



# Deferred Action for Childhood Arrivals

## What is DACA?

On June 15, 2012, the Secretary of Homeland Security announced via a [memorandum](#)<sup>1</sup> that certain individuals who came to the United States as children and met several guidelines could request consideration for deferred action through the newly initiated Deferred Action for Childhood Arrivals (DACA) program. DACA is patterned after the DREAM Act,<sup>2</sup> bipartisan legislation that was initiated more than a decade ago but has not become law.

The purpose of DACA is to utilize prosecutorial discretion to provide undocumented persons who were brought to the United States when they were children with temporary relief from deportation (deferred action) and work authorization. DACA recipients also have the ability to apply for [advance parole](#) (permission to temporarily leave and re-enter the U.S.).<sup>3</sup> The program expires after two years, subject to renewal with a renewal filing fee cost of a \$380 for Form I-765 and an \$85 biometric services (fingerprints and photo) fee. As of December 23, 2016, the filing fee will increase to \$410 for Form I-765; the biometric services fee will remain at \$85.<sup>4</sup>

## What is Deferred Action Generally?

[Deferred action](#) is “a discretionary determination to defer a removal action of an individual as an act of

1 Janet Napolitano, *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children*, DHS (June 15, 2012).

2 The Development, Relief, and Education for Alien Minors (“DREAM”) Act is a bill to legalize immigrant high school graduates of good moral character who were brought to the United States at a young age without legal status. See DREAM Act, S.1291, 107th Cong. (2001). The DREAM Act has been reintroduced several times since 2001.

3 Emily Creighton et al., *Advance Parole for DACA Recipients*, CLINIC, <https://cliniclegal.org/resources/articles-clinic/advance-parole-daca-recipients> (last visited Dec. 9, 2016).

4 *Our Fees*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES (USCIS) (Oct. 24, 2016), <https://www.uscis.gov/forms/our-fees>.

prosecutorial discretion.”<sup>5</sup> Those with deferred action are not considered to be unlawfully present in the United States, however, deferred action does not grant them any sort of lawful immigration status.<sup>6</sup> DACA is one specific form of deferred action.

## Does DACA Provide a Path to Legalization or to Citizenship?

No. DACA does not grant a path to permanent residency or citizenship. That can only be done if a measure like the DREAM Act were to be enacted into law.

## Who is Eligible for DACA?

One is [eligible](#)<sup>7</sup> for DACA if s/he –

- was under 31 years old as of June 15, 2012;
- first came to the United States before his/her 16th birthday;
- has lived continuously in the United States from June 15, 2007 until the present;
- was physically present in the United States on June 15, 2012 and at the time of application;
- came to the United States without documents before June 15, 2012, or his/her lawful status expired as of June 15, 2012;
- is currently studying, has graduated from high school, or has earned a certificate of completion of high school or GED, or has been honorably

5 *Frequently Asked Questions*, USCIS (Oct. 27, 2016), <https://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-process/frequently-asked-questions>.

6 *Id.*

7 *Consideration of Deferred Action for Childhood Arrivals (DACA)*, USCIS (Oct. 14, 2016), <https://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-daca>.

discharged from the U.S. Coast Guard or U.S. military (technical and trade school completion also qualifies); and

- Has NOT been convicted of a felony, certain significant misdemeanors (including a single DUI), or three or more misdemeanors of any kind, and does not otherwise pose a threat to national security or public safety. An applicant should consult with an attorney about ANY contact s/he has had with law enforcement or immigration authorities.
- In addition, one must typically be over age 15 to request DACA. However, an individual, under age 31 as of June 15, 2012, may request DACA at any time if s/he is in removal proceedings, has a final order of removal, or has a voluntary departure order, and s/he is not in immigration detention.

## How Many Persons Are Protected by DACA?

As of August of 2016, 820,000 individuals had applied for DACA and approximately [730,000](#) applicants had received it.<sup>8</sup> However, there could be as many as [1.3 million persons](#) living in the United States who are immediately eligible for the program.<sup>9</sup> Some potential DACA recipients have not come forward because they feared that a hostile Administration might follow President Obama's presidency and that the new Administration might withdraw DACA and then

use the information provided in the DACA applications to find and deport this population.<sup>10</sup>

## Can the New Administration Rescind DACA?

As DACA was not codified or issued as a rulemaking under the Administrative Procedure Act, the incoming Administration has the authority to quickly eliminate the program.

## What Would be the Consequences of a Withdrawal of DACA?

If DACA is entirely rescinded, over 730,000 vetted, tax-paying, contributing members of our communities, including some veterans, would be subject to potential deportation. These DACA Youth may be separated from their families and deported to their countries of origin, which in some cases they may barely remember.

## Why Should We Protect DACA Youth?

DACA Youth exemplify the extraordinary contributions that immigrants can provide to our nation. These youth have grown up in our country, some even choosing to put their lives on the line to serve in our armed forces. These young, educated, tax-paying individuals are a valuable part of our work force and our communities. One only has to turn to the media to see the [stories](#) of successful DACA Youth who are trying to make a

8 Faye Hipsman et al., *DACA at Four*, MIGRATION POLICY INSTITUTE (Aug. 2016), <http://www.migrationpolicy.org/research/daca-four-participation-deferred-action-program-and-impacts-recipients>.

9 *Deferred Action for Childhood Arrivals (DACA) Data Tools*, MIGRATION POLICY INSTITUTE, <http://www.migrationpolicy.org/programs/data-hub/deferred-action-childhood-arrivals-daca-profiles> (last visited Dec. 9, 2016).

10 AUDREY SINGER ET AL., BROOKINGS, LOCAL INSIGHTS FROM DACA FOR IMPLEMENTING FUTURE PROGRAMS FOR UNAUTHORIZED IMMIGRANTS 23 (2015), available at [https://www.brookings.edu/wp-content/uploads/2016/06/BMPP\\_Srvy\\_DACAImmigration\\_June3b.pdf](https://www.brookings.edu/wp-content/uploads/2016/06/BMPP_Srvy_DACAImmigration_June3b.pdf) ("This fear extends to trepidation that joining the [DACA] program will put them squarely in line for deportation after the next president takes office. Service providers reported that this was a common fear among DACA applicants prior to the 2012 election, and with the 2016 election looming it is a fear among those who would be eligible for both programs.").

difference, such as one recipient who has graduated nursing school and is now working with disabled children.<sup>11</sup>

## What Are Some Policy Reasons to Support DACA?

- **Financial:** The DACA program is not a resource drain on the Department of Homeland Security (DHS). The application fees that DACA recipients pay cover the cost for DHS to administer the program. Additionally, DACA Youth are bolstering our economy; with DACA they receive the ability to work legally and pay income taxes. Eighty-seven percent of DACA recipients are employed, and six percent of recipients have started their own businesses.<sup>12</sup> Several mayors, including those from Chicago, New York, Los Angeles, and Houston, recently delivered a [letter](#) to President-elect Trump explaining that eliminating the DACA program could lead to a loss of \$9.9 billion in tax revenue over the next four years and a loss of at least \$433.4 billion from the U.S. gross domestic product over the next decade.<sup>13</sup>
- **Security & Safety:** DACA recipients have undergone thorough vetting by DHS. Recipients have had their applications scrutinized and their records carefully evaluated, and they have been found not to pose a national security or public safety risk. Furthermore, as noted in the [mayoral letter](#) to President-elect Trump, the U.S. Armed Forces “rely on DACA applicants to serve

through Military Accessions Vital to the National Interest (MAVNI), which enlists individuals who are fluent in critical languages or possess medical professional skills essential to the defense of our nation.”<sup>14</sup>

## What Are Some Moral Reasons to Support DACA?

- **Most DACA Recipients Did Not Actively Choose to Come to the U.S. Illegally.** Most DACA Youth were brought to the U.S. as babies or children by their parents. Consequently, they did not choose to come and live in the United States themselves. Furthermore, as most DACA Youth came to live in the United States as young children, our country is all that they know.
- **Separation of Immigrant Families Could Drastically Increase.** DACA Youth submitted their and their families’ sensitive biographical information to the government during the DACA application process. The new Administration could use that information to begin to target DACA applicants and their families for deportation. Currently, such biographical information is not at the disposal of Immigration and Customs Enforcement (ICE), the DHS office tasked with removals. However, it is possible that this information could be shared with ICE by the new Administration. While such action could be subject to legal challenges, if it occurs, many families will be torn apart as a large percentage of DACA Youth come from mixed-status families (families where members have varying immigration status – ranging from no lawful status to U.S. citizenship). One [study](#) found that seventy percent of DACA recipients surveyed have at least one immediate family member who is a U.S. citizen and forty-four percent had at least one family member with lawful permanent

11 Brian Latimer, *What Successful Young Immigrants #WithDACA Want Trump to Know*, NBC NEWS (Nov. 11, 2016), <http://www.nbcnews.com/news/latino/with-daca-dreamers-share-stories-financial-success-after-daca-n682601>.

12 *Letter to President-Elect Trump on DACA*, CITY OF CHICAGO (Dec. 7, 2016) <https://www.cityofchicago.org/content/dam/city/depts/mayor/Press%20Room/Press%20Releases/2016/December/DACAletter.pdf>.

13 *Id.*

14 *Id.*

residency.<sup>15</sup> Accordingly, withdrawing DACA and targeting this population for deportation could tear families apart and could harm citizens and other individuals here legally.

- **Punishing DACA Youth Does Not Advance the Common Good.** These youth came forward out of the shadows to cooperate with our government and get right with the law, to the extent that they could. They paid a fee to apply for DACA, they submitted to a rigorous application process and investigation, they gave their personal and family information to the government, and they agreed to pay taxes on any wages they received through use of the work authorization. For the government to rescind DACA and then to use applicants' information to begin deporting these youth and their family would be inhumane, inequitable, and would undermine the ideas of fairness and compassion that our nation holds dear.

## What Contingencies Are Being Contemplated in Congress?

On December 9, 2016, Senators Graham and Durbin introduced S.3542, the [Bar Removal of Individuals who Dream and Grow our Economy \("BRIDGE"\) Act](#). If reintroduced as written and

enacted in the 115th Congress, the BRIDGE Act would provide "provisional protected presence" and work authorization to eligible individuals who came to the United States as children without status. The eligibility requirements for provisional protected presence closely mirror the DACA eligibility requirements, and current DACA recipients would be automatically deemed to have provisional protected presence through the expiration of their DACA status. While this legislation would not confer lawful status on the recipients, it would prevent their deportation for the period in which they maintain provisional protected presence. As written, the bill allows provisional protected presence to extend three years from the date of enactment. Presence could be rescinded only in certain delineated circumstances.

Temporary protection under the BRIDGE Act would ensure that these young people can continue to work and study and be protected from deportation while Congress debates broader legislation to fix our broken immigration system

Finally, it bears noting that the bill includes a provision to ensure that, with a few limited exceptions, information provided in applications will not be shared with ICE and the U.S. Customs and Border Protection for the purposes of enforcement actions.

15 Caitlin Patler, et al., *From Undocumented to DACAmended*, UCLA (June 2015), [http://www.chicano.ucla.edu/files/Patler\\_DACA\\_Report\\_061515.pdf](http://www.chicano.ucla.edu/files/Patler_DACA_Report_061515.pdf).

