

Preparing for Deferred Action

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Presented by:

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National Immigration Project of the NLG

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United We Dream

Immigration Advocates Network



Panelists

- Jennie Guilfoyle, Catholic Legal Immigration Network, Inc.
- Paromita Shah, National Immigration Project of the National Lawyers Guild
- Don Lyster, National Immigration Law Center
- Lorella Praeli, United We Dream
- Moderator: Pat Malone, Immigration Advocates Network



What Is “Deferred Action”?

- DHS decision not to deport or initiate enforcement against a person
- “Act of administrative convenience”
- Case given low priority for enforcement
- Can only be given by DHS, not IJ
- Valid for two years and can be renewed
- Does not lead to permanent resident status



Benefits of Deferred Action

- Written assurance that will not be deported
- Eligibility for work authorization
 - 8 CFR § 274a.12(c)(14)
 - Must show economic necessity
 - EAD valid for two years and renewable if deferred action renewed
- Not accruing “unlawful presence”



Benefits of Deferred Action

- Eligible for EAD, Social Security number
- May qualify for state drivers license
- May qualify for in-state tuition
- May qualify for loans and grants
- Not “qualified alien” so not eligible for federal benefits (Medicaid, SSI, TANF, Food Stamps)



Eligibility

- Entered U.S.:
 - before age 16
 - before June 15, 2007
- Currently aged 15-30*
- Continuously resided in U.S. for five years
- Present in U.S. on June 15, 2012
- Currently in school, have graduated from high school, or obtained a GED, or been honorably discharged from the Coast Guard or U.S. Armed Forces



Eligibility

- Not been convicted of:
 - a felony
 - a significant misdemeanor
 - three or more minor misdemeanors
- Do not pose a threat to national security or public safety



Proof of Eligibility

- All applicants will submit biometrics and undergo background check
- Proof of entry to the United States before 16, physical presence on June 15, 2012, and five years of residence:
 - Financial records
 - Medical records
 - School records
 - Employment records
 - Military records
 - Church records



Proof of Eligibility

- Proof of current enrollment in school, graduation from high school, or GED:
 - Diplomas
 - GED certificates
 - report cards
 - school transcripts



Proof of Eligibility

- Gather documentation on criminal history
 - Arrests
 - Final dispositions
- FBI fingerprint checks?



Open Questions on Eligibility

- Age
 - up to 31?
 - Frozen on June 15, 2012?
- Travel outside U.S. on advance parole?
- “Currently in school”



Where to Apply

- For people with a final removal order or who have never been placed in removal proceedings, apply with USICS
- People with pending removal hearings before EOIR will apply through a separate process laid out by the ICE Public Advocate. If the ICE public advocate decides the person does not qualify for deferred action, they will apply the ICE prosecutorial discretion memos.



Bars to Deferred Action

- Have **been convicted** of a
 - felony offense,
 - a significant misdemeanor offense,
 - multiple misdemeanor offenses,
- or otherwise **pose a threat** to national security or public safety;
- **START** collecting information now! Get a consultation with someone experienced in deportation defense and detention. Not knowing the facts ahead of time could result in deportation. (Not sure if confidentiality protections will apply.)



Significant Misdemeanor

- A significant misdemeanor is a federal, state, or local criminal offense punishable by **no more than one year of imprisonment or even no imprisonment** that involves: 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.

- USCIS Frequently Asked Questions, June 15, 2011



Significant Misdemeanor

- Sentence: Not just limited to time spent in jail.
 - suspended sentence
 - expunged conviction
 - deferred adjudication
 - deferred sentence
- Juvenile delinquency adjudications not convictions under immigration law, but many minors are prosecuted as adults (risk of public safety threat bar – more later)



Multiple Misdemeanors

- An individual who is not convicted of a significant misdemeanor but is 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 is not eligible to be considered for deferred action under this new process.



Public Safety and National Security Threat

- Gang membership:
 - Distinguish members vs. associates
 - Member: Active or prior?
 - ICE will rely on intel from local police or police gang units: Field interviews by police officers during stop and frisk, databases (GangNet, CalGang)
- Participation in criminal activities:
 - Admissions in plea agreement, “admissions” to ICE officer or in application, rap sheet



Public Safety and National Security Threat

- Juvenile delinquency adjudications? USCIS hasn't said anything yet.
 - Juvenile delinquency is participation in illegal behavior by minors
 - This means that evidence of juvenile delinquency adjudications may have to be submitted.
 - IF they do not include juvenile delinquency adjudications, “bad” acts that currently trigger removal: prostitution, drug trafficking, drug abuse or drug addiction, violations of no-contact orders.
- National Security: Similar to terrorism bar? Punishes conduct that you may not know about. E.g. donating to organization that provides services but also has an armed unit



Can I Clean up My Record?

- Criminal records are public: You can request them at http://www.publicrecordsinfo.com/criminal_records.htm
- Often juvenile records are publicly available
 - Some states limit access to juvenile records after the person turns 18 or 21
 - Local law enforcement often shares juvenile records with other law enforcement agencies – like ICE - unless state statutes say otherwise
- For convictions, explore post conviction relief – may require vacating conviction or reducing sentences
 - Vacate based on legal defect, not immigration reasons
- Difficult to clean up allegations of gang membership or admissions
 - Be prepared to rebut allegations and assemble evidence
 - Seal record?



Risk of detention if you apply

- Many criminal convictions trigger mandatory detention
 - Controlled substances, aggravated felonies, “crimes of moral turpitude”
- If you have a criminal conviction, international travel may result in detention upon removal, even if you were given permission by USCIS
- **CONSULT** with immigration attorney or advocate experienced in detention and removal defense



Risk of Misrepresentation

- If there is evidence of fraud or misrepresentation
 - USCIS FAQ states ICE will aggressively pursue criminal prosecution and removal from U.S.
 - Misrepresentation ground under INA 212(a)(6)(C); Don't know if waiver will be available and for whom.
 - No waiver available for post 1996 misrepresentation of being a USC
- Tension between admissions vs. disclosure



Policy Implementation Concerns

26 days until August 14...



Questions about Eligibility



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Education

- Does enrollment in a GED program count as being “in school”?
 - If so, would applicants have to be enrolled by a certain date, such as June 15 or August 14, 2012?



Criminal History

- What counts toward “multiple misdemeanors” or as a “significant misdemeanor”?
- What is a “threat to national security”?
- What is a “threat to public safety”?



Concerns about Process



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Fees

Cost of Application

- \$ ____ deferred action application
- \$380 employment authorization application filing fee
- \$85 biometrics fee

TOTAL: \$465+, every 2 yrs.

Economic Realities

- In 2007, 1/3 of children of undocumented immigrant parents lived below the federal poverty line
- In 2003, undocumented families in CA had average income of \$29,700



Fees: Recommendation

- Application fee for deferred action should not exceed **\$50**
 - Same as application fee for Temporary Protected Status (TPS), a form of relief that is also temporary and also does not confer permanent legal immigration status



Confidentiality

- Applicants will be reluctant to apply if they fear that the information they submit may lead to removal proceedings for:
 - themselves (if they are denied deferred action)
 - their parents
 - other family members



Confidentiality: Recommendations

- Issue guidance prohibiting information provided from being used to initiate or continuing to pursue removal proceedings
- Collect only information necessary to make determination about deferred action for the individual applicant



Other Concerns & Recommendations

- **Simple application:** Application should be one page with clear and simple instructions.
- **Central processing:** All applications should be processed through one center by specifically trained staff. (Similar to VAWA office in VT.)
- **Language access:** Application materials should be made available in languages commonly used by undocumented youth and their parents, such as Spanish, Tagalog, Korean, Chinese, Thai, Hindi.



Concerns about Immigration Consequences



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Travel Abroad

- Clarify that individuals with deferred action will be able to travel abroad and return to the U.S.
- Establish process for them to do so



Resources / Links

- **National Immigration Law Center (NILC)**
<http://www.nilc.org/FAQdeferredactionyouth.html>
- **United We Dream**
<http://unitedwedream.org/resources/deferred-action-faq/>
- **American Immigration Lawyers' Association (AILA)**
<http://www.aila.org/content/default.aspx?docid=40291>
 - AILA's implementation recommendations to Secretary Napolitano:
<http://www.aila.org/content/default.aspx?docid=40342>



United We Dream (UWD) Network

UWD is the first and largest immigrant youth led network in the nation, with 40 affiliates in over 28 states.



Our mission is to achieve equal access to higher education and a path to citizenship for immigrant youth.



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Responsibilities & Opportunities of Deferred Action

- **Responsibility** to ensure that all eligible Dreamers benefit from Deferred Action
- **Responsibility** to ensure effective implementation of Deferred Action



Responsibilities & Opportunities of Deferred Action

- **Opportunity** to identify, engage, serve, train, and organize thousands of young immigrants
- **Opportunity** to unify the immigrant rights movement
- **Opportunity** to increase immigrant youth educational attainment
- **Opportunity** to grow relationships



Educational Outreach

UnitedWeDream.org or LosDreamers.org

- Deferred Action Guidelines Toolkit
- Webinars for students, teachers and allies
- Partnering with National Organizations: National Education Association, American Federation of Teachers, Labor Organizations, Civil and Immigrant Rights Organizations, Faith, Legal Organizations, etc.



Outreach

- Community Forums
- Webinars
- DREAM Sabbath
- Briefings and National Calls
- Partnerships with
 - Spanish Language Media (Univision, Telemundo)
 - Ethnic Media (New American Media)
- Radio
- Social Media (Twitter, Facebook, Youtube)



Finding Safe Places

- Schools
- Churches
- Community Spaces

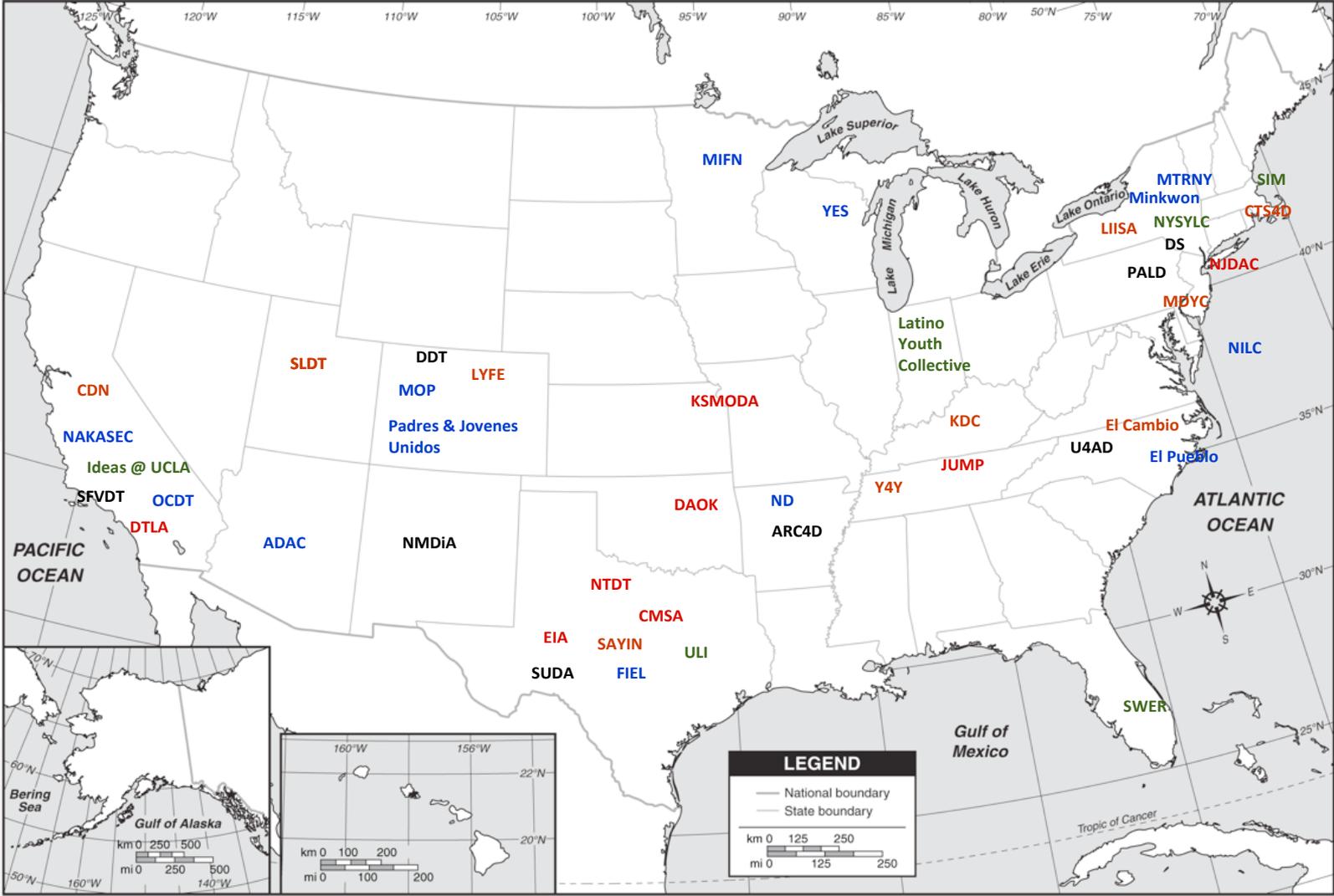


Speakers

- DREAMers
- Attorneys or Legal Aid
- Community leaders and allies



UWD Affiliates





Dreamers will be a transformative constituency that will change our country and expand the capacity of our movement for long lasting immigration policy reforms and beyond.

Contact Lorella Praeli at lorella@unitedwedream.org

Questions?

(Please use the chat box to the right of your screen to ask questions.)



Join the Immigration Advocates Network

Join a community of over 5,000 advocates dedicated to protecting and promoting the rights of immigrants in the United States.

To learn more, visit

www.immigrationadvocates.org



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