



DACA primer

An overview of DACA, including a legislative timeline, public opinion polls, and details about recent court challenges

July 30, 2021

PRODUCER
National Journal Presentation Center

Deferred Action for Childhood Arrivals overview



OVERVIEW

- After the DREAM Act's failure to pass both houses of Congress in 2012, the Obama administration created the Deferred Action for Childhood Arrivals (DACA) program through executive action
- The DACA program provided certain individuals who were brought to the US as children with a two-year deferment from deportation actions and provided eligibility for work permits
- At the time, conservatives accused then-President Obama of overstepping his authority, and in 2017 the Trump administration attempted to terminate the DACA program; the Supreme Court vacated the attempted termination and ruled that the DHS had not provided adequate reasons or followed proper procedures in rescinding the policy

DACA BY THE NUMBERS



- **914,460** the total number of requests USCIS accepted from FY2012 to FY2020
- **827,119** the number of those requests approved by USCIS
- **636,390** the number of active DACA recipients
- **195** countries are represented by DACA recipients
- **27** the average age of a recipient
- **1-7** the most common age of entry into the United States
- **81%** of all DACA holders are originally from Mexico; no other birth population is greater than 4% of the total
- **29%** of all DACA recipients live in California; Texas has the second highest population with 16%
- *Figures reflect data as of December 2020*

REQUIREMENTS OF DACA



- Under the age of 31 as of June 15, 2012
- Entered the United States by the 16th birthday
- Physically present in the United States on June 15, 2012 and at the time of the request for consideration, and continuous residence in the US since June 15, 2007
- Had no lawful status on June 15, 2012
- Currently in school, graduated, have a GED or a certificate of complete from high school, or honorably discharged from the Coast Guard or Armed Forces
- Have not been convicted of a felony, significant misdemeanor or three misdemeanors, and pose no threat to national security or public safety

Key dates and DACA litigation timeline (1/2)

Jun. 15, 2012	<p>Former DHS Secretary Janet Napolitano released a memo announcing “Deferred Action for Childhood Arrivals (DACA),” a program intended to defer deportation against qualified individuals “for a period of two years, subject to renewal.”</p>
Aug. 15, 2012	<p>U.S. Citizenship and Immigration Services (USCIS) officially begins the DACA program. More than 700,000 individuals applied for and qualified for the program.</p>
November 2014	<p>Former DHS Secretary Jeh Johnson announced the administration’s intent to expand “deferred action” programs by instituting the Deferred Action for Parents of Americans (DAPA) program.</p>
February 2015	<p>26 states, all under Republican governor control, issued a lawsuit to block DAPA. After an extended legal battle, the Supreme Court affirmed a previous judge’s order against DAPA and the program fails to go into effect.</p>
Sept. 5, 2017	<p>Former DHS Acting Secretary Elaine Duke issued a memo announcing the Trump administration’s decision to repeal DACA. New DACA requests will no longer be accepted.</p>
Oct. 5, 2017	<p>The Trump Administration’s set deadline for DACA renewals for individuals whose DACA expired before March 5, 2018. New DACA requests continue being denied.</p>
Jan. 9, 2018	<p>U.S. District Judge William Alsup issued a nationwide order to prevent the Trump administration’s action to repeal DACA citing a “flawed legal premise that the policy was illegal.” Judges in other jurisdictions, such as New York and D.C., issue similar orders. The order forces USCIS to accept DACA renewal requests but excludes initial requests.</p>
Jan. 16, 2018	<p>The Department of Justice requested the Supreme Court’s judgement regarding the district judge’s ruling. Included in the request is a ruling that granted DACA recipients the ability to renew work permits.</p>

Key dates and DACA litigation timeline (2/2)

Feb. 26, 2018	The Supreme Court denies the request and sends the case to the 9th Circuit Court of Appeals.
Apr. 24, 2018	District Judge John Bates issued a ruling ordering the Trump administration to continue DACA and begin accepting new applications. He granted DHS a 90-day period to explain why the program was canceled. Despite this ruling, new applications for DACA are still not being accepted.
Nov. 6, 2018	The Department of Justice requested the Supreme Court's judgement a second time, this time including two additional lawsuits that challenged the administration's decision to repeal DACA.
Nov. 8, 2019	The 9th Circuit Court issued a ruling on Department of Homeland Security vs. Regents of the University of California, upholding the plaintiff's argument that repealing DACA was "arbitrary and unlawful."
May 2019	Other lawsuits challenging the Trump administration's repeal of DACA have emerged and the government requests judgment from the Supreme Court in rulings regarding these cases. The Supreme Court denies the government's requests for expedited consideration.
Jun. 28, 2019	The U.S. Supreme Court announced it will consolidate three cases challenging the repeal of DACA and hear oral arguments in Department of Homeland Security vs. Regents of the University of California to decide "whether DHS's decision to wind down DACA is lawful."
June 18, 2020	By a 5-4 vote, the Court ruled that DHS's decision to end DACA was arbitrary and capricious under the Administrative Procedure Act
July 16, 2021	U.S. District Judge Andrew Hanen ruled in favor of nine conservative-led states, including Texas, and blocked the Biden administration from accepting new DACA applicants — saying the program is not legal

Look-ahead:

A day after the Judge Hanen ruled against DACA, President Biden stated that the Department of Justice intends to appeal the decision to preserve and fortify the program

Supreme Court ruling on Department of Homeland Security v. Regents of the University of California

Department of Homeland Security v. Regents of the University of California

This case was taken up by the Supreme Court to determine whether the DHS's decision to wind down the DACA policy was judicially reviewable and lawful

KEY ISSUES



Issue 1

- Is the DHS's decision to wind down the DACA policy judicially reviewable and lawful?

Issue 2

- Is the Trump administration's decision to repeal DACA **arbitrary and capricious under the APA**?

IMPACT OF RULING



Impact 1

- By a 5-4 vote, the Court ruled that **DHS's decision to end DACA was arbitrary and capricious under the Administrative Procedure Act**

Impact 2

- The ruling provided immediate relief for over 700,000 DACA beneficiaries who are now shielded from deportation. However, Chief Justice Roberts made it clear in his majority opinion that **DHS may rescind DACA if it were to follow the appropriate procedure to do so**



JUSTICES VOTES

✓ Majority



✗ Dissent



On July 16, a federal district judge in Texas ruled against the DACA program

District ruling

1

- Texas and eight other states sought to terminate the program by arguing that DACA was illegal and placed a burden of cost on the states
- U.S. District Judge Andrew Hanen ruled in favor of the nine states stating that then President Obama exceeded his authority when he created the program, effectively blocking the federal government from approving new DACA applicants
- However, the ruling does allow for current DACA recipients to maintain their current status and allows for renewals while the case goes through the appeals process

DACA outlook

2

- Over 600,000 immigrants are currently enrolled in the program, of which, roughly a third performed essential jobs during the pandemic
- The Biden administration is expected to appeal the decision; the legality of DACA could once again find itself before the Supreme Court
- The American Dream and Promise Act of 2021 passed the House in March by a 228-197 vote with nine Republicans joining all Democrats in favor of the legislation
- The legislation would provide a pathway to citizenship for DACA recipients, however, Republican support in the Senate remains uncertain

Key players take sides

YES

"[The ruling] relegates hundreds of thousands of young immigrants to an uncertain future"

PRESIDENT JOE BIDEN (D)
PRESIDENT OF THE UNITED STATES

NO

"The executive branch cannot just enact its own legislative policy when it disagrees with Congress's choice to reject proposed legislation?"

JUDGE ANDREW HANEN
FEDERAL DISTRICT JUDGE

H.R. 6 – American Dream and Promise Act of 2021

Bill sponsor



Rep. Lucille Roybal-Allard
D-CA-40

Background

- H.R. 6 currently has the highest number of cosponsors for any immigration bill thus far in the 117th Congress
- A similar version of the legislation has been introduced into the Senate by Sen. Dick Durbin (D-IL)
- A version of the bill previously passed the House in 2019

Outlook

- Passed the House on a 228-197 vote with nine Republicans joining all Democrats in favor of the legislation
- Republican support for the bill to pass the Senate remains uncertain

Key provisions



DACA recipients and other unauthorized immigrants who arrived in the United States before their 18th birthday could apply for a 10-year conditional permit, if they met certain qualifying criteria



Recipients of conditional permanent resident status can qualify by attending college for two years, obtaining a university degree, serving in the military for two years, or working in the US for three years



Legislation would provide for an eventual pathway to citizenship for “Dreamers” and individuals with temporary protected status due to an enforced departure

Status

H.R. 6

Reported to: Senate
3/22/21

Passed Senate

Differences resolved

Signed by president

Introduced: House
3/3/21

Passed House
3/18/21

The vast majority of Americans favor granting permanent legal status to DACA recipients

Survey: % who say they oppose/favor Congress passing a law granting permanent legal status to immigrants who came to the US illegally when they were children

