

ASSISTING IMMIGRANT CHILDREN AND FAMILIES

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Law School

Important Disclaimer

- This presentation is based on information currently available.
- Many changes in the law are expected, and anyone who is directly affected should speak with an immigration lawyer to find out how they are directly impacted and how future changes in the law may affect or benefit them.

Presentation Preview

- Looming Questions
 - Impact of Executive Orders
- Power of Attorney Forms
- Importance of Knowing Rights
- Forms of Immigration Relief
- Questions



EXECUTIVE ORDERS' IMPACT ON IMMIGRANTS AND NONCITIZENS

WHO MAY NOW BE AN ENFORCEMENT PRIORITY?

Executive Order prioritizes many new categories of removable noncitizens. These categories include any noncitizen who has been:

1. Convicted of any criminal offense (no exceptions noted);
2. Charged with an unresolved criminal offense;
3. Committed acts which constitute chargeable offenses;
4. Engaged in fraud or willful misrepresentation in connection with any official matter or application before a governmental agency;
5. Abused any program related to receipt of public benefits;
6. Anyone with a final removal order (even those with pre-2014 orders); or
7. Anyone who, **“In the judgment of an immigration officer, otherwise pose[s] a risk to public safety or national security.”**

EXPEDITED REMOVAL

- **What is it?** A process with immigration officials – rather than judges- orders the deportation of a person and quickly deports that person.
- At this time, expedited removal is mainly used for adults who **have just arrived** in the United states without permission to enter.
- **What do the executive orders say?** The orders extend the use of expedited removal to anyone who entered the United States without permission in the last 2 years.

WHAT SHOULD SOMEONE DO IF HE/SHE MIGHT BE AT RISK OF EXPEDITED REMOVAL?

- **The new expedited removal policy does NOT apply to unaccompanied minors**
- **Who is an unaccompanied minor?** A minor who arrived in the United States before turning 18, without his/her parents, and was picked up by immigration upon arrival.
- **If you have been in the United States for more than 2 years:** Put together documents that show that you have been present for more than 2 years. Make a plan for who will be able to help you QUICKLY if you are detained by immigration and in expedited removal proceedings.
- **If you have been in the United States for less than 2 years:** Make a plan so that someone will be able to help you quickly in case you are detained. The process of deporting someone through expedited removal moves very quickly.

WHAT SHOULD INDIVIDUALS IN REMOVAL PROCEEDINGS Do?

- **TALK TO AN IMMIGRATION LAWYER IMMEDIATELY TO PLAN YOUR NEXT STEPS.**
 - You have the right to a hearing before any decision is made about whether you have to leave the country.
 - You also have the right to an appeal.
- **IF YOU DON'T GO TO COURT, THE JUDGE CAN ISSUE A REMOVAL ORDER.**
 - This may put you at higher risk of deportation.

DO THE NEW EXECUTIVE ORDERS AFFECT THE RECEIPT OF PUBLIC BENEFITS?

Currently they do Not, but There is Reason for Concern

- A “leaked draft Order” redefined “public charge” and “means-tested public benefits” to span a much wider variety of federal programs and called for deporting legal permanent residents for using benefits.
- Under “leaked order” legal immigrants could be ordered deported for using a wide variety of benefits, potentially including food and nutrition assistance, federally subsidized health insurance through Medicaid or the ACA, and education benefits.

DOES THE SOCIAL SECURITY ADMIN. OR WELFARE AGENCY HAVE OBLIGATION TO REPORT TO ICE?

It Depends (and policies could change)

Current Law states:

- If present fraudulent documents, must report
- Only people who are actually seeking benefits (not relatives or household members applying on their behalf) are subject to the reporting requirement and even then there must be a formal determination, subject to administrative review.
- There is no federal reporting requirement in health programs. Information submitted by applicants or family members seeking Medicaid, CHIP, or health care coverage under the Affordable Care Act would not be used for immigration enforcement purposes.

WHAT ELSE SHOULD UNDOCUMENTED IMMIGRANTS DO RIGHT NOW?

1. Speak with a lawyer about possible immigration options.
2. Learn about their rights.
3. Make an emergency plan for loved ones to follow in the event that they are detained.
 - Consider creating a Power of Attorney



POWER OF ATTORNEY/DELEGATION OF PARENTAL AUTHORITY

What does the document allow parents to do?

Give someone else (called an “attorney in fact”) the authority to care for and make decisions about their child or children.

The document is good for 6 months.

It is strongly advised that the form be renewed every 6 months.

What can an “attorney in fact” do?

- Care for and provide for one’s child or children
- Make medical decisions
- Make educational decisions
- Approve and arrange for travel
- Handle any financial matters in which one’s child or children may be involved

The parents decide which authorities the “attorney in fact” will be able to do. However, if they want the “attorney in fact” to be able to fully care for their child, all should be checked off all of them.

Do both parents have to sign?

It is best if both parents sign, but if one parent cannot sign, then the form allows for an explanation as to why the other parent is not signing

What are some of the other requirements to completing the form?

- 1. Complete a separate form for each child**
- 2. It is best if the form is signed by two witnesses**
- 3. The “attorney in fact” does NOT sign the document**

Does the form need to be notarized?

- In order to ensure the validity of the document, it should be notarized.
- Getting someone to notarize a document should not cost more than \$2.50 and in many cases will be free.
- Check out banks, UPS stores, or libraries.
- Any attorney in New Jersey is a notary.
- The person you use to notarize cannot also be a witness

Are there any requirements of the “attorney in fact?”

- Must be **18 years of age**
- Should be someone that the parent **trusts and with whom the children are comfortable**
- It is preferable if the person appointed is someone with legal immigration status, but it is not necessary.
- Parents do not need the assistance of an attorney to complete the Power of Attorney/Delegation form, but if they have questions it may be helpful to consult with an attorney

Once parents complete the form, what should they do?

- The “attorney in fact” should keep the original
- The parents should keep copies
- Also, keep a copy in a special place in your home
- Give a copy to a few close family or friends
- Give a copy to your child if he/she is old enough to understand

Can someone other than a parent initiate a Power of Attorney/Delegation?

- **YES.** A person who has legal guardianship can enter into a Power of Attorney
- A person who has legal custody may also be able to do so.
- If the person initiating a Power of Attorney has legal custody or guardianship, he/she should also give a copy of the court order of custody or guardianship to the “attorney in fact.”
- An ORR sponsor can only initiate a Power of Attorney if he/she is the parent or he/ she has gone to family court and obtained legal guardianship or custody.

Do parents lose their authority if they enter into a Power of Attorney/Delegation?

NO.

- While a Power of Attorney is in place, both the parent(s) and the “attorney in fact” can make decisions on behalf of the child.
- It is called concurrent authority.

Will the Power of Attorney/Delegation keep DCPP from taking custody of the children?

MAYBE.

- The Power of Attorney shows that the parents were responsible and made a plan for someone else to care for their child or children, if they could not.
- DCPP has reviewed the document and stated that it will honor it, unless DCPP has concerns about the proposed caregiver (“attorney in fact”) and his/her ability to care for your child.

How can parents terminate the Power of Attorney/Delegation??

- Power of attorney can be revoked at any time by putting in writing that the parents are revoking it.
- It is best if the revocation is witnessed and notarized just like the Power of Attorney, but this is not necessary.
- Give a copy of the revocation to the person that was appointed as the “attorney in fact” and try to get the original Power of Attorney back.
- It is advisable to give a copy of revocation to any doctor, school, or anyone else who received a copy of the Power of Attorney.

Is this Power of Attorney/Delegation good in other states?

NO.

- Only good for New Jersey
- However, the “attorney in fact” can reside out-of-state, so long as he/she can fulfill responsibilities of the Power of Attorney.

If child is a U.S. Citizen should the parents get him/her a passport?

YES

- It is difficult for anyone other than the child's parents to obtain a passport for a child.
- The Attorney in Fact can make travel arrangements and purchase airline tickets for the child, but will probably not be able to get the child/ren a passport.



IMMIGRANT RIGHTS

Plan Ahead

➤ **Know your rights.**

Be sure that your loved ones know their rights too.

➤ **Do not keep any false documents on you.**

Carry your green card if you have one, but do not carry your passport or any papers from your country of origin, and *never ever carry or show false documents.*

➤ **Make arrangements.**

If you have children or other dependents, designate someone to care for them in case you are ever detained.

➤ **Have a lawyer.**

Find the name and number of *at least one* reliable lawyer and keep it with you at all times.

If ICE Comes To Your Home:

1. **Ask to see a warrant** – ask “may I see your search or arrest warrant?”
2. **Do not open the door** – If ICE does not have a search warrant, you do not have to let them in.
3. **Remain silent** – say “I choose to exercise my right to remain silent.”
4. Carry a **“Know Your Rights”** card at all times

What if they have a warrant?

If ICE has an arrest warrant, the person who is named must present himself/herself, but ICE does not have a right to enter the home.

****Only a search warrant allows ICE to enter the home.**

What should I do if I am detained by police or immigration agents in a public place?

1. **Do not** answer questions about your immigration status or your country of origin
2. Ask the police officer or the immigration official, “Am I free to leave?”
3. If the police officer says, “you are not free to leave,” remember that **you have the right to remain silent. To protect yourself, remain quiet and do not sign any documents until you are able to speak with a lawyer.**
4. If the police officer says that you are free to go, walk away calmly. **DO NOT RUN.**

What to Do if You Encounter Immigration Officials At Work


- Immigration officials can enter any workplace, including restaurants, stores, office buildings, or factories.
- Although immigration officials can enter any workplace, they must remain in public areas, such as the reception area, unless they receive permission from your employer to enter private areas.

What to do if an Immigration Official Shows Up at Your Workplace

1. Continue working until someone says something to you. Do not try to run away.
2. Remember that you have the right to remain silent.
3. Don't offer information about yourself or about your immigration status to anyone.
4. An immigration agent may ask that you and your coworkers form groups based on your immigration status. **You do not have to offer this information by walking to one of the areas designated by the immigration agent.** You can instead stand in the middle of the room or in another part of the room that was not designated for a specific group by the immigration agent.

In any situation that you encounter immigration officials remember:

- You have the right to remain silent. Do not offer personal information or information about your immigration status.
- You should exercise your right to remain silent until you speak with a lawyer. Don't sign any documents before you speak to a lawyer.
- **Never** present any identification documents that are fake or that belong to another person.
- Never lie to an immigration official or a police officer.



FORMS OF IMMIGRATION RELIEF

Forms of Immigration Relief

- Asylum
- U Visa
- Special Immigrant Juvenile Status (SIJ)
- VAWA
- T Visa

Asylum ELIGIBILITY

A person who fears returning to your home country due to fear of harm based on your:

- Race
- Religion
- Nationality
- Membership in a particular social group
- Political opinion

Asylum BENEFITS

- Temporary protection from deportation
- Ability to live and work in the U.S. legally
- Ability to apply for lawful permanent residency after receiving asylum status for one year

U Visa ELIGIBILITY

- A victim of a qualifying serious crime which occurred in the U.S.
- Victim suffered substantial physical or emotional harm.
- Must be willing and able to assist law enforcement in the investigation and prosecution of the crime

U Visa BENEFITS

- Temporary legal status
- Permission to live and work in the U.S. for up to 4 years
- Ability to apply for a green card after 3 years

Special Immigrant Juvenile Status or “SIJ” ELIGIBILITY

- UNDER 21 YEARS OLD
- IN THE U.S.
- NOT MARRIED
- DEPENDENT ON THE FAMILY COURT
- ABUSED, NEGLECTED OR ABANDONED BY ONE OR BOTH PARENTS (OR SOMETHING SIMILAR)
- NOT IN THE MINOR’S BEST INTEREST TO RETURN TO COUNTRY OF ORIGIN

Special Immigrant Juvenile Status or “SIJ” BENEFITS

- WORK PERMIT
- GREEN CARD
 - Long backlogs/wait times for applicants of Guatemala, Honduras, El Salvador and Mexico.

OTHER FORMS OF RELIEF

VAWA

- Green card for victims of domestic violence and qualifying family members. Perpetrator must be a U.S. citizen or legal permanent resident (green card holder). Spouses, children and parents can be eligible.

T Visa

- Green card for victims of human trafficking which occurred in the U.S. Victims must cooperate with authorities in the investigation of trafficking.

What is DACA (Deferred Action for Childhood Arrivals)?

- Allows certain undocumented immigrants who entered the country before their 16th birthday and before June 2007 to receive a renewable two-year work permit and exemption from deportation.
- Began in 2012

DACA cont'd

Criteria for DACA

- Under 31 years of age as of June 15, 2012;
- Came to the U.S. while under the age of 16;
- Have continuously resided in the U.S. from June 15, 2007 to the present.;
- Entered the U.S. without inspection or fell out of lawful visa status before June 15, 2012;
- Physically present in the United States on June 15, 2012, and at the time of making the request for consideration of deferred action with USCIS;
- Currently in school, graduated from high school, obtained a GED, or have been honorably discharged from the Coast Guard or armed forces;
- Have not been convicted of a felony, a significant misdemeanor, or more than 3 misdemeanors; and
- Do not pose a threat to national security or public safety.

How Do the Executive Orders Impact DACA?

- The current executive orders **DO NOT** address DACA
- As of today, the DACA program is still in effect. It will remain in effect until Trump issues an Executive Order that addresses that program.
- Even if DACA is terminated, whether or not an individual's DACA (lawful presence and work authorization) will end right away depends on what is announced.

Should Individuals File Initial DACA Applications?

THE ANSWER IS NOT CLEAR

- If you are considering applying for the first time, it is important to consult with an Immigration Attorney
- Applying for DACA for the first time will give personal information to the government and may put the applicant at risk should Trump rescind DACA.
- For those who have a criminal history or who might fall under new enforcement priorities, applying for DACA would reveal this history to immigration authorities.

Should DACA Holders File to Renew Their DACA?

IT DEPENDS

- There are reports that USCIS is currently processing renewal applications quickly.
- **If DACA is set to expire within 150 days:** May file renewal immediately
- **If DACA is more than 150 days from expiration:** Reports indicate that the government **may** accept renewal applications even for those whose DACA is more than 150 days from expiration. Individuals in this position should consult with an attorney to see whether filing for renewal early might be worthwhile.

Should DACA Holders File to Renew Their DACA?

➤ Risks of Filing a DACA Renewal:

- The government already has current DACA holders' information, so one does **not** create a new risk by applying for renewal unless his/her situation has changed in a way that might make him/her ineligible for DACA.
 - Those submitting renewals could lose money if their renewal applications are not decided before DACA is rescinded.
- **Advance parole:** For those who have DACA and an urgent need to travel outside the U.S., it is still possible to seek advance parole and travel. However, travelling on advance parole would be very risky right now because: (1) Administration might refuse reentry to those granted advance parole; (2) An executive order could be passed that would make it impossible to reenter the country using advance parole.

Will the Federal Government Use DACA Information to Find and Deport Individuals with DACA?

WE DO NOT KNOW.

- Deporting over 770,000 DACA recipients would be very time-consuming and expensive.
- DACA recipients are also near the bottom of the government's priority list for deportation.



??QUESTIONS??