

DREAMERS: FILLED WITH WORRY, HOPE, AND RESILIENCE

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Throughout their lives in the United States, Dreamers have experienced a rollercoaster of emotions: they have worried about their immigration status, hoped that Congress will enact a permanent solution, and resiliently fought against the Trump administration's attempts to terminate the Deferred Action for Childhood Arrivals ("DACA") program.¹ Unfortunately, Dreamers will continue to experience this rollercoaster of emotions until the government issues a permanent solution for DACA.

In 2012, then-President Barack Obama created the DACA program. This program protects eligible undocumented individuals² (also known as Dreamers) from deportation by providing them with temporary legal status.³ Moreover, the program grants Dreamers various benefits, including eligibility for work authorization, and a state-issued identification.⁴ Due to its various protections and benefits, DACA's enactment relieved Dreamers of their fears of being deported from the place they call home.⁵ Nonetheless, Dreamers' fears and doubts

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1. The Deferred Action for Childhood Arrivals is a program created by President Barack Obama's administration in 2012. The program grants those that are eligible with relief from deportation but does not grant permanent legal status or amnesty.

2. To be eligible for DACA, you must meet the following criteria: (a) have come to the United States before your sixteenth birthday; (b) have lived continuously in the U.S. since June 15, 2007; (c) have been present in the U.S. on June 15, 2012, and on every day since August 15, 2012; (d) not have a lawful immigration status on June 15, 2012. To meet requirement (d), (1) you must have entered the U.S. without papers before June 15, 2012, or, if you entered lawfully, your lawful immigration status must have expired before June 15, 2012; and (2) you must not have a lawful immigration status at the time you apply for DACA. You must also (e) be at least fifteen years old at the time you apply for DACA. If you are currently in deportation proceedings, have a voluntary departure order, or have a deportation order, and are not in immigration detention, you may apply for DACA even if you are not yet fifteen years old; but you (f) must be in school; (g) must not have been convicted of a felony offense. A felony is a federal, state, or local criminal offense punishable by imprisonment for a term exceeding one year. You also (h) must not have been convicted of a significant misdemeanor offense or three or more misdemeanor offenses. See below for more information about offenses that may disqualify you. Finally, you must (i) not pose a threat to national security or public safety. DHS has not defined precisely what these terms mean but has indicated that they include gang membership, participation in criminal activities, or participation in activities that threaten the U.S. See *Frequently Asked Questions The Obama Administration's Deferred Action for Childhood*, NATIONAL IMMIGRATION LAW CENTER 2-3 (2016), <https://www.nilc.org/wp-content/uploads/2016/02/DACA-FAQ.pdf>.

3. Ilana Etkin Greenstein, *DACA, Dreamers, and the Limits of Prosecutorial Discretion: DHS v. Regents of the University of California*, 64 #3 BOSTON BAR J. 11 (2020).

4. *Id.*

5. *Id.*

regarding their undocumented status resurfaced when Texas Attorney General Ken Paxton threatened legal action if the DACA program was not terminated by September of 2017.⁶ Feeling pressure from Texas and other states, the Trump administration rescinded DACA in September 2017. Attorney General Jeff Sessions, a longtime opponent of the DACA program,⁷ announced “[w]e cannot admit everyone who would like to come here. It’s just that simple.” Sessions missed one key detail—Dreamers did not choose to come to the United States illegally, they were brought here as children.⁸

Following Sessions’ announcement, the country came together to protect the Dreamers by filing lawsuits against the Trump administration for rescinding DACA.⁹ The first lawsuit filed by a university occurred on September 8, 2017, only three days after the announcement regarding the end of DACA, when the University of California and its President, Janet Napolitano, filed a lawsuit in the Northern District of California.¹⁰ In this lawsuit, the University of California alleged the Trump administration “wrongly and unconstitutionally violat[ed] the rights of the University and its students by rescinding the [program].”¹¹ The University further reasoned that the Administration’s decision to terminate the program was arbitrary and capricious, therefore violating the Administrative Procedure Act.¹² After the court in the University of California’s lawsuit ruled in favor of the plaintiffs,¹³ and after Congress failed to act through legislation that would (a) terminate the program, (b) enact “many of the same protections in place as DACA does” or (c) “create[] a path for citizenship or permanent legal resident status,”¹⁴

6. Julián Aguilar, *Texas Leads 10 States in Urging Trump to end Obama-era Immigration Program*, THE TEXAS TRIBUNE (June 29, 2017), <https://www.texastribune.org/2017/06/29/texas-leads-10-states-urging-trump-end-daca>.

7. Vanessa Romo, Martina Stewart and Brian Naylor, *Trump Ends DACA, Calls on Congress to Act*, NPR (Sept. 5, 2017), <https://www.npr.org/2017/09/05/546423550/trump-signals-end-to-daca-calls-on-congress-to-act>.

8. *Id.*

9. *DACA Litigation Timeline*, NATIONAL IMMIGRATION LAW CENTER (May 8, 2020), <https://www.nilc.org/issues/daca/daca-litigation-timeline/>.

10. UC Office of the President, *University of California sues Trump Administration on Unlawful Repeal of DACA Program*, University of California (Sept. 8, 2017), <https://www.universityofcalifornia.edu/press-room/university-california-sues-trump-administration-unlawful-repeal-daca-program>.

11. *Id.*

12. *Compl. The Regents of the Univ. of Cal. v. U.S. Dep’t of Homeland Sec.*, (N.D. Cal. 2017) (No. 3:17-cv-05211) <https://universityofcalifornia.edu/sites/default/files/UC-DACA-Complaint.pdf>.

13. The *Regents of the Univ. of Cal. v. U.S. Dep’t of Homeland Sec.* was not the only lawsuit challenging DACA’s rescission, and courts in other lawsuits also ruled in favor of the plaintiffs. See *DACA Litigation Timeline*, NATIONAL IMMIGRATION LAW CENTER (May 8, 2020), <https://www.nilc.org/issues/daca/daca-litigation-timeline/> (“[T]here nationwide injunctions issued by U.S. district courts—in California, New York, and the District of Columbia—have allowed people who have previously had DACA to renew their deferred action.”); see also *NAACP v. Trump*, 298 F. Supp. 3d 209, 249 (D.D.C. 2018); *Batalla Vidal v. Nielsen*, 279 F.Supp.3d 401, 438 (E.D.N.Y. 2018); *Regents of the Univ. of Cal. v. Dep’t of Homeland Sec.*, 279 F. Supp. 3d 1011, 1048 (N.D. Cal. 2018).

14. See Jessica Taylor, *Here are 4 Options Congress Could Take on DACA*, NPR (Sept. 6, 2017), <https://www.npr.org/2017/09/06/548766330/here-s-how-congress-could-act-to-save-daca>; see also Dylan Scott, *The Senate Put 4 Immigration Bills up for a Vote. They All Failed.*, VOX (Feb. 15, 2018), <https://www.vox.com/policy-and-politics/2018/2/15/17017682/senate-immigration-daca-bill-vote-failed>.

the United States Supreme Court granted certiorari to hear the legal challenges surrounding the decision to rescind DACA.¹⁵

In November 2019, the Supreme Court heard oral arguments for the DACA lawsuit. U.S. Solicitor General Noel Francisco represented the federal government and Theodore Olson represented “DACA recipients and civil rights groups.”¹⁶ Francisco defended the Government, alleging, in part, that then-Acting Secretary Duke’s justification that DACA must be rescinded—“because it conferred benefits in violation of the INA”—was sufficient.¹⁷ Olson, on the other hand, argued that the program was lawful, and that then-Acting Secretary Duke “failed to consider . . . important aspect[s] of the problem(s)” that terminating the program would cause.¹⁸ After the oral argument concluded, the Supreme Court Justices seemed to be split, leaving the country wondering what the outcome would be.¹⁹

On June 18, 2020, seven months after the oral argument, the Supreme Court issued its long-awaited decision, giving Dreamers the hope they had lost.²⁰ In its decision, the Supreme Court ruled against the Government reasoning that the decision to rescind the program was “arbitrary and capricious,” and therefore violated the requirements laid out by the Administrative Procedure Act.²¹ In its decision, the Court did not evaluate whether DACA was illegal, explaining that such a determination is “a question for the Attorney General.”²² The Court, instead, evaluated then-Secretary Duke’s failure to cast doubt on or consider “the legality of forbearance” that DACA extended to childhood arrivals.²³ The Court thus reasoned that “the DACA memorandum could not be rescinded in full ‘without any consideration whatsoever’ of a forbearance-only policy.”²⁴ Although the Court’s narrow decision did not provide a permanent solution to Dreamers and left the door open to another possible termination of the program by the Trump administration, it provided Dreamers with hope that a solution could be near. A federal court in Maryland further strengthened this hope by issuing a decision that

15. *DACA Litigation Timeline*, NATIONAL IMMIGRATION LAW CENTER (May 8, 2020), <https://www.nilc.org/issues/daca/daca-litigation-timeline/>.

16. Amy Howe, *Argument Analysis: Justices Torn, Hard to Read in Challenge To Decision to End DACA*, SCOTUS BLOG (Nov. 12, 2019), <https://www.scotusblog.com/2019/11/argument-analysis-justices-torn-hard-to-read-in-challenge-to-decision-to-end-daca/>.

17. *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1910 (2020).

18. *Id.* at 1910.

19. Amy Howe, *Argument Analysis: Justices Torn, Hard to Read in Challenge To Decision to End DACA*, SCOTUS BLOG (Nov. 12, 2019), <https://www.scotusblog.com/2019/11/argument-analysis-justices-torn-hard-to-read-in-challenge-to-decision-to-end-daca/>.

20. *Regents of the Univ. of Cal.*, 140 S. Ct. at 1891.

21. *Id.* at 1913.

22. *Id.* at 1910.

23. *Id.* at 1912.

24. *Id.*

ordered the reinstatement of DACA to its original status prior to the Trump administration's 2017 rescission of the program.²⁵

This hope held by the Dreamers and advocates of the program, however, did not last long.²⁶ Following the Supreme Court and the federal judge's rulings, the Department of Homeland Security's Acting-Secretary Chad F. Wolf issued a memorandum on July 28, 2020—only forty-one days after the Supreme Court's decision and eleven days after the District Court of Maryland's decision.²⁷ In his memorandum, Acting-Secretary Wolf directs "DHS personnel to take all appropriate actions to reject all pending and future initial requests for DACA, to reject all pending and future applications for advance parole absent exceptional circumstances, and to shorten DACA renewals."²⁸ This curtailing of the program without complete termination made one thing certain: "DACA [was] on the ballot in November."²⁹

Although Secretary Wolf's memorandum thrust Dreamers into uncertainty once again, Dreamers and advocates of DACA showed resilience.³⁰ One month after Acting-Secretary Wolf issued the memorandum significantly altering the DACA program by setting a "one-year limit on renewals,"³¹ Dreamers and advocacy groups challenged its validity by amending "an existing lawsuit, *Batalla Vidal v. Wolf*" that was filed as a challenge to the Trump administration's rescission of DACA.³² After the Supreme Court remanded the case for further proceedings, and after Secretary Wolf issued his memorandum, the complaint was amended to challenge the appointment of Secretary Wolf as violating the Federal Vacancies Reform Act and the Homeland Security Act.³³ Because of the alleged unconstitutionality of Secretary Wolf's appointment, the amended complaint also alleged that Secretary Wolf lacked the power to substantially change the DACA program, which would therefore render his memorandum unlawful.³⁴ Whether the

25. *Casa de Maryland v. U.S. Dep't of Homeland Sec.*, No. PWG-17-2942 (D. Md. July 17, 2020).

26. See Chad Wolf, *Memorandum on Reconsideration of the June 15, 2012 Memorandum*, U.S. DEP'T OF HOMELAND SECURITY (July 28, 2020), https://www.dhs.gov/sites/default/files/publications/20_0728_s1_daca-reconsideration-memo.pdf.

27. *Id.*

28. *Id.*

29. Joel Rose, *Trump Administration Refuses to Accept New DACA Applicants Despite Court Rulings*, NPR (July 28, 2020), <https://www.npr.org/2020/07/28/896334928/trump-administration-will-reject-new-daca-applications-administration-official-s>.

30. This resilience is evident by how vocal Dreamers and advocacy groups have been concerning the latest attack on DACA by the Trump administration. See *Federal Court Greenlights New DACA Challenge*, NATIONAL IMMIGRATION LAW CENTER (Aug. 13, 2020), <https://www.nilc.org/2020/08/13/federal-court-greenlights-new-daca-challenge/> ("For the last three years we have fought against Trump's cruel attacks on undocumented youth, and we are ready to continue to fight tooth and nail to defend and protect immigrant youth and all immigrants.")

31. See *New York Undocumented Youth File Lawsuit Challenging Wolf's DACA Memo*, NATIONAL IMMIGRATION LAW CENTER (Aug. 28, 2020), <https://www.nilc.org/2020/08/28/ny-youth-file-suit-challenging-wolf-daca-memo/#:~:text=The%20new%20challenge%20amends%20an,opportunity%20to%20apply%20for%20DACA.>

32. See *id.*

33. *Lawsuit Challenges Trump Administration's Authority to Limit DACA*, MALDEF (Sept. 3, 2020), <https://www.maldef.org/2020/09/lawsuit-challenges-trump-administrations-authority-to-limit-daca/>.

34. *Id.*

challenge to Secretary Wolf's memorandum will succeed remains to be seen. Nonetheless, if the previous challenges to the Trump administration's attempts to terminate DACA have taught us anything, it is that Dreamers and advocates of DACA are resilient and this challenge to Wolf's memorandum, which drastically modified DACA, is likely the first of many to come.

Ultimately, Dreamers have constantly struggled with a rollercoaster of emotions even before DACA's creation in 2012. The legal battles their beloved program has faced seem to be never-ending—with a success quickly followed by yet another challenge. Although Dreamers and advocates of the program hope to see a permanent solution soon, one thing is certain: the future of Dreamers has become a political bargaining chip and will remain uncertain until President Joseph R. Biden Jr. implements a permanent solution.³⁵

35. Throughout his campaign, President Biden addressed President Trump's decision to terminate the DACA program. During the presidential debate on October 22, 2020, Biden pledged to "legally certify [y] [Dreamers] . . . and put [them] on a path to citizenship" during the first one hundred days of his administration. Joseph Biden, Democratic Presidential Candidate, Presidential Debate (Oct. 22, 2020); *see also The Biden Plan for Securing our Values as a Nation of Immigrants*, JOE BIDEN (2020) <https://joebiden.com/immigration/#>.