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The Obama Administration's November 2014 Immigration Initiatives: Questions and Answers (CRS Reports)

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On November 20, 2014, President Obama delivered a televised address wherein he broadly described the steps that his administration is taking to "fix" what he has repeatedly described as a "broken immigration system." Following the President's address, executive agencies made available intra-agency memoranda and fact sheets detailing specific actions that have already been taken, or will be taken in the future. These actions generally involve either border security, the current unlawfully present population, or future legal immigration. The most notable of these actions, for many commentators, are the initiatives to grant "deferred action"—one type of relief from removal—to some unlawfully present aliens who were brought to the United States as children and raised here, or who have children who are U.S. citizens or lawfully permanent resident (LPR) aliens. Previously, in June 2012, then Secretary of Homeland Security Janet Napolitano announced a program—commonly known as Deferred Action for Childhood Arrivals (DACA)—whereby unlawfully present aliens who had been brought to the United States as children and met other criteria could receive deferred action and, in many cases, employment authorization. The eligibility criteria for DACA expressly excluded unlawfully present aliens who were over 31 years of age, or who had entered the United States on or after June 15, 2007. However, aliens who are over 31 years of age, or entered between June 15, 2007, and January 1, 2010, could receive deferred action as part of the 2014 initiative. Similarly, unlawfully present aliens who have children who are U.S. citizens or LPRs could also receive deferred action and employment authorization pursuant to the November 2014 initiatives, provided they meet specified criteria. These criteria include "continuous residence" in the United States since before January 1, 2010; physical presence in the United States both on the date the initiative was announced and on the date when they request deferred action; and not being an enforcement priority (e.g., not a threat to national or border security). The announced executive actions—particularly the granting of deferred action and employment authorization to unlawfully present aliens—have revived debate about the President's discretionary authority over immigration like that which followed the announcement of DACA in 2012. In the case of DACA, some argued that the initiative violates the Take Care Clause of the U.S. Constitution, runs afoul of specific requirements found in the Immigration and Nationality Act (INA), or is inconsistent with historical precedents. Others, however, asserted that DACA involves a valid exercise of the executive's prosecutorial or enforcement discretion, is consistent with the INA, and has ample historical precedent. Similar arguments will likely be made as to the November 2014 actions, which affect a significantly larger number of aliens than DACA. Legal challenges to DACA have generally failed on standing grounds, because the plaintiffs bringing these challenges were not seen as the proper parties to seek judicial relief from a federal court. The one exception to this—the litigation in Crane v. Napolitano—resulted in the reviewing federal district court finding that DACA runs afoul of provisions in Section 235 of the INA which some assert require the executive to place unlawfully present aliens in removal proceedings. However, this same federal district court subsequently found that it lacked jurisdiction because the plaintiff immigration officers alleged that they faced discipline by their employer, DHS, if they refused to implement DACA, and such claims are within the jurisdiction of the Merit Systems Protection Board (MSPB), not the court.

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