



DACAmented Law Students and Lawyers in the Trump Era

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Lawyers play a vital role in U.S. society. In law school and throughout their careers, they hone an intimate understanding of the law as well as the ability to craft policy, serving as mediators between the law and everyday individuals.

Lawyers and law students who hold Deferred Action for Childhood Arrivals (DACA) are therefore in a unique position. DACA grants individuals temporary stays of deportation and U.S. work authorization. However, while DACA protections allow young immigrants without legal status to pursue legal careers, they do not ensure that the path is easy. In addition to the typical barriers that aspiring lawyers must overcome, DACA recipients face the obstacle of seeking admission to a bar with residency restrictions—on top of the inherent daily uncertainty that comes with not having legal status.

The personal lives of lawyers and law students with DACA are rooted in the broader immigrant community in the United States. The Trump administration's hard-line stance on immigration has made life difficult for this community and, by extension, for the lawyers and law students with DACA. Since President Donald Trump took office in January 2017, he and his administration have aggressively focused on stripping protections from immigrants who are permitted to live in the country. The administration has also amplified deportation efforts, increasing the number of individuals who are prioritized for deportation.¹ In the midst of this crackdown, DACAmented lawyers and law students hold a deep understanding and specialized knowledge of the legal system, a system that is the bedrock of the U.S. immigration code. Many of these individuals serve as advocates and voices of justice for those who may not otherwise have access to such representation, often choosing to work with underserved communities.

Through interviews with 33 DACA recipients pursuing legal careers, this issue brief—a collaboration between the Penn State Law Center for Immigrants' Rights Clinic and the Center for American Progress—highlights their complex experience: the uncertainty they face, their overwhelmingly positive and determined attitudes, their coping mechanisms, their self-perceived privilege, and the futures they are planning for themselves.² The brief then provides policy recommendations that would help support them, and others like them, in their education and chosen profession.

The termination of Deferred Action for Childhood Arrivals

On September 5, 2017, Attorney General Jeff Sessions announced the end of DACA, claiming that the program constituted an executive overreach.³ DACA recipients whose protections were set to end between October 5, 2017, and March 5, 2018, were given one month to apply to renew their status, and Congress was given six months to act on a legislative solution. President Trump followed the announcement with a tweet in which he claimed that he would “revisit” the issue if Congress failed to pass a legislative solution.⁴

To date, several federal courts across the United States have rejected the administration’s effort to terminate DACA. Since the announcement, two federal courts have issued injunctions ordering the administration to continue processing DACA renewals.⁵ A third court ordered the administration to additionally process new DACA applications, but the judge stayed the order for 90 days to give the administration a chance to provide a reasoned explanation for why it ended DACA.⁶ On the other hand, Texas and six other states have filed a lawsuit in the Southern District of Texas challenging DACA; the lawsuit is currently pending before the same judge who blocked a 2014 expansion of DACA and a similar form of protection for parents of U.S. citizens and permanent residents.⁷

Despite the very real consequences of ending DACA, as of June 2018, Congress has not passed legislation to protect this population. Meanwhile, the White House has signaled its unwillingness to sign legislation unless it includes sweeping immigration enforcement measures and limits on future legal immigration.⁸ Notwithstanding the fact that DACA recipients are currently able to renew their protections, thousands of individuals have already lost their DACA, exposing them to detention and deportation.⁹ Since the Trump administration took office, several DACA recipients have been arrested and detained, including one instance when a judge ruled that U.S. Immigration and Customs Enforcement (ICE) lied in court about an individual’s gang membership in effort to deport him.¹⁰ In short, DACA recipients’ lives in the United States hang in the balance.

Interviews with DACAmended lawyers and law students

This brief focuses on law students and lawyers with DACA because these individuals are intimately familiar with how policy—including immigration policy—works. Interviewees were asked about their experiences in personal, professional, and familial contexts, and certain trends were observed in all of these areas. Among those interviewed, many shared a sense of uncertainty, wide-ranging emotions, and a view that having an understanding of the law and DACA was both a privilege and a responsibility.

Primarily, interviewees expressed that, since President Trump took office, they have been uneasy about most aspects of their daily lives. In the month before the announce-

ment ending DACA, one participant—identified here as YK—described living with anxiety, checking every day to see whether DACA would be taken away:

It's always in my mind. What if Trump deports me back to South Korea? What if he does that? What if he rescinds DACA? Back in Obama's administration, I didn't have to worry about that part. I just had to worry about, like—I just had to make sure that I renew, I don't forget that I had to renew DACA. And one day, he would build a pathway to permanent residency. But right now, every day I actually worry. I have to look up newspapers and check the internet to see if he has announced or just considered to rescind DACA this morning or maybe yesterday night.¹¹

As YK explains, participants were less concerned during the Obama administration. This makes sense given that the previous administration created the DACA program and established a series of immigration enforcement priorities that focused resources on people who posed a threat to public safety or arrived more recently to the country.¹² And the feeling of uncertainty described by interviewees has presumably become more persistent following the termination of DACA. Just weeks after the Trump administration ended DACA, another interviewee, Ari, shared what it was like to see his protections slipping away:

It [DACA] means a lot to me. I feel like it's fading away from me. It's like I'm holding it, but it's like sand in your hand where it's fully dissolving. That's what it felt like since the election. I thought I had it, but it's going to be gone too. It's leaving. So, I guess it's also like having someone dying in your arms ... I feel like it's like you're holding something, and it's going to be leaving soon.¹³

Since President Trump took office, for a large part of the immigrant community, this sense of anxiety and fear has grown. Immigrants are facing unthinkable choices, both for themselves and for their children. Near the border in Texas, parents have been forced to choose between taking their children for emergency medical treatment, thereby exposing themselves and their children to arrest or deportation, or forgoing necessary treatment altogether.¹⁴ In many cities around the country, immigrants—particularly within Latino communities—are reporting fewer crimes and are more regularly refusing to cooperate with prosecutors out of fear that interacting with local police will bring them to the attention of federal immigration enforcement authorities.¹⁵ Such prolonged exposure to stress leaves immigrants, their children, and their extended communities exposed to negative repercussions that affect their daily lives.¹⁶

Some interviewees maintain a positive attitude with regards to DACA; others seem apathetic; and some express a range of attitudes throughout the day. One interviewee, MM, described this emotional rollercoaster:

*It's a day-to-day thing, and it depends on how I'm feeling that day. That's how I cope with it. Sometimes I'm sad. Sometimes I am just [in] ready-to-fight mode. Sometimes I am just mad and in a bad mood.*¹⁷

Interviewees discussed developing coping mechanisms in order to deal with the complicated emotions that they experience. Many rely heavily on their support networks—whether they be family, friends, or faith. Others have found activities, such as journaling or exercise. A few have even reported that they simply avoid thinking about their futures too much. These feelings and coping techniques are similar to those reported in other research on DACA recipients and the unauthorized community more broadly.¹⁸ While interviewees were overwhelmingly determined to find a way to pursue their professional careers in the United States, those who did not actively seek support tended to be less hopeful about the future and relatively less motivated to map out future plans.

The emotions described by many participants are not unique to DACA recipients who are lawyers or law students. Yet this group's training and professional navigation of the legal system can deepen its understanding of the immigration process. Given that a main focus of lawyers is understanding complex policy and interpreting legal code, this is a congruency worth considering.

DACA recipients commonly express that the protections can be both a privilege and a burden.¹⁹ With work permits and access to driver's licenses, individuals with DACA have opportunities that other unauthorized immigrants do not. However, this often translates to greater familial responsibility. Furthermore, pursuing a law degree—and thus having an advanced understanding of the law and the legal system—gives some participants a greater sense of privilege and societal responsibility than the wider DACA and unauthorized immigrant community might feel.

Many of the lawyers and law students interviewed in this brief shared that they play an important role in disseminating news to their families and communities, and some use their knowledge of the law to build contingency plans for their own futures as well as those of their families. One participant, Esmerelda, describes this conflicting privilege and burden:

My parents were now living in a situation where they really were vulnerable to deportation any minute, and that was a new reality for me. And at the same time, as an attorney advising other families of their rights and trying to empower them—that they still have rights, that they still have ways to go about it—and providing consultations; and, it was very much a push-and-pull struggle in me. How, as an attorney, you give hope and information and material for the community, and, in the personal

*level, knowing that, even as much as I gave those advisory, we were still so vulnerable. And that doesn't change how people feel ... I am giving them tools and empowering them and talking to them. It is important, but I know that when those families go back home, they are in fear, and they're still thinking, what's going to happen to me and my kids or my family?*²⁰

Overall, these interviews are further evidence of the need for a permanent solution in the form of a pathway to citizenship to protect DACA recipients and Dreamers. Participants in this study are making efforts to ensure that an end to DACA will not mean the end of their professional goals, but their immigration status—especially considering the Trump administration's decision to end DACA—places obstacles in the way of these aspirations. While they remain committed to their futures in the United States, and their professional goals remain largely the same, the rescission of DACA has left them vulnerable.

Policy recommendations

Since the Trump administration announced the end of DACA, the program's beneficiaries have been living in perilous legal limbo. Only Congress can pass a federal solution, such as the Dream Act, to alleviate the uncertainty of their futures.²¹ Although Congress has considered several other legislative solutions—which range in scope—that would help DACA beneficiaries or Dreamers more broadly, thus far, it has failed to enact any proposals.²²

To fill this void, there are several things that state legislative bodies and educational institutions can do to help law students and lawyers with DACA as well as DACA recipients more broadly.

In-state tuition and financial aid

A chief concern among interviewees was how to finance their education and provide for themselves. Because DACA recipients obtain work authorization only as a result of being granted this protection, by losing DACA, they would lose their ability to work lawfully, which is essential for many DACA recipients enrolled in college and graduate school.

Unauthorized immigrant residents can pay in-state tuition in more than 20 states.²³ While they are ineligible for federal financial aid, California, Connecticut, Hawaii, Minnesota, New Jersey, New Mexico, Oregon, Texas, and Washington extend some aid to these students.²⁴ In four states, losing DACA would affect students' ability to pay tuition at an in-state rate.²⁵ These state legislatures should consider legislation that permits DACA beneficiaries to continue to pay in-state tuition after the expiration of

DACA protections as well as legislation that allows all unauthorized immigrants who otherwise meet state residency requirements to pay in-state tuition. All states that do not extend financial aid to unauthorized immigrant students, regardless of their DACA, should consider doing so, provided the students meet the residency requirements.

Even in the absence of new legislation, private universities have more flexibility than public universities when it comes to providing financial aid and reducing the cost of living expenses for DACA recipients and unauthorized students who do not currently qualify for assistance; they should make this aid accessible.²⁶

Mental health support for students

Due to the constant and often overwhelming unpredictability of their situation, it is crucial that DACA recipients have access to mental health services. Educational institutions can do more to provide support for DACA students. For example, schools should prominently advertise available mental health services, such as counseling, focusing on students who may not be aware they are eligible for them, students who may not think they are particularly good candidates, and students who are unaware that such services exist. Students with DACA may fit into any of these groups. In order to maximize the usage of these services, they must be sensitive to students' different cultural realities and to the specific experiences of unauthorized students.²⁷ Schools with limited resources for these services should partner with community-based organizations that can provide them.

Attorney screenings

In the absence of congressional action, DACA recipients could benefit from consultations with immigration attorneys who could help them to identify whether they have other avenues to legal status. Some DACA recipients may qualify for family- or employment-based sponsorship; visas protecting victims of domestic violence or other crimes; or other relief. Previous research estimated that 14 percent of individuals eligible for DACA were eligible for some other permanent visa as well.²⁸ Some law school immigration clinics offer such screenings for free or for a minimal charge. Schools could also establish a relationship with local immigration lawyers or legal service providers in order to conduct such screenings for enrolled students and alumni.

Credentialing

Admission to a state bar is necessary to practice law.²⁹ If a state requires its attorneys to demonstrate permanent residency or citizenship, regardless of DACA, law school graduates without legal status will not be admitted. Only states can ensure that individuals with DACA are eligible to practice law, and they should pass legislation that admits eligible DACA recipients to the bar. Certain states—including but not necessarily

limited to Arizona, California, Florida, Illinois, Nevada, New Jersey, New Mexico, New York, and Pennsylvania—have permitted DACA recipients to the bar. However, upon the expiration of their DACA protections, they will again be shut out of the profession.³⁰

The American Bar Association has begun to help pave the way for law school graduates without legal status. In 2017, it adopted a resolution supporting “the principle that bar admission should not be denied based solely on immigration status.”³¹

Conclusion

Under the Trump administration, lawyers and law students with DACA face unparalleled uncertainty in their personal and professional lives. In one participant’s words:

*We’re resilient ... We are better together. We are better united. And we are going to show this administration and people that we are going to continue to fight. We’re not going to be defeated, on the contrary.*³²

It is Congress’ job to pass the Dream Act and end the uncertainty facing Dreamers. Until this occurs, state legislatures and educational institutions can act in ways that support DACAmented lawyers and law students.

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Institutional affiliation for faculty and students in the Penn State Law Center for Immigrants’ Rights Clinic is provided for identification purposes only and does not represent the views of the institution.

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