


**Immigration 101:  
A General Overview**



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This presentation is for informational purposes only and should not be considered legal advice.

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**Roadmap**

1. Overview of Existing Immigration Law
2. Why can't undocumented immigrants just "get legal?"
3. Executive Orders
4. Future of Immigration Law and Enforcement

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**Nonimmigrant Visa Categories**

- Visitor Visas: B1/B2, Visa Waiver
- Work visas: H, I, L, E, O, P, Q, R
- Government visas: A, G, C
- Student visas: F, J, M, and OPT
- TN for Canada and Mexico
- S, T, U for victims of violent crimes and VAWA for victims of domestic violence
- K fiancé visas

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## Immigrant Visa Categories

- Lawful Permanent Resident (LPR) a.k.a. “green card”
- Immediate relatives, family-based and employment-based preference categories
- Employment Authorization Document (EAD) and Advance Parole are ancillary benefits
- Asylee or Refugee
- Naturalization to become US citizen after 3-5 years as LPR

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## Undocumented Immigrants: Two Types

- Overstay
- Entry Without Inspection (EWI)

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## Immediate relative (IR) of a US citizen

- Only an immediate relative can adjust status in the U.S. if visa **overstay**
- Immediate relative is defined as:
  - Children, spouses and parents of USC
  - If applying for a parent, USC son or daughter must be at least 21 years old
  - If applying for a child, child must be under 21 and unmarried

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### EWI Immediate Relative

- Cannot adjust status in the U.S.
- Must leave the U.S. and apply for a waiver of the 10 year bar and prove extreme hardship to a U.S. citizen or lawful permanent resident spouse or parent
- But 212(a)(9)(c) a.k.a. "9C"
- Unless 245(i)
  - April 30, 2001, or before

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### Family-Based Preference Categories for Permanent Residency

- First: Unmarried sons and daughters of US citizens (over 21)
- Second: Spouses and children, unmarried sons and daughters of permanent residents
- Third: Married sons and daughters of US citizens (over 21)
- Fourth: Brothers and sisters of adult citizens

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### Employment-Based Preference Categories for Permanent Residency

- First: Extraordinary Ability, Outstanding Professors/Researchers, Multinational Executives or Managers
- Second: Advanced Degree or Exceptional Ability
- Third: Skilled Workers, Professionals and other
- Fourth: Special Immigrants, Religious Workers
- Fifth: Employment Creation (Investors)

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### So, why can't they just "get legal?"

- **Backlogs** of 5-20 years for family and employment based permanent immigration categories (see U.S. Department of State Visa Bulletin)
- **EWI** ineligible for adjustment of status in the US
- **3 and 10 year bars for unlawful presence**  
...can't stay and can't go
- **9(C) Illegal reentry** after unlawful presence of at least one year or prior deportation = 10 year bar with no waiver
- Lack of employment-based nonimmigrant visas (**H-1B 85,000 cap**, investor visa threshold, lack of lower skilled and labor visas)

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### What happens when a person is placed in removal proceedings?

- Certain criminal history or prior removal order=no hearing/expedited removal
- Can't turn yourself in
- Released on own recognizance, post bond, or mandatory custody
- Right to an attorney and a hearing before Immigration Judge in most cases
- Deportation/removal is administrative proceeding before a federal Immigration Judge (IJ)
- Backlog for hearing
- IJ decides whether to grant **relief from removal**, voluntary departure or removed
- Uptick in detentions of easy targets

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### Lack of immigration status leads to...

- Ineligible for Social Security number (but may get an Individual Tax ID Number or ITIN)
- Ineligible for driver's license or state ID card
- Decreased access to college and ineligible for state or federal financial aid
- Limited healthcare coverage (ER only)
- Ineligible for public assistance and unemployment benefits
- Mixed status families: one family member is stuck
- Perceived lack of legal remedies
- Impact on emotional and mental health

12

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## Public Benefits and Taxes

- Anyone with SSN pays into SS
- Anyone with ITIN pays taxes
- Anyone who owns property pays property taxes
- DACA working lawfully; paying taxes
- USCIS Affidavit of Support and Filing Fees

13

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## Executive Orders and DACA

- EO is not a change in law
- Constitutionality of DACA and Executive Orders remains **unresolved**
- Executive branch may exercise prosecutorial discretion to defer removal action or prioritize certain cases, but to what extent?
- Unresolved legal question is whether President(s) exceeded authority

14

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## Trump EOs

- January 25 interior and border enforcement
- January 27 travel ban 1.0
- March 6 travel ban 2.0
- October 18 travel ban 3.0: Syria, Libya, Iran, Yemen, Chad, Somalia, added *North Korea*, *Venezuela*
- Impact on international students, faculty and staff?

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## Obama EO for Deferred Action for Childhood Arrivals (DACA)

### Requirements:

- Entered U.S. before 16;
- 5 years of continuous residence and physical presence in the U.S. since June 15, 2007, and on June 15, 2012;
- Enrollment in or graduation from high school or other qualifying educational program or obtained GED;
- No convictions for felonies, multiple misdemeanors, or significant misdemeanors; and
- At least 15 at time of filing and not older than 30 on June 15, 2012.

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## DACA Statistics

- Total close to 800,000 approved in U.S.
- Indiana ranks 16th with ~10,000 approved

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## What does DACA do?

- Two year employment authorization
  - Can get SSN and driver's license
  - Renewable biannually
- Two year grant of prosecutorial discretion to defer removal action
- "Lawfully present" but no "lawful status"

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### What does DACA not do?

- Not a path to permanent residence or U.S. citizenship
- No “lawful status” in the U.S.
- Not eligible for state or federal financial aid or governmental assistance

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### Future of DACA uncertain

- 16 states challenging DACA rescission and two courts have ruled that applicants may renew and possibly submit new applications
- Over 700 university presidents and chancellors, including **19 from Indiana**, signed the Pomona College letter supporting the continuation of DACA and protection for DACA students

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### What Can You Do?

- Listen, learn, share, speak out, write letters, volunteer, be an advocate
- National resources
  - American Immigration Lawyers Association
  - National Immigration Forum
  - National Immigration Law Center
- Local resources
  - Neighborhood Christian Legal Clinic
  - Immigrant Welcome Center
  - Coalition for Our Immigrant Neighbors
  - Indiana Latino Institute

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## Maira's Story



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## Questions?

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