

## **Oversight of the Administration's Decision to End Deferred Action for Childhood Arrivals**

**U.S. Senate Committee on the Judiciary  
October 3, 2017**

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Chairman Grassley and Ranking Member Feinstein, thank you for the invitation to appear at this important hearing. My statement addresses the implementation and impact of the Deferred Action for Childhood Arrivals (DACA) program, and provides recommendations for how Congress should move forward. There is no doubt that the DACA benefits have been a major blessing for the recipients and their families. The educational institutions they attended and their employers also benefited. But there also have been some adverse side effects for the American economy, for local communities, and for our immigration system. The DACA program not only was an egregious abuse of executive authority, it was carelessly implemented. It has displaced legal U.S. workers from employment opportunities, added to the cost of public welfare and assistance programs, provided deportation protection to criminals, diverted resources away from processing benefits for legal immigrants, invited fraudulent applications, and helped inspire a surge of new illegal immigration. Members of Congress again are being confronted by passionate advocates for an amnesty. You must also remember that constant increases in immigration have consequences for Americans, and that continued tolerance of illegal immigration damages the integrity of our legal immigration system and erodes public support. For these reasons, an amnesty is appropriate only if it is limited to the approximately 700,000 people who now have DACA benefits, and only if it is enacted along with other provisions to mitigate the unavoidable fiscal costs, increases in chain migration, and encouragement to illegal immigration that will ensue.

### DACA Was Carelessly Implemented

The public image of the DACA recipients that has been carefully cultivated by activists and their allies is that they are young people who were “brought” to the United States at a young age through no fault of their own, are well-educated, have a clean background, have gone through a rigorous screening process, and are now indistinguishable from the best and brightest American youths.

The reality is that the DACA eligibility criteria were quite lenient and the screening of applications was cursory. To qualify, applicants were supposed to be aged 15-31, present in the United States illegally by June 15, 2012 with continuous residence for at least five years prior, and must have arrived by age of 16. They were supposed to have completed high school or a GED program or higher, or be enrolled in some kind of educational program (loosely defined) at the time of application.

A clean criminal history was not required; applicants could have up to two misdemeanor convictions (or multiple misdemeanors if they were associated with two separate incidents). Felony or misdemeanor convictions having to do with illegal status, such as identity theft or immigration fraud, were excused. Among the crimes that would not necessarily disqualify an alien for DACA: child pornography, child abuse, assault, kidnapping, larceny, robbery, theft, voter fraud, petty theft, possession of drug paraphernalia, public intoxication, fleeing from an officer, disorderly conduct, vandalism, indecent exposure, prostitution and trespassing. “Minor” traffic offenses, such as driving without a license or insurance, or reckless driving, were not disqualifying, even if considered criminal under state laws.

U.S. Citizenship and Immigration Services (USCIS) had adopted a notorious “get to yes” culture and emphasized speed of processing over careful review. There was no requirement that applicants be interviewed, and few were. Claims made by applicants and documents submitted to support the application were not routinely or randomly verified. Many of the documents required for the application, such as residency information, diplomas, and even identity documents, were possible to produce on a home computer, or could easily be obtained from document vendors, often operating on the Internet. The agency adjudicators were told to accept electronic messages such as e-mails and even text messages as “proof” of claims. Applicants were not required to demonstrate proficiency in English.

Adjudicators were told to adopt a “lite and lean” background check, without reviewing all of the security and criminal databases that are typically checked before approving benefits applications.<sup>1</sup>

Renewals have been rubber-stamped, with no attempt to re-visit the claims of the original application or to confirm employment or that educational criteria have been met.

According to USCIS, today approximately 690,000 individuals have the DACA benefit. Of all the new applications adjudicated since the inception of the program, 92.1 percent were approved. Of the all renewals adjudicated, 99.6 percent were approved.

#### Characteristics of DACA Recipients

Very little is known of the characteristics of the DACA population. Some studies have been done that create proxies for DACA beneficiaries within the Census Bureau data, but there is no way to know if they correctly describe the actual DACA population. Another widely cited study published by a pro-DACA advocacy group was based on a Facebook survey of DACA activists, but was not conducted using generally accepted scholarly survey methodology.

I know of only one reputable academic study of actual DACA beneficiaries, conducted by Harvard scholar Roberto G. Gonzales, known as the National UnDACAmented Research Project.<sup>2</sup> Gonzales and his team surveyed just over 2,000 self-described DACA-eligible respondents and performed about 200 follow-up detailed interviews. There are important (self-acknowledged) caveats to the findings, and Gonzales believes that for a variety of reasons, the respondents are more educated and well-off than the DACA population as a whole.

To date Gonzales has published only a few of the findings, but together with other information that has been disclosed by USCIS, his results suggest that the DACA population spans the full spectrum of educational achievement and socio-economic status. Among the findings:

- 73 percent of DACA recipients he surveyed live in a low-income household (defined as qualifying for free lunch in high school);
- 22 percent have earned a degree from a four-year college or university;
- 21 percent have dropped out of high school;
- 20 percent have no education beyond high school and no plans to attend college;

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<sup>1</sup> Documents obtained through a FOIA request by Judicial Watch, published on June 11, 2013, <http://www.judicialwatch.org/press-room/press-releases/homeland-security-documents-reveal-dhs-abandoned-required-illegal-alien-background-checks-to-meet-flood-of-amnesty-requests-following-obamas-deferred-action-for-childhood-arrivals-directive/>.

<sup>2</sup> See <https://scholar.google.com/citations?user=qLii6B0AAAAJ&hl=en&oi=ao>.

- 59 percent obtained a new job with a DACA work permit, but only 45 percent increased their overall earnings;
- 36 percent have a parent who holds a bachelor's degree; and
- 51 percent were already employed before DACA.

Before considering amnesty legislation, Congress obtain more information about the DACA beneficiaries, in order to better understand the potential impact of an amnesty, and to help determine if the eligibility criteria for an amnesty should be different from the DACA rules. USCIS has information on the communities of residence, educational levels, marital status, mode of entry to the country, criminal histories and English proficiency of DACA applicants. This committee should request a compilation of this information for the public to review. In addition, USCIS should conduct a survey of a random sample of DACA recipients, to learn more about their employment history, educational achievements, and socio-economic progress.

#### Less Education and Skills Means More Fiscal Costs and Displacement of Challenged American Workers.

While a number of DACA recipients appear to be well-educated and successful, at the same time there appear to be many – the roughly 40 percent with no education beyond high school – who likely are working in relatively low-paying jobs that do not require much education or skills. This means that they are in direct competition for jobs with some of the most vulnerable American and legal immigrant workers. At the same time that the 690,000 DACA beneficiaries have been able to secure legal employment, there were more than four million unemployed Americans of the same age range who are unemployed. Nearly half of these unemployed Americans are black or Hispanic.

The educational profile of the DACA recipients suggests that since many are not likely working in high paying jobs, they are eligible for and collecting public assistance benefits. Theoretically they are not eligible for federal welfare programs, but federal law gives the states great leeway to set the rules for access, and many states allow DACA beneficiaries to receive these benefits and services (if qualified based on income). For example, New York allows DACA recipients to participate in its public health insurance program, Medicaid, the cash assistance program, and more.<sup>3</sup> California allows DACA recipients to receive Pre-natal Medicare, Community Clinic care, SSI, cash assistance, and more.<sup>4</sup> I am unaware of any accounting or estimate of the public assistance payouts to DACA beneficiaries to date. Three other places that allow DACA beneficiaries to qualify for Medicaid are Minnesota, Massachusetts and the District of Columbia.<sup>5</sup>

#### Low Eligibility Standards Mean Criminals Received DACA.

The low eligibility standards, which explicitly allowed some people with criminal records to obtain DACA, together with the inadequate screening of applications and failure to ensure thorough review of databases virtually guaranteed that mistakes were made in granting DACA benefits to individuals who turned out to be criminals. USCIS has disclosed that 2,139 people have had their DACA

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<sup>3</sup> Empire Justice Center, "Public Benefit Eligibility of Deferred Action 'Dreamers,'" September 7, 2012, <http://www.empirejustice.org/issue-areas/immigrant-rights/access-to-public-benefits/public-benefit-eligibility-of.html>.

<sup>4</sup> Immigrant Eligibility for Health Care and Public Benefits in California, June 4, 2013, <http://www.alrp.org/wp-content/uploads/AIDS-Legal-Referral-Panel-Access-to-Health-Care-and-Benefits-for-Immigrants-in-California-PowerPoint.pdf>.

<sup>5</sup> Kathleen Pender, "'Dreamers' could lose more than their jobs if immigration program dies," *San Francisco Chronicle*, September 10, 2017, <http://www.sfchronicle.com/business/networth/article/Dreamers-could-lose-more-than-their-jobs-if-12184622.php>

benefits revoked due to criminal behavior or gang ties. According to USCIS, most of these crimes were for “alien smuggling, assaultive offenses, domestic violence, drug offenses, DUI, larceny and thefts, criminal trespass and burglary, sexual offenses with minors, other sex offenses, and weapons offenses.”<sup>6</sup>

Following the mistaken approval of benefits for Emmanuel Jesus Rangel-Hernandez, a DACA beneficiary who killed four people in Charlotte, NC in YEAR, who was approved for DACA despite evidence of gang membership that was in the system but which the USCIS officer failed to check, in the spring of 2015 USCIS had to provide “refresher training” on how to perform thorough background checks for all officers who handled DACA applications. Following a review of cases prompted by Sen. Grassley’s inquiries into this case, USCIS found and terminated hundreds more cases. The vast majority were cases of criminal offenses that were committed after DACA approval, but about 5% were cases where the information was available to the USCIS officer at the time of adjudication.

Even more disturbing, only about one-third of these individuals whose DACA status was terminated due to crimes or gang ties was promptly removed; most of the rest were released and allowed to remain in the United States for some time, even without DACA benefits.<sup>7</sup> It appears that more than 100 of these gang members were not put on the path to deportation at all and likely have been allowed to remain in the United States.

A MS-13 gang leader in Frederick, MD was able to receive DACA benefits and worked as a custodian at a local middle school. He is now incarcerated for various gang-related crimes, but reportedly was told by gang leaders in El Salvador to take advantage of the lenient policies at the U.S. border to bring in new recruits, knowing that they would be allowed to resettle in the area with few questions asked.

In another troubling case, Edgar Covarrubias-Padilla, an alleged DACA recipient who was working as the night manager at a popular overnight science camp in northern California, was arrested by local authorities and charged with four felonies, including possession and distribution of more than 600 child porn images and a charge for lewd and lascivious act with a child under 14. According to whistle blowers, ICE agents had become aware of an investigation into Covarrubias-Padilla’s behavior and updated his USCIS file, but USCIS took no action for months, and Covarrubias-Padilla remained in his job, in a position to abuse other children.

The implementation of DACA prevented the removal of thousands of aliens who were in deportation proceedings at the time. According to ICE records, in the first six months that DACA was operating, there were 4,594 people who had been in removal proceedings but who instead received DACA benefits.<sup>8</sup> There is a strong likelihood that many of these individuals had criminal convictions in order for them to be in deportation proceedings under Obama administration policies. In some instances, Obama appointees at DHS headquarters exerted pressure on field office enforcement personnel to drop deportation proceedings for aliens seeking DACA benefits, even in cases where the deportation case was based on state criminal convictions.<sup>9</sup>

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<sup>6</sup> Paul Bedard, “Feds: 30% surge in illegals losing DACA freedom for crime, gang violence,” *Washington Examiner*, August 29, 2017, <http://www.washingtonexaminer.com/feds-30-surge-in-illegals-losing-daca-freedom-for-crimes-gang-violence/article/2632820>.

<sup>7</sup> DHS responses to questions for the record from Sen. Charles Grassley pursuant to an April 28, 2015 Senate Judiciary committee hearing.

<sup>8</sup> ICE records released under discovery in the *Crane v. Napolitano* lawsuit brought by ICE deportation officers challenging the legality of DACA.

<sup>9</sup> Complaint of Patricia Vroom in *Vroom v Johnson*, detailing numerous instances of abusive conduct toward senior career immigration officials who expressed concerns about Obama administration policies, <https://cis.org/sites/cis.org/files/Vroom%20complaint.pdf>.

### Implementation of DACA Helped Inspire More Illegal Immigration.

In the years following the implementation of DACA, Customs and Border Patrol (CBP) began to report a significant increase in the number of illegal aliens being apprehended at the southern border, particularly in the Rio Grande Valley sector. The numbers of unaccompanied minors began to increase noticeably in 2012, when Texas officials first raised the alarm seeking help from DHS, and increased sharply again from 2013 to 2014, when apprehensions of minors went up by nearly 80 percent. Much of the flow consisted of unaccompanied minors and parents with children. This influx continued at record-breaking levels for several years, until dropping off sharply in early 2017 after Donald Trump's inauguration. According to intelligence reports from the Border Patrol and other sources, most of the new illegal arrivals were motivated to come by accounts from friends, family, news media and smugglers that after apprehension they would receive a "permiso" to remain indefinitely in the United States. While the Obama administration's notorious catch and release policies are believed to be primary motivation for the increase in illegal immigration, still the general awareness of the DACA program, the push for a large-scale amnesty in 2013, and Barack Obama's attempt to enact a similar amnesty by executive fiat in 2014 certainly contributed to an impression for prospective illegal immigrants that an amnesty that would cover their children, if not their entire family, was very likely to be enacted in the near future.

### DACA Drained USCIS Resources and Disadvantaged Legal Immigrants.

The implementation of DACA created an enormous burden on USCIS. It added a huge volume of cases, but since DACA was not authorized by Congress, the agency was not authorized to collect fees to support the cost of processing the application. This is why DACA applicants had to also apply for a work permit; this enabled USCIS to collect \$380, plus a biometrics fee. Nevertheless, the work permit fees did not cover the entire cost of processing the application [cite] and the agency had to stretch its resources to cover the new workload. This is one reason that the background checks were skimpy – less time per application enabled each adjudicator to crank out more approvals. The agency attempted to employ other funding gimmicks too.<sup>10</sup>

Besides stretching the meager fee revenue, USCIS also diverted human resources away from processing applications for several categories of legal immigrants – especially family members of US citizens – to help cover the DACA applications.<sup>11</sup> U.S. citizens sponsoring their spouses and other close family members, paying hundreds of dollars in fees, saw their waiting times increase to 15 months and had their lives on hold in a backlog of more than 850,000 cases, while DACA applicants who paid only a fraction of the total cost of their benefit were processed in two to four months. This committee explored these and many other issues surrounding the DACA program in a hearing in March, 2015.<sup>12</sup>

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<sup>10</sup> Jessica Vaughan, "Blue Light Special on Naturalization to Help Fund Obama's Amnesty," Center for Immigration Studies, November 20, 2014, <https://cis.org/Vaughan/Blue-Light-Special-Naturalization-Help-Fund-Obamas-Amnesty>.

<sup>11</sup> Jessica Vaughan, "USCIS Favors Illegal Alien Applicants Over American and Legal Immigrants," Center for Immigration Studies, March 12, 2015, <https://cis.org/Vaughan/USCIS-Favors-Illegal-Alien-Applicants-over-Americans-and-Legal-Immigrants>.

<sup>12</sup> Jessica Vaughan, "Senate Hearing Exposes Billion Dollar Amnesty Slush Fund and Other USCIS Improprieties," Center for Immigration Studies, March 6, 2015, <https://cis.org/Vaughan/Senate-Hearing-Exposes-BillionDollar-Amnesty-Slush-Fund-and-Other-USCIS-Improprieties>.

## **The Way Forward**

The termination of the DACA program has set off a new campaign by immigration expansion pressure groups to urge Congress to enact an amnesty for DACA beneficiaries, or possibly even a broader amnesty that would cover their parents and other relatives who are also residing illegally in the United States. Proponents of a DACA amnesty argue that the DACA beneficiaries arrived as children, did not choose to live here illegally, have grown up like Americans, and are unfamiliar with and have no ties to their country of citizenship. In the past, these proposals have lacked sufficient support in Congress, due to concerns about the significant fiscal costs, the labor market effects that result in displacement and wage depression for U.S. workers, and the need to avoid encouraging more illegal immigration, especially at a time when border security and interior enforcement have not reached their full potential.

My sense is that many in Congress want to move forward with an amnesty despite what we may learn about the DACA beneficiaries, essentially for political reasons. In that event, I recommend that Congress enact a narrowly-focused amnesty package that gives relief to qualified DACA beneficiaries in the form of lawful permanent residency status (LPR, or green card status) and a path to citizenship – provided that this amnesty is combined with reductions to chain migration and other obsolete green card categories, and also measures to stem illegal immigration. These reforms would help mitigate the fiscal costs and labor market-distorting results of the amnesty and resulting chain migration.

The amnesty should be limited to qualified current DACA beneficiaries. These individuals are a special case, for the reasons articulated by their advocates: they arrived as children, through no fault of their own, and have grown up and been educated here. Nevertheless, because the screening of DACA applicants was so lax, without interviews, fraud safeguards, or comprehensive background checks, and because individuals with criminal records were eligible, all those who apply for permanent residency must be re-vetted under more effective and appropriate guidelines. In sum, only DACA beneficiaries should receive amnesty, but having DACA benefits is no guarantee of receiving LPR status.

The amnesty should provide regular LPR status, which offers the opportunity for these individuals to become citizens after five years (or three years, if they marry a U.S. citizen). Aliens with LPR status can sponsor spouses and their children for green cards. Under the current system, after they become citizens, they can sponsor their parents and siblings, and these relatives can sponsor their spouses, siblings and other relatives too.

According to the most reliable research, recent immigrants have sponsored an average of 3.45 additional relatives.<sup>13</sup> I estimate that if 700,000 DACA beneficiaries receive LPR status under an amnesty, then they can be expected to sponsor at least an additional 1.4 million relatives over time.<sup>14</sup> In this scenario, the award of LPR status would result in a second, de facto amnesty for the parents of DACA beneficiaries – the very individuals who brought their children to settle here illegally, creating this policy dilemma. Ultimately, an amnesty for DACA beneficiaries likely would produce more than two million new LPRs over 20 years. Like chain migration resulting from previous amnesties in 1986 and 2000, the applications would come in surges, with an initial large increase as DACA beneficiaries get green cards, followed by petitions for spouses and their children, and followed by another larger

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<sup>13</sup> Stacie Carr and Marta Tienda, “Family Sponsorship and Late-Age Immigration in Aging America: Revised and Expanded Estimates of Chained Migration,” Princeton University, August, 2013, <http://www.princeton.edu/faculty-research/research/item/family-sponsorship-and-late-age-migration-aging-america-revised-and>.

<sup>14</sup> Jessica Vaughan, “Immigration Multipliers: Trends in Chain Migration,” Center for Immigration Studies, September 2017, <https://cis.org/Report/Immigration-Multipliers>.

application surge as they naturalize and apply to sponsor their parents and other relatives. The likely total would average out to a 10 percent increase in LPR admissions every year for 20 years.<sup>15</sup>

Chain migration now represents about half of all legal immigration, and the admission of immigrants' parents and spouses in unlimited numbers has helped fuel the steady growth in immigration since 1965.<sup>16</sup> Equally important, chain migration is one of the reasons why immigration has had adverse labor market and fiscal effects. By definition, these immigrants are admitted because of family relationships, irrespective of skills or labor market needs. While there are exceptions, immigrants who are admitted in family categories tend to be less educated than native-born Americans, and are working in lower paying jobs that require fewer skills. This means that they are competing directly with less-educated, poor American workers, often in jobs like construction, manufacturing and landscaping, where wages have eroded or been stagnant for the last two decades. About half of these households are using at least one major welfare program.<sup>17</sup>

In addition, chain migration is contributing to the aging of the immigrant flow. Research has found that today, there are about 20 percent more immigrants who are age 50 or over than there were in the 1980s. The older chain migration immigrants are mainly in three categories: parents, adult sons and daughters, and siblings of U.S. citizens. More than 90 percent of the parents sponsored as family immigrants and about 20 percent of the adult sons and daughters and siblings are older than age 50. This has fiscal implications, both in terms of taxes that the immigrants will pay and for the types of health care and other services they are likely to need.<sup>18</sup>

The way to avoid the chain migration increases and to help mitigate the inevitable fiscal costs of a DACA amnesty is to downsize the family migration categories and terminate the annual visa lottery. The family visa downsizing is best accomplished by terminating the categories for married adult sons and daughters and siblings of U.S. citizens (the family third and fourth preference categories) and by imposing a numerical limit on the admission of parents of U.S. citizens. These are chain migration categories that benefit immigrants' relatives who not nuclear family members, but are grown adults, presumably with independent, established lives in their home countries. It is difficult to justify preserving these categories if a large amnesty for DACA beneficiaries is to be enacted. Likewise, the visa lottery admits immigrants randomly, who generally have no ties to this country and who are not required to demonstrate any significant level of education or skills.

Adopting these changes would gradually offset the increase in immigration from the DACA amnesty over a ten-year period, which is when the majority of the chain migration resulting from an amnesty would occur. The reductions from cutting the chain migration and lottery categories would be about 200,000 green cards granted per year, amounting to two million fewer green cards over 10 years. As discussed above, a DACA amnesty would create about 700,000 new green cards right away, adding potentially the same number of green cards for spouses and parents after five to ten years (the admission of the parents presumably would be slowed by the imposition of a numerical limit).

To help ensure that a DACA amnesty does not provoke even more illegal immigration, as seems to have been the case after the creation of the DACA program, Congress should also consider adopting

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<sup>15</sup> 2 million new LPRs over 20 years = 100,000 new LPRs per year, which is approximately 10% of the current annual level of new LPRs admitted (1 million per year).

<sup>16</sup> Vaughan, "Immigration Multipliers."

<sup>17</sup> Steven Camarota and Karen Zeigler, "Immigrants in the United States: A Profile of the Foreign-Born Using 2014 and 2015 Census Data," Center for Immigration Studies, October 2016, <https://cis.org/Report/Immigrants-United-States>.

<sup>18</sup> Carr and Tienda, "Family Sponsorship and Late-Age Immigration in Aging America," op cit.

measures to boost immigration enforcement and border security. These measures should include: adopting universal mandatory E-Verify; expanding information sharing between the Department of Treasury, the Social Security Administration and ICE to identify illegal employment-related identity theft and fraud; addressing the problem of sanctuary policies; clarifying how states and localities can assist with immigration enforcement; accelerating completion of the entry-exit tracking to deter overstays; reforming the asylum system to end abuse; adding barriers and infrastructure at the border; and boosting the number of immigration enforcement officers and agents in the interior.

Finally, if an amnesty is enacted, Congress must ensure that adequate fees are collected to cover the true cost to taxpayers of processing the applications and benefits. In addition, it would be appropriate to have applicants disclose any mis-use of Social Security numbers or other personal identifiers so that the system can be purged and corrected, and so that the true number holders can be informed. It would also be appropriate to impose an additional fine on the many DACA recipients who worked illegally before obtaining DACA status and improperly used false identity information. The fines could be used to establish a restitution fund for the victims.