicted of violent crimes
 - With convictions other than a violent crime
 - Who have not been convicted of a crime

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Example of Priority #3

- Aliens who reenter the country illegally after removal (in descending priority):
 - and pose danger to nat'l sec'y
 - Convicted of violent crimes or pose threat to community
 - Convicted of other than a violent crime, and
 - Who have not been convicted of a crime.

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Example of Priority #3

- Aliens who obtain *admission* or *status* by visa, identification, or immigration benefit fraud
 - (but taking into consideration people who engaged in fraud to enter the U.S. to escape persecution)

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Undocumented People

- ICE Civil Enforcement memo does not discourage or prohibit ICE from
 - Apprehending,
 - Detaining, or
 - Removing
 - Aliens unlawfully in the United States
- But it should not displace or disrupt resources needed to remove higher priority aliens.

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DREAMers

- Under the President's announcement, DREAMers are a low priority to be deported from the United States.

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What is Deferred Action?

- A decision by the Department of Homeland Security (DHS) that a person is a low priority to be removed from the United States.
- Decision to not place someone in deportation proceedings or decision not to deport someone.
- DA is NOT legal Status.

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Deferred Action is NOT Amnesty!

- Deferred Action does not lead to permanent residence (i.e., the Green Card).
- Deferred Action does not put you on the path to U.S. citizenship.
- It is only a temporary solution to the problem.
- After DA expires, the DHS might continue w/ deportation case again.

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Key Criteria for Eligibility

- The person requesting Deferred Action:
 - Should have come to the U.S. before 16th birthday,
 - Has continuously resided in U.S. for at least 5 years before 06/15/12 (e.g., 06/15?/07),
 - Is present in the U.S. on 06/15/12,
 - Is currently in school, or
 - Has graduated from high school, or
 - Has obtained a GED certificate, or

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Key Criteria for Eligibility

- The person requesting Deferred Action:
 - Is an honorably discharged veteran of the Coast Guard or Armed Forces of the U.S., and
 - Has not been convicted of a “*felony offense*,” and
 - Has not been convicted of a “*significant misdemeanor offense*,” and
 - Has not been convicted of “*multiple misdemeanor offenses*,” and

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Key Criteria for Eligibility

- The person requesting Deferred Action:
 - Does not pose a threat to national security or to public safety, and
 - Is not above the age of 30 (i.e., has not yet reached her/his 31st birthday).

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Supporting Documentation

- Financial records,
- Medical records,
- School records,
- Employment records, and
- Military records.
- Other docs?

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Key Criteria

- Arrived in the United States before age 16
 - You have been in the United States since before your 16th birthday.

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Key Criteria

- Continuously resided in the U.S. for at least 5 years preceding June 15, 2012
 - You have been living in the United States for at least 5 years before 06/15/12

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Key Criteria

- The person was physically present in the United States on June 15, 2012
 - Actual bodily presence in the United States on 06/15/12 (the date of the President's announcement)

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Key Criteria

- The person:
 - is currently in school, or
 - has graduated from high school, or
 - Has obtained a GED certificate, or
 - Is an honorably discharged veteran of the Coast Guard or Armed Forces of the United States

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Military Requirements

- Is an honorably discharged veteran of the Coast Guard or Armed Forces of the U.S.
 - Most people in the military have a high school diploma or a GED – so might qualify for DA independently of an honorable discharge
 - An honorably discharged veteran who has performed active duty or Selected Reserve service post 9/11 can naturalize

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Key Criteria

- The person has not been convicted of a felony offense
- A felony is a federal, state, or local criminal offense punishable by imprisonment for a term *exceeding one year*.

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Key Criteria

- The person has not been convicted of a “significant misdemeanor” offense.
- A federal, state, or local criminal offense punishable by no more than one year of imprisonment or even no imprisonment that involves. . . .

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Significant Misdemeanor

- Violence, threats, or assault, including domestic violence; sexual abuse or exploitation; burglary, larceny, or fraud; driving under the influence of alcohol or drugs; obstruction of justice or bribery; unlawful flight from arrest, prosecution, or the scene of an accident; unlawful possession or use of a firearm; drug distribution or trafficking; or unlawful possession of drugs.

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Key Criteria

- The person has not been convicted of “multiple misdemeanors”
- Convicted of three or more other misdemeanors not occurring on the same day and not arising out of the same act, omission, or scheme of misconduct

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Key Criteria

- The person does not otherwise pose a threat to national security or public safety.
- This could include:
 - Gang membership,
 - Participation in criminal activities, or
 - Participation in activities that threaten the U.S.

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Arrests

- If you have ever been arrested in the past, do not submit any application to the USCIS or USICE before you speak with an immigration attorney or BIA accredited representative.
- It is important that you understand the immigration consequences of criminal behavior.
- Criminal history might lead to deportation!!

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Key Criteria

- The person is not above the age of 30
 - The person has not yet reached her/his 31st birthday.

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How to apply?

- DHS must establish an application process and start accepting applications by 8/15/12.
- The application period has not yet opened.
- USCIS reported that they will reject requests for DA that people submit before the application period opens.

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USCIS

- Will handle requests for DA from people
 - with a final order of removal (regardless of age)
 - Who are at least 15-years-old and have never been apprehended or placed into removal proceedings.

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USICE

- Will handle requests for DA from people who have a case pending:
 - in removal proceedings, or
 - on appeal with the Board of Immigration Appeals (BIA)
 - or before a federal court.

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USICE

- Is currently considering requests for Deferred Action:
 - Individuals who qualify for the new deferred action policy and currently have voluntary departure orders;
 - Individuals who have already received PD but now qualify for deferred action

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Case-by-Case

- DHS has indicated that all requests for DA will be decided on a case-by-case basis.
- There is no guarantee that all requests for DA will automatically be granted.
- You must demonstrate that you meet the eligibility criteria.

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Will there be a fee?

- Right now there is no fee for when someone submits a request for Deferred Action but it *appears* that DHS will set a fee for this program.
- There is no application form to request DA.
- You must undergo biometrics, which is an \$85 fee.
- Unsure if fee waiver will be available.

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How Long to Process DA request?

- The USCIS reported that because the application process is not yet open, they can't estimate the processing time.
- Will depend on volume of requests and the infrastructure USCIS puts in place to decide the requests.

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No Appeal of Denial

- You can't appeal a DHS denial of DA.
- USCIS and USICE will have a process for supervisory review of the denial.

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Consequences of Lying on DA application

- An individual who knowingly makes a misrepresentation to the CIS or ICE, or knowingly fails to disclose facts to CIS/ICE, in an effort to receive DA or a work permit will be treated as an immigration enforcement priority
 - Criminal prosecution
 - Removal from the United States

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Grant of Deferred Action

- Valid for two years
- Can be renewed at end of two years
- You do not have legal status but you will not accrue unlawful presence while you are in a period of Deferred Action.
- Family members must independently qualify for Deferred Action. They cannot get DA through your DA.

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Work Permit

- A person granted DA can then file the Form I-765 to apply for an Employment Authorization Document (EAD) (i.e., work permit) if s/he can *demonstrate an economic necessity to work*.
- Form I-765 fee = \$380
- Form I-912, Request for Fee Waiver?

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Travel

- It is unclear at this point whether people granted Deferred Action will be eligible to travel abroad.
- Execute Deportation/removal order if depart the United States?
- Trigger ground of inadmissibility by traveling outside the United States?

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Beware of *Notarios!*

- Obtain immigration legal advice from an immigration attorney or a BIA Accredited Representative before submitting any request to the USCIS.
- You might be eligible for an immigration benefit or relief from removal!
- Don't go to *notarios*, immigration consultants, travel agents, or tax preparers, etc.

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Legal Service Providers

- <http://www.thenyic.org/find-help>

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