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Questions and Answers About President Obama's August 18, 2011 Immigration Enforcement Policy Announcement

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We are receiving many calls for information about President Obama's August 18, 2011 immigration enforcement policy announcement. It is good news to hear that the government wants to give families the opportunity to stay together. But there is much confusion about what this new policy actually means for undocumented immigrants and their families, and how it will actually be implemented by the Department of Homeland Security. In order to help community organizations and members learn more about the policy, I have written a few Questions & Answers that should help us understand better what the policy means thus far. I encourage you to regularly check our website (www.hvlawgroup.com), Twitter, and Facebook accounts for more documents and updates.

Q: *Is this a new law? Is this an amnesty for undocumented immigrants?*

A: No. This is not a new law. There is no new immigration law. There is no amnesty. This is just a policy statement, meaning it is giving guidance to Immigration and Customs Enforcement ("ICE") officers and attorneys on how to deal with undocumented immigrants they encounter, arrest, or put in removal proceedings (sometimes called "deportation proceedings").

Q: *A local company is telling me they can get me a greencard because of what Obama said. Is that true?*

A: No. Do not trust or pay anyone who tells you this. Again, there is no new immigration law. This policy does not give any status to undocumented immigrants. There are no forms to fill out, and no penalty or fee to pay. Never seek advice from "notarios" or "immigration consultants." Only a licensed attorney can give you immigration advice. Even then, because immigration law is extremely complex, I strongly recommend that you seek advice from an attorney who focuses his or her practice solely on immigration law and is in good standing with the American Immigration Lawyers Association ("AILA").

Q: *Should I go to the nearest office of the U.S. Citizenship & Immigration Service (“USCIS”) to sign up?*

A: No. Do NOT go to USCIS or ICE or any Immigration office. As of today, there is no means of “signing up,” no form, and no fee or penalty to be paid. There is nothing for you to gain by going to a USCIS office. If you come into contact with USCIS or ICE, they can still arrest you, detain you, and even deport you.

Q: *I heard that I can get a work card from the new policy. How do I get it?*

A: A work card, also known as an “Employment Authorization Document” or “EAD,” is usually granted because of a person’s status or an expectation of status. I am aware that this was mentioned in the President’s message about the new policy. However, as of today, there is no new law, regulation, or policy that will give a work card to undocumented immigrants, unless they already qualified for one.

Q: *Can an ICE officer still arrest me?*

A: Yes. This new policy only asserts that ICE agents should focus their efforts on finding and arresting criminal immigrants and persons who are a security threat. In order to focus on criminals, it encourages ICE agents to “use their discretion” when they are making enforcement decisions, like whether to make an arrest, whether to put an immigrant into Removal Proceedings before the Immigration Judge, or whether to actually deport an undocumented immigrant to their home country. However, that doesn’t mean they can’t, or won’t, arrest you or deport you.

Q: *What is “discretion?”*

A: “Discretion” has been described by ICE as the authority of a law enforcement officer or agency to decide whether, and to what degree, to enforce the law in a particular case. For example, if an ICE agent is looking for a criminal, he doesn’t have to arrest an undocumented immigrant he just happens to meet in the same neighborhood. He can use his discretion to let the harmless immigrant go. Or another example: when an undocumented immigrant has been caught by ICE and ordered to see the Immigration Judge for removal proceedings, ICE may use its discretion to ask the judge to “administratively close” the case (see below for more on this topic), so they don’t have to go back to court. ICE officers and attorneys have always had this discretion, but the new policy encourages them to focus more on the criminals and persons who are a security threat.

Q: *What if I am already in Removal Proceedings and have to go see the Immigration Judge?*

A: This new policy gives ICE the ability to “administratively close” some cases. Alternatively, they could ask the Immigration Judge to terminate (“stop”) the removal proceedings. Not every undocumented immigrant’s case will qualify.

Q: *What does “administratively close” mean? If my case is closed, can I get a work card?*

A: When a case is “administratively closed,” it means that the case is no longer actively on the Court’s calendar, and nothing further will happen unless and until the Court, ICE, or the undocumented immigrant asks for the case to be “re-calendared.”

At this time, there is no way to get a work card just because your case has been administratively closed. However, an undocumented immigrant may be able to get a work card based on certain documents they have submitted to the Court, like an Adjustment of Status application or an Application for Cancellation of Removal.

Q: *What factors will ICE consider in exercising their discretion?*

A: So far, according to several sources, the following are some of the factors ICE may consider:

- the undocumented immigrant’s length of presence in the United States;
- the circumstances of the undocumented immigrant’s arrival in the United States, particularly if the undocumented immigrant came to the United States as a young child;
- the undocumented immigrant’s pursuit of education in the United States, with particular consideration given to those who have graduated from a U.S. high school or have successfully pursued or are pursuing a college or advanced degree at a legitimate institution;
- whether the undocumented immigrant, or his or her immediate relative, has served in the U.S. military, reserves, or national guard;
- the undocumented immigrant’s criminal history, including arrests, prior convictions, or outstanding arrest warrants;
- the undocumented immigrant’s ties and contributions to the community, including family relationships;
- the undocumented immigrant’s age, with particular consideration given to minors and the elderly;

- whether the undocumented immigrant has a U.S. citizen or permanent resident spouse, child, or parent;
- whether the undocumented immigrant has a mental or physical disability, or is the primary caretaker of a person with a seriously ill relative;
- whether the undocumented immigrant or their spouse is pregnant or nursing.
- whether the undocumented immigrant is a victim of crime

This is not a complete list, and ultimately we don't know how ICE officers and attorneys will choose to balance these and other factors as they exercise their discretion. Remember, the new policy *encourages* ICE officers and attorneys to use their discretion; it doesn't *force* them to do so. An ICE officer or attorney can always exercise their discretion to decide against helping the undocumented immigrant.

Q: *If I fit in one of the above categories, can I get a greencard, or a work card?*

A: No. It doesn't matter if your exact situation is described in one of the above categories. This new policy does not grant greencards or work cards at this time. It just means that ICE officers and attorneys can consider the above factors and may exercise their discretion to allow you to stay in the United States.

Q: *What if I don't fit into one of the above categories?*

A: Talk to us. As attorneys, it is our job to advocate and argue for you. We may be able to argue that you fit you into a category. Or we may even argue that there should be other categories of undocumented immigrants who should be included in this policy.

Q: *I have been arrested before. Could ICE still exercise its discretion and allow me to stay in the United States?*

A: It depends. Some crimes, like the Pennsylvania crimes of disorderly conduct or simple assault, may not harm your chances. And even with a crime you may have powerful positive factors, such as strong family ties or a history of service to the community. As the new policy states, ICE will consider each situation on a case-by-case basis. A skillful and experienced immigration attorney can explain to you how your arrest or conviction may affect you under the new policy. In some cases, we may advise our clients to wait a few months to see how ICE is actually implementing the new policy, or even wait to see if a new policy is issued that may be more beneficial.

Q: *What if an Immigration Judge already ordered me to be deported?*

A: The new policy gives ICE the ability to consider relief for undocumented immigrants who have a deportation order. ICE has the ability to grant “deferred action,” meaning you can remain in the United States even if you have been ordered deported. ICE can also join in a “joint motion” to ask the Immigration Judge to reopen your case. So even if you have a final order, ICE may allow you to stay. In fact, if you have a final order of removal and ICE exercises its discretion so you can remain, you may qualify for a work card so long as you comply with any conditions of your release.

Q: *Do I need an attorney?*

A: Yes, you do, but it is not required by the law. Attorneys are professional advocates; we use our knowledge of the facts of your situation and the law to fight for you and your family. It is usually not enough to just ask ICE for a “favorable exercise of discretion.” An experienced immigration attorney can ask for exactly what discretion you need and argue why it is appropriate in your case. We also prepare documents to persuasively highlight important facts such as your family, your job, and your history of good works in the community. As advocates, we prepare strong arguments and supporting documentation to show ICE why they ought to give you a chance to remain in the United States.

I hope that these Questions and Answers have been useful to you. Please understand that these answers are provided solely for informational purposes. They are not legal advice. Immigration law is very complex, so to obtain legal advice you must speak to one of our attorneys, so we can apply the law to your specific circumstances. To schedule a consultation, contact us by phone (610-664-6271 for Philadelphia and New Jersey, or 302-225-2734 for Delaware and Maryland), or email to info@hvlawgroup.com. You can learn more about our firm at www.hvlawgroup.com.

W. John Yahya Vandenberg practices immigration law in the Philadelphia area. He is regularly invited to speak on immigration law topics for professional and community groups. Mr. Vandenberg was a Speaker at both the 2010 and 2011 Annual Conferences of the American Immigration Lawyers Association – Philadelphia Chapter. He addressed difficult family-based immigration cases and removal proceedings in a detained setting, respectively. He has written on immigration matters for Fun Times, a magazine for the African diaspora community, Jornal dos Imigrantes, a Brazilian newspaper, and L'Informateur, a Haitian newspaper. He has given immigration law presentations at mosques, churches, and community organizations in Pennsylvania, New Jersey, and Delaware. He is a Board Member of the African Family Health Organization in Philadelphia, and a member in good standing of the American Immigration Lawyers Association.