

## White House Framework on Immigration: A Breakdown

On Thursday January 26, 2018, the White House released a framework for what it believes can be the basis of a bipartisan deal on immigration that would address the status of DACA recipients and other DREAMers, while also providing resources for the president's priority of a border wall and other enforcement measures as well as eliminating the diversity visa lottery and ending many categories of family-based immigration. Many of these proposals have been part of other bills or under consideration during this debate. Without additional details, it is hard to be certain how the provisions of the framework would be implemented in legislation. This document provides breakdown of the proposals as released so far and what they might mean in practice.

### Border Security:

- The framework explicitly links the removal of illegal entrants as well as the prevention of illegal entry as necessary for "border security." While much of the debate has centered on the "wall," the new framework also includes other changes that impact detention and removal and addresses certain interior enforcement priorities of the administration.
  - Border Wall: The proposal would create a \$25 billion "trust fund" for a "border wall system," ports of entry/exit, and northern border improvements.
    - The "trust fund" idea is new, and the president has said that the fund would be used to fund future border enforcement needs along with the wall.
      - ◆ This idea bridges between "authorization" of funding, in which Congress sets out a maximum budgetary amount that potentially could be spent on a program and "appropriations" in which the money is allocated for spending.
      - ◆ A "trust fund" is a special account set up by Congress in the U.S. Treasury into which funds would be deposited (e.g. appropriations, border fees, or other revenues) from which expenditures for border security would be made. The proposal does not specify who would be authorized to make expenditures out of the trust fund if established. For example, would those expenditures be subject to further appropriations from Congress or does the Executive have complete authority over the expenditures?
    - The proposal for the first time acknowledges infrastructure needs at the ports of entry, and by adding the word "exit," suggests the desire to create a biometric "entry-exit system" required in statute to deter and track visa overstays.
    - The proposal also addresses needs at the northern U.S.-Canada border, something not previously addressed in this debate.

- Personnel: the framework proposes appropriation of funds to hire an unspecified number of additional personnel, including unspecified “DHS personnel,” ICE attorneys, DOJ immigration judges, prosecutors (presumably DOJ prosecutors) and other “law enforcement professionals.”
  - The president previously in his early executive orders specified the addition of 5,000 Border Patrol agents, and 10,000 ICE enforcement officers. This proposal is significantly broader since it includes Department of Homeland Security and Department of Justice personnel, and other unspecified law enforcement professionals.
  - This change could indicate some flexibility on the part of the administration as to numbers, but is clear about seeking personnel increases across the immigration enforcement system, not just front-line agents and officers, and explicitly includes personnel primarily involved in interior enforcement, not just border staff.
  - It also includes hiring and pay reforms for recruitment and retention, which has been a key problem in obtaining personnel for Customs and Border Protection positions along the Southern border.
    - ◆ Past administration proposals in this area have included reducing hiring requirements for polygraph tests, loosening requirements for hiring veterans and increasing base and journey-level pay, as well as additional incentive pay for postings in more remote or less-desirable border areas.
- Detention and Removal; Minors at the Border: Proposes ending “statutorily-imposed catch and release” and “closing legal loopholes.” Also proposes ensuring the “prompt removal of illegal border-crossers regardless of country of origin.”
  - These phrases could refer to changes in how unaccompanied minors are treated at the border, and ending court settlement agreements that create limits on the detention of minors, as well as changing the treatment of minors from non-contiguous territory under the Trafficking Victims Protection Reauthorization Act (TVPRA).
    - ◆ The government currently operates under the requirements of a settlement agreement from the Clinton Administration that limits its ability to detain minors, or family units with minors. The administration has previously criticized this agreement and asked Congress to overturn it.
      - The *Flores* settlement agreement was first entered by the Clinton Administration in 1997 after it was sued over the

- conditions of detention of minors, and would only release them to parents, close relatives or legal guardians.
- The case went all the way to the Supreme Court, after which the government entered into a stipulated settlement that allowed detention only in facilities that meet state regulations for the housing of dependent children, and release to other responsible adults in the United States.
  - ◆ Under the TVPRA, unaccompanied minors who enter the United States but are not from contiguous countries (Mexico or Canada) cannot be returned to those countries, but must be placed into removal proceedings in the interior of the United States for the chance to make a case for asylum, trafficking or other relief.
  - ◆ Due to the Flores agreement, many of these minors are released in the United States into the custody of individuals here, and may not appear for their court hearings.
    - Advocates for children and immigrants believe these requirements protect the minor children from significant harm and distress in detention and allow for full due process for the most vulnerable.
    - Enforcement advocates argue that smugglers and family members are exploiting this system to smuggle minors, many of whom are older teenagers, into the country and giving them the greatest possible chance to avoid subsequent deportation, when the majority do not have viable legal claims to stay.
  - *Interior Enforcement*: the framework proposes to ensure the detention and removal of criminal immigrants, gang members, violent offenders and aggravated felons, deterring visa overstays with expedited removal, and instating immigration court reforms to improve efficiency and prevent fraud and abuse.
    - These provisions relate almost exclusively to enforcement in the interior of the United States.
    - The proposal would increase the detention of those apprehended in the interior of the United States and the avenues for removal of these individuals without an immigration court proceeding by expanding the definitions of criminality eligible for removal, the definitions of aggravated felony for purposes of immigration removal, and authorizing removal for gang membership, without regard to actual criminal activity by the individual.
    - Immigration court reforms proposed by the Department of Justice have included strict schedules for immigration court hearings, regardless of the

availability of documents or representation, and creating “quotas” of case completions for immigration judges to meet.

- The current administration has also overturned the Obama-era enforcement prioritization of serious criminals, and has stated that “all unauthorized immigrants are priorities for removal” at any time.
  - ◆ Immigration advocates argue that these changes reduce the due process available to immigrants, result in deportations for more minor offenses and do not take into consideration any mitigating circumstances, such as age of the offense, current efforts to be law abiding, U.S. family or community relationships.
  - ◆ Enforcement advocates say these measures are necessary to streamline the immigration enforcement system, prevent immigrants from dragging out their deportation, and close legal loopholes that allow immigrants to avoid deportation for criminal behavior.
- Previous Administration documents outlining its immigration priorities have included proposals for making all visa overstayers, regardless of category, subject to removal from the United States without an immigration hearing, as is the current case with Visa Waiver entrants (who are admitted only as business persons and tourists).
  - ◆ A legislative proposal in the House introduced by Rep. Bob Goodlatte would also make overstaying a visa a misdemeanor crime. Currently, it is only a civil violation.

## DACA Legalization:

- The framework provides legal status to DACA recipients and other “DACA-eligible” immigrants by “adjusting the time frame” to encompass approximately 1.8 million individuals.
  - Legalization Requirements: It is unclear what “adjusting the time frame” would mean. It may include moving the date of first arrival forward, or allowing those who entered before the age of 18, or lifting the upper-age limit for application that was imposed on the original Obama DACA program.
    - For comparison, the DREAM Act, which makes all of these changes to the DACA requirements, is estimated to encompass 1.7 to 2.1 million individuals.
    - The proposal indicates the status is “subject to revocation for criminal conduct, public safety or national security concerns, public charge, fraud, etc.”
      - Since these criteria are not specified, it is unclear how these might differ from the DACA program or other legislative proposals.
      - Most bills introduced providing relief for this population require a showing of work, education or military service.

- “Public charge” is a ground of inadmissibility under the Immigration and Nationality Act that requires one to show that they have enough resources to support themselves without government assistance before entering the country. There is no precise definition of what constitutes public charge in regulation.
  - Rep. Goodlatte’s bill, the “Securing America’s Future Act,” includes what might be considered a public charge requirement for DACA individuals. It would require recipients of a three-year renewable temporary status to maintain an income at 125% of the poverty level or risk losing status.
- *Path to Citizenship*: The proposal would provide a “10-12” year path to citizenship with requirements for “work, education and good moral character.”
  - Under current law, most green card holders must wait at least 5 years after obtaining their green card before applying for citizenship.
  - It is unclear if the proposal includes this 5-year green card status within the 10 to 12-year pathway.
  - Different current legislative proposals offer anywhere from an 8-year (DREAM Act) to a 12-year (SUCCEED Act) potential path to citizenship.
    - The bipartisan group working with Senators Graham and Durbin had a similar timeframe, with a reported a 12-year path to citizenship, with availability of a 10-year path for those that had previously held DACA status.

## Family Immigration:

- *Nuclear Family Immigration*: While the proposal does not use the term “chain migration” used by the President and others, it eliminates all categories of family-sponsored immigration **except for the spouses and minor children of U.S. citizens and green card holders**.
  - The specific categories of sponsorship that would be eliminated are:
    - Parents of United States citizens
    - Unmarried Adult Children (over 21) of U.S. citizens
    - Unmarried Adult Children (over 21) of Permanent Residents
    - Married adult children of U.S. citizens (and their spouses and minor children)
    - Siblings of U.S. citizens (and their spouses and minor children)
  - Currently, the spouses and minor children of U.S. citizens are not subject to any annual caps on immigration, but the spouses and children of green card holders are. The proposal does not specify whether that framework (capped vs. uncapped) would continue, or whether the spouse and children of green card holders would now also be exempt from the cap.

- A larger four-page proposal previously circulated by DHS would also propose to change the definition of a “minor child” to an individual younger than 18. Current immigration law has children “aging out” at age 21. This change would reduce family immigration by some 20,000 individuals per year by some estimates.
- The proposal would apply these changes to prospective new immigrants, and would allow immigrants who are already “in line” in these categories to immigrate by processing the so-called “backlog.”
  - It is unclear whether this means that the existing annual caps on these categories, which total to approximately 280,000 visas each year, would continue until all of the “backlog” is cleared, which could be 15 to 20 years or more by some estimates; or
  - Whether the caps would be zeroed out and under another proposal in the framework, the visas from the terminated Diversity Lottery would be reallocated to clearing the backlog, which would reduce annual admissions in these categories to approximately 27,000 annually and could take over 100 years to clear the “backlog.”
- [Some analysts](#) estimate that these changes (and the elimination of the Diversity Lottery) would reduce legal immigration to the United States by 44 percent.

### Diversity Lottery:

- Proposal would eliminate this category and repurpose its 55,000 green cards each year to other immigration categories.
  - *National Interest*: The framework asserts the program is “riddled with fraud and abuse and does not serve the national interest.”
    - The White House release states that the program “selects individuals...without regard to skills, merit, or public safety.”
      - Under current law, to be admitted to the United States under this category, the individual must have the equivalent of a High School diploma and two years of skilled work experience to qualify for the visa. For many countries in the lottery, this factor limits eligibility to only the higher skilled of the population.
      - Individuals selected in the lottery must meet all of the same criteria to be admitted to the United State as any other visa applicant, including meeting criminal and national security background checks, health screenings, showing they will not become a public charge and other grounds.
      - Only after meeting this set of requirements will they be issued a visa to come to the United States.

- Reallocation of Visas: The framework proposes to reallocate the 55,000 diversity visas each year to reduce the family-based and “high-skilled” green card backlog.
  - As stated above, depending on how this reallocation is handled, it may take family-based immigrants longer to immigrate under this proposal than under current law.
  - The president has previously proposed a “merit-based immigration system” which might include changes to employment or economic based immigration categories, but the current proposal does not seem to address those changes.
  - The proposal does not define which employment-based immigration categories it considers “high-skilled.”
    - Currently there are no backlogs in the “highest” category of employment-based green cards, for individuals of “extraordinary ability.”
    - The only countries with backlogs in the category for advanced degree holders or individuals of “exceptional ability” are India and China, which currently have waiting times of approximately 4 to 10 years.
    - The category for those holding a bachelor’s degree or equivalent has backlogs for China, India and the Philippines only.
    - The visas available for those with less than a bachelor’s degree is likewise backlogged only for China, India and the Philippines.
    - The other categories of employment based immigration include categories for special immigrants, religious workers and investors. It is unclear if these categories would be considered “High-skilled” under the administration’s framework.