



WRITTEN STATEMENT OF  
THE AMERICAN CIVIL LIBERTIES UNION

For a Hearing on

**“President Obama’s Executive Overreach on Immigration”**

**Submitted to the U.S. House Committee on the Judiciary**

December 2, 2014

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## I. Introduction

For nearly 100 years, the American Civil Liberties Union (ACLU) has been our nation's guardian of liberty, working in courts, legislatures, and communities to defend and preserve the individual rights and liberties that the Constitution and the laws of the United States guarantee everyone in this country. The ACLU takes up the toughest civil liberties cases and issues to defend all people from government abuse and overreach. With more than a million members, activists, and supporters, the ACLU is a nationwide organization that fights tirelessly in all 50 states, Puerto Rico, and Washington, D.C., for the principle that every individual's rights must be protected equally under the law, regardless of race, religion, gender, sexual orientation, disability, or national origin.

The ACLU submits this statement to the U.S. House of Representatives' Committee on the Judiciary for its hearing: "President Obama's Executive Overreach on Immigration." This statement aims to provide the Committee with an appraisal of President Barack Obama's executive actions on immigration, which were announced on November 20, 2014. The immigration laws contain broad discretion for the executive to refrain from enforcement. The Supreme Court has repeatedly recognized this authority, most recently in *Arizona v. United States*.<sup>1</sup> Congress wrote the immigration laws to give the Executive Branch leeway in deciding which unauthorized immigrants to target for enforcement, and Congress has explicitly referenced that discretionary authority in the immigration laws.<sup>2</sup>

This statement highlights the stories of specific individuals who will benefit from the President's announcement to expand the Deferred Action for Childhood Arrivals ("DACA") program and to extend deferred action to the parents of U.S. citizens or lawful permanent residents.

Nearly two and a half years ago, on June 15, 2012, the Obama administration instituted the federal DACA program<sup>3</sup> which stated that many young immigrants who came to the United States as children are legally allowed to live in the country. Though imperfect, this has allowed over half a million people—often referred to as DREAMers—to come out of the shadows, work legally, and give back to their communities. Similarly, the President's 2014 administrative actions will allow

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<sup>1</sup> 567 U.S. \_\_\_, 132 S. Ct. 2492 (2012). The Court noted that: "A principal feature of the removal system is the broad discretion exercised by immigration officials. . . . Federal officials, as an initial matter, must decide whether it makes sense to pursue removal at all." See also *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 483-84 (1999) ("at each stage" of the "initiation or prosecution of . . . the deportation process," "the Executive has discretion to abandon the endeavor"; referring to deferred action as one aspect of that discretion).

<sup>2</sup> Congress has codified certain forms of administrative relief, such as parole, INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A), and has acknowledged the existence of others, such as deferred action, see, e.g., INA § 204(a)(1)(D)(i)(II), 8 U.S.C. § 1154(a)(1)(D)(i)(II).

<sup>3</sup> Memorandum from then-Department of Homeland Security Secretary Janet Napolitano, "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children" (Jun. 15, 2012), *available at* <http://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf>.

more than 4 million undocumented immigrants<sup>4</sup>—many of whom are longstanding residents with stable jobs, homes, church membership, and community participation—to temporarily come out of the shadows, pay taxes, live without fear of deportation, support their families, and contribute to their communities. Under the new Deferred Action for Parent Accountability (“DAPA”) program, undocumented parents of U.S. citizens or lawful permanent residents, who have lived in the U.S. since January 1, 2010, will be able to apply for a work permit after undergoing a criminal background check, and live free from deportation on a temporary basis.<sup>5</sup> As DHS has made clear, the deferred action protection will be temporary—granted in three-year intervals—and “does not confer any form of legal status in this country, much less citizenship; it simply means that, for a specified period of time, an individual is permitted to be lawfully present in the United States.”<sup>6</sup> In addition, the President announced expansions of the DACA program, which will benefit about 270,000 individuals.<sup>7</sup>

Although President Obama’s actions are not a complete solution to the problems plaguing our immigration system, the ACLU supports the President for taking necessary action to restore some fairness to our broken immigration system, and to place limits on the devastating deportation machine that has torn apart countless families for decades. Now, millions of people who have lived under the daily threat of deportation for years can finally breathe a sigh of relief.

## II. Stories of DAPA Recipients

In the immediate aftermath of the President’s announcement on November 20, 2014, the ACLU affiliates around the country documented the following cases of individuals who plan to come forward and seek deferred action in 2015. The cases include the stories of immigrants from Latin America and Asia. Here are their stories:

### **EH**

- EH arrived in the U.S. from Mexico in 1988 – 26 years ago. She has two daughters: one who is a U.S. citizen and is attending college, and another who was granted DACA and now works at the ACLU. Her family had lived in a rural part of Oaxaca, Mexico. Her father was verbally and physically abusive to both her mother and her siblings. It was understood that women had to be subservient to the men in the family. When EH became pregnant, her family turned their back on her and her child. Fearing that her life would

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<sup>4</sup> The White House estimated that “nearly 5 million undocumented immigrants” would be impacted. See White House Fact Sheet, “Immigration Accountability Executive Action” (Nov. 20, 2014), available at <http://www.whitehouse.gov/the-press-office/2014/11/20/fact-sheet-immigration-accountability-executive-action>.

<sup>5</sup> Memorandum from Department of Homeland Security Secretary Jeh Johnson, “Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Residents,” p. 4 (Nov. 20, 2014), available at [http://www.dhs.gov/sites/default/files/publications/14\\_1120\\_memo\\_deferred\\_action.pdf](http://www.dhs.gov/sites/default/files/publications/14_1120_memo_deferred_action.pdf).

<sup>6</sup> *Supra* note 3, p. 2.

<sup>7</sup> Elise Foley, *Obama Moves To Protect Millions From Deportation*, Huffington Post (Nov. 20, 2014), available at [http://www.huffingtonpost.com/2014/11/20/obama-immigration-plan\\_n\\_6178774.html](http://www.huffingtonpost.com/2014/11/20/obama-immigration-plan_n_6178774.html).

never improve and that her daughter would face the same obstacles, EH decided to run away to California. Since arriving to the U.S., EH has volunteered at her daughters' schools despite working long hours. She has learned English and wants to become a professional tailor now that she can apply for a work permit. She feels happy to be able to step out of the shadows and to finally live without fear of being deported.

## **BR**

- BR left Mexico and entered the U.S. 10 years ago. She is married with two U.S. citizen children. Her family owns property in Texas, and she and her husband pay their taxes. BR has worked in hotels and restaurants and has been self-employed selling beauty products. BR is a neighborhood activist and a member of the Parent-Teachers Association. She is also an ACLU volunteer and a member of the Rio Grande Valley Equal Voice Network.

## **MH**

- MH has lived in the U.S. for 10 years. She has 3 U.S. citizen children and a teenage daughter who is a DREAMer. The family lives in Texas. MH has worked cleaning houses and has worked in hotels and restaurants; at times she has had to work two jobs to support her children. She has paid her income taxes. MH is an active member and volunteer of the ACLU, Texas Rio Grande Legal Aid, and Community Development Corporation of Brownsville.

## **MB**

- MB is the mother of a legal permanent resident. She arrived to the U.S. from Argentina in 2001 with her 9-year-old son and husband after a big economic crisis in their country. The family eventually settled down in North Miami Beach, where they currently reside. Since moving to the U.S., MB's son has gone to college and, after marrying his high school girl friend, became a legal permanent resident. For the past 11 years, MB has worked as a housecleaner and babysitter of one family. MB is also an activist for immigrants' rights, who now runs her own organization, "United Families." When movement around the DREAM Act began, MB joined in as part of DREAMers' MOMS and then also worked to stop an Arizona-type anti-immigrant law in Florida. MB has met with the staff of at least five different Members of Congress and has participated in numerous protests.

## **AS**

- "My name is AS, and I have resided in the United States for the past 25 years. At the age of 3, I arrived from Pakistan in Los Angeles in 1989 and eventually settled down Broward County, Florida. My family who reside in the United States includes my mother, my brother, my sister, my daughter, uncles, aunts and cousins. My entire family including myself have paid taxes and worked here. All of my family members are legal residents or citizens, except for my mother who is also eligible for DAPA. I currently am a DACA

recipient. However, DAPA also applies to me as well since I have a two-year-old child who is a US citizen.”

**BS**

- BS arrived from Nicaragua when she was 14 years old and currently resides in Florida. After coming to the U.S., BS had a child, who is now a college student. Since residing in the U.S., BS has been paying taxes and working to repair air conditioners and to clean houses. She has worked in the same house for the past 5 years.

**AB**

- AB arrived from Argentina in 2000 and currently lives in Florida. She has lived in the U.S. for 14 years. AB has two DACA-recipient daughters as well as 9-year-old U.S. citizen daughter. Until recently, AB was working in the real estate business supervising 10 people, but the company closed. As a result, she lost her job and is currently a stay-at-home mother and is involved in immigrants’ rights activism. Her husband supports the family with his small business, a demolition and furniture delivery company with 3 employees, and the family pays taxes. AB has stated that her daughters feel like Americans, not Argentines.

**III. Conclusion**

The ACLU continues to urge Congress to pass legislation that provides a permanent path to citizenship for all of the aspiring citizens who contribute to our communities. In the absence of such congressional action – and in light of stories such as these and thousands more like them – the executive action of the Obama Administration that enhances fairness in the existing deportation system is a welcome improvement.