

**DECLARATIONS AND EXHIBIT LIST CITED IN PLAINTIFF STATES' MOTION FOR
PRELIMINARY INJUNCTION**

Exhibit Number	Exhibit Name
1	Decl. Shobha Wadhia (Expert: Clinical Professor of Law Penn. State Univ.)
2	Updated USCIS, Consideration of Deferred Action for Childhood Arrivals Fiscal Years 2012-2017, June 8, 2017
3	Transcript of Deposition of James McCament, Deputy Director of USCIS, Oct. 17, 2017
4	Decl. Cesar Andrade (DACA Grantee; NY)
5	Decl. Hina Naveed (DACA Grantee; NY)
6	Decl. Milton Eduardo Ramirez Cuevas (DACA Grantee; OR)
7	Decl. Cairo Mendes (DACA Grantee; MA)
8	Decl. Renata Teodoro (DACA Grantee; MA)
9	Decl. Javier Juarez (DACA Grantee; RI)
10	Decl. Tom Wong (Expert; Associate Professor UCSD)
11	Ike Brannon, <i>The Economic and Fiscal Impact of Repealing DACA</i> , The Cato Institute, Jan. 18, 2017
12	Decl. Ayesha-Blackwell Hawkins (Amazon)
13	Decl. Seth Kalvert (TripAdvisor)
14	Decl. Jeffrey Igneri (Local Burger)
15	Decl Jacob Tingen (Tingen & Williams, PLLC)
16	Decl. Jonathan Schwartz (Univision)
17	Decl. Lucila Loera (Washington State University)
18	Decl. Heatwole (University of Massachusetts)
19	Decl. Alexandra Monroe (Washington State Department of Ecology)
20	Decl. Kaplan (Washington State Department of Social and Health Services)
21	Decl. Rich Jones (Washington State Office of the Treasurer)
22	Decl. Sarah Conly (Washington Department of Veterans Affairs)
23	Decl. Alfred Mathewson and Sergio Pareja (University of New Mexico School of Law)
24	Decl. Clark, et al. (Massachusetts State University Presidents)
25	Decl. Susan Herbst (University of Connecticut)
26	Decl. Dimitrios Pachis (Eastern Connecticut State University)
27	Decl. Karen Hardwick (University of the District of Columbia)

EXHIBIT 1

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

STATES OF NEW YORK,
MASSACHUSETTS,
WASHINGTON, COLORADO
CONNECTICUT, DELAWARE,
DISTRICT OF COLUMBIA,
HAWAII, ILLINOIS, IOWA, NEW
MEXICO, NORTH CAROLINA,
OREGON, PENNSYLVANIA,
RHODE ISLAND, VERMONT, and
VIRGINIA,

Plaintiffs,

v.

DONALD TRUMP, in his official
capacity as President of the United
States; U.S. DEPARTMENT OF
HOMELAND SECURITY; ELAINE
C. DUKE, in her official capacity; U.S.
CITIZENSHIP AND IMMIGRATION
SERVICES; U.S. IMMIGRATION
AND CUSTOMS ENFORCEMENT;
and the UNITED STATES OF
AMERICA,

Defendants.

CIVIL ACTION NO. 17-cv-5228

**DECLARATION OF SHOBA
SIVAPRASAD WADHIA**

I, Shoba Sivaprasad Wadhia, declare as follows:

1. I am presently the Samuel Weiss Faculty Scholar, Clinical Professor of Law and founding director of the Center for Immigrants' Rights Clinic at Penn State Law in University Park. I have been employed by the Pennsylvania State University ("University") since 2008. This declaration was prepared in my individual capacity and does not reflect the views of the University.

2. In 1999, I received my Juris Doctorate degree from the Georgetown University Law Center. Since that time, I have worked in the immigration field for nearly 20 years in the following settings: private practice, non-profit organizations, and institutions of higher education.

3. As a practitioner, I have practiced immigration law on behalf of individuals seeking a benefit before the immigration agency as well as those challenging removal or seeking relief from removal before an immigration judge or the appellate agency. In the non-profit sector, I have drafted, reviewed, and analyzed legislative proposals on immigration and convened or participated in meetings with government officials, organizational leaders, and the public on immigration topics.

4. As an academic researcher, my work focuses on the role of prosecutorial discretion in immigration law and the intersections of race, national security and immigration. In the area of prosecutorial discretion in immigration law, my scholarship has served as a foundation for scholars, advocates, and government officials seeking to understand or design a strong prosecutorial discretion policy. My book, *Beyond Deportation: The Role of Prosecutorial Discretion in Immigration Cases*, was published by New York University Press and is the first book on the topic.

5. I have published more than 30 articles, book chapters, and essays on immigration law, including a number discussing the use of prosecutorial discretion in immigration cases. My work has been published in seventeen law journals, including but not limited to *Emory Law Journal*; *Texas Law Review*; *Columbia Journal of Race and Law*; *Notice & Comment*, *Yale Journal on Regulation*; *Harvard Latino Law Review*; *Connecticut Public Interest Law Journal*; *Georgetown Immigration Law Journal*; and *Howard Law Journal*. Some of my scholarly works have been cited by federal judges in their opinions and decisions.

6. I have delivered several academic lectures and papers over the past 15 years on a variety of topics, including the history of prosecutorial discretion in immigration cases.

7. As an educator, I teach law students in the doctrinal survey course in immigration law and a specialized course in asylum and refugee law. I also supervise students in an in-house law school clinic known as the Center for Immigrants' Rights, which I founded.

8. Since the Fall 2008 semester, I have supervised more than 75 students on the following types of cases and projects: policy products on behalf of institutional clients, outreach and education with the community and local municipality, and legal support in individual cases.

9. I currently sit on the Board of Trustees of the American Immigration Council and previously served as a Commissioner on the American Bar Association's Commission on Immigration.

10. I have received multiple awards and honors, including: Pro Bono Attorney of the Year by the American-Arab Anti-Discrimination Committee in 2003, leadership awards by the Department of Homeland Security's Office of Civil Rights and Civil Liberties and Office of the Inspector General in 2008, recognition as the 2017 Honoree by the National Immigration Project

and the award for Excellence in Legal Advocacy by the American-Arab Anti-Discrimination Committee in 2017.

11. I spent nearly a decade researching the history of prosecutorial discretion in immigration cases, especially its historical use, legal foundation, and litigation challenging the use of such authority, before and while writing my book. The opinions expressed in this declaration are based largely on the research for my book as well as related articles which have been published in law journals.

12. More information about my experience and qualifications as an expert, a complete list of my publications, and other relevant information is contained in my *curriculum vitae*, which is attached as Exhibit A to this declaration.

Summary of Expert Opinions

13. I have been asked for my expert opinion concerning the history and use of prosecutorial discretion, including specifically deferred action, by federal immigration authorities in the United States. I have also been asked for my expert opinion as to how the formation and termination of the Deferred Action for Childhood Arrivals (DACA) compares to prior uses of deferred action. A summary of my conclusions are as follows:

- Prosecutorial discretion is a tool that has been part of the immigration system for as long as the system has operated.
- Deferred action is one form of prosecutorial discretion in immigration law and enjoys a long history.
- The Department of Homeland Security (“DHS”) and its predecessor, Immigration and Naturalization Services (“INS”), have applied deferred action and other forms of prosecutorial discretion to groups (while still

requiring a case-by-case determination of each individual) based on factors that are largely consistent with the eligibility criteria utilized for DACA.

- The method by which DACA has been terminated is inconsistent with how deferred action has been used and applied historically.

Prosecutorial Discretion in Immigration Law

14. Prosecutorial discretion refers to the choice by the DHS and its predecessor agencies, including INS, of whether and how to enforce the full scope of immigration law against a person or group persons if at all.

15. When an individual enters the country without inspection, overstays a visa, or engages in conduct that makes her removable, she is subject to removal by DHS. This requires enforcement action (*i.e.*, prosecution) by DHS to effectuate.

16. To illustrate, when DHS chooses not to file legally valid immigration charges against a person who is present in the United States without authorization discretion is being exercised favorably. In other words, the question of whether to use discretion is raised only where there is legally sufficient basis to bring immigration enforcement actions in the first place.

17. There are more than one dozen forms of prosecutorial discretion in federal immigration law. These forms have been outlined in several guidance documents issued by DHS and INS, including a memorandum published in 1976 by then-INS General Counsel Sam Bernsen (the “Bernsen Memo”),¹ a 2000 memorandum published by then-INS Commissioner

¹ Memorandum from Sam Bernsen, General Counsel, Immigration and Naturalization Service, Legal Opinion Regarding Service Exercise of Prosecutorial Discretion (July 15, 1976), <https://www.ice.gov/doclib/foia/prosecutorial-discretion/service-exercise-pd.pdf>.

Doris Meissner (the “Meissner Memo”),² a 2011 memorandum by then-Immigrations and Customs Enforcement (“ICE”) Commissioner John Morton (the “Morton Memo”),³ and more recently by then-DHS Secretary Jeh Johnson (the “Johnson Memo”).⁴

18. The memoranda list at least 15 types of prosecutorial discretion. The most commonly utilized forms are:

- Deciding whether to issue, serve, file, or cancel a Notice to Appear;
- Deciding whom to stop, question, and arrest;
- Deciding whom to detain or release;
- Deciding whether to settle, dismiss, appeal, or join in a motion on a case; and
- Deciding whether to grant deferred action, parole, or a stay of removal.

19. Other forms of prosecutorial discretion include the use of “extended voluntary departure”⁵ and “deferred enforcement departure.”⁶ Formerly called extended voluntary departure, deferred enforcement departure can be utilized by the President to temporarily safeguard classes of individuals from removal.⁷

² Memorandum from Doris Meissner, Commissioner of Immigration and Naturalization Service, on Exercising Prosecutorial Discretion, (Nov. 17, 2000), <http://library.niwap.org/wp-content/uploads/2015/IMM-Memo-ProsDiscretion.pdf>.

³ Memorandum from John Morton, Director, U.S. Immigration and Customs Enforcement, on Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens, (June 17, 2011), <http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf>.

⁴ Memorandum from Jeh Charles Johnson, Secretary of U.S. Department of Homeland Security, on Policies for the Apprehension, Detention and Removal of Undocumented Immigrants, (Nov. 20, 2014), https://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf.

⁵ Ira Kurzban, *Kurzban’s Immigration Law Sourcebook* 493 (11th ed. 2009).

⁶ Shoba S. Wadhia, *The Role of Prosecutorial Discretion in Immigration Law*, 9 Connecticut Pub. Int. L. J. 243, n.124 (2009), citing U.S. Citizenship and Immigration Services, Affirmative Asylum Procedures Manual 57 (Nov. 2007).

⁷ U.S. Citizenship and Immigration Services, Adjudicator’s Field Manual 38.2(a) (2007),

20. Prosecutorial discretion may be exercised at any stage of the immigration enforcement process including right before an arrest, prior to the filing of charges, and even after a removal order has been entered. As ICE's Principal Legal Advisor, William J. Howard, explained in a 2005 memo, there is a "universe of opportunities" to exercise prosecutorial discretion in federal immigration enforcement.⁸

21. While there are multiple forms of prosecutorial discretion and stages at which it may be enforced, the outcome in any case is the same: a temporary reprieve from removal proceedings and/or deportation.

22. The concept behind prosecutorial discretion is entrenched in the prioritization of limited government resources and compassion for individuals without a lawful immigration status who present strong qualities or equities in their cases. When DHS makes the choice to not take enforcement actions against a mother caring for an ill child, for a student affected by a natural disaster back home, or for a Dreamer working and/or finishing school, prosecutorial discretion is being exercised favorably with respect to that individual.

Legal Basis for Use of Prosecutorial Discretion

23. Prosecutorial discretion in immigration law has been recognized repeatedly by federal courts and former agency heads.⁹ The basis for this discretion is inherent to agency enforcement action as well as statutory authority.

<https://www.uscis.gov/ilink/docView/AFM/HTML/AFM/0-0-0-1/0-0-0-16606/0-0-0-16764.html>.

⁸ Memorandum from William J. Howard, Principal Legal Advisor, U.S. Immigration and Customs Enforcement, on Prosecutorial Discretion (Oct. 24, 2005), http://www.asistahelp.org/documents/resources/DHS_NTA_discretion_7076BC4F57842.pdf; see also Shoba S. Wadhia, *Beyond Deportation: The Role of Prosecutorial Discretion in Immigration Cases* 27 (2015).

⁹ See, e.g., Bernsen Memo, *supra* note 1, at 1-2.

24. Discretion in agency action dates back to the New Deal, with the birth of the modern administrative state.

25. The Bernsen Memo published in 1976 is one of the first legal opinions issued on the use of prosecutorial discretion in immigration. The Bernsen Memo traces prosecutorial discretion back to common law and cites to the 1868 Confiscation Cases to describe the general authority of the Executive Branch to terminate a case. This same memo cites to a 1934 memo by the Attorney General to highlight the various sources for prosecutorial discretion and its extension to both civil and criminal contexts.

26. The Bernsen Memo also identifies the Take Care Clause, Article II, Section 3 to the U.S. Constitution, as a source of authority for prosecutorial discretion in immigration matters.

27. The Meissner Memo builds upon the Bernsen Memo and provides a broad overview regarding the use of prosecutorial discretion, including connections to criminal law. Standards guiding prosecutorial discretion in the criminal context historically have informed the use of such discretion in immigration.

28. A review of the immigration statute, the Immigration and Nationality Act, also makes clear that Congress authorizes DHS to utilize its discretion. Section 103 delegates the administration and enforcement of immigration law to DHS, 8 U.S.C. § 1103(a)(1), and section 242 prohibits judicial review of three specific acts of prosecutorial discretion (commencement of proceedings, adjudication of cases, and execution of removal orders), *id.* § 1252(g).

29. The Homeland Security Act delegates the establishment of national immigration enforcement policies and priorities to the DHS Secretary. 6 U.S.C. § 202(5).

30. The Supreme Court also explicitly recognized the use of discretion in immigration law. In *Arizona v. United States* 567 U.S. 387 (2012), the Court concluded that several anti-immigration provisions in an Arizona statute overreached into federal domain over immigration matters and explained that “a principal feature of the removal system is the broad discretion exercised by immigration officials” in relation to how “federal officials, as an initial matter, must decide whether it makes sense to pursue removal at all.” *Id.* at 396.

History of Use of Prosecutorial Discretion

31. Formal uses of prosecutorial discretion immigration law can be traced back to as early as September 20, 1909. On that date, the Department of Justice issued a letter concerning the initiation of proceedings to cancel naturalization.¹⁰

32. In individual matters, prosecutorial discretion is exercised routinely, including whether to arrest, interrogate, file charging documents, or appeal a case. It is exercised at every stage, including after an order of removal has been obtained. Over time, INS and, then, DHS have taken greater care to ensure more uniformity in how prosecutorial discretion is exercised.

33. The Meissner Memo provides a broad overview regarding the use of prosecutorial discretion, including a list of 13 factors to consider when evaluating the “totality of the circumstances” of a particular case. These factors include, but are not limited to: (i) immigration status; (ii) length of residence in the United States, (iii) criminal history, (iv) humanitarian concerns, and (v) immigration history, (vi) likelihood of ultimately removing the alien, (vii) likelihood of achieving enforcement goal by other means, (viii) whether the alien is eligible or is

¹⁰ Bernsen Memo, *supra* note 1, at 4 (quoting Department of Justice Circular Letter Number 107 (Sep. 20, 1909). (“In the opinion of the department, as a general rule, good cause is not shown for the institution of proceedings to cancel certificates of naturalization alleged to have been fraudulently or illegally procured unless some substantial results are to be achieved thereby in the way of betterment of the citizenship of the country.”)).

likely to become eligible for other relief, (ix) effect of action on future admissibility, (x) current or past cooperation with law enforcement authorities, (xi) honorable U.S. military service, (xii) community attention, and (xiii) resources available to the INS.

34. In addition to these factors for consideration, the Meissner Memo calls for even-handed application of discretion: “Service officers are not only authorized by law but expected to exercise discretion in a judicious manner at all stages of the enforcement process.”

35. The Meissner Memo has been repeatedly reaffirmed in subsequent years, through both a 2003 memo from INS Associate Commissioner Johnny N. Williams,¹¹ shortly after DHS was formed, a 2007 memo from ICE Assistant Secretary Julie Myers,¹² and the 2011 Morton Memo, which details at least 16 factors for consideration and listing particular care for veterans, minors, and elderly individuals, among others.¹³

36. Beyond the application of prosecutorial discretion in individual cases, there are many examples of the use of prosecutorial discretion on behalf of groups of people.

37. **1956 (Eisenhower):** Thousands of Hungarian “Freedom Fighters” were permitted to enter the United States by way of “parole.” Faced with the inaction of Congress to solidify an immigration statute for refugees, the administration moved to exercise prosecutorial discretion to admit refugees from Hungary.¹⁴

¹¹ Memorandum from Johnny N. Williams, Executive Associate Commissioner of the Office of Field Operations, U.S. Immigration and Naturalization Service, on Family Unity Benefits and Unlawful Presence (Jan. 27, 2003).

¹² Memorandum from Julie L. Myers, Assistant Secretary, U.S. Immigration and Customs Enforcement, on Prosecutorial and Custody Discretion (Nov. 7, 2007), <https://www.ice.gov/doclib/foia/prosecutorial-discretion/custody-pd.pdf>.

¹³ Morton Memo at 5, *supra* note 3.

¹⁴ Shoba S. Wadhia, *Beyond Deportation: The Role of Prosecutorial Discretion in Immigration Cases* 29-30, (2015). (“Similar parole programs were applied in subsequent administrations to protect classes of individuals.”). Kate M. Manuel & Michael J. Garcia, *Executive Discretion as to Immigration: Legal*

38. **1956 (Eisenhower):** An extended voluntary departure program was implemented for certain beneficiaries of an approved third-preference petition for skilled or other workers.¹⁵

39. **1981 (Reagan):** Extended voluntary departure was issued to thousands of Polish nationals as refugees residing in the United States when Poland declared martial law.¹⁶

40. **1987 (Reagan):** After Congress passed the Immigration Reform and Control Act of 1986 (IRCA), the “Family Fairness” executive action was announced to defer deportations for children of a parent eligible for permanent residency.¹⁷

41. **1990 (George H.W. Bush):** The “Family Fairness” policy was expanded to defer deportations to spouses and children of immigrants who qualified for permanent residency under IRCA.¹⁸

Overview, U.S. Congressional Research Service (Nov. 10, 2014), <https://fas.org/sgp/crs/homesec/R43782.pdf>.

¹⁵ Immigration and Naturalization Service, Operations Instructions, O.I. § 242.10(a)(6)(i) (1956).

¹⁶ Stephen H. Legomsky & Cristina M. Rodriguez, *Immigration and Refugee Law and Policy* 1115-17 (5th ed. 2009); David Reimers, *Still the Golden Door: The Third World Comes to America* 202 (1986).

¹⁷ 64 Interpreter Releases 1191 (Oct. 26, 1987); see also American Immigration Council, *Reagan-Bush Family Fairness: A Chronological History* 1-2, (Dec. 2014), https://www.americanimmigrationcouncil.org/sites/default/files/research/reagan_bush_family_fairness_final_0.pdf.

¹⁸ Marvine Howe, *New Policy Aids Families of Aliens*, N.Y. Times (Mar. 5, 1990), <http://www.nytimes.com/1990/03/05/nyregion/new-policy-aids-families-of-aliens.html>; 67 Interpreter Releases 204 (Feb. 26, 1990); 67 Interpreter Releases 153 (Feb. 5, 1990). (“President Bush’s policy followed a narrower 1987 executive order by President Reagan’s immigration commissioner that applied only to children.”). Immigration and Nationality Act of 1990, Pub. L. 101-649, Sec. 301, 104 Stat. 4978, <http://www.justice.gov/eoir/IMMACT1990.pdf>.

42. **2007 (George W. Bush):** Deferred enforcement departure was announced for certain Liberians in light of armed conflict in Liberia.¹⁹ The policy has since been extended for 18 months at a time, most recently by President Obama in September 2016.²⁰

43. **2011 (Obama):** ICE Commissioner John Morton published several memoranda concerning prosecutorial discretion. One memo discussed the specific enforcement priorities of the federal government with regard to deportable immigrants with criminal records, noting that “particular care should be given when dealing with lawful permanent residents, juveniles, and the immediate family members of U.S. citizens.”²¹ Another guidance memorandum dealt with the use of prosecutorial discretion for plaintiffs, victims, and witnesses in order to “avoid deterring individuals from reporting crimes and from pursuing actions to protect their civil rights.”²²

44. Several administrations have used prosecutorial discretion as an instrument for protecting victims of crime, domestic abuse, and sexual assault.

Deferred Action

45. Deferred action is one of the most common forms of prosecutorial discretion in immigration law and enjoys a long history. It is one of the few forms of prosecutorial discretion

¹⁹ Deferred Enforcement Departure- Liberia, U.S. Citizenship and Immigration Services, <http://www.uscis.gov/humanitarian/temporaryprotected-status-deferred-enforced-departure/ded-granted-country-liberia/ded-granted-country-liberia> (last updated Sep. 28, 2016).

²⁰ Memorandum from Barack Obama, President of the United States of America, on Deferred Enforced Departure for Liberians (Sep. 28, 2016), <https://obamawhitehouse.archives.gov/the-press-office/2016/09/28/presidential-memorandum-deferred-enforced-departure-liberians>.

²¹ Morton Memo, *supra* note 3, at 2.

²² Memorandum from John Morton, Director, U.S. Immigration and Customs Enforcement, on Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs (June 17, 2011), <https://www.ice.gov/doclib/foia/prosecutorial-discretion/certain-victims-witnesses-plaintiffs.pdf>.

to provide with it work authorization, the others being parole²³ and orders of supervision.²⁴

Historically, decisions to grant deferred action have also rested on identifiable humanitarian factors for consideration.

46. For many years, deferred action was in operation through case-by-case determinations but not publicly understood. Previously described as “nonpriority,” it operated essentially in secret for much of the 20th Century.

47. In the early 1970s, as part of his effort to support his clients John Lennon and Yoko Ono, attorney Leon Wildes pursued Freedom of Information Act (FOIA) litigation to obtain deferred action records from INS.

48. Through these records, Wildes conducted groundbreaking research and revealed multiple facets of deferred action. Among these revelations was the fact that deferred action cases labeled as “tender age” involved individuals who were teenagers or young adults when INS granted deferred action.²⁵

49. Following Wildes’ litigation on behalf of Lennon and Ono, INS issued guidance on deferred action through “Operations Instructions.” These instructions contained factors for INS agents and officers to determine whether a case should be referred for deferred action. They included: (i) young or old age; (ii) years present in the United States; (iii) health condition

²³ 8 U.S.C. § 1182(d)(5)(A) (2013) (“The Attorney General may...in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission....”).

²⁴ Shoba S. Wadhia, *Demystifying Employment Authorization and Prosecutorial Discretion in Immigration Cases*, 6 Colum. J. of Race and L. 1, 7-8 (2016). (“Unlike deferred action, which can be granted or processed at any stage of immigration enforcement, an order of supervision may be processed after the government orders removal.”); 8 U.S.C. § 1231(a)(3) (2006).

²⁵ Shoba S. Wadhia, *Beyond Deportation: The Role of Prosecutorial Discretion in Immigration Cases* 64, (2015).

requiring care in the United States; (iv) impact of removal on family in United States; and (v) criminal or other problematic conduct.²⁶

50. The Operations Instructions required consideration for deferred action “[i]n every case where the district director determines that adverse action would be unconscionable because of the existence of appealing humanitarian factors, he shall recommend consideration for deferred action category....”²⁷

51. Since that time, INS and DHS have repeatedly issued guidance over the course of several administrations on the use of deferred action for both individuals and groups. In the last 15 years, DHS has granted deferred action in thousands of cases for largely humanitarian reasons.

52. Deferred action can have a significant impact on the individual and his or her family, as individuals granted deferred action are able to apply for employment authorization upon the showing of “economic necessity.”²⁸

53. The United States Citizenship and Immigration Services (“USCIS”) Standard Operating Procedures for Handling Deferred Action Requests at USCIS Field Offices details that a request for deferred action can be formally filed by the individual, a legal representative, or USCIS officers.²⁹ A request must have at least four components: an explanation supporting the

²⁶ *Id.* at 197, n.8(ii), citing (Legacy) Immigration and Naturalization Service, Operations Instructions, O.I. § 103.1(a)(1)(ii) (1975).

²⁷ *Id.*

²⁸ 8 C.F.R. § 274.12(c)(14) (2008); Shoba S. Wadhia, *The Aftermath of United States v. Texas: Rediscovering Deferred Action*, Notice & Comment: A Blog from the Yale Journal on Regulation and the ABA Section of Administrative Law & Regulatory Practice (Aug. 10, 2016), <http://yalejreg.com/nc/the-aftermath-of-united-states-v-texas-rediscovering-deferred-action-by-shoba-sivaprasad-wadhia/>.

²⁹ Shoba S. Wadhia, Standard Operating Procedure for Deferred Action (non-DACA), (Mar. 7, 2012), (Obtained under the Freedom of Information Act from U.S. Citizenship and Immigration Services; received Aug. 2015), http://works.bepress.com/shoba_wadhia/36/.

request with supplemental documentation, proof of identity and nationality, any documents utilized to enter the U.S., and biographical information. My understanding is that this policy still guides USCIS treatment of deferred action requests outside DACA. In addition, ICE has the authority to grant deferred action to individuals.

Legal Basis for Deferred Action

54. The legal foundation for the use of deferred action is clear from opinions of federal courts, federal statutes, regulations, and memoranda published by DHS and INS.

55. Agency regulations that have been in place for nearly 30 years explicitly identify “deferred action” as one basis for the provision of work authorization. 8 C.F.R. § 274a.12(c)(14).

56. Federal immigration law provides that “[t]he denial of a request for an administrative stay of removal under this subsection shall not preclude the alien from applying for . . . deferred action[.]” 8 U.S.C. § 237(d)(2).

57. Shortly after the Operations Instructions were published in 1975, several Courts of Appeals recognized the ability of INS to offer deferred action to individuals who were facing removal or who were removable.³⁰

58. The Supreme Court in *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471 (1999), specifically mentioned “deferred action” when analyzing 8 U.S.C. § 1252(g), which precludes judicial review over certain acts of prosecutorial discretion decisions.

³⁰ *Soon Bok Yoon v. INS*, 538 F.2d 1211, 1211 (5th Cir. 1976); *Vergel v. INS*, 536 F.2d 755, 755 (8th Cir. 1976); *David v. INS*, 548 F.2d 219, 223 (8th Cir. 1977).

59. Memoranda published by DHS provide guidance on the use of prosecutorial discretion in immigration law and in doing so identify the grant of deferred action as one such use of discretion.³¹

Historical Use of Deferred Action

60. Long before DACA, thousands of individuals have been processed for and granted work authorization pursuant to deferred action.³²

61. Historically, many deferred action cases have been driven by factors that are relevant to the DACA population. Two factors in particular have long driven outcomes in deferred action cases: age and long term presence in the United States.

62. DHS and its predecessor agencies have often set criteria, similar to those put forth in DACA, for how deferred action should be applied to particular groups, while still requiring a case-by-case determination for each individual.

63. **2003 (George W. Bush):** INS Associate Director of Operations Williams Yates published memoranda directing officers to use prosecutorial discretion forms like deferred action to protect victims who were eligible for eligible for certain statutory protections such as a U visa.³³

³¹ Letter from 130+ Law Professors (Sep. 3, 2014), <https://pennstatelaw.psu.edu/file/Law-Professor-Letter.pdf>.

³² Wadhia, *supra* note 25, at 2.

³³ Memorandum from William Yates, Associate Director of Operations, U.S. Citizenship and Immigration Services, on Centralization of Interim Relief for U Nonimmigrant Status Applicants (Oct. 8, 2003), http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/Archives%201998-2008/2003/ucntrl100803.pdf; Memorandum from William Yates, Associate Director of Operations, U.S. Citizenship and Immigration Services, on Assessment of Deferred Action Requests for Interim Relief from U Nonimmigrant Status Aliens in Removal Proceedings (May 6, 2004), http://www.uscis.gov/USCIS/Laws/Memoranda/Static_Files_Memoranda/Archives%201998-2008/2004/uprcd050604.pdf; *see also* Wadhia, *supra* note 25, at 61.

64. **2005 (George W. Bush):** The President announced a “deferred action” program for foreign academic students affected by Hurricane Katrina.³⁴

65. **2009 (Obama):** USCIS announced deferred action for the widows of U.S. citizens. In announcing the decision, DHS Secretary Janet Napolitano said: “Granting deferred action to the widows and widowers of U.S. citizens who otherwise would have been denied the right to remain in the United States allows these individuals and their children an opportunity to stay in the country that has become their home while their legal status is resolved.”³⁵

66. Deferred action has been used to protect individuals applying for relief under the Violence Against Women Act (VAWA). VAWA was enacted by Congress in 1994 and twice amended to include statutory remedies for abused spouses, parents, and children; victims of crimes and domestic abuse; and victims of human trafficking.

67. One protection under VAWA allows abused spouses and children of U.S. citizens and green card holders (lawful permanent residents) or the abused parents of U.S. citizens to file petitions for themselves with USCIS.

68. The self-petition process is critical to victims of domestic violence and abuse because it allows them to achieve a positive immigration status without having to rely on their abuser. If the self-petition is ultimately approved, the petitioner may receive deferred action.³⁶

³⁴ Shoba S. Wadhia, *Response, In Defense of DACA, Deferred Action, and the DREAM Act*, 91 Tex. L. Rev. 59, n. 46 (2013), citing Press Release, U.S. Citizenship and Immigration Services, USCIS Announces Interim Relief for Foreign Students Adversely Impacted by Hurricane Katrina (Nov. 25, 2005), http://www.uscis.gov/files/pressrelease/F1Student_11_25_05_PR.pdf.

³⁵ DHS Establishes Interim Relief for Widows of U.S. Citizens, <https://www.dhs.gov/news/2009/06/09/dhs-establishes-interim-relief-widows-us-citizens>.

³⁶ William A. Kandel, *Immigration Provisions of the Violence Against Women Act (VAWA)*, U.S. Congressional Research Service (May 15, 2012), <https://fas.org/sgp/crs/misc/R42477.pdf>

69. Deferred action also has been used as a mechanism to keep immigrants who are the spouses, parents, and children of military members together.

70. The examples identified above are not exhaustive but demonstrate how DHS (and INS before it) has long used the instrument of deferred action and its authority under the INA to protect certain classes of people.³⁷

DACA

71. DACA falls in line with the long history described above. By its terms, DACA requires the individual to document entry into the United States before the age of sixteen and presence in the United States since June 15, 2007.³⁸ Long-term residence and tender age are two central facets of deferred action.

72. Beyond those characteristics, the totality of circumstances weighs in favor of DACA grantees receiving deferred action based on past guidance documents. Among other things, DACA grantees are either in school, have graduated from high school (or obtained an equivalent degree), or have served honorably in the military.

73. The idea of protecting those who came to the United States at a young age, residing in the United States for a long period of time, and with other equities from removal through deferred action longstanding and in fact customary.

74. The implementation of DACA, even on a wide scale, is entirely consistent with previous acts of prosecutorial discretion by Democratic and Republic administrations.

³⁷ Wadhia, *supra* note 25, at 68.

³⁸ Memorandum from Janet Napolitano, Secretary of Homeland Security, on Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children (June 15, 2012), <https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf>.

75. The decision to and method by which DACA has been terminated raises serious legal questions and is wholly inconsistent with how deferred action has been used and applied historically.

76. Previous decisions to end deferred action programs or to change course on broad exercises of prosecutorial discretion have been triggered by new statutory protections through an Act of Congress that rendered the exercise of further prosecutorial discretion unnecessary, changes in country conditions, or other significant changes in circumstances. DACA's termination does not meet any of these criteria.

77. Despite the great success of the DACA program and the contributions of its grantees to our schools, businesses, communities, and economy, this Administration has turned DACA grantees into among the most vulnerable immigrants. This switch from protecting those with the most compelling cases for deferred action to the most vulnerable for such a large group of immigrants is remarkable and also destabilizes the structure of prosecutorial discretion in the immigration system.

Conclusion

78. Deferred action is a long-recognized form of prosecutorial discretion in immigration law and with a strong legal foundation. The operation of DACA is a lawful exercise of prosecutorial discretion. Categorically revoking deferred action from hundreds of thousands of beneficiaries without reason is not only unprecedented but is in tension with the history of both INS and DHS.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Shoba Sivaprasad Wadhia". The signature is written in a cursive style with some capital letters.

SHOBA SIVAPRASAD WADHIA

Dated this 15th day of December 2017.

EXHIBIT A

CURRICULUM VITAE
Shoba Sivaprasad Wadhia
Samuel Weiss Faculty Scholar
Penn State Law-University Park
Phone: 814-865-3823 | Email: ssw11@psu.edu

EMPLOYMENT

Pennsylvania State University School of Law, University Park, PA
Samuel Weiss Faculty Scholar, Clinical Professor of Law
Director/Founder, Center for Immigrants' Rights, June 2008-present

Direct an immigration clinic whose mission is to advance immigrants' rights through legal excellence, advocacy, education, and collaboration with key stakeholders on immigration law and policy. Supervise law students representing clients on policy projects, community education and individual cases pertaining to U.S. immigration law and policy.

[Publications by the Center](#)

[Press releases and stories](#) about the Center's work

Teaching at Penn State Law:

Center for Immigrants' Rights Clinic (5 credits)

Advanced Immigration Clinic (2 credits)

Asylum and Refugee Law (3 credits)

Immigration Law (3 credits)

Scholarship at Penn State Law (see publication list below)

Service at Penn State Law:

Post-Election: Penn State Law's Center for Immigrants' Rights has been at the forefront of responding to immigration issues Post-Election at local and national levels. See: <https://pennstatelaw.psu.edu/immigration-after-election> for more details.

Minority Mentor Program: Helped to develop and institutionalize the law school's first [minority mentor program](#), aimed at improving the climate of law school and academic performance. Received initial and renewal matching grant from Penn State's Equal Opportunity Commission.

Interdisciplinary Roundtable on Immigration: Co-founder/chair of [Interdisciplinary Working Group](#) on Immigration, whose objective is to build connections among research

and service organizations who work with or conduct research about immigrants and immigration, and to raise awareness of resources available among the local community of scholars and service providers.

Academic Symposia Featuring Nationally Renowned Scholars and Legal Experts:

Organized and moderated academic symposia annually from 2009-12 on national immigration topics, with featuring speakers from around the nation.

- Symposium: Immigration in a New Administration (2009)
- Symposium: Immigration Adjudications: Court Reform and Beyond (2010)
- Colloquium: 30th Anniversary of the Refugee Act (2010)
- Symposium: 10th Anniversary of 9/11 (2011)
- Symposium: Immigration Remedies for Victims of Domestic Abuse (2012)

Faculty Committees: Serve(d) on the following academic committees:

- Diversity Committee (Chair) (2013-present)
- Strategic Planning Committee (2013-14)
- Academic Rules Committee (2012-13)
- Curriculum Committee (2009-12)
- Clinics Committee (2008-9)

National Immigration Forum, Washington DC

Deputy Director for Legal Affairs, January 2007- June 2008

Senior Policy Associate/Counsel, July 2002-December 31, 2006

- Worked for national immigration advocacy organization on the multiple legislative efforts, including the creation of the Department of Homeland Security, comprehensive immigration reform, immigration enforcement, and post 9-11 proposals affecting immigrants
- Provided legal and policy expertise on immigration issues to government officials, interested advocates, and the public
- Played a leadership role in working groups engaged in strategy and policy development on immigration law and policy reform with government officials
- Analyzed, prepared and/or drafted legislative and regulatory proposals on immigration law and policy for government officials and interested advocates

Maggio Kattar, P.C., Washington DC

Attorney, 2000-2002/Law Clerk, 1998-2000

- Represented clients in deportation (removal) proceedings before the VA and MD immigration courts
- Represented clients before Immigration and Naturalization Service (now Department of Homeland Security) during interviews for immigration benefits
- Interviewed clients and witnesses; prepared affidavits, evidentiary materials and legal briefs; conducted related legal research

EDUCATION

Georgetown University Law Center, Washington, DC, J.D., May 1999

Related Coursework/Activities

Georgetown Immigration Law Journal- Senior Notes & Comments Editor

Immigration and Refugee Law

Advanced Seminar on Immigration Research

Indiana University, A.B. with Honors, Political Science, May 1996

PUBLICATIONS

Books

[Beyond Deportation](#): *The Role of Prosecutorial Discretion in Immigration Cases* (New York University Press 2015), new on paperback May 1, 2017

- Website: www.beyonddeportation.com
- Reviews published by NYU Press: <https://nyupress.org/books/9781479870059/>
- Review in Oxford University's Border Criminologies, April 22, 2016.
- Review in International Migration Review, Fall 2016.
- Featured in Guernica Magazine, July 1, 2016
- Review in Harvard Law Review, [Recent Publications](#), June 2016
- Review in [The Federal Lawyer](#), October/November 2016
- Review by Reader's Favorite, [Book Review](#), August 2016
- Review by International Migration Review, [Book Review](#), Fall 2016

Law Journals

Emory Law Journal, [Is Immigration Law National Security Law?](#) 66 Emory Law Journal 669 (2017).

["Beyond Deportation: Understanding Immigration Prosecutorial Discretion and U.S. v. Texas,"](#) 36 IMMGR. & NAT'LITY L. REV. 94 (2015).

["Demystifying Employment Authorization and Prosecutorial Discretion in Immigration Cases"](#) Colum. J. Race & L. 1 (2016).

["The Aftermath of United States v. Texas: Rediscovering Deferred Action,"](#) Notice and Comment, Yale Journal on Regulation (2016).

[The President and Deportation: DACA, DAPA, and the Sources and Limits of Executive Authority - Response to Hiroshi Motomura](#) Washburn Law Journal (2016).

["Executive Action and Immigration"](#) Case W. Res. Journal of International Law 48 (2016).

[“The History of Prosecutorial Discretion in Immigration Law”](#) American University Law Review Vol 64.5 (2015).

[“The Rise of Speed Deportation and the Role of Discretion,”](#) Vol. 5 No. 1 Colum. J of Race & L. (2014).

[“Immigration Remarks for the 10th Annual Wiley A. Branton Symposium,”](#) Vol. 57 No. 3 HOW. L.J. (2014).

[“My Great FOIA Adventure and Discoveries of Deferred Action Cases at ICE,”](#) 27 Geo. Immig. L.J. (2013).

[“In Defense of DACA, Deferred Action, and the DREAM Act,”](#) 91 Texas L. Rev. SEE ALSO 59 (2013).

[“The Immigration Prosecutor and the Judge: Examining the Role of the Judiciary in Prosecutorial Discretion Decisions,”](#) 16 Harv. Latino L. Rev. 39 (2013).

[“Sharing Secrets: Examining Deferred Action and Transparency in Immigration Law,”](#) 10 U. N. H. L. Rev. 1 (2012).

[“Business As Usual: Immigration and the National Security Exception,”](#) 114 Penn State L. Rev. 1485 (2010).

[“The Role of Prosecutorial Discretion in Immigration Law,”](#) 9 Connecticut Pub. Int. L. J. 243 (2010).

“Under Arrest: Immigrants’ Rights and the Rule of Law,” 38 U. Memphis L. Rev. 853 (2008).

“The Policy and Politics of Immigrant Rights,” 16 Temple Pol. & Civil Rts. L. Rev. 387 (2007).

“Immigration: Mind Over Matter,” 5 U. Md. L. J. on Race, Religion, Gender & Class 201 (2006).

Book Chapters and Essays

American Immigration Lawyers Association, *Prosecutorial Discretion, Practice Advisory* (w. A. Gallagher and A. Nunez) (2017)

Carolina Academic Press, Book Chapter, Dreams Deferred: Deferred Action, Prosecutorial Discretion, and the Vexing Case(s) of DREAM Act Students in [Law Professor and Accidental Historian](#) (2017)

American Immigration Lawyers Association, *The Long and Winding Road of Prosecutorial Discretion, Practice Advisory* (w. L. Wildes and P. Taurel) (2015)

Who are the Players in Immigration Law? in What Every Lawyer Should Know About Immigration Law (American Bar Association 2014)

Reflections on Prosecutorial Discretion One Year After the Morton Memo, in *Emerging Issues Analysis* (LexisNexis, June 2012)

Prosecutorial Discretion in Immigration Agencies: A Year in Review, in *Emerging Issues Analysis* (LexisNexis, January 2012)

The Term Illegal Alien, in *Debates on U.S. Immigration*, (Sage Publications, 2012)

The Morton Memo and Prosecutorial Discretion: An Overview, American Immigration Council (July 2011)

Reading the Morton Memo: Federal Priorities and Prosecutorial Discretion, American Immigration Council (December 2010)

"Letter to Lahore," *The Subcontinental* Vol. 1, Issue 3 (with Sin Yen Ling), (2004)

Obama-Biden Presidential Transition Team, Immigration Policy: Transition Blueprint for the Obama Administration, 2008 (contributor)

Immigration Law Weekly, *Concerns With The DOJ's Proposed Rule To Implement The St. Cyr. Ruling* (w. Rob Randhava and Nancy Morawetz), September 13, 2003

Florida Bar Association, *21st Annual Immigration Law Update, Extreme Hardship For Waivers of Inadmissibility*, (w. Michael Maggio), 2000

APPOINTMENTS/HONORS

American-Arab Anti-Discrimination Committee, Excellence in Legal Advocacy Award, September 2017

[National Immigration Project](#) of the National Lawyers Guild, [2017 Honoree](#), June 2017

Penn State Law, Faculty Diversity Award, February 2017

Global Connections, Spirit of Internationalization Award, March 15, 2016

Named Samuel Weiss Faculty Scholar at Penn State Law, July 2013

Appointed to American Bar Association Commission on Immigration: 2010-2014

Department of Homeland Security, Office of Inspector General, Leadership Plaque, June 2008

Department of Homeland Security, Office of Civil Rights and Civil Liberties, award for leadership as co-chair of NGO working group, June 2008

Department of Homeland Security, Office of Civil Rights and Civil Liberties, Leadership Plaque, April 2006

American-Arab Anti-Discrimination Committee, Pro Bono Attorney of the Year, June 2003

Indiana University, Political Science Department, William Jennings Bryan Prize, 1996

Indiana University, Honors Division: Summer Research Grant, 1996

American University, Washington Semester Program, Dean's Scholarship, 1994

Congressional Award: Silver, 1991; Bronze, 1989

State/National Forensics League: over 25 trophies in related competitions, 1990-1993

BAR ADMISSIONS

State of Maryland

State of New Jersey

Court of Appeals for the Third Circuit

Supreme Court of the United States

MEMBERSHIPS

American Bar Association (since 2008) (Commissioner, 2010-2014)

American Civil Liberties Union, Pennsylvania Chapter, Board Member (2010-2011)

American Constitution Society (since 2015)

American Immigration Council, Board of Trustees (since 2016)

American Immigration Lawyers Association (since 2001)

National Immigration Project, National Lawyers Guild (since 2000)

Pennsylvania Immigration Resource Center, Board Member (2008-2011)

PRESENTATIONS (HIGHLIGHTS)

2017

Lecturer (Invited), Arlin Adams Center for Law and Society at Susquehanna University, Immigration in a New Administration, Selinsgrove, Pennsylvania, October 10, 2017

2017-2018 Cannon Lecturer (Invited), Beyond Deportation: The Role of Prosecutorial Discretion in Immigration Cases in the Wake of the Trump Administration, University of Toledo School of Law, Toledo, Ohio, September 11, 2017

Faculty Speaker, Student Orientation, Diversity and Inclusion in the Legal Profession, Penn State Law at University Park, August 15, 2017

Panelist, International Student Orientation, Understanding International Student Visas and the U.S. Travel Ban, Office of Global Programs, Pennsylvania State University, August 12, 2017

Panelist, National Council for State Legislatures (Invited), [National Summit](#), Immigration in 2017, Boston, MA, August 6, 2017

Discussant, Southeastern Association of Law Schools (SEALS), Workshop on National Security, Discussion Group: Trump's Executive Actions on Immigration: Travel Ban, Extreme Vetting, Border Surveillance, and Mass Deportation, Boca Raton, FL, August 4, 2017

Moderator (Invited), Annual Conference, American Immigration Lawyers Association, Prosecutorial Discretion, New Orleans, LA, June 21, 2017

Guest Speaker (Invited), Interfaith Initiative Centre County, Immigration in a New Administration, June 11, 2017

Speaker (Invited), Annual Conference, [Community Diversity Group Conference](#), Immigration, June 6, 2017

Panelist (Invited), Career Professionals Conference, Pennsylvania State University, Immigration in a New Administration, May 9, 2017

Keynote (Invited), Immigrant Justice Week Keynote Speaker, University of Wisconsin School of Law, Beyond Deportation: The Role of Prosecutorial Discretion in the Wake of Trump's Executive Orders, April 2017

Moderator, "[All In at Penn State Law: Addressing Diversity and Implicit Bias in the Legal Academy](#)", Penn State Law, March 16, 2017

Keynote (Invited), Sprit of Internationalization Awards Ceremony, Hosted by Global Connections, March 16, 2017

Speaker (Invited), National Press Conference on [Executive Order on Immigration](#), Hosted by Americas Voice, March 6, 2017

Speaker (Invited), National Community Call on Executive Order on Immigration (Muslim Ban 2.0), Hosted by Muslim Advocates, March 6, 2017

Organizer, [Executive Orders on Immigration: Where Have We Been and What Lies Ahead?](#) at Penn State Law, February 24, 2017

Guest Speaker on Immigration for [International Ministries at Penn State University](#), February 24, 2017

Speaker (Invited), Post-Executive Order [Briefing for Academics](#), American Immigration Council February 15, 2017

Speaker, Information Session on Executive Orders on Immigration for Postdoctoral students, staff and faculty at Penn State, February 10, 2017

Speaker, Information Session on Executive Orders on Immigration for Engineering faculty, staff and students at Penn State, February 7, 2017

Organizer, Information Session, [President Trump's Executive Orders on Immigration](#), February 3, 2017

2016

Speaker (Invited), Post-Election Research Briefing for Academics, Muslim Registry, American Immigration Council, December 20, 2016

Facilitator, Community Dialogue on Diversity, Immigration and Race Post-Election, State College, PA, November 18, 2016

Panelist (Invited), Fall Conference, DC Chapter of the American Immigration Lawyers Association, Notices to Appear/Prosecutorial Discretion, November 16, 2016

Panelist (Invited), Equal Justice Leadership and Training Conference, United States v. Texas and Prosecutorial Discretion, Washington D.C., October 26, 2016

Keynote and Book Discussion (Invited), Spartan Scholars Awards Ceremony, Ocean Township High School, Ocean, NJ, October 24, 2016

Lecture and Book Discussion (Invited), [Washington University School of Law](#) (sponsored by the Immigration Law Society and American Constitution Society), St. Louis, MO, October 14, 2016

Book Talk, University Women's Club (Invited), Book and Play Review Group, Schlow Centre Regional Library, State College, PA, September 26, 2016

Immigration Issues after U.S. v. Texas, Center for Immigrants' Rights Clinic, September 1, 2016

Immigration Issues after U.S. v. Texas, State College Municipal Building, A Panel Discussion, August 31, 2016

Book Talk and Discussion of DAPA/DACA Case at Supreme Court, State College Sunrise Rotary, State College, PA, August 17, 2016

Book Talk and Discussion of DAPA/DACA Case at the Supreme Court and Beyond; [Brown University Bookstore](#), Providence, RI, August 4, 2016

Panelist (Invited), American Immigration Lawyers Association's Annual Conference, Humanitarian Remedies in Immigration Law, June 2016

Guest Lecturer (Invited) United Nations Association of Centre County, May 2016

Cornell University School of Law, invited to present my research and FOIA strategies to social scientists working on empirical research related to deferred action, April 2016

Cornell University School of Law, present remarks on Beyond Deportation at a school sponsored public forum, April 2016

Pennsylvania Bar Association, Law Form on Mass Incarceration, Pittsburgh, PA (representing Penn State Law), March 31, 2016

Emory University School of Law, Discussion of Beyond Deportation (w. C. Kuck, sponsored by Immigration Law Society), February 2016

Emory University School of Law, annual Thrower Symposium on National Security, Invited panelist on domestic terrorism, immigration and national security, February 2016
Washington College of Law at American University, spoke about Beyond Deportation and Texas case (w. A. Frost, B. Johnson, P. Spiro) February 2016

New York School of Law/City Bar Association of New York City/NYU Press: panel on Beyond Deportation and United States v. Texas (w. L. Benson, A. Kalhan, F. Anello), January 2016

American Association for Law Schools, Annual Conference, (Invited) "Is Immigration Law Administrative Law," January 2016

2015

University of Cincinnati School of Law, Invited Speaker from Immigration and Nationality Law Review, Spoke about Beyond Deportation and United States v. Texas, November 2015

Case Western Reserve University School of Law, annual symposium, Invited panelist on executive action and immigration, October 2015

Chicago Bar Foundation/Mayor Brown/National Immigrant Justice Center: Panel Discussion on Beyond Deportation and United States v. Texas (w. G. Hereen, T. Magner, C. Valenzuela), October 2015

American Civil Liberties Union, Washington D.C., Book Talk on Beyond Deportation, September 2015

Department of Justice Office of Immigration Litigation, Washington D.C., Invited talk on Beyond Deportation to DOJ attorneys, September 2015

Temple University, Beasley School of Law, Philadelphia, PA, Panel Discussion on Beyond Deportation (w. Jaya Ramji-Nogales, J. Family), September 2015

Drexel School of Law, Philadelphia, PA, Panel Discussion on Beyond Deportation (w. B. Stock and A. Kalhan), September 2015

National Press Club, Book Launch of Beyond Deportation (with S. Legomsky, F. Sharry and E. Quinn), June 2015

Panelist, American Constitution Society, [Going it Alone? Presidential Power and the DAPA Debate](#), June 2015

Moderator, American Immigration Lawyers Association's Annual Conference, The Long and Winding Road of Prosecutorial Discretion, June 2015

Keynote Speaker, Pennsylvania Immigration Resource Center, Light of Liberty Awards, March 2015

Keynote Speaker, Conference on Race, Class, Gender and Ethnicity: University of North Carolina School of Law-Chapel Hill, February 2015

Presenter, CLE on Immigration and Executive Action, Centre County Bar Association, February 2015

Opening Remarks and Panelist, American University Law Review, Symposium on Prosecutorial Discretion, January 2015

Panelist, American Association for Law School's Academic Symposium on Congressional Dysfunction and Executive Lawmaking, January 2015

2014

Moderator, Penn State Law, Symposium "Shining the Light on Gender-Based Violence at Home and Abroad", October 2014

Facilitator, National Immigration Project, Continuing Legal Education Program on Challenges to Immigration Detention, September 2014

Panelist, American Bar Association, Homeland Security Institute August 2014

Presenter of and Commentator on Works-in-Progress, Immigration Law Professors Workshop, University of California Irvine- School of Law May 2014

Presenter of and Commentator on Works-in-Progress, The Association of American Law Schools Annual Conference on Clinical Legal Education, April 2014

2013

Panelist, Tenth Annual Wiley A. Branton / Howard Law Journal Symposium, Howard University School of Law, October 2013

Workshop and Presenter, Clinical Law Review Writers' Workshop 2013, New York University School of Law, September 2013

Panelist, National Immigration Project, CLE Program on "Developments in Immigration Law & Removal Defense" (May 2013)

2012

Moderator, American Bar Association Section on Administrative Law and Regulatory Practice, Fall Conference, Understanding Prosecutorial Discretion in Immigration Law, (October 2012)

Luncheon Speaker, Pennsylvania State University, Migration Studies Project, Immigration Law and the Administration's Deferred Action for Childhood Arrivals Program, (September 2012)

Organizer and Moderator, Penn State Law's Symposium on Immigration Remedies for Victims of Domestic Abuse, (September 2012) (w. Centre County Women Resource Center's Civil Legal Representation Project)

Panelist, Immigration Law Teachers Workshop, Plenary on Prosecutorial Discretion

(June 2, 2012)

Panelist, Press Conference, "The NSEERS Effect: A Decade of Racial Profiling, Fear, and Secrecy" (June 4, 2012)

Speaker, Press Conference: "Law Professors Alongside DREAMers Discuss Details of Memo Outlining President's Legal Authority to Grant Much Needed Relief for the Latino Community," (June 1, 2012), <http://act.americasvoiceonline.org/page/-/americasvoice/audio/DREAM%20060112.mp3>

Panelist, Foreign Policy Association, *Immigration Policy: What Is It and What Should It Be?* (May 24, 2012)

Panelist, American Immigration Lawyers Association, CLE Audio Seminar on Cancellation of Removal Relief (April 26, 2012)

2011

Panelist, American Immigration Lawyers Association, CLE Webinar on Deferred Action (October 25, 2011)

Penn State Law, Center for Immigrants' Rights, [The 9/11 Effect and its Legacy on U.S. Immigration Laws](#), Organizer and Moderator (September 2011)

Panelist, 23rd Annual Minority Attorney Conference, Immigration Panel, Philadelphia, PA (March 17 & 18, 2011)

Panelist, Maggio + Kattar Community Forum on Prosecutorial Discretion and Private Bills, Washington D.C. (January 26, 2011)

2010

Penn State Law, Center for Immigrants' Rights, [Fall Colloquium on the 30th Anniversary of the Refugee Act](#), Organizer and Moderator (November 2010)

Presenter, Penn State University, Research Unplugged, [Presentation on "Immigration Rights and Wrongs"](#) (October 2010)

Penn State Law, [World on Trial](#), Jury Member and Foreperson (September 2010)

Robert C. Byrd Center for Legislative Studies, Tom E. Moses Memorial Lecture on the U.S. Constitution (September 2010)

Seton Hall Law School, National People of Color Legal Scholarship Conference, Moderator and Panelist (September 2010)

Panelist, Penn State University Dickinson School of Law, [Symposium on Iqbal v. Ashcroft](#) (2010)

M.C. and Moderator, Penn State University Dickinson School of Law, [Symposium on Immigration Adjudications and Court Reform](#) (2010)

2009

Lecturer, Penn State University, Presidential Leadership Academy, Immigration (2009)

Lecturer, Penn State University, School for International Affairs, Asylum Law (2009)

University of Illinois School of Law, Big 10 Aspiring Scholars Conference, Abstract Presentation (2009)

M.C. and Moderator, Penn State Dickinson School of Law, Symposium on Immigration Reform (2009)

Panelist, Georgetown University Law Center, Panel on Counterterrorism and Immigration (2009)

2008

Panelist, University of Connecticut School of Law, Symposium on Immigration (2008)

Panelist, University of Memphis School of Law, Symposium on Immigration Issues (2008)

Older

New England People of Color Conference, Moving Forward or Moving Backward? Criminal Justice and Immigration in the 21st Century, Commentator (2007)

Panelist, Stanford Law School, Symposium on Immigration Reform and Policy (2007)

Panelist, Temple University School of Law, Symposium on Immigration Reform (2006)

Panelist, University of Texas School of Law, Symposium on Immigration and Civil Rights (2006)

Panelist, University of Maryland School of Law, Symposium on Immigration Reform (2004)

Instructor, District of Columbia Bar: Continuing Legal Education Series, Removal and Deportation (2002-03)

Panelist, Columbia University Law School, Panel on Immigration Policy and Due Process (2005)

Panelist, Catholic University Law School, Panel on Immigration Policy and Due Process (2005)

Panelist, Georgetown University Law Center, Alumni Panel on Public Interest Law (2004)

Arab Community Center for Economic and Social Services, Panel on Immigration Policy (2004)

University of Michigan-Dearborn, Teach-In on Immigration Policy (2005)

Illinois Coalition for Immigrant and Refugee Rights, Policy Summit, Panel on Immigration Policy and Due Process (2004)

Speaker, New York University School of Law/Breakthrough: Forum on Immigration Policy (2004)

Panelist, Japanese American Citizens League/Office of Chinese Americans Annual Leadership Conference: Panel on Immigration Policy and Due Process (2003-2005)

National Lawyers Guild Annual Convention, Panels on Immigration Policy (2001-05)

Panelist, Ethiopian Community Development Council: Panel on Department of Homeland Security and its Impact on the Asylum and Refugee Community (2003)

MEDIA

MSNBC [The Last Word with Lawrence O'Donnell](#), November 20, 2014.

USA Today, [What's Next for Trump's travel ban?](#) June, 2017

New York Times Magazine, [Is It Possible to Resist Deportation in Trump's America?](#) May 2017

Wisconsin Public Radio, [Travel Ban Litigation](#), July 2017

WPSU, [Travel Ban Blocked, But Its Aftermath Reverberates At Penn State](#), May 2017

The Hill, [Immigrant detention centers marred by 'needless deaths' amid poor care – report](#), May 2017

ABC23 News, [Immigration Concerns](#), May 2017

WPSU, Featured Guest on Immigration Panel, [Conversations Live](#), March 2017

WPSU, Featured Guest, [Digging Deeper on Immigration](#) (w. Pennsylvania State University President Eric Barron), March 2017 (aired April 2017)

Town & Gown, [Lunch with Mimi](#), March 2017

ABC23 New, [Immigration Concerns](#), March 2017

WJAC, [Trump's executive order could be stopped before going into effect](#), March 2017

Bloomberg BNA, [Are Immigrants Protected Under Obama No Longer Safe?](#), February 2017

Law360, [3 Key Takeaways From The 9th Circ.'s Travel Ban Ruling](#), February 2017

The Washington Post, [Draft executive order would begin 'extreme vetting' of immigrants and visitors to the U.S.](#), January 2017

The Atlantic, [Two Cases Could Limit or Enhance Trump's Ability to Engage in Mass Deportations](#), January 2017

NBC News, [Obama Leaves Behind a Mixed Legacy on Immigration](#), January 2017

Centre Daily Times (Front Page), [Teach-In Offers Overview of Immigrants' Rights](#), January 2017

WTAJ-TV, [Statewide 'teach-in' held on immigrants' rights](#), January 2017

WJAC-TV, [Penn State Law hosts 'Teach-In' on immigrants' rights](#), January 2017

Centre Daily Times (Front Page), [Borough Council Expresses Support for Immigrant Community](#), January 2017

WTAJ-TV, [Resolution approved to help immigrants](#), January 2017

Statecollege.com, [Borough Council Passes Immigration Enforcement Resolution](#), January 2017

The Guardian, [Registry used to track Arabs and Muslims dismantled by Obama administration](#), December 2016

Long Island Press, [Obama Administration Dismantles Framework of Muslim-Focused Registry](#), December 2016

Huffington Post, [Obama Administration Makes Last-Minute Bid To Stall Trump's Ability To Create Muslim Registry](#), December 2016

The Atlantic, [America Already Had a Muslim Registry](#), December 2016

The Guardian, [Muslims to march on White House in bid to dismantle discriminatory registry](#), December 2016

PBS Newshour, [Could President Trump really create a tracking system for U.S. Muslims?](#), December 2016

Politifact, [In context: "Dreamers" and background checks](#), December 2016

VICE, [This Small Town Is Helping Undocumented Immigrants, but Don't Call It a 'Sanctuary City'](#), December 2016

Centre Daily Times (Front Page): [Penn State supports DACA students, hopes to ease fears](#), December 2016

Philadelphia Inquirer, [Ebola scare over, Liberian immigrants lose right to stay in U.S.](#), November 2016

Long Island Press, [Trump Team Considering Resurrecting Ineffective & Discredited Bush-Era Muslim Registry](#), November 2016

ATTN, [Why Muslim Registries Haven't Worked in America](#), November 2016

Medium, [Musings on Dreamers, Mass Deportations and a "Muslim Registry"](#) November 2016

New York Times, [Trump Camp's Talk of Registry and Japanese Internment Raises Muslims' Fears](#), November 2016

Vox, [Donald Trump's proposed "Muslim registry," explained](#), November 2016

The Christian Science Monitor, [Will Trump's plan to register Muslims make it to The White House?](#), November 2016

Penn State Research Magazine [Profile on Clinic and Research](#), Spring 2016

Penn State [Probing Questions Video Project](#), February 2016

National Public Radio, [Take Note: Unauthorized Immigrants and the Use of Prosecutorial Discretion](#), September 18, 2015 (full length book interview)

Minnesota Public Radio, [Untangling Obama's Immigration Policy](#), March 2, 2016

San Francisco Chronicle, [Paris attacks stoke fears at home about Syrian refugees](#), November 17, 2015

CNN National, [States cannot refuse refugees, but they can make it difficult](#), November 16, 2015

Wall Street Journal [Appeals Court to Again Consider Obama Immigrant Deportation Policy](#) July 9, 2015

Buzzfeed [No Clear Indications About Ruling On Immigration Actions Case At Arguments](#), April 17, 2015

Vox.com [The government can't enforce every law. Who gets to decide which ones it does?](#), March 31, 2015

[C-SPAN coverage](#), Association for American Law Schools, Academic Symposium on Executive Action, Jan. 5, 2015.

Rachel Maddow Blog [Judge takes aim at Obama's immigration policy](#), Dec. 17, 2014.

MSNBC [Bush appointee rules Obama's immigration action unconstitutional](#), Dec. 16, 2014.

Roll Call [Obama's Immigration Actions Test Presidential Power](#), November 20, 2014.

The Roanoke Times [Goodlatte signs legal brief fighting Obama immigration action](#) Dec. 17, 2014.

[C-SPAN coverage](#), American Bar Association, Homeland Security Institute, August 2014.

The Economist Blog [Mini-DREAM and the rule of law](#), June 18, 2012.

Dallas Morning News [U.S. Immigration Enforcements 'Prosecutorial Discretion' History Dates to John Lennon](#), October 6, 2013.

[The Epoch Times](#) Immigration's Legal Labyrinth: The Agony of Discretion, November 16, 2014.

United We Dream, Speaker, Press Conference [UWD & Legal Experts Define Success: Presidential Executive Action Must Be Broad, Bold and Inclusive](#), Oct. 29, 2014.

National Immigration Law Center, Invited Speaker, Press Conference [Law and Precedent Allow Broad Presidential Action on Immigration](#), August 14, 2014.

America's Voice, Invited Speaker, Press Conference: "[Law Professors Alongside](#)

[DREAMers Discuss Details of Memo Outlining President's Legal Authority to Grant Much Needed Relief for the Latino Community](#)," June 1, 2012.

Original Op-Eds/Opinion Pieces

American Constitution Society, [Muslim Ban Litigation: An Unfinished Symphony](#), July 20, 2017

American Constitution Society, [Reflections on Bona Fide Relationships](#), July 14, 2017

American Immigration Council, ImmigrationImpact, [Ending Deportation Priorities Breaks Away from Decades of History and Sound Policy](#), July 10, 2017.

SCOTUS Blog, [Immigration symposium: Delays, detentions and due process](#) – Why Jennings matters, June 27, 2017.

American Constitution Society, [Musings on Today's Travel Ban Decision by the Supreme Court](#), June 26, 2017.

Medium, [The Birth and Death of Deferred Action \(and what the Future Holds\)](#), June 16, 2017.

American Immigration Council, ImmigrationImpact, [The Dire State of Immigration Detention in Georgia](#), June 6, 2017.

Yale Law Journal on Regulation, [Notice and Comment, Prosecutorial Discretion at ICE: My Latest FOIA Adventure](#), May 26, 2017.

Yale Law Journal on Regulation, Notice and Comment, Donald Trump's [Enforcement Plan and the Future of Discretion](#), April 25, 2017.

Medium, [Immigration Law and Policy After the Executive Orders: Five Key Points](#), March 25, 2017.

American Constitution Society, [Musings on Muslim Ban 2.0](#), March 13, 2017.

The Conversation, [Trump's immigration executive orders: The demise of due process and discretion](#), March 6, 2017. (reprinted in Associated Press, Newsweek, Salon, Houston Chronicle, and additional outlets)

Medium, [Leaked DHS Memo Implementing the Executive Order on Border Enforcement](#), February 18, 2017.

Medium, [Leaked DHS Memo Implementing the Executive Order on Interior Enforcement \(or Is Prosecutorial Discretion Dead?\)](#), February 18, 2017.

Medium, [On This Day: The End of NSEERS](#), December 2016.

Notice & Comment, Yale Journal on Regulation; Medium, [Understanding the Final Rule Ending NSEERS](#), December 2016.

Medium, [Shutting Down Special Registration](#), December 2016.

Medium, [NSEERS or “Muslim” Registration Was a Failed Post 9–11 Program and Must Come to an End](#), November 2016.

American Constitution Society, Medium, [Musings on Dreamers, Mass Deportations and a “Muslim Registry”](#), November 2016.

Medium, [Immigration Law and Policy After the Election: Six Key Points](#), November 2016

Supreme Court of the United States Blog (SCOTUS Blog), [Symposium: A meditation on history, law and loss](#), June 23, 2016.

American Constitution Society. [Beyond Deportation: Prosecutorial Discretion Requests After U.S. v. Texas](#), June 28, 2016.

American Constitution Society. Reflections on Judge Hanen’s Reprimand. May 23, 2016.

American Immigration Council, ImmigrationImpact. [Understanding Justice Kennedy’s Upside Down Argument](#), April 20, 2016.

ImmigrationProf Blog. [U.S. v. Texas – TRUE OR FALSE?](#), April 19, 2016.

American Constitution Society. [Notice and Comment Rulemaking in U.S. v. Texas](#), April 15, 2016.

Yale Law Journal on Regulation, Notice and Comment, [Employment Authorization and Prosecutorial Discretion: The Case for Immigration Unexceptionalism](#), February 10, 2016.

[The Patriot-News](#), Trump’s Muslim ban reeks of failed post-9/11 anti-Muslim policies, December 10, 2015.

[The Hill](#), 9-11 Flashback and Future Immigration Policy, December 9, 2015.

[The Hill](#), On the Anniversary of Obama’s Immigration Announcement, November 21, 2015.

[Centre Daily Times](#), Syrian Refugees and Moral Courage, November 21, 2015.

[The Hill](#), Immigration Argument at the Fifth Circuit, July 14, 2015.

Centre Daily Times, State College Raid: Reflections One Year Later, June 9, 2015.

American Constitution Society. A President's Constitutional and Faithful Execution of Immigration Law, January 19, 2016.

American Constitution Society. Book Talk. Beyond Deportation: The Role of Prosecutorial Discretion in Immigration Cases, January 27, 2016.

From the Square. NYU Press Blog. The Refugee Dilemma and the Broader Immigration Debate, December 11, 2015.

American Constitution Society. Seeking to Understand the Fifth Circuit Ruling on Deferred Action, November 11, 2015.

Crimmigration. Beyond Deportation: The Relationship Between Immigration Prosecutorial Discretion and Criminal Activity, August 4, 2015.

From the Square. NYU Press Blog, Book Notes: Beyond Deportation, July 28, 2015.

ImmigrationProf Blog. Law Professor Blogs, Work authorization for dreamers, a week of wonders and woes, July 17, 2015.

ImmigrationProf Blog. Law Professor Blogs, Beyond Deportation, July 10, 2015.

Centre Daily Times [Raids, rights and the rule of law](#), June 24, 2014.

The Hill [Relics of 'deferred action'](#), November 20, 2014.

The Hill- Op-Ed [To file or not to file Vargas's Notice to Appear](#), July 17, 2014.

Centre Daily Times [State College Raid: Reflections One Year Later](#), June 9, 2015.

ImmigrationProf Blog. Law Professor Blogs, *Immigration Prosecutorial Discretion and Deportation*, April 30, 2014.

AILA Slip Opinion Blog. American Immigration Lawyers Association, *Ninth Circuit Upholds the Rule of Law and Limits Chevron Deference for Children who "Age-Out" During the Green Card Process*, October 2012.

ImmigrationProf Blog. Law Professor Blogs, *Deferred Action in Immigration Law: The Next Generation*, June 28, 2012.

AILA Leadership Blog. American Immigration Lawyers Association, *DHS Releases Long-Awaited Memo on Controversial 9/11 Program* (w. Denyse Sabagh), May 2012.

AILA Slip Opinion Blog. American Immigration Lawyers Association, *Musings on the Visa Waiver Program, No-Right Waivers and the Age of Youth*, March 2012.

AILA Slip Opinion Blog. American Immigration Lawyers Association, Board Offers New Standard for Administrative Closure, and Highlights the Importance of Decisional Independence, February 2012.

ImmigrationProf Blog. Law Professor Blogs, *Prosecutorial Discretion and Post 9-11*, December 2011.

AILA Slip Opinion Blog. American Immigration Lawyers Association, Third Circuit Reflects on Unlawful Presence, Chevron, and the Importance of Prosecutorial Discretion, September 2011.

ImmigrationProf Blog. Law Professor Blogs, *White House's Review of Removal Cases*, September 2011.

ImmigrationProf Blog. Law Professor Blogs, *9/11 Registration and the Morton Memo*, July 2011.

ImmigrationProf Blog. Law Professor Blogs, (w. Leon Wildes) *Prosecutorial Discretion and the Legacy of John Lennon*, July 2011.

Co-founder and contributor to "Race Matters" blog: <http://endnseers.blogspot.com/>

Advocacy - Law Professor Letters

Co-author of letter to the White House supporting the legal authority of executive action in immigration law, signed by 136 law professors and featured in national press, Sept. 3, 2014

- Washington Post [Lawyer's agree: Obama has broad authority to act on deportations](#), Sept. 3, 2014

Co-author of letter supporting President Obama's deferred action programs announced signed by 135 law professors and featured in national press and at congressional hearings, Nov. 25, 2014:

- Associated Press Bigstory [Legal Scholars: Obama's immigration actions lawful](#), Nov. 25, 2014

Co-author of letter to the White House defending the legality of extending deferred action to the parents of DACA (Deferred action for Childhood Arrivals) recipients, Nov. 3, 2014

- NBC News [Law Profs: Legal To Include More Immigrant Parents In Exec Action](#), Dec. 3, 2014

Co-author of law professor letter challenging *Texas v. U.S.* (March 2015), signed by 104 immigration law scholars and featured in national press

- NBC News Legal Experts: [Ruling Blocking Immigration Action 'Deeply Flawed'](#), March 13, 2015
- Law 360: Law Profs. Call Executive Action Injunction 'Deeply Flawed', March 13, 2015

OTHER EXPERIENCE

Howard University School of Law, Washington DC

Adjunct Faculty, January 2008-May 2008

Taught 3 unit course on immigration law and policy

American University, Washington College of Law, Washington DC

Adjunct Faculty, Spring 2005-August 2008

Taught 3 unit course on asylum and refugee law

Indiana University, Bloomington, Indiana

Teaching Assistant, Fall 1995

Taught undergraduate course on American Political Science

Georgetown University Law Center, Washington DC

Research Assistant for T. Alexander Aleinikoff, 1997-1998

District of Columbia Superior Court, Washington DC

Legal Intern, Fall 1997

Advice Desk for Abused Women, Durban, South Africa

Legal Intern/Trainer, Summer 1997

Monitored women's collectives in rural regions of Zululand; Lived in a shelter for and counseled abused women and children; Wrote legal analysis of the Advice Desk for Abused Women's activities

Indian Social Institute, New Delhi, India

Legal Researcher, Summer 1996

Published legal analysis of girl-child prostitution in India; Conducted field work in village and slum areas of Delhi; wrote white paper on human rights education methods for women

Department of Justice, Civil Rights Division, Washington DC

Washington Semester Intern, Fall 1994

Read and absorbed Title II of the American with Disabilities Act (ADA); Reviewed and assessed complaints falling under Title II of ADA

VOLUNTEER WORK AND COMMUNITY SERVICE

- Georgetown University Law Center Mentor, Public Interest Law Scholars Program, 2006-2009
- National Lawyers Guild, Washington DC Chapter, Immigration Comm. Chair, 2001-2004
- Florida Immigrant Advocacy Center, Legal Volunteer, Spring 1996 (one week intensive)
- Council for Community Accessibility, Bloomington, IN, Volunteer, 1995
- Monmouth Medical Center, Long Branch, NJ, Hospital Volunteer, 1988-1993-500+ hours