

Obama Deportation Deferral Program Hinges on Details

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The Obama administration's program to defer deportation for young undocumented immigrants will be up and running on Aug. 15, but the program's success will depend on a host of details that will be worked out on a case-by-case basis.

Department of Homeland Security's decision to give two-year deferrals to young people who were brought to the United States illegally by their parents, announced in the Rose Garden by President Obama last month, may be the most ambitious immigration plan ever undertaken by a federal agency. Hundreds of thousands of illegal-immigrant teens and young adults could submit applications to DHS, essentially outing themselves to federal authorities, and hope for the best. Homeland Security Secretary [Janet Napolitano](#) repeatedly used the term "case-by-case" at a hearing on Thursday to describe how the agency would handle the applications.

And just to add to the drama, the unprecedented immigration program will also be subjected to a high degree of scrutiny from critics as it is being rolled out. No pressure, DHS.

The deferral program is the most significant development on the immigration front since Obama took office. Undocumented teenagers and young adults who lack papers now have a way to stay in the country legally, provided they meet the eligibility criteria. (They can't have criminal records, for example.) This is the administration's answer to the stalled Dream Act to grant legal status to those kids. The Dream Act is part of Obama's larger comprehensive immigration plan that would give qualified illegal immigrants a path to citizenship. He and Napolitano cannot win over Republicans, so DHS is hefting its own authority to give the "dreamers" some relief.

DHS will issue guidelines on Aug. 1 that will spell out how to apply and illustrate the kinds of documents that would prove an applicant's residency in the United States and other eligibility criteria, Napolitano said. School transcripts, residency records, and medical records will be among the papers that DHS adjudicators will examine.

There are a lot of logistical questions about DHS's program, and Napolitano attempted to answer some of them before the [House Judiciary Committee](#). Applicants' undocumented parents will not be eligible for the deferral program, she said. (The parents can apply for individual deferrals under separate existing programs, however.) There will be an application fee, as well as a very small chance for a waiver of that fee under extreme and compelling circumstances. DHS will be seeking help from the Justice Department to protect applicants from fraudsters who tell potential applicants that they need notaries and other unnecessary and costly services to apply for deferrals.

Napolitano's statements raise yet more questions that can only be answered as the agency begins to process applications.

Applicants will receive confirmation of their applications "within a short period," and their cases will be given a number that will allow them to track their progress through the system, Napolitano said. (Think UPS.) Those

who receive deferrals will be permitted to apply for papers that allow them to work in the United States, which will also be given out on a case-by-case basis.

Napolitano could not offer a number as to how many work permits would be given out, which irritated Immigration Subcommittee Chairman **Elton Gallegly**, R-Calif., who said the permits could take jobs away from Americans. "It could be a million," he said. "Don't know," Napolitano responded. "We shouldn't balance the American economy on the backs of the children who came here" at the behest of their undocumented parents," she added.

Napolitano emphasized, in sometimes heated exchanges with committee members, that the temporary deferrals of illegal immigrants will be decided individually. That means that there will be no clear-cut rules for determining who gets a deferral and who doesn't, a concept unsatisfying to congressional overseers and unsettling for applicants.

Committee Chairman **Lamar Smith**, R-Texas, worried that the people given deferrals would be put on a path to citizenship. Napolitano said they would not be, but she also said some teens that are given the deferrals could be given other visas under separate programs. "If you go down that road as I think you may be going, you will have to be prepared for consequences," Smith warned.

Napolitano replied that the factors that determine whether an undocumented immigrant is eligible for permanent residency are "independent and separate" of the new deferral program. Such is the nature of "prosecutorial discretion," the legal basis upon which DHS is acting.

Napolitano insisted that the program came from within DHS through its own decision-making process, without input from the White House. Napolitano has been firm since she took the helm of the agency that it has the authority to determine who it will prosecute and who it will not when it comes to illegal immigration. This administration has chosen to focus on criminals when it comes to immigration, which means that workplace raids are down while investigations of local jail houses are up. Deportations of pregnant mothers take a low priority, while drug dealers are given high priority.

The new deferral program is the logical extension of this prioritization, Napolitano said. "This is truly a development that we have been looking at over the last several years of how do we clear out the backlog of non-priority cases so we can focus on the criminals, repeat border crossers, and the violators," she said. The only hint that she gave that she sympathizes with the views of the immigration-reform advocates that danced in the streets when DHS made the announcement was in her firm statement that she will not rescind the program. "It is right under the law," she said.

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