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**STATEMENT OF THE AMERICAN IMMIGRATION COUNCIL**

**SUBMITTED TO THE COMMITTEE ON THE JUDICIARY  
OF THE U.S. HOUSE OF REPRESENTATIVES**

**HEARING ON “THE UNCONSTITUTIONALITY OF OBAMA'S  
EXECUTIVE ACTIONS ON IMMIGRATION”**

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The American Immigration Council is a non-profit organization which for over 25 years has been dedicated to increasing public understanding of immigration law and policy and the role of immigration in American society. We write to (1) share our analysis and research regarding the ample legal and historical authority for the President’s recent deferred action programs, Deferred Action for Childhood Arrivals (DACA) and Deferred Action for Parental Accountability (DAPA); (2) detail the significant economic benefits; and (3) detail some of the significant social benefits of the action.

After decades of congressional neglect, in November 2014, President Obama took a crucial and courageous step toward reforming our immigration system. He announced that he will provide temporary relief for many of those impacted by our broken system.<sup>1</sup> Like his predecessors who took executive action on immigration, President Obama is not providing anyone a permanent legal status—only Congress can do that. But his action will provide benefits not only to those individuals who receive deferred action and their families, but to society as a whole.

**I. Legal and Historical Authority for Immigration Executive Action**

Presidents have ample legal authority—and abundant historical precedent—supporting their discretion to take action in immigration matters.<sup>2</sup> The president’s broad executive authority to shape the enforcement and implementation of immigration laws includes the exercising of

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<sup>1</sup> American Immigration Council, *A Guide to the Immigration Accountability Executive Action* (December 2014), at <http://www.immigrationpolicy.org/special-reports/guide-immigration-accountability-executive-action>.

<sup>2</sup> American Immigration Council, *Executive Grants of Temporary Immigration Relief, 1956-Present* (October 2014), at <http://www.immigrationpolicy.org/just-facts/executive-grants-temporary-immigration-relief-1956-present>.

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prosecutorial discretion to defer deportations and streamline certain adjudications.<sup>3</sup> 135 law professors from around the nation<sup>4</sup> and four former chief counsels of USCIS and INS<sup>5</sup> have affirmed that the DACA and DAPA programs are well within the President’s authority.

Under this authority, since at least 1956, every U.S. president since Eisenhower has granted temporary immigration relief to one or more groups in need of assistance. Our report *Executive Grants of Temporary Immigration Relief, 1956-Present* (Attachment A) collects 39 examples, including large scale actions, actions designed to protect immigrant families, and actions taken while legislation was pending.<sup>6</sup>

Perhaps the most striking historical parallels to President Obama’s action are the “Family Fairness” deferred actions implemented by Presidents Ronald Reagan and George Bush, Sr. between 1987 and 1990, set out in our report *Reagan-Bush Family Fairness: A Chronological History* (Attachment B).<sup>7</sup> The 1986 Immigration Reform and Control Act (IRCA) made roughly 3 million unauthorized immigrants eligible for lawful permanent residence, but did not allow spouses and children to apply as derivatives. The ensuing controversy over “split-eligibility” families ultimately led the Reagan administration to announce, in 1987, that it would defer deportation for children under 18 who were living in a two-parent household with both parents legalizing, or with a single parent who was legalizing. Then, in July 1989, the Senate passed legislation to protect a larger group—prohibiting deportation of all spouses and children of those who were legalizing under IRCA. But the legislation stalled in the House. In 1990, President Bush Sr. extended deferred action to cover spouses and children.

Our research regarding Family Fairness demonstrates three points, among others:

- The use of executive branch authority in immigration does not constitute a constitutional crisis. Rather, temporary deferral programs may provide “breathing room” for Congress to further debate a more lasting solution for undocumented immigrants.
- That said, Family Fairness was not “ancillary to” or a “mere cleanup of” Congressional action. Both Presidents Reagan and Bush took action for spouses and children despite explicit Congressional intent to leave them out of IRCA reform, as stated by both of IRCA’s primary drafters,<sup>8</sup> and recognized by the INS.<sup>9</sup>

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<sup>3</sup> Hiroshi Motomura, *The President’s Discretion, Immigration Enforcement, and the Rule of Law* (August 2014), at <http://www.immigrationpolicy.org/perspectives/president%E2%80%99s-discretion-immigration-enforcement-and-rule-law>.

<sup>4</sup> <https://pennstatelaw.psu.edu/sites/default/files/documents/pdfs/Immigrants/executive-action-law-prof-letter.pdf>.

<sup>5</sup> Stephen Legomsky, Roxana Bacon, Paul W. Virtue, and Bo Cooper, Letter to chairs of Judiciary Committees (Nov. 29, 2014) (affirming arguments in law professors’ letter).

<sup>6</sup> *Executive Grants of Temporary Immigration Relief, 1956-Present*.

<sup>7</sup> American Immigration Council, *Reagan-Bush Family Fairness: A Chronological History* (December 2014), at <http://www.immigrationpolicy.org/just-facts/reagan-bush-family-fairness-chronological-history>; see also Mark Noferi, *When Reagan and GHW Bush Took Bold Executive Action on Immigration* (Oct. 2, 2014), at <http://thehill.com/blogs/congress-blog/foreign-policy/219463-when-reagan-and-ghw-bush-took-bold-executive-action-on>.

<sup>8</sup> *Reagan-Bush Family Fairness: A Chronological History* at 2, citing Sen. Alan Simpson (R-WY) and Rep. Romano Mazzoli (D-KY).

- Additionally, when President Bush took action, INS officials, legislators, and those in the policy debate such as the Center for Immigration Studies director all understood the potential impact to be large—impacting up to 1.5 million immigrants.<sup>10</sup>

Yet no lawsuits or allegations of a constitutional crisis ensued. Today’s debate may be indicative of a more polarized political environment, rather than a change in the constitutional underpinnings.

## II. Economic Benefits

Our recent report, *Only the Beginning: The Economic Potential of Executive Action on Immigration*, details the significant economic benefits from President Obama’s recent action.<sup>11</sup> (Attachment C) Those benefits include:

- The White House Council of Economic Advisers (CEA) estimates that the executive actions would, over the next 10 years, increase GDP by between 0.4 percent and 0.9 percent (\$90-\$210 billion), and decrease federal deficits between \$25 billion and \$60 billion.<sup>12</sup>
- The Center for American Progress (CAP) estimated that an executive action scenario in which 4.7 million unauthorized immigrants with a minor child in the United States received deferred action and work authorization would increase payroll tax revenues by \$2.9 billion in the first year, and up to \$21.2 billion over five years.<sup>13</sup>
- The Fiscal Policy Institute (FPI) estimates a 5 to 10 percent increase in wages over a five-year period for the almost 5 million workers potentially eligible to gain work authorization through expanded deferred action under the President’s executive action.<sup>14</sup> Also, the CEA estimates that the executive actions would raise average wages for U.S.-born workers by 0.3 percent, or \$170 in today’s dollars, over the next 10 years.<sup>15</sup>

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<sup>9</sup> Id. at 2, 4.

<sup>10</sup> Id. at 3-5.

<sup>11</sup> American Immigration Council, *Only the Beginning: The Economic Potential of Executive Action on Immigration* (December 11, 2014), at <http://www.immigrationpolicy.org/just-facts/only-beginning-economic-potential-executive-action-immigration>. Statistics cited in this statement are provided therein.

<sup>12</sup> White House Council of Economic Advisers, “The Economic Effects of Administrative Action on Immigration” (Washington, DC: Executive Office of the President of the United States, November 2014), at [http://www.whitehouse.gov/sites/default/files/docs/cea\\_2014\\_economic\\_effects\\_of\\_immigration\\_executive\\_action.pdf](http://www.whitehouse.gov/sites/default/files/docs/cea_2014_economic_effects_of_immigration_executive_action.pdf).

<sup>13</sup> Patrick Oakford, “Administrative Action on Immigration Reform: The Fiscal Benefits of Temporary Work Permits” (Washington, DC: Center for American Progress, September 2014), p. 3, at <http://cdn.americanprogress.org/wp-content/uploads/2014/09/OakfordAdminRelief.pdf>.

<sup>14</sup> Fiscal Policy Institute, “President’s Immigration Action Expected to Benefit Economy” (New York, NY: Fiscal Policy Institute, November 21, 2014), at <http://fiscalspolicy.org/presidents-immigration-action-expected-to-benefit-economy>; personal communication with David Dyssegaard Kallick, December 10, 2014.

<sup>15</sup> White House Council of Economic Advisers, note 4.

- Moreover, the CEA anticipates that the executive actions would have no impact on employment of U.S.-born workers.<sup>16</sup> In other words, it is unlikely that the changes announced by President Obama would cause jobs to be taken away from native-born workers.

Preliminary evidence from the National UnDACAmented Research Project suggests that even a temporary legal status can improve economic opportunities for undocumented individuals.<sup>17</sup> That said, there is significant evidence that permanent legalization would provide critical economic benefits, while by nature, deferred action is a temporary status—a mechanism that provides a measure of relief and protection from removal during the allotted time period.

### III. Social Benefits

Additionally, an *amicus* brief submitted by the American Immigration Council and other organizations in pending litigation against the executive action, details stories of the other benefits of executive action to the United States and impacted individuals.<sup>18</sup> (Attachment D) These benefits include:

- The ability to focus enforcement on lower-priority individuals.
- For those now eligible for DACA, the ability to support themselves through work, better pursue higher education, and follow their dreams.
- For those now eligible for DAPA, the ability to work and support their children who are U.S. citizens and lawful permanent residents.

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We urge Congress to work to fix our broken immigration system and provide individuals, families and communities across America a functional system that meets our needs and reflects our proud history as a nation of immigrants.

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<sup>16</sup> White House Council of Economic Advisers, note 4.

<sup>17</sup> Roberto G. Gonzales and Angie M. Bautista-Chavez, Two Years and Counting: Assessing the Growing Power of DACA (American Immigration Council: Washington DC, June 2014), at <http://www.immigrationpolicy.org/special-reports/two-years-and-counting-assessing-growing-power-daca>.

<sup>18</sup> *Amici Curiae* Brief of American Immigration Council, American Immigration Lawyers Association, Define American, National Immigrant Justice Center, National Immigration Law Center, New Orleans Workers' Center For Racial Justice, Service Employees International Union, Southern Poverty Law Center, and United We Dream in Opposition to Plaintiffs' Motion For Preliminary Injunction, *Texas, et. al. v. United States, et. al.*, No. 14-cv-254, Dkt # 39 (S.D. Tex. Dec. 29, 2014), available at <http://www.legalactioncenter.org/sites/default/files/Texas%20v.%20US%20amicus%20brief.pdf>.

ATTACHMENT A

ATTACHMENT B

ATTACHMENT C

ATTACHMENT D