

FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

STATE OF TEXAS, <i>et al.</i> ,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	Case No. 1:18-CV-68
	§	
UNITED STATES OF AMERICA, <i>et al.</i> ,	§	
	§	
Defendants,	§	
	§	
and	§	
	§	
KARLA PEREZ, <i>et al.</i> ,	§	
	§	
Defendant-Intervenors,	§	
	§	
and	§	
	§	
STATE OF NEW JERSEY,	§	
	§	
Defendant-Intervenor.	§	

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, PA. 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 first 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. My second book *Banned: Immigration Enforcement in the Time of Trump*, will be released by New York University Press on September 10, 2019 and examines immigration enforcement and discretion in the first eighteen months of the Trump administration.

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 eighteen law journals, including but not limited to *Washington and Lee Law Review*; *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*. I am the co-author of a forthcoming immigration textbook, *Immigration and Nationality Law: Problems and Solutions* to be published by Carolina Academic Press in 2019.

6. My scholarship has been cited more than 450 times by other scholars as measured by Google Scholar. My work on prosecutorial dissection has been cited to by federal appellate court judges, including Judge Richard Posner (article on deferred action), Judge Paul J. Watford (article on the role of discretion in speed deportation), and Judge Kim McLane Wardlaw (“See generally” citation to book *Beyond Deportation*).

7. 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.

8. 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 Clinic (CIRC), which I founded.

9. Since the Fall 2008 semester, I have supervised more than 100 students at CIRC 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. CIRC is a 2017 recipient of the Legal Advocacy Award by the American-Arab Anti-Discrimination Committee, and a 2019 recipient of the Light of Liberty Award for legal organization of the year by the Pennsylvania Immigration Resource Center.

10. In 2018, I was named and serve as the inaugural Editor-In-Chief of the American Immigration Lawyers Association (AILA) Law Journal, a partnership between AILA and Fastcase. I currently sit on the Board of Directors of the American Immigration Council and

previously served as a Commissioner on the American Bar Association's Commission on Immigration.

11. 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, the Arnold Addison Award for Town and Gown Relations by the Borough of State College, and the 2019 Elmer Friend Excellence in Teaching Award by the American Immigration Lawyers Association.

12. 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 *Beyond Deportation*. 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.

13. 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

14. 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 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.

Prosecutorial Discretion in Immigration Law

15. 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.

16. 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.

17. 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.

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

19. 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.

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>.

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.

20. Other forms of prosecutorial discretion include the use of “extended voluntary departure”⁵ and “deferred enforced 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

21. 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 former ICE 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

22. 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.

23. 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

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

⁶ Congressional Research Service, *Temporary Protected Status: Overview and Current Issues*, 3-4, March 29, 2019.

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

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

24. 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.

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

26. 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.

27. 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.

28. The Meissner Memo builds upon the Bernsen Memo and provides a broad overview regarding the use of prosecutorial discretion, including connections to criminal law.

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

Standards guiding prosecutorial discretion in the criminal context historically have informed the use of such discretion in immigration.

29. 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).

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

31. 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

32. 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

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.”)).

33. 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.

34. 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 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.

35. 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.”

36. The Meissner Memo has been repeatedly reaffirmed in subsequent years, through both a 2003 memo from then-INS Associate Commissioner Johnny N. Williams,¹¹ shortly after

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).

DHS was formed, a 2007 memo from then-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

37. 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.

38. 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

39. 1956 (Eisenhower): An extended voluntary departure program was implemented for certain beneficiaries of an approved third-preference petition for skilled or other workers.¹⁵

40. 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

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 Overview*, U.S. Congressional Research Service (Nov. 10, 2014), <https://fas.org/sgp/crs/homesecc/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).

41. 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

42. 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

43. 2007 (George W. Bush): Deferred enforced departure was announced for certain Liberians in light of armed conflict in Liberia.¹⁹ The policy has since been extended for 12 or 18 months at a time, most recently by President Trump in March 2019.²⁰

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>.

¹⁹ Deferred Enforced Departure- Liberia, U.S. Citizenship and Immigration Services, <https://www.uscis.gov/humanitarian/deferred-enforced-departure/ded-granted-country-liberia/ded-granted-country-liberia> (last updated Apr. 4, 2019).

²⁰ Memorandum on Extension of Deferred Enforced Departure for Liberians (March 29, 2019), <https://www.whitehouse.gov/presidential-actions/memorandum-extension-deferred-enforced-departure-liberians/>.

44. 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

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

Deferred Action

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

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>.

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).

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

47. 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.

48. 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.

49. 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

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

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

²⁶ *Id.* at 187, n.8(ii), citing (Legacy) Immigration and Naturalization Service, Operations Instructions, O.I. § 103.1(a)(1)(ii) (1975).

51. 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

52. 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.

53. Deferred action, inside and outside DACA, does not provide individuals with a substantive benefit. Deferred action is not a legal status, and does not provide an independent basis for obtaining permanent residence or United States citizenship. Importantly, the immigration statute provides four primary bases through which a foreign national can seek for permanent residency and eventual citizenship: family, employment, diversity lottery, and as a refugee.

54. Pursuant to federal regulations, individuals granted deferred action may be eligible for employment authorization upon a case-by-case showing of “economic necessity.”²⁸ DACA recipients, like other deferred action grantees, are eligible to apply for work authorization pursuant to these regulations. Historically, thousands of individuals have been granted

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/>.

employment authorization pursuant to a grant of deferred action.²⁹ The regulation that governs work authorization for deferred action has been operational for more than 30 years.

55. The 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.³⁰ A request must have at least four components: an explanation supporting the request with supplemental documentation, proof of identity and nationality, any documents utilized to enter the U.S., and biographical information. In addition, ICE has the authority to grant deferred action to individuals.

Legal References to Deferred Action

56. 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.

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

²⁹ Shoba S. Wadhia, *Demystifying Work Authorization and Prosecutorial Discretion in Immigration Cases*, Colum. J. Race & L. 1 (2016).

³⁰ 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/; See also, Shoba S. Wadhia, Response from USCIS for Deferred Action (non-DACA), (May 22, 2019), (Obtained under the Freedom of Information Act from U.S. Citizenship and Immigration Services; received May 2019), https://works.bepress.com/shoba_wadhia/46/

58. 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).

59. 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.³¹

60. 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.

61. 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.³²

Historical Use of Deferred Action

62. Long before DACA, thousands of individuals had been and continue to be processed for and granted work authorization pursuant to deferred action.³³

63. 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.

³¹ *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).

³² Letter from 130+ Law Professors (Sep. 3, 2014), <https://pennstatelaw.psu.edu/file/Law-Professor-Letter.pdf>.

³³ Wadhia, *supra* note 25, at 2.

64. 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.

65. 2003 (George W. Bush): Then- 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 certain statutory protections such as a U visa.³⁴

66. 2005 (George W. Bush): The President announced a “deferred action” program for foreign academic students affected by Hurricane Katrina.³⁵

67. 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

³⁴ 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/ucntr1100803.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.

³⁵ 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/pressrelese/F1Student_11_25_05_PR.pdf.

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.”³⁶

68. 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.

69. 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.

70. 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.³⁷

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

72. 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.³⁸

³⁶ 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>.

³⁷ 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>

³⁸ Wadhia, *supra* note 25, at 68.

DACA

73. 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, 2007.³⁹ Long-term residence and tender age are two central facets of deferred action.

74. 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.

75. 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 is longstanding and in fact customary.

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

Conclusion

77. 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.

³⁹ 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>.

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.

Shoba Sivaprasad Wadhia

SHOBA SIVAPRASAD WADHIA

Dated this 17th day of July 2019.

EXHIBIT A

CURRICULUM VITAE

Shoba Sivaprasad Wadhia
Samuel Weiss Faculty Scholar
Clinical Professor of Law
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 Clinic, June 2008-present

- Direct an immigration clinic where law students work on immigration cases and projects under my supervision; Cases and projects fall into three core areas: 1) community outreach and education; 2) policy work for institutional clients; and 3) legal support in individual immigration cases
- Teach doctrinal courses in immigration and refugee law
- Write and publish in the area of immigration law and policy
- Serve Penn State, and broader community in areas of immigration, access to justice, diversity and inclusion

National Immigration Forum, Washington, D.C.

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, D.C.

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, D.C., J.D., May 1999

- Georgetown Immigration Law Journal- Senior Notes & Comments Editor

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

- William Jennings Bryan Award for Outstanding Honors Thesis, Department of Political Science

SCHOLARSHIP

CITATIONS

Citations in Google Scholar – 473; since 2014- 323

Citations in Judicial Decisions: Judge Richard Posner (article on deferred action), Judge Paul J. Watford (article on the role of discretion in speed deportation), and Judge Kim McLane Wardlaw (“See generally” citation to book *Beyond Deportation*)

EDITORIAL POSITIONS

Fastcase and the American Immigration Lawyers Association, Inaugural Editor-In-Chief, AILA Law Journal <https://www.aila.org/publications/aila-law-journal>

BOOKS

Immigration and Nationality Law: Problems and Strategies (w. Lenni Benson and Steve Yale-Loehr) (Carolina Academic Press) (forthcoming 2020)

Banned: *Immigration Enforcement in the Time of Trump* (New York University Press, forthcoming 2019)

- Release Date: September 10, 2019

Beyond Deportation: *The Role of Prosecutorial Discretion in Immigration Cases* (New York University Press 2015), in 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

[National Security, Immigration and the Muslim Bans](#), 75 WASH. & LEE L. REV. 1475 (2018).

[Is Immigration Law National Security Law?](#) 66 Emory L.J. 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 J. on Reg. (2016).

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

[The Rise of Speed Deportation and the Role of Discretion](#), Vol. 5 No. 1 Colum. J of Race & L. (2015).

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

[Response, 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).

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

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

[The History of Prosecutorial Discretion in Immigration Law](#) Amer. Univ. L. Rev. Vol 64.5 (2015).

[Immigration Enforcement and the Future of Discretion](#), 22 Roger Williams Law Review, 353 (2018).

Remarks, Prosecutorial Discretion in Immigration Law, Dick. L. Rev. (forthcoming, 2019).

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

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

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

Shorter Works

American Immigration Lawyers Association, *Don't Let it Go! Contesting NTAs*, *Practice Advisory* (w. Nicholas J. Mireles and Benjamin Osorio) (2019)

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

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

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

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

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

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

The Subcontinental, *Letter to Lahore*, 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

TEACHING

AT PENN STATE

Center for Immigrants' Rights Clinic (5 credits) (since 2008)

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. The Center for Immigrants' Rights Clinic (CIRC) has earned a national reputation and focuses on three areas: 1) policy work for institutional clients; 2) community outreach and education; and 3) legal support in individual cases. 2018 marked the 10-year anniversary of CIRC.

[Publications by the CIRC](#) [Press releases and stories](#) about CIRC

Advanced Immigration Clinic (2 to 5 credits)

Asylum and Refugee Law (3 credits) (since 2009)

Immigration Law (3 credits) (since 2011)

*New: Online Course on Immigration (non-credit), in progress

Howard University School of Law, Washington DC

Adjunct Faculty, January 2008-May 2008 - 3-unit course on immigration law and policy

American University, Washington College of Law, Washington DC

Adjunct Faculty, Spring 2005-August 2008- 3-unit course on asylum and refugee law

Indiana University, Bloomington, Indiana

Teaching Assistant, Fall 1995- undergraduate teaching assistant in American Politics

AWARDS & HONORS

[Enlund Scholar-In-Residence](#), DePaul Law, recognized on April 10, 2019

2019 AILA Elmer Fried Excellence in Teaching Award, annual award by the American Immigration Lawyers Association, June 20, 2019

[Arnold Addison Award for Town and Gown Relations](#), Borough of State College, recognized April 18, 2019

Light of Liberty Award for Outstanding Pro Bono Service to the Community by a legal organization, awarded by the Pennsylvania Immigration Resource Center, June 12, 2019

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

Faculty Diversity Award, Penn State Law, recognized two years: April 2019 and 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

SERVICE

AT PENN STATE

Rapid Response: [Immigration in the Time of Trump](#): CIRC has been at the forefront locally and nationally responding to immigration issues during the Trump administration. We have generated dozens of fact sheets, community forums, legal workshops and written updates in a “rapid response” format, usually within 48 hours of a major policy change.

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. Helped to operate the program for three years.

Interdisciplinary Roundtable on Immigration (2011-2016): 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) (2013-17)
- Strategic Planning Committee (2013-14)
- Academic Rules Committee (2012-13)
- Curriculum Committee (2009-12)
- Clinics Committee (2008-9)

SPEAKING AT PENN STATE OR IN THE COMMUNITY

[Welcoming the Other](#) (w. President Eric Barron, Penn State Hillel, and Penn State Latino/a Studies), Penn State University, March 27, 2019

Community Diversity Conference, Banned: Immigration Enforcement and Asylum in the Age of Trump, Penn State Hotel, June 12, 2019

UN Centre County Chapter, Keynote Speaker, State College, PA, April 17, 2019

Dickinson School of Law, Dickinson Law Review Symposium, "Discretion and Misconduct: Examining the Roles, Functions, and Duties of the Modern Prosecutor," Remarks on Prosecutorial Discretion in Immigration Law, Carlisle, PA, March 15, 2019

Penn State University, Lunch with Honors Speakers Series, Remarks on Immigration Enforcement and Asylum, March 13, 2019

Penn State University, "Tough Conversations": A Panel Discussion, College of Education, February 22, 2019

Jane Marie Foundation, [Mokita Dialogue on Immigration](#), State College, PA, January 24, 2019

Department of Mechanical and Nuclear Engineering, Penn State University, Immigration, January 23, 2019

Foxdale Village, Immigration and Refugees, State College, PA, January 15, 2019

Asylum 101, Journal for International Affairs and Latinx Law Student Association, Penn State Law, September 27, 2018

Hispanic Heritage Month, Immigration 101, Diversity and Inclusion Committee of Finance and Business, Penn State University, September 12, 2018

International Student/Parent Orientation, Understanding International Student Visas and the U.S. Travel Ban, Office of Global Programs, Penn State University, August 2018

Immigration Misinformation: What People Get Wrong and How to Respond, Foster Auditorium, Penn State University, February 13, 2018

[Q & A on Immigration with Marc Friedenberg](#), February 8, 2018

Balancing the First Amendment with Diversity and Inclusion in Higher Education, Penn State Dickinson Law, November 17, 2017

Immigration Now: Bans, Borders and Walls, A Panel Discussion, Pennsylvania State University, Foster Auditorium, October 26, 2017

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

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

Interfaith Initiative Centre County, Immigration in a New Administration, June 11, 2017

Annual Conference, Community Diversity Group Conference, Immigration, June 6, 2017

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

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

Keynote, Sprit of Internationalization Awards Ceremony, Hosted by Global Connections, March 16, 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

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

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

Guest Lecturer, United Nations Association of Centre County, May 2016

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

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)

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)

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)

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

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

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

SERVICE/ADVOCACY OUTSIDE PENN STATE

Response to William Barr on DACA, Nationwide Injunctions: [Redline Version](#), May 2019

Co-Counsel, [Amicus Brief by Law Professors on the Asylum Rule](#), Ninth Circuit Court of Appeals, May 15, 2019

[Law Professor Letter in support of the NO Ban Act](#), April 10, 2019

Co-Counsel, Amicus Brief by Law Professors on the Asylum Rule Case, December 5, 2018

Co-Counsel, Amicus Brief by Law Professors in the Travel Ban Case/Hawaii v Trump, March 31, 2018

Co-Author, [Amicus Brief by Law Professors in DACA-Regents Case](#), March 20, 2018

Lead Author, [Statement by Legal Practitioners and Scholars in Immigration](#) on the DACA and H4 Children, March 1, 2018

Lead Expert, Declaration in Lawsuit challenging [DACA rescission](#), filed December 2017

Lead Author, [Open Letter to the President](#) on the legality of Deferred Action for Childhood Arrivals (DACA), signed by 105 law professors, August 14, 2017

- [Press conference](#) with Dreamers, immigration advocates and legal experts
- [InsideHigherEd](#)
- [Penn State](#)
- [AP Story](#)
- [Politico](#)

Co-author, Letter to White House supporting the legal authority of executive action in immigration, 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, 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, Letter to 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, 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

NATIONAL SPEAKING ENGAGEMENTS

American Immigration Lawyers Association Annual Conference, panel on challenging immigration charges, Orlando, FL, June 19, 2019

Brigham Young University School of Law, Emerging Immigration Scholars Conference, Keynote (w. Wall Street Journalist Alicia Caldwell), Provo, UT, June 8, 2019

DePaul University, College of Law, [Enlund Scholar-in- Residence](#), Lecture and Faculty Colloquium, Chicago, IL, April 10, 2019

Washington College of Law at American University, National People of Color Conference, Panel on Refugees, Washington D.C., March 22, 2019

Harvard Law School, "Total and Complete Shutdown": A Panel Discussion on Trump v. Hawaii and the Travel Ban, Boston, MA, February 25, 2019

Indiana University-Bloomington, 20th Anniversary Symposium of the Asian American Cultural Center, Building Immigration Policy Through Compassion, October 12, 2018

American Immigration Lawyers Association, Webinar on Travel Ban Decision, Panelist, July 12, 2018

American Constitution Society, [Annual Supreme Court Review](#), Panelist, National Press Club, June 28, 2018

Muslim Advocates, Community Conference Call on Travel Ban Decision at the Supreme Court, June 26, 2018

American Immigration Lawyers Association Annual Conference, Panel on FOIA Practice, June 16, 2018

Drexel University, Immigration Law Teachers Biennial Workshop, Panelist/Co-Planner, May 24-26, 2018

American Constitution Society, Briefing on *Trump v. Hawaii* at the Supreme Court (w. former Attorney General for the State of Hawaii, Doug Chin), April 19, 2018

Rutgers Law School, Panelist, Refugee Policy & The Travel Ban, April 2, 2018

Bridges Initiative, [Georgetown University, Unpacking the Muslim Bans](#), February 22, 2018

Washington and Lee University School of Law, Panelist, [Annual Symposium, President Trump's Executive Orders and Emergent Issues in Immigration Enforcement](#), February 2, 2018

University of Pennsylvania School of Law, Panelist, Symposium, Executive Power: Immigration in a New Administration, January 26, 2018

American Immigration Council, Academic Research Convening, Immigration Enforcement, December 11, 2017

Forum on [Higher Education & Immigration](#), Panelist, National Press Club, November 15, 2017

Levin Center, Wayne State University School of Law, [Current Issues in Immigration Policy](#), Panelist, Detroit, MI, November 10, 2017

University of Colorado Boulder, Citizenship and Equality Colloquium, [Race, Surveillance, South Asian Exclusion](#) (w. Seema Sohi), November 2, 2017

Named Lecture, Arlin Adams Center for Law and Society at Susquehanna University, Immigration in a New Administration, Selinsgrove, Pennsylvania, October 10, 2017

Named Lecture, 2017-2018 Cannon Lecturer, 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

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

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

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

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

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

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

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

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

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

Keynote, Spartan Scholars Awards Ceremony, Ocean Township High School, Ocean, NJ, October 24, 2016

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

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

Panelist, American Immigration Lawyers Association's Annual Conference, Humanitarian Remedies in Immigration Law, June 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, remarks on Beyond Deportation, 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, 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, "Is Immigration Law Administrative Law?" January 2016

University of Cincinnati School of Law, 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, 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., 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

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

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)

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

Panelist, Immigration Law Teachers Workshop, Plenary on Prosecutorial Discretion, Law Vegas, NV (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)

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)

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)

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

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

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

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

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 INTERVIEWS

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San Antonio Express-News, [Border Patrol officials say they had no choice but to detain 10-year old girl; immigration experts say they have discretion](#)

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The National Law Journal, Thorny Battles Loom for Lawsuits Against Trump's DACA Repeal, September 2017

New York Times, 'Dreamer' Plan That Aided 800,000 Immigrants Is Threatened, August 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

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

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

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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

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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

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[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

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Los Angeles Times (w. Jennifer Lee Koh), [Deport, Not Court? The U.S. is already doing that](#) June 30, 2018

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Philadelphia Inquirer, [Two Years Later](#): The 'Muslim Ban' Still Shuts the Door on Pennsylvanians, February 6, 2019

Regulatory Review, University of Pennsylvania, [Asylum and the Abuse of Administrative Law](#), November 20, 2018

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

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

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

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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

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

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

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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

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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

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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/>

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, 2010-14)
- American Civil Liberties Union, Pennsylvania Chapter, Board Member (2010-11)
- 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 (2008-11)

OTHER EXPERIENCE

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)