

DACA IN THREE ACTS: GENESIS, IMPACTS, FUTURE

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Despite years of debate, Congress has been unable to come to agreement on much-needed comprehensive immigration reform legislation. A fundamental and enduring sticking point that has thwarted compromise on reform is the question whether to provide a path to legalization for the approximately eleven million undocumented immigrants living in the United States.¹

With Congress unable to pass immigration reform, the Obama administration in 2012 announced the Deferred Action for Childhood Arrivals (DACA) policy.² Based on the well-established practice of prosecutorial discretion, the policy provided temporary relief from removal to hundreds of thousands of undocumented immigrants who came to the United States as children.³ This most sympathetic demographic of noncitizens has a popular hold on the national consciousness.

With aggressive immigration enforcement the cornerstone of his 2016 presidential campaign, Donald J. Trump promised to dismantle DACA. Along with many aggressive immigration enforcement measures, the Trump administration later announced the intent to put an end to the policy.⁴ Controversy, protests, and legal challenges followed. Several lower courts enjoined the attempted rescission of DACA. The cases slowly, but inevitably, made their way to the United States Supreme Court.⁵

DACA has emerged as representing something far more than the mere extension of a temporary benefit to young undocumented immigrants. It has political significance to the entire immigrant community, not just those who came to the United States as children. DACA in fact has become nothing less than a lightning rod in the contemporary debate over immigration reform. Many DACA supporters demand simple justice for immigrants. Activists and some politicians even have called for the abolition of ICE, Immigration and Customs Enforcement (ICE), the primary immigration enforcement arm of the federal government.⁶ The political movement continues to push for reform of the immigration laws and enforcement.

Against this background, the pending Supreme Court decision in the DACA case took on great political significance. After months of contention, in June 2020 near the end of the Term when the most controversial decisions are handed down, the Court in a [5-4 decision by Chief Justice John Roberts](#) held that the Trump administration's rescission of DACA was arbitrary and capricious, with inadequate weighing of the various interests at stake. The Court avoided deciding the question whether DACA was lawful but did make clear that the President had the power to dismantle the policy if proper procedures were followed. In the end, while DACA has a reprieve for now, its future is not clear. Only Congress can bring about lasting immigration reform.

*This Policy Brief offers background about DACA and its creation, impacts, and threatened dismantling by the Trump administration. It then discusses the ramifications of the Supreme Court's decision in *Department of Homeland Security v. Regents of the University of California*.*

DACA's Genesis

In the realm of immigration, the Obama administration initially focused its efforts on ramping up enforcement. The hope was to demonstrate a commitment to the enforcement of the immigration laws so that Republicans in Congress would support comprehensive immigration reform and a path to legalization for undocumented immigrants.

During the Obama presidency, the administration annually removed hundreds of thousands of noncitizens a year.⁷ Record-setting numbers of removals, however, failed to

significantly reduce the overall undocumented population in the United States.⁸ Nor did the mass removals lead Congress to pass immigration reform.

To make the removal records all the more troubling to immigrant rights groups, the deportations fell almost exclusively on one component of the immigrant population -- Latinx noncitizens. In 2013, *ninety-six percent of all noncitizens removed* from the United States came from four countries (*Guatemala, Honduras, El Salvador, and Mexico*),

with Mexican nationals representing seventy-two percent of these.⁹ The disparate removal data is a function of the fact that Latinx and African American men are overrepresented in the U.S. criminal justice system, which is the primary contemporary pipeline for the contemporary immigration removal system.¹⁰

Immigrant rights groups criticized what they considered to be the worst of all outcomes for immigrants: removal records of Latinx immigrants, the failure of Congress to pass immigration reform, and no path to legalization for undocumented immigrants. As the 2012 election neared, the Obama administration announced and implemented DACA, a policy that made undocumented immigrants who came to the United States as children eligible for a form of relief from removal known as **deferred action**. Although not full legalization, deferred action constitutes the equivalent of the exercise of prosecutorial discretion by the U.S. government in selecting the noncitizens to prioritize for removal from the United States and offers some modicum of security to one group of undocumented immigrants.¹¹ In essence, noncitizens granted DACA relief were not targeted by the government's immigration enforcement efforts. Deferred action thus allows the U.S. government to devote scarce immigration enforcement resources to high priority removal targets, such as noncitizens convicted of serious crimes. Relief could be revoked if the recipients committed a crime.

DACA also provided recipients with a tangible economic benefit – the legal authorization to work denied to undocumented immigrants. Work authorization is particularly important to DACA recipients who are university students seeking to fund their educations.

Critics, especially Republican partisans, vociferously attacked DACA as an unconstitutional “amnesty” that unlawfully intruded on the power of Congress to determine which noncitizens should be removed from the United States.¹² However, various legal challenges to DACA failed to delay, much less derail, its implementation.¹³

In 2014, the Obama administration announced another deferred action policy. Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) would have made undocumented parents of lawful permanent residents and U.S. citizens eligible for deferred action. As they did with DACA, critics claimed that President Obama had usurped the lawmaking power of Congress.¹⁴ One lower court enjoined the implementation of DAPA; a deadlocked Supreme Court allowed the injunction to stand.¹⁵ The end result was that DAPA never was implemented.

DACA's Impacts

DACA provided relief to hundreds of thousands of young undocumented immigrants. The relief provided economic benefits to the nation and facilitated higher education for recipients.¹⁶ DACA also benefited many Latinx noncitizens. Close to ninety percent of the DACA recipients were Latinx. The top four countries of origin for DACA recipients were as

follows:

Country	Total	% of total DACA recipients
Mexico	548,000	79.4
El Salvador	25,900	3.7
Guatemala	17,700	2.6
Honduras	16,100	2.3

Source: [Top Countries of Origin for DACA Recipients](#), PEW RESEARCH CENTER (Sept. 25, 2017).

DACA spawned a potent grassroots movement seeking nothing less than a full vindication of the rights of immigrants. Some congressional leaders resurrected the possibility of comprehensive immigration reform and a DREAM Act, a version of which has been proposed for roughly two decades and would create a path to legalization for young undocumented college students.

Put simply, DACA ultimately came to stand for much more than the limited relief that it extended to young undocumented immigrants. It in fact contributed to, and buttressed, the foundations of a powerful political movement that appears to have staying power.

DACA's Demise

From the day that he announced a run for the presidency, Donald Trump made aggressive immigration enforcement the cornerstone of his campaign.¹⁷ No major party's presidential candidate in modern U.S. history talked about immigration and immigrants in the aggressive and unfiltered way that Trump regularly does. Consistent with that aggressive pro-immigration enforcement stance, he criticized DACA, as well as DAPA, as unconstitutional and illegitimate measures adopted by the Obama administration.¹⁸

Within days of his inauguration, President Trump laid out a blueprint for greatly ramping up immigration enforcement.¹⁹ Aggressive enforcement measures followed. As one observer summarized, “the [Trump] administration's sweeping, high profile immigration enforcement initiatives — along with its inflammatory anti-immigrant rhetoric — mark the ascendance of immigration restrictionism to the highest levels of the executive branch to an extent that is entirely without modern precedent.”²⁰

The family separation policy exemplified the administration's hyper-aggressive, if not mean-spirited, approach to immigration enforcement. As part of a “zero tolerance” approach to undocumented immigration, the administration

began separating families in detention along the U.S./ Mexico border, a policy that it later abandoned in the wake of a firestorm of controversy.²¹ All told, President Trump's aggressive immigration enforcement measures, including reports of arrests of DACA recipients²² and workplace raids, terrified immigrant communities.

Immediately before the announcement of the rescission of DACA, there was considerable lobbying, including by prominent Republicans, to maintain the policy.²³ Nonetheless, the Trump administration ultimately announced the rescission of DACA. In justifying that decision, Attorney General Jeff Sessions simply stated that the policy was unlawful and subject to legal challenge.²⁴ Little reasoning was offered for the monumental change in policy relied upon by DACA recipients. No effort was made to offer a reasoned rebuttal to the detailed legal justification offered by the Obama Justice Department concluding that DACA was legal. No mention was made of the fact that no court had upheld any legal challenge to DACA. The Trump administration thus in conclusory fashion justified eliminating DACA relief to hundreds of thousands of young people through a conclusory statement that DACA was unlawful. Consequently, the claim that DACA was illegal failed to ring true with critics.

After announcement of DACA's rescission, protests across the country demanded congressional action to provide relief to DACA recipients.²⁵

Conclusion

The Supreme Court's DACA decision is in the books. DACA lives another day. However, its days may be numbered. The Trump administration may again seek to end the policy. Alternatively, it could allow DACA to continue in some form for the time being and avoid a political backlash.

Despite all the fanfare, it remains true that DACA is only a limited "fix" for some noncitizens without legal status. Only Congress can bring about meaningful and lasting immigration reform. It unquestionably has been a long time coming. The saga of DACA kept immigration at the forefront of the national consciousness and spurred a robust political movement for meaningful immigration reform that shows no signs of going away anytime soon. The nation will see how and when Congress will address immigration reform.

Legal challenges also followed the Trump administration's attempted rescission.²⁶ Finding that the Trump administration had failed to offer a rational explanation for the dismantling of DACA, the lower courts enjoined the rescission; the injunction allowed applications for renewal, but did not allow the filing of any new DACA applications. DACA thus was literally stopped in its tracks.

The Supreme Court's Decision

With DACA's future in doubt as the Supreme Court weighed its fate, beneficiaries of its relief anxiously awaited a decision. The Court heard arguments in the case in November 2019. The stakes were high as the dismantling of DACA would affect the future politics of immigration reform as well as the lives of hundreds and thousands of noncitizens and their families and communities.²⁷

Surprising to many Supreme Court watchers, a [5-4 majority of the Supreme Court in an opinion by Chief Justice John Roberts](#) held that the Trump administration's rescission of DACA was arbitrary and capricious and violated the Administrative Procedure Act (APA). The majority, among other things, found that, in making the decision to dismantle DACA, the administration had not considered the interests of the recipients who had relied on the relief to buy houses, attend schools, and make other life decisions. The majority made it clear that the President could lawfully end DACA but would need to comply with the law, namely the APA, which governs the decisions of federal administrative agencies. Chief Justice Roberts' opinion did not decide whether DACA was lawful, which, of course, was the reason offered by the Trump administration for its rescission.

Justice Thomas, joined by Justices Alito and Gorsuch, would have found DACA to be unlawful. In a separate opinion, Justice Kavanaugh would have found administrative law principles should allow the administration's decision to stand.

About Our Center

The UC Davis Global Migration Center studies immigration with a multi-disciplinary approach to better understand the immigration and integration of vulnerable migrants, including undocumented immigrants, temporary migrants and more.

For more information, visit us online at: globalmigration.ucdavis.edu

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Endnotes

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- 15 See United States v. Texas, 136 S. Ct. 2271, 2272 (2016).
- 16 See Tom K. Wong et al., *DACA Recipients' Economic and Educational Gains Continue to Grow* <https://www.americanprogress.org/issues/immigration/news/2017/08/28/437956/dacha-recipients-economic-educational-gains-continue-grow/>, CTR. FOR AM. PROGRESS (Aug. 28, 2017).
- 17 See, e.g., Michelle Mark, [Trump Just Referred to One of his Most Infamous Campaign Comments: Calling Mexicans "Rapists"](#), BUS INSIDER, Apr. 5, 2018 ("In June 2015, while Trump was a presidential candidate, he said, 'When Mexico sends its people, they're not sending their best.' He added: They're sending people that have a lot of problems, and they're bringing those problems with us. They're bringing drugs. They're bringing crime. They're rapists. And some, I assume, are good people.'").
- 18 See James Pfiffner & Joshua Lee, [Trump Pledged to Reverse Obama's Executive Orders](#), WASH. POST (Jan. 23, 2017).
- 19 See Exec. Order No. 13,768, 82 Fed. Reg. 8799 (Jan. 25, 2017); Exec. Order No. 13,767, 82 Fed. Reg. 8793 (Jan. 25, 2017). For critical analysis of the early Trump administration immigration policies, see Jennifer M. Chacón, [Immigration and the Bully Pulpit](#), 130 HARV. L. REV. F. 243 (2017); Bill Ong Hing, *Entering the Trump ICE Age: Contextualizing the New Immigration Enforcement Regime*, 5 TEX. A&M L. REV. 253 (2018); Kevin R. Johnson, *Immigration and Civil Rights in the Trump Administration: Law and Policy Making by Executive Order*, 57 SANTA CLARA L. REV. 611 (2017).
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