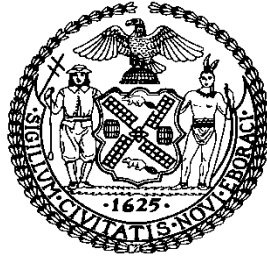


Committee Staff:

Committee on Immigration

Indiana Porta, Legislative Counsel

Muzna Ansari, Policy Analyst



THE COUNCIL OF THE CITY OF NEW YORK

COMMITTEE REPORT

Matt Gewolb, Legislative Director

Rachel Cordero, Deputy Director, Governmental Affairs Division

COMMITTEE ON IMMIGRATION

Hon. Carlos Menchaca, Chair

April 5, 2016

Proposed Res. No. 928-A: By Speaker (Melissa Mark-Viverito), and Council Members Menchaca, Chin, Lander, Mendez, Rodriguez, Wills, Van Bramer, and Cohen

Title: A Resolution calling on the United States Supreme Court to issue a decision in *United States v. Texas* that overturns the Fifth Circuit's ruling in *Texas v. United States*, and upholds the implementation of President Obama's expanded DACA and DAPA programs.

I. INTRODUCTION

On January 27, 2016, the Committee on Immigration, Chaired by Carlos Menchaca, held a public hearing to discuss Proposed Resolution No. 928-A calling on the United States Supreme Court to issue a decision in *United States v. Texas* that overturns the Fifth Circuit's ruling in *Texas v. United States*, and upholds the implementation of President Obama's expanded DACA and DAPA programs. Representatives from the New York City Mayor's Office for Immigrant Affairs, as well as advocates and other stakeholders testified in support of the resolution and the expanded DACA and DAPA programs.

Since the hearing, the United States Supreme Court has received legal briefs from the Obama administration, as well as from the State of Texas and 25 other states. Additionally, nearly 20 amici curiae briefs have been filed in support of the implementation of President Obama's 2014 executive action programs. Notably, the City of New York, along with 117 other municipalities is among the parties that filed briefs in support of the implementation of expanded DACA and DAPA programs.

II. BACKGROUND

On November 20, 2014, President Obama announced a series of Executive Orders that expanded previously implemented programs for temporary deportation relief, created new avenues for temporary deportation deferrals, and clarified already existing policies and immigration enforcement priorities.¹ Of the various executive orders issued that day, the expansion of the existing "Deferred Action for Childhood Arrivals" (DACA) program and creation of the "Deferred Action for Parents of American Citizens and Lawful Permanent Residents" (DAPA) program, would, arguably, have the most significant

¹ U.S. Citizenship and Immigration Services website, available at: <http://www.uscis.gov/immigrationaction>.

impact on immigrant communities given that estimates say between 3.9 and 5 million undocumented immigrants could qualify for temporary deportation relief and work authorization nation-wide.²

a. Expanded DACA

The initial DACA program, launched by President Obama in 2012, allowed certain youth who entered the U.S. prior to age 16, resided continuously in the U.S. since June 15, 2007 or before, and who are either in school, obtained a U.S. high school diploma or General Education Development certificate (“GED”), or have been honorably discharged from the U.S. Coast Guard or Armed Forces, and were under 31 years of age on June 15, 2012, to be eligible for a two year deferral of deportation and work authorization.³

President Obama’s 2014 plan expands DACA eligibility criteria to allow applicants of any age, not just those under 31 years of age on June 15, 2012, who met all other criteria to apply for deferred action and work authorization. Additionally, the order further expands eligibility criteria by moving the threshold date for continuous residence from June 15, 2007 to January 1, 2010 – thus reducing the number of years an applicant must have continuously lived in the U.S. to qualify. Finally, the order mandates that the duration of the grant of deferred action and work authorization be extended from two

² Krogstad, Jens Manuel. “Key facts about immigrants eligible for deportation relief under Obama’s expanded executive actions,” Pew Research Center, January 19, 2016, available at: <http://www.pewresearch.org/fact-tank/2016/01/19/key-facts-immigrants-obama-action/>.

³ U.S. Citizenship and Immigration Services Website, available at: <http://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-daca>.

years to three.⁴ Projections estimate that approximately 300,000 undocumented immigrants could qualify for relief through the expanded DACA program.⁵

b. DAPA

The new DAPA program would allow for parents of U.S. Citizens and Lawful Permanent Residents to request deferred action and employment authorization for a period of three years if they have lived in the U.S. continuously since January 1, 2010, pass required background checks and meet other eligibility criteria.⁶ Projections estimate that upwards of 3.5 million undocumented immigrant parents could qualify for relief through the DAPA program.⁷

III. LEGAL CHALLENGES TO DACA AND DAPA

In response and opposition to President Obama's 2014 administrative relief initiatives, the State of Texas, joined by 25 other states, filed a lawsuit against the Obama administration in federal district court in Brownsville, TX.⁸ The lawsuit claims that President Obama overstepped his constitutional authority with the instant executive actions and asserted that the proposed programs would place financial burdens on the state. Judge Andrew Hanen ruled in favor of the states and issued an injunction, which halted the implementation of the expanded DACA and new DAPA programs.⁹ The

⁴ U.S. Citizenship and Immigration Services website, available at: <http://www.uscis.gov/immigrationaction#1>.

⁵ Krogstad, Jens Manuel. "Key facts about immigrants eligible for deportation relief under Obama's expanded executive actions," Pew Research Center, January 19, 2016, available at: <http://www.pewresearch.org/fact-tank/2016/01/19/key-facts-immigrants-obama-action/>.

⁶ U.S. Citizenship and Immigration Services website, available at: <http://www.uscis.gov/immigrationaction#2>.

⁷ Krogstad, Jens Manuel. "Key facts about immigrants eligible for deportation relief under Obama's expanded executive actions," Pew Research Center, January 19, 2016, available at: <http://www.pewresearch.org/fact-tank/2016/01/19/key-facts-immigrants-obama-action/>.

⁸ American Immigration Council, "Understanding the Legal Challenges to Executive Action", available at, <http://www.immigrationpolicy.org/just-facts/understanding-legal-challenges-executive-action>

⁹ *Id.*

Obama Administration appealed both, the decision and the injunction, to the Fifth Circuit Court of Appeals but, ultimately, did not prevail and the injunction remains in place.¹⁰

The Obama administration filed a *writ of certiorari* with the United States Supreme Court asking that they review the lower court's decision. On January 19, 2016, the United States Supreme Court agreed to rule on the case during the current term which concludes in June 2016.¹¹

IV. PROPOSED RESOLUTION NO. 928-A

Proposed Resolution No. 928-A (hereinafter “the Resolution”) recognizes and supports the immigration executive orders issued by President Obama on November 20, 2014 and calls upon the United States Supreme Court to uphold the implementation of the expanded DACA and new DAPA programs.

The Resolution recognizes that the implementation of the expanded DACA program would allow undocumented immigrants, of any age, who entered prior to age 16, are currently enrolled in school or obtained a high school diploma or GED, or were honorably discharged from the U.S. Coast Guard or Armed Forces, and have lived in the U.S. continuously since January 1, 2010 to qualify for a three year deferral of deportation and work authorization.

The Resolution further recognizes that the implementation of the DAPA program would allow undocumented immigrant parents of U.S. Citizens or Lawful Permanent Residents, pass required background checks, and meet other eligibility criteria to qualify for a three year deferral of deportation and work authorization.

¹⁰ *Id.*

¹¹ *Id.*

The Resolution recognizes that the implementation of these programs was halted when the State of Texas, along with 25 other states, filed a lawsuit against the Obama administration in federal district court and received a favorable ruling and an injunction preventing the programs from moving forward. The Obama administration was unsuccessful in their appeal filed with the U.S. Court of Appeals for the Fifth Circuit and subsequently filed a request for review with the United States Supreme Court who, on January 19, 2016 decided to hear the case during the current term ending in June 2016.

Further, the Resolution acknowledges that the decision to support the 2014 immigration executive orders is timely as the programs could provide approximately 121,000 individuals in New York City with temporary relief from deportation and work authorization. Additionally, the decision is timely as the United States Supreme Court, on January 19, 2016, agreed to rule on the 2014 executive orders during the current term ending in June 2016.

The Resolution explains that the City acknowledges the significant cultural contributions of its immigrant communities and believes that the implementation of the executive action programs will significant benefit not just for countless undocumented immigrants and their families, who would no longer fear being separated, but for the nation as a whole.

Further, the resolution suggests that the Center for American Progress projects that the implementation of the 2014 administrative relief programs would increase the U.S. gross domestic product by 0.4 percent over ten years; equivalent to \$90 billion by 2024.

For all of these reasons, and in light of Congressional inaction on comprehensive immigration reform, the Resolution calls upon the United States Supreme Court to issue a decision in *United States v. Texas* that overturns the Fifth Circuit's ruling in *Texas v. United States*, and upholds the implementation of President Obama's expanded DACA and DAPA programs.

Proposed Res. No. 928-A

Resolution calling on the United States Supreme Court to issue a decision in *United States v. Texas* that overturns the Fifth Circuit's ruling in *Texas v. United States*, and upholds the implementation of President Obama's expanded DACA and DAPA programs.

By The Speaker (Council Member Mark-Viverito), Council Members Menchaca, Chin, Lander, Mendez, Rodriguez, Wills, Van Bramer, and Cohen

Whereas, On November 20, 2014, President Obama announced a series of executive orders on immigration, including an expanded Deferred Action for Childhood Arrivals (DACA) program and the new Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) program; and

Whereas, The original DACA program, established in 2012, allows individuals who were under the age of 31 as of June 15, 2012 and came to the United States as children under the age of 16, have lived in the United States continuously since June 15, 2007, and meet certain criteria, to request consideration for deferred action for a period of two years, subject to renewal; and

Whereas, Deferred action is a discretionary determination made by the United States Citizenship and Immigration Services ("USCIS") to defer removal action of an individual as an act of prosecutorial discretion; and

Whereas, Deferred action does not provide an individual with lawful or permanent immigration status, but approved applicants may receive a work permit; and

Whereas, In order to apply for DACA, individuals must meet certain prerequisites, including demonstrating that they are currently in school, have graduated or obtained a certificate of completion from high school, or have obtained a General Education Development certificate ("GED") while in the United States, or be an

honorably discharged veteran of the Coast Guard or Armed Forces of the United States;
and

Whereas, The expanded DACA program would allow individuals of any age who entered the United States before the age of 16, have lived in the United States continuously since January 1, 2010, and meet all other eligibility requirements to request deferred action and work authorization; and

Whereas, The expanded DACA program would extend the period of deferred action and work authorization from two to three years; and

Whereas, The new DAPA program would allow parents of U.S. Citizens and Lawful Permanent Residents who have lived in the United States continuously since January 1, 2010, pass required background checks, and meet certain criteria, to request deferred action and employment authorization for a period of three years, subject to renewal; and

Whereas, Reports estimate that under expanded DACA and DAPA, between four and five million undocumented immigrants would become eligible for deferred action;
and

Whereas, It is estimated that in New York City up to 121,000 individuals could become eligible for deferred action under the expanded DACA program and the new DAPA program; and

Whereas, In December of 2014, the State of Texas, along with 25 other states, filed a lawsuit against the Obama administration regarding these programs, which has stalled their launch; and

Whereas, In the lawsuit, Texas asserted that the President overstepped his constitutional and statutory authority in executive actions on immigration and that the proposed programs would place a financial burden on the state; and

Whereas, On February 16, 2015, Judge Andrew Hanen of the U.S. District Court in Brownsville, Texas issued a preliminary injunction, which temporarily halted the implementation of the expanded DACA and DAPA programs; and

Whereas, In response, the U.S. Department of Justice (“DOJ”) filed an appeal of the injunction to the U.S. Court of Appeals for the Fifth Circuit; and

Whereas, In November of 2015, nearly a year after the President announced the extended DACA and DAPA programs, the U.S. Court of Appeals for the Fifth Circuit affirmed the lower court’s decision and continued the preliminary injunction against the DAPA program and the expansion of the DACA program; and

Whereas, The Obama administration filed a petition with the Supreme Court requesting that it review the Fifth Circuit’s decision, with the goal of the Court reviewing the appeal during the current term, which is the final full Supreme Court term of President Obama’s presidency; and

Whereas, On January 19, 2016, the Supreme Court granted the Department of Justice’s request, and in *United States v. Texas* (No. 15-674) will review and rule on the Fifth Circuit’s decision during the current term ending in June 2016; and

Whereas, The expanded DACA and DAPA programs, if implemented, would greatly benefit not only millions of undocumented immigrants, but the nation as a whole; and

Whereas, The Center for American Progress projects that implementation of the President's administrative relief programs, such as expanded DACA and DAPA, would raise the level of U.S. gross domestic product by 0.4 percent after ten years, which is equivalent to an additional \$90 billion by 2024; and

Whereas, Beyond economic gains, immigrants contribute to the fabric and diversity of this nation, particularly in New York City, which has a long-standing history of welcoming and fostering growth among flourishing immigrant communities; and

Whereas, The expanded DACA and DAPA programs will preserve family units in immigrant communities and prevent working families from being unnecessarily separated; and

Whereas, During a time of Congressional inaction on comprehensive immigration reform, swift implementation of the President's expanded DACA and DAPA programs is vital to enhance the lives of millions of undocumented immigrants who contribute daily to this country; now, therefore, be it

Resolved, That the Council of the City of New York calls on the United States Supreme Court to issue a decision in *United States v. Texas* that overturns the Fifth Circuit's ruling in *Texas v. United States* and upholds the implementation of President Obama's expanded DACA and DAPA programs.

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