

CHAPTER 1

INTRODUCTION

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§ 1.1 Introduction

President Obama’s announcement on June 15, 2012, creating the Deferred Action for Childhood Arrivals (DACA) program was one of the most exciting moments in recent history for immigrants. In fact, it remains one of the most significant changes to U.S. immigration policy since the Immigration Reform and Control Act of 1986 (IRCA) provided the opportunity to obtain lawful permanent residence to three million undocumented immigrants. DACA benefits undocumented immigrant youth, commonly referred to as “DREAM Act students” or “DREAMers” named after failed federal legislation that would have granted them lawful permanent residence status, who entered the country before the age of 16 and graduated from a U.S. high school, or are currently in a qualifying educational program or served in the U.S. military. Individuals granted DACA, are protected from removal and may obtain permission to work for two years, with the possibility of renewal.

Two years after the launch of DACA, on November 20, 2014, immigrants and advocates celebrated another hard-fought victory—a series of Executive Actions announced by President Obama, including the expansion of DACA to allow more undocumented immigrant youth to benefit from this program, and the Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) policy that would have similarly benefited millions of undocumented immigrants who were the parent of a U.S. citizen or lawful permanent resident. Unfortunately, as a result of a preliminary injunction, these programs were prevented from going into effect, and remain blocked as of the writing of this manual. Although DACA falls short of providing lawful permanent residence status, an estimated 1.2 million undocumented individuals

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are eligible for DACA as announced in 2012,¹ and over 700,000 immigrants have been granted DACA.²

PRACTICE TIP: For purposes of this manual, we use the terms DACA “requests” and “applications” interchangeably; USCIS refers to the process as “requests.” We call the individuals requesting DACA “applicants,” while USCIS calls them “requestors.”

The Executive Actions surrounding DACA represent seminal moments in the history of immigrant rights in the United States. DACA and the expansion of this program is an achievement of the DREAMers. In the post-9/11 era, increased detentions, deportations, and border enforcement funding have been the order of the day. Calls for visa reform and a path to citizenship for the estimated 11 million undocumented immigrants in the country have been blocked. With mounting criticism from immigrants, supporters calling for comprehensive reform, and the 2012 general election approaching, on June 15, 2012, President Obama announced DACA. It was no coincidence that the President’s decision came after a series of protests by DREAMers, including a weeklong sit-in at Obama’s Denver, Colorado campaign offices in 2012.

The persistence, dedication, organizational skills, and advocacy of DREAMers convinced the Obama Administration to do the right thing through executive authority. Of course the foundation for these efforts is the just nature of their cause—the stories of DREAMers are compelling. They are part of the nation’s fabric and, in most cases, the United States is their only home.

§ 1.2 Background

The DREAM Act (Development, Relief, and Education for Alien Minors) was first introduced in Congress in 2001 by a bipartisan group of legislators that included Senators Dick Durbin, Richard Lugar, and Orrin Hatch and Luis Gutierrez, a member of the House of Representatives. They recognized that the would-be beneficiaries of the DREAM Act were brought to the United States as young children, have grown up as Americans, and are in a position to contribute mightily to our nation. Various versions of the legislation would have provided lawful permanent residence and eventually U.S. citizenship to certain undocumented individuals (up to age 30 or 35) of good moral character, who graduated from U.S. high schools, arrived in the United States as minors, and lived in the country continuously for at least five years prior to the bill’s enactment. Beneficiaries would have also needed to complete two years in the military or two years at a four-year institution of higher learning. (The military option replaced community service contained in

¹ An estimated 1.2 million immigrant youth were eligible for DACA under the original program and an additional 300,000 would be eligible through the currently enjoined expansion of DACA. See Migration Policy Institute, “The County-Level View of Unauthorized Immigrants and Implications for Executive Action Implementation” (January 15, 2015), available at www.migrationpolicy.org/events/county-level-view-unauthorized-immigrants-and-implications-executive-action-implementation.

² For data sets on DACA adjudications by the U.S. Citizenship and Immigration Service, visit www.uscis.gov/tools/reports-studies/immigration-forms-data/data-set-form-i-821d-deferred-action-childhood-arrivals.

early versions of the DREAM Act.) Many of these undocumented youths called themselves “DREAMers.”

Following the first introduction of the DREAM Act, and subsequent reintroductions, DREAMers and their allies faced a battle not only with opponents who were opposed to any “amnesty” for undocumented immigrants, but with some supporters who wanted comprehensive immigration reform that would cover all undocumented immigrants, not just the young. Some Democrats opposed the DREAM Act’s piecemeal approach to reform, worried that they would only get one shot at reform and that moving forward on a piece like a DREAM Act would be at the exclusion of other equally worthy pieces of legislation. However, by the fall of 2010, sentiment solidified among most supporters, and the DREAM Act came to the Senate floor with support from both parties and the White House. However, in September 2010, Senate Republicans blocked action on the DREAM Act by conducting a filibuster of the defense authorization bill to which the legislation had been attached.

After the November 2010 elections, the prospects for comprehensive immigration reform faded. Democrats lost their majority in the House of Representatives in the next Congress. So, during the lame duck, post-election Congressional session, the House passed the DREAM Act with a 216-198 vote on December 8, 2010. The DREAM Act became a top priority of then-Senate Majority Leader Harry Reid, who won a tough re-election fight that November with the help of Nevada’s large Latino community, which strongly supported the DREAM Act. The bill garnered a majority of Senate votes, 55-41, but failed to advance because 60 votes were required to overcome a filibuster. Republican Senators John McCain, Orrin Hatch, and Bob Bennett, all original sponsors of the DREAM Act, voted against it in 2010.

Four months later, after the new Congress assembled and Republicans took control of the House of Representatives; twenty-two senators sent a letter to President Obama asking him to act administratively and to grant deferred action for undocumented immigrant youth who would have qualified for the bill. Led by Senators Durbin and Reid, they reminded the President that “the exercise of prosecutorial discretion in light of law enforcement priorities and limited resources has a long history in this nation and is fully consistent with our strong interest in the rule of law.... Granting deferred action to DREAM Act students, who are not an enforcement priority for DHS, helps to conserve limited enforcement resources.”³ Congressman Gutierrez also argued that the President had the power to stop deporting immigrants with “deep roots” in the United States.⁴

President Obama’s June 15, 2012 deferred action announcement for DREAMers was a culmination of the failure of the DREAM Act to pass, the congressional pressure of DREAM Act supporters to do something administratively, and especially the lobbying and advocacy efforts of DREAMers themselves.

³ See <http://durbin.senate.gov/public/index.cfm/pressreleases?ID=cc76d912-77db-45ca-99a9-624716d9299c>.

⁴ *Illinois Rep. Luis Gutierrez arrested during DREAM Act protest*, CHICAGO SUN-TIMES, July 27, 2011.

Encouraged by the success of DREAMers, and looking to build on the success of DACA, immigrant communities and allies mobilized again in 2013 to push for comprehensive immigration reform. On April 16, 2013, a bipartisan group of eight Senators that included Republican Senators Marco Rubio (FL), Lindsey Graham (SC), Jeff Flake (AZ), John McCain (AZ), and Democrat Senators Charles E. Schumer (NY), Richard J. Durbin (IL), Robert Menendez (NJ), and Michael F. Bennet (CO) came together to draft and introduce the “Border Security, Economic Opportunity, and Immigration Modernization Act” or Senate Bill 744.⁵ This legislation would have provided legal status to approximately eight million undocumented immigrants living in the United States.⁶

With a diverse coalitions of groups that included business, faith, law enforcement, and high-tech institutions advocating for immigration reform and public support for immigration reform at an all-time high, in June 2013, the Senate passed its bipartisan legislation with a 68-32 vote.

Despite efforts to get the House of Representatives to consider the Senate’s legislation, Republican Members of Congress refused to bring the bill to the floor for a vote. By April 2014 immigrants and allies turned to President Obama calling for an end to family separation and a stop to deportations that had reached the highest rate under any other Presidential Administration. Once again DREAMers were at the forefront of the movement calling both for an expansion of DACA that would allow more young immigrants to qualify for relief and a similar program that would protect their parents and other immigrants with ties to the United States.

On November 20, 2014 President Obama announced a series of executive actions including three changes to DACA that would have: (1) eliminated the upper age cap that requires applicants to show they were under 31 years of age as of June 15, 2012, a requirement that prevents many otherwise eligible people to qualify because they are deemed to be “too old” under the original program; (2) advanced the continuous residence period from June 15, 2007 to January 1, 2010 benefiting those who arrived more recently to the United States; and (3) extended grants of deferred action (and work authorization) from two to three years.⁷ The President’s announcement also created a new program offering deferred action to certain undocumented immigrants who are parents of U.S. citizens or lawful permanent residents, known as Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA).

Despite the momentous event of the 2014 Executive Action announcements, the expansion of DACA and the DAPA policy never went into effect and remain blocked from implementation due to a preliminary injunction. The injunction is a result of a lawsuit filed by 26 states challenging these programs on procedural grounds. The preliminary injunction issued by the federal district court in Texas came just two days before the Department of Homeland Security (DHS) was set to

⁵ Border Security, Economic Opportunity, and Immigration Modernization Act of 2013, S.744, 113th Cong. (2013).

⁶ Congressional Budget Office. Cost Estimate: S.744, Border Security, Economic Opportunity, and Immigration Modernization Act (June 18, 2013), available at www.cbo.gov/sites/default/files/s744.pdf.

⁷ U.S. Department of Homeland Security. “Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Whose Parents are U.S. Citizens or Permanent Residents (November 20, 2014).

begin accepting applications for expanded DACA. The U.S. Department of Justice appealed the district court's ruling to the Fifth Circuit Court of Appeals, which upheld the injunction, preserving the order to keep these programs from moving forward. The Fifth Circuit's decision was appealed to the U.S. Supreme Court. In January 2016, the Supreme Court granted *certiorari*, permitting the case to be heard. Before oral arguments were heard in the case, Supreme Court Justice Antonin Scalia, the then longest serving member on the Court, unexpectedly passed away. His death left a vacancy on the nine-member bench which the Senate has not filled. As a result, the *United States v. Texas* case was heard and voted on by an eight member court. Voting 4 to 4, on June 23, 2016, the U.S. Supreme Court issued an equally divided decision, thereby upholding the lower court's decision.⁸

Although the expansion of DACA and DAPA remain blocked, 2012 DACA remains in full effect, and eligible DREAMers continue to apply for and renew their grant of deferred action and work authorization.

§ 1.3 Contributions of DREAMers

Many DREAMers are highly educated and potential high-income earners who can contribute billions of dollars to the U.S. economy across diverse industries. A study by the UCLA North American Integration and Development Center estimates they would earn between \$1.4 trillion and \$3.6 trillion, over the course of their working lives. A larger supply of skilled students would also increase U.S. global competitiveness in science, technology, medicine, education, and many other endeavors. The Congressional Budget Office concluded in 2010 that the productivity of DREAM Act beneficiaries would help reduce the U.S. deficit by \$1.4 to \$2.2 billion between 2011 and 2020.

While not all DREAMers are straight-A students, they are in a position to contribute nonetheless. Recall the related sentiment of the Supreme Court in its 1982 case, *Plyler v. Doe* (ruling that providing a public education to undocumented children is in all of our best interest):

[M]any of the undocumented children disabled by this classification will remain in this country indefinitely, and ... some will become lawful residents or citizens of the United States. It is difficult to understand precisely what the State hopes to achieve by promoting the creation and perpetuation of a subclass of illiterates within our boundaries, surely adding to the problems and costs of unemployment, welfare, and crime. It is thus clear that whatever savings might be achieved by denying these children an education, they are wholly insubstantial in light of the costs involved to these children, the State, and the Nation.

Since DACA was announced, many researchers have studied the progression of DACA and the benefits of obtaining it. In the preliminary findings from the National UnDACAmented Research Project, researchers Roberto Gonzales and Veronica Terriquez found that the DACA recipients

⁸ For additional analysis of the U.S. Supreme Court's decision in *United States v. Texas*, visit www.nilc.org/issues/immigration-reform-and-executive-actions/united-states-v-state-of-texas/.

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they surveyed “experienced a pronounced increase in economic opportunities, such as getting a new job, opening their first bank account, and obtaining their first credit card.”⁹ The study also found that 94% of DACA recipients would apply for citizenship if they were ever eligible. “This finding suggests that DACA recipients seek to be further integrated into U.S. society.”¹⁰

Convincing the Obama administration to create and then expand DACA is an example of the power and energy of DREAMers. Their achievement speaks volumes about their leadership capabilities, political acumen, and brilliance. They are risk takers who are emblematic of what makes America great.

§ 1.4 Toward the Future

While over half of those eligible have received DACA, hundreds of thousands have not applied. Compared to DACA-eligible young adults who applied and received DACA, eligible youth who did not apply to DACA have less schooling; work longer hours; report less trust in institutions; and are more likely to have children of their own. These young people live in rural and urban communities, but are less connected to the schools and institutions in their neighborhoods.¹¹ A significant number have not finished high school or have not had the opportunity to complete the education requirements of the DACA program. They will need to enroll in educational programs in order to avoid being left behind. Economic and social circumstances have created pockets of potential DACA applicants who will need counseling on this and a range of other issues.

Additionally, we must continue to work to provide a path to citizenship for DREAMers, their parents and the remainder of the 11 million. Obtaining DACA today means that “DACAdmented” (a term now used to refer to DREAMers granted DACA) individuals will not be deported and can work for two years. But, DACA does not confer legal immigration status, a visa, or a green card. It does not provide a path to citizenship. Since DACA is based on administrative action rather than on a law passed by a Congress, the policy can be modified and even eliminated at any time by the DHS or the President. What the future holds for DACA recipients and other DREAMers cannot confidently be predicted by anyone. Of course, DREAMers and their supporters are fighting and hoping for the best.

Notably, DREAMers are here because their parents are dreamers as well—something we also should honor. Their parents’ dreams may appear simple and clichéd, but they are true nonetheless: to make an honest living for an honest day’s work, to put food on the table, to be part of a safe community, to instill strong family values, and to send their children to school out of hope for a better tomorrow. They too are remarkable for the sheer determination to lead a productive life despite sometimes tremendous obstacles.

⁹ *How DACA is Impacting the Lives of those Who are Now UnDACAdmented*, Preliminary findings from the National UnDACAdmented Research Project, Roberto G. Gonzales, Harvard Graduate School of Education and Veronica Terriquez, University of Southern California, www.immigrationpolicy.org/just-facts/how-daca-impacting-lives-those-who-are-now-dacAdmented (last accessed Jul. 18, 2016).

¹⁰ *Id.*

¹¹ *Id.*

Preliminary findings from the National UnDACAmented research project showed that although DACA did open up many opportunities for DACA recipients, “it [did] not address the constant threat of deportation still facing those closest to them, including mothers, fathers, and siblings.”¹² While DAPA would have potentially benefited up to 3.7 million undocumented immigrants, many of whom are parents of DREAMers, millions of undocumented immigrants were left out. In the absence of DAPA or more comprehensive relief measures, undocumented immigrants will continue to live with the constant threat of deportation.

In an era of growing xenophobia, mass immigration enforcement, and congressional inaction, policy changes like DACA, and its effective implementation, are more important than ever, both to ensure that the maximum number of potentially eligible immigrants can benefit, and as a reminder of the need for a permanent legislative solution. DREAMers and many other immigrant advocates, including the ILRC, remain committed to fight for meaningful immigration relief for all immigrants.

§ 1.5 About This Manual

The Immigrant Legal Resource Center is proud of working with immigrant youth for more than two decades. Our track record includes battles for in-state tuition long before “DREAMer” was a term. Once DACA was announced, we began holding public information sessions and developing application guidance and training materials. Since the implementation of DACA, the ILRC has provided dozens of trainings and answered hundreds of technical assistance questions, presented information at dozens of community events, provided legal support to numerous DACA workshops and clinics, and advocated in Washington, DC for fair and generous implementation of the program. *DACA: The Essential Legal Guide* represents one of our contributions to this effort. In putting together the materials, our goal is to create a quality publication befitting the importance of the subject. DREAMers deserve nothing less.

In addition to this manual, we urge everyone to look at our website where we have a page¹³ dedicated to DACA resources, such as practice advisories, informational podcasts, training videos, and bilingual materials that can be passed out to the community. We also manage a listserv for those who regularly assist others with DACA applications: dacaexperts@yahogroups.com. To join this exchange, send an email to: dacaexperts-subscribe@yahogroups.com.

Since our first edition of the ILRC’s DACA guide, DACA FAQs (Frequently Asked Questions) and forms have been updated. We also learned a significant amount about adjudication trends and how to tackle legal issues. As the third edition of this manual, this is still the only comprehensive DACA guide in existence. Even though more than four years have passed since its implementation, DACA is gradually evolving and changing.

¹² *Id.*

¹³ At www.ilrc.org/daca.

This guide contains 11 chapters and an extensive appendix. This first chapter is an introduction to the manual. The second chapter contains a thorough review of the DACA eligibility requirements. The third chapter discusses the criminal bars to DACA. The fourth chapter reviews some of the most efficient and effective ways of working with DACA-eligible clients. The fifth chapter contains extensive information on how to document a winning DACA application. The sixth chapter provides a detailed analysis of the DACA request process and information on how to complete the DACA forms. The seventh chapter covers the important issue of how to make a DACA request for someone who has removal issues. The eighth chapter contains information about how to conduct group processing of DACA applications. The ninth chapter reviews DACA requests for evidence, decisions, appeals and renewals. The tenth chapter discusses how to obtain benefits associated with DACA, such as drivers' licenses, social security numbers, and traveling on advance parole. The eleventh chapter covers other immigration relief for which DACA applicants might be eligible. It is important for advocates to determine if their DACA clients might be eligible for other immigration relief, which could turn out to be more advantageous for DACA-eligible immigrants than applying for DACA would be.¹⁴ Finally, we have included an extensive appendix to this manual, which includes dozens of different documents that will be useful to practitioners who assist DACA applicants.

¹⁴ A study by the Center for Migration Studies of New York (CMS) found that 14.3 percent of immigrants screened for DACA eligibility were potentially eligible for some other immigration benefit or relief, such as a U visa, VAWA self-petition, or family petition. Note that an individual can apply for DACA as well as other forms of relief. For example, someone can apply for DACA in order to receive a work permit sooner and then apply for another form of relief, which depending on the benefit, may take more than a year to process. The study is available at <http://jmhs.cmsny.org/index.php/jmhs/article/view/37>.