

DACA RECAP: WHAT HAPPENED AND WHERE ARE WE NOW

By Professor Uzoamaka Nzelibe

Pick up a newspaper or scroll through your newsfeed on any given day and you are bound to see at least one immigration-related headline. But what do these headlines mean? Why is everyone talking about DACA? The volume of immigration news, the rapidly-changing nature of the immigration landscape, and the complexity of the laws and issues involved combine to make it nearly impossible to keep up with--let alone understand--the issues that underlie the ongoing debate about who should be allowed to enter or remain in the United States.

What is DACA?

The [Deferred Action for Childhood Arrivals](#) (“DACA”) program, established in 2012 under the Obama Administration, permitted the issuance of renewable two-year deferments of deportation and work permits to young people without immigration status who entered the United States before age 16 and met certain other requirements.

The DACA program was part of the Obama Administration’s attempts to standardize enforcement decisions and focus the Administration’s resources on persons it deemed an enforcement priority. The Administration argued that because it was confronted with more immigration

violations (studies estimated the undocumented population at around [11.1 million](#) in 2011) than it had resources to address, it was necessary to prioritize its law enforcement efforts by exercising its [prosecutorial discretion](#).

DACA permitted a category of people who were not enforcement priorities to [request an exercise of prosecutorial discretion](#) in the form of deferred action. In essence, what DACA recipients have been receiving is an official statement that their deportation has been deferred, and work authorization for this period of deferment. DACA does not confer legal status or provide a pathway to citizenship.

Approximately [800,000](#) young people have received DACA relief since the program’s inception in 2012. [Studies](#) have shown that the DACA program has improved the lives of most DACA recipients and allowed them to participate more robustly in the economy.

Why has the DACA program been in the news recently?

When President Trump took office in January 2017, he issued [executive orders](#) eliminating Obama-era policies that narrowed the categories of immigrants subject to enforcement actions. The Trump Administration’s new, everyone-is-a-priority enforcement [policies](#) allowed for the arrest,

detention, and removal of anyone in the United States in violation of U.S. immigration laws. However, the Administration did not rescind the memorandum implementing DACA at that time, and specifically exempted DACA recipients from its enforcement policies in a [February 2017 memorandum](#) implementing the new executive orders. The DACA carve-out reflected President Trump's ever-changing attitude toward the DACA program.

In early 2017, DACA seemed relatively safe, and much of the immigration news revolved around the so-called "Muslim travel ban." The beginning of the end for the DACA program began in June 2017 when Texas Attorney General Ken Paxton, along with nine other attorneys general and one governor, sent a [letter](#) to U.S. Attorney General Jeff Sessions threatening to contest DACA's validity by amending a pending 2014 lawsuit in which they had obtained an injunction preventing the implementation of another Obama-era deferred action program similar to DACA. The letter gave the Administration until September 5, 2017, to rescind DACA or defend it in court.

Rather than defend DACA, Sessions [announced](#) on September 5, 2017, that the DACA program would be rescinded and phased out. The Attorney General couched the rescission as an [attempt to forestall the lawsuit, but he also expressed a strong view that DACA was unconstitutional](#).

On the same day as the Attorney General's remarks, then-Acting DHS Secretary Elaine Duke issued a [memorandum](#) explaining how the DACA program would be phased out.

Under the phase-out, individuals with DACA relief and work permits expiring between September 5, 2017, and March 5, 2018, had one month to get their renewal applications on file, and individuals with DACA and work permits expiring after March 5, 2018, would not be able to file renewal applications. The Migration Policy Institute estimated that the phase-out would result in the loss of status for about [915 DACA recipients per day](#) from March 6, 2018, until March 5, 2020, the date by which all DACA recipients would have lost their status.

Young people whose documents were expiring between September 5, 2017, and March 5, 2018, had one month to raise close to [\\$500](#) -- sometimes more depending on whether an attorney was involved -- for the DACA renewal fee. The period between September 5, 2017, and October 5, 2017, was hectic for many nonprofits and legal assistance organizations as they struggled not only to understand the new timetable, but also to submit their clients' applications.

President Trump challenged Congress to pass DACA legislation by March 5, the date after which some DACA recipients would begin to lose their status, and [promised to revisit](#) the issue if Congress failed to act by this deadline. Trump's beliefs about what legislators would be able to do under pressure failed to recognize the lack of consensus within each political party--not to mention between the two parties--about how to protect dreamers (as this group has become known) and past failures by Congress to enact protections for dreamers.

The DACA legislative deal was in trouble from the start. The President and his team of advisors [insisted](#) that any deal on DACA would need to include money for a border wall, a nonstarter for many Democrats and immigration advocates. Talks took a further step back after reports that President Trump used [vulgar language](#) to describe nationals from certain countries he thought should not be allowed to immigrate to the United States. A government shutdown, threats of a second government shutdown, and the March 5 deadline all failed to incentivize Congress to strike a deal on DACA. Efforts at a legislative fix have since petered out in Congress.

Meanwhile, as legislators argued about the fate of DACA, state officials took up the DACA battle in court. The [Regents of the University of California](#) and Janet Napolitano, in her capacity as the president of the University of California, [together with](#) the attorneys general for California, Maine, Maryland, and Minnesota, sued the Trump Administration for its rescission of the DACA program. On January 9, 2018, the plaintiffs obtained [an injunction](#) which halted implementation of the parts of the DACA phase-out concerning the renewal of DACA applications. As a result of the injunction, the Trump Administration announced on January 13 that it would resume the processing of renewal applications.

On January 16, 2018, the Justice Department, in what it described as a [rare step](#), bypassed the Ninth Circuit, which had roused Trump's ire by striking down his travel ban, and [asked](#) the Supreme Court to weigh in regarding the January 9 injunction.

While the Administration's petition for *certiorari* before judgment was pending, the U.S. District Court for the Eastern District of New York also [enjoined](#) the Trump Administration from implementing its rescission of the DACA program.

About two weeks later, the Supreme Court [denied](#) the Administration's request for *certiorari* and refused to enter the DACA rescission controversy prematurely. The Trump Administration has appealed both the [California](#) and [New York](#) injunctions to their respective circuit courts, and both cases remain pending.

What's the current status of DACA?

The two injunctions have halted most of the provisions of the DACA phase-out, and the Trump Administration [continues](#) to accept renewal applications from DACA recipients. At the start of the DACA phase-out in September 2017, about [690,000](#) DACA recipients remained in DACA status. The remaining 110,000 had either acquired more permanent status through other forms of immigration relief or failed to (or could not) renew their DACA status. The lives of these nearly 700,000 young people continue to hang in the balance. Legislative action has stalled. The lawsuits continue to wind their way through court in California and New York.

The fate of DACA now rests on the courts and the results of future elections.

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