Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

June 15, 2017

MEMORANDUM FOR THE PRESIDENT

THROUGH: Stephen Miller
Assistant to the President and Senior Advisor to the President for Policy

FROM: John F. Kelly
Secretary

CC: Jeff Sessions
Attorney General

SUBJECT: Rescinding Policy Providing for Deferred Action for Parents of Americans and Lawful Permanent Residents ("DAPA")

After consultation with Attorney General Sessions, I have decided to rescind the November 20, 2014 Department of Homeland Security ("DHS") Memorandum that sets forth the policy providing for Deferred Action for Parents of Americans and Lawful Permanent Residents ("DAPA"). This memorandum describes the process my predecessor used to put this policy in place, describes the subsequent litigation halting its implementation, and explains my decision to rescind the policy. During the last Administration the State of Texas sued to halt the implementation of the November 20, 2014 Memorandum, which will be the subject of a court filing scheduled for June 15th.

On November 20, 2014, former Secretary of Homeland Security Jeh Johnson issued a memorandum directing U.S. Citizenship and Immigration Services ("USCIS") "to establish a process, similar to Deferred Action for Childhood Arrivals ("DACA"), for exercising prosecutorial discretion through the use of deferred action, on a case-by-case basis," to certain aliens who have "a son or daughter who is a U.S. citizen or lawful permanent resident." This policy was named Deferred Action for Parents of Americans and Lawful Permanent Residents ("DAPA"). This policy—if implemented—would have allowed millions of illegal immigrants to remain in the United States and to receive authorizations to work.

To request consideration for deferred action under the DAPA policy, the alien must have satisfied the following criteria: (1) as of November 20, 2014, be the parent of a U.S. citizen or lawful permanent resident; (2) have continuously resided here since before January 1, 2010; (3) have been physically present here on November 20, 2014, and when applying for relief; (4) have no lawful immigration status on that date; (5) not fall within the Secretary's enforcement priorities; and (6) "present no other factors that, in the exercise of discretion, make[ ] the grant of

deferred action inappropriate." The Memorandum also directed USCIS to expand the coverage criteria under the 2012 DACA policy to encompass aliens with a wider range of ages and arrival dates, and to lengthen the period of deferred action and work authorization from two years to three ("Expanded DACA").

Historically, deferred action—which has no explicit statutory authorization—has been granted as a discretionary exercise of prosecutorial discretion in limited cases, and should be employed only on an individual case-by-case basis. Although deferred action does not confer a lawful immigration status, current regulations allow the recipient to apply for employment authorization if the recipient can demonstrate "economic necessity." Deferred action also tolls, for the designated period, the accrual of "unlawful presence" in the United States for certain immigration purposes.

The DAPA policy, when issued, was highly controversial and viewed by many as an unlawful exercise of immigration authority. Federal courts halted the policy before it was implemented. Twenty-six states led by Texas challenged the policies announced in the November 20, 2014 memorandum in the U.S. District Court for the Southern District of Texas.

In an order issued on February 16, 2015, the district court preliminarily enjoined the policies nationwide on the ground that the plaintiff states were likely to succeed on their claim that DHS violated the Administrative Procedure Act by failing to comply with notice-and-comment rulemaking requirements. *Texas v. United States*, 86 F. Supp. 3d 591 (S.D. Tex. 2015). The Fifth Circuit Court of Appeals affirmed, holding that Texas had standing, demonstrated a substantial likelihood of success on the merits of its APA claims, and satisfied the other requirements for a preliminary injunction. *Texas v. United States*, 809 F.3d 134 (5th Cir. 2015). The Supreme Court affirmed the Fifth Circuit's ruling by equally divided vote (4-4) and did not issue a substantive opinion. *United States v. Texas*, 136 S. Ct. 2271 (2016) (per curiam).

The litigation remains pending before the district court.

I have considered a number of factors, including the preliminary nationwide injunction in this matter, the ongoing litigation, the fact that DAPA never took effect, and our new immigration enforcement priorities. After consulting with the Attorney General, and in the exercise of my discretion in establishing national immigration enforcement policies and priorities, I have decided to rescind the November 20, 2014 memorandum. Because these policies were issued by Secretarial memorandum, I will rescind them by a superseding Secretarial memorandum. Regulations are not required.

This rescission will not affect the terms of the original DACA program.
DHS will coordinate the rescission with the Department of Justice, including with respect to the ongoing litigation. DHS will also provide appropriate notification to relevant congressional committees.