Deferred action topics: A review of the literature

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This is assembled from numerous NGO and academic studies of past legalization/deferred action, and the contents reflect the sources (available by request to the email above). Suggestions for improvement are welcome. Focus suggestions on additions or nuances that can make this better, not points with which you disagree—this is simply a compilation from sources.

Analyze all aspects of the program

* Responses below will vary according to specifics of program(s)
* Dates (eg., residence in US, application)
* Paths to deferred action
* Documentation
* English and civics, tax assistance—will these be relevant?

Develop comprehensive plans for action based on that analysis

What will happen with the following?

* Narrow the broad definition of "repeat offenders" and "immigration fugitives.". Right now, the federal government says that anyone who's been deported and has reentered the US illegally — even if that happened a decade ago — is a "repeat offender" who's a priority for deportation. And immigrants with deportation orders who are still in the country are considered "fugitives" — even if they don't know anything about the deportation order.

Agency that implements the action

* CIS? ICE?
* Develop contacts/relations (cooperation between agencies and immigrant advocacy groups that traditionally had been adversaries).
* Monitor officer decisions; educating and pushing them; keep after them on issues of implementation & discretion

Potential problems on the government side:

* incomplete and unclear administrative and operational structures, delayed regulations, insufficient outreach and public information, inadequate training, and inconsistencies in decision-making that resulted in litigation.

Assessing regional capacity

* Assessing local capacity around outreach, application assistance, full legal assistance,
* Estimate of the local capacity provided by different kinds of non-profit and government organizations. Information on local capacity should be collected, shared, and mapped-- databases and maps of these organizations in each community. According to the types and levels of service provided by different organizations.
* Organizations range in their capability and capacity to provide community outreach, application assistance, and complex legal work.

Heightened coordination and collaboration crucial

* Avoid the gaps in services, lack of resources in many nonprofits
* Efforts should be made to bring in organizations and "non-traditional" groups that may not have expertise in immigration law, but are trusted within communities.
* Organizations with only basic screening capacity could be of assistance by helping channel more complex cases to private attorneys or to federally-recognized charitable organizations with attorneys or with accredited nonattorneys who can provide legal assistance.
* Despite the general sense that many notarios can be ill-informed and sometimes ill-intentioned, it may nonetheless be possible that some notaries could become partners and points of contact and screening. Yet participants emphasized that vetting mechanisms for these and other kinds of providers need to be in place

Key strategic decision for existing service providers

* Put aside other work and maintain a laser focus on deferred action or
* Try to continue other, valuable work. People in removal proceedings, asylum and T visas and U visas.

Application fees (all CIS costs by law must be covered by user fees)

* Fee waivers

Fees as barriers

* Inability to pay the application fees (especially daunting if someone has several eligible family members), the fees add up quickly –particularly on top of the cost of paying any outstanding fines and taxes, accessing and copying documents, traveling to the providers helping with applications, etc.
* Fund to pay fees/assist pay fees for low income

Documentation issues

* Non-profits need to get/provide training about how individuals can prepare.

Family relationship proof

* Mexican Consul about helping to translate documents and help people get Mexican identity cards. Get a birth certificate from home; get it translated

Continuous presence requirement

* Exact groundrules (length of time, documentation rules)
* Documentation strategies (kinds of documents that work, how to deal with gaps, agency discretion, etc.)

Develop these early so that can advise clients

* Key allies in documentation e.g., school districts, churches

Criminal background check; waivers of past immigration issues

* Exact groundrules—must know
* Fear of, as barrier… overcome hesitation to apply in appropriate cases
* Having documents ready in case waivers are granted for former arrests or deportation orders

For those who have been arrested –get the records; if you have had contact with immigration, FOIA the records. Having your immigration record, even without reform, is never a bad idea. about 350,000 expedited removal or in absentia cases per year since 1996, and in many of these cases individuals mistakenly believed that they had elected voluntary departure.

One person who is the legalization point person who will be on top of what the proposals are, or creating materials and adapting the materials—with respect to the issues above.

Designing the program to draw participants and encourage those who may be hesitant to apply is critical

* Understanding incentives and levels of skill to apply and adhere to the program
* Barriers, attractions to applying and adhering; costs, knowledge, perceived risks—analyze these and have a strategy to optimize outcomes within them
* Maintaining a steady flow of applications is beneficial, since a more constant flow results in a better-administrated program. One lesson from past legalization programs is that during the registration period there will be a lot of excitement and applications in the beginning, followed by a slower pace and then a rush to apply as the deadline approaches

Mixed-status family concerns about revealing non-authorized/eligible persons

* Strategies to address this
* This may cause reluctance to come forward
* It is important that participants understand that the application process is free of enforcement action or threat of such action
* Work with needs of the ineligible as well as eligible; plan for this

Communications, marketing strategies

* Design, fund to reach widely, persuasively to potential applicants
* Both low- and high-tech outreach including the engagement of ethnic media, and the use of social media and the Internet.
* Targets should include "non-traditional" organizations and partners.
* Local and ethnic media may have information that is not quite accurate and a lot of attorneys and unscrupulous service providers use [them to advertise and tell people] things that are not necessarily true. We try to counteract that and actually be part of that conversation and be part of those outreach methods, so that way people can actually get the right information and not be taken advantage of.

Outreach sites/allies

* School systems, city and county agencies, utility companies and banks
* “Hospital X made available space, they made available administrative help, they publicized it, it was a wonderful community effort working with a system where people were going to naturally, and we had an overwhelming response.”
* If there is something to be learned for immigration reform it is that you go where the people are, and they were there and they trusted us.
* The general workshops didn't have good attendance; when we focused on a population in a school district or church more came out.
* Efforts should be made to bring in organizations and "non-traditional" groups that may not have expertise in immigration law, but are trusted within communities.

Organizational processes at the point of delivery of service

Specific planning of anticipated cases loads and case management practices, databases

* Few nonprofits have digitized case files, and, during past legalization programs, much time was spent copying, scanning, and filing. Databases.
* You need an excellent record-keeping and filing system and a lot of follow-up work. Applications will be returned to people if they aren't filled out correctly or have missing information. In addition, you will have to help people who come in after filing applications by themselves or with notarios.
* Tracking applicants’ progress through the legalization
* Even with a comparatively simple application for DACA, clients often had to come in for more than one consultation. As one individual noted: The challenge with DACA is that rarely can anyone come in through the door and complete the application in one fell swoop. They always have to come back with more documents.
* Is this possible/good? boilerplate the applications, try to fill in all the information we can prior (to a client visit).
* prep work on which issues were complex and what people should be looking out for
* some applicants could, with minimal support, prepare and file their own applications, allowing service-providers to devote more time to other categories of applicants. Such a strategy would help to maximize the resources available in each community

Processes of interaction of clients with providers

* Complete and thorough screenings; effective identification of eligibility and needs; best practices in interviewing techniques
* Ways to assess the need for more information about applicants;
* People need to bring lots of documents, but most come with incomplete records

Prep & communicate this better

* We take an hour with a client. At the beginning they want to explain their story; at first they say "no, I don't have any criminal record", but later things come out.

Accurate management of legal issues

* The legal director wrote detailed FAQs, also made templates to respond to legal questions. See above on having one legalization/deferred action point person
* Members of legal staff revamped all of the information on our website
* You also need good training about things like what will you do when there is a criminal conviction.
* A good model is one in which experienced lawyers do intake and then refer people to a pro bono attorney for completion of the application. This model helps to avoid the serious problem of misadvising clients or failing to suggest the most relevant forms of relief.
* Hotline or just a contact system for pro bono lawyers who want to ask questions of a more experienced immigration attorney.

Coordination and organization and training of non-lawyers to do a lot of the scuttle work that makes what the lawyers do more precise. A lot of prep work can be done… (see below on intake)

* Will BIA accredited reps or attorneys be needed, or can organizations without these people just help prepare applications?
* Organizations with only basic screening capacity could be of assistance by helping channel more complex cases to private attorneys or to federally-recognized charitable organizations with attorneys or with accredited nonattorneys who can provide legal assistance.

Relationships with the private bar to get pro and low bono assistance

* It's helpful to train attorneys who don't practice immigration law. We need legal help and there are ways to hold good trainings for non-immigration attorneys.
* To get services and financial support from a big firm you need to find one partner who thinks that immigration fairness is important enough to get involved and promotes the effort inside the firm.

Intake

* Train intake staff to do complete screenings . There is no one size fits all, because one kid might be eligible for one form of relief, and another does not qualify due to a specific bar. The screening needs to be done by an immigration attorney, or very carefully designed—like a computerized TurboTax program that has flags asking "have you considered that you may be eligible for x?"
* Screening for Other Forms of Relief and Eligibility

Some % of those intending to apply actually eligible for better relief—channel them toward that

* Large number of individuals who will be ineligible for any form of relief.

You don't have to rush on day one, and every non-profit doesn't have to be prepared for a rush –it's important to organize first.

* Waiting list? You need to help people feel comfortable waiting in line, and …how to assure people that they will be assisted.
* A triage system to prioritize certain kinds of cases.
* Tension between deciding cases quickly and weighing the evidence thoroughly.

Challenge of sustainability of long-term cases (renewals, etc.)

* Opinion of one organization: for long-term sustainability we encourage our affiliates to have a client agreement saying that we will only be doing the initial application; when it's approved we will not be your rep, and when it's time to be renewed, it's your responsibility.

Financing the effort; Resource strategies

* Charging modest fees for services as a way of insuring long-term program sustainability.
* Grant writing immediately
* Asking for funding [through the media]. That helped us, a lot. Direct, public appeals.
* Identify one or two spokespersons whose only job is to work with city agencies and Washington…Someone needs to mind the details and identify targets of opportunity… working with the City Council and the Mayor; someone should be the point person who coordinates with City services and seeks public funding
* Local government sources would be an important source of future funds: making a case that undocumented immigrants who come out of the shadows will pay taxes.
* Community service block grant funding which is actually a federal program. They give it to localities and then the localities award it to non-profits, so it's a city contract but the dollars originate at the federal level.
* Start-up funds for new programs may be available but recurring funding is difficult to obtain. After receiving initial funding, the organization has to figure out how to keep going. What happens in the second, third, or fourth year becomes an issue.

Government payment for assistance in application

* To the extent that there are provisions to pay community groups for their assistance, provision needs to be made for prompt transfer of funds and for payment to be based on assistance provided, as well as completed applications submitted.

Resource needs & strategies

* Do not underestimate volume and largely unreimbursed costs of time-consuming tasks, such as arranging for fingerprints, getting photographs, copying original documents, arranging for medical exams, helping applicants accumulate the necessary documents, and monitor clients' progress. In most cases, the time devoted to these efforts exceeded program resources.
* Hire additional volunteer coordination, use interns and volunteers: can stretch resources but need coordinator, etc.

Legal and non-legal volunteers will require a heightened level of resources, space, training and coordination to be truly effective.

* A 'fund' to cover government filing fees for clients who are unable to pay and who can't get a fee waiver.
* Additional staff was high on most groups' wish lists, including administrative staff, on-site attorneys, and case workers to help with screening and follow-up.
* However, space needed for more staff or accepting additional volunteers.
* In the absence of additional paid staff, the need for more attorneys who can assist with CIR applications for legalization can be met with referrals or pro bono assistance.
* Concept of “low bono” attorneys—agree to take low fees.
* Coordination and organization and training of non-lawyers to do a lot of the scuttle work that makes what the lawyers do more precise. A lot of prep work can be done…

Personnel management

* Responding to continual surges in applications can lead to burnout for staff who already have heavy workloads: a big challenge is just that everyone is really gung-ho in the beginning and you get flooded with people🡪 burn out
* Pro bono help is wonderful, [however,] if you have weekend events, week after week you will have a diminishing number of pro bono volunteers. You need good communication at the beginning about how many events you will have and say that you don't want people to burn out.

Track changes to Secure Communities:

* Press reports said the White House was planning to "reboot" the Secure Communities program, which allows federal immigration agents to request to pick up immigrants in local jails and put them on the road to deportation, would "focus" it on violent offenders — implying that only serious criminals would be taken into ICE custody from local law enforcement.