

Why Protecting Dreamers is More Urgent than Ever

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The Deferred Action for Childhood Arrivals (DACA) program was created almost 10 years ago and in that time it has faced threats from all fronts. Lawsuits have continuously sought to get the program ruled unconstitutional and the Trump Administration was bold enough to try to revoke protections for hundreds of thousands who have known no home other than America.

Now as the Biden Administration continues to restore calm and order to American governance and immigration policy, it can be tempting to think that DACA is out of the fire and there is a moment to relax. That's simply not the case. Here's why a legislative solution to DACA continues to be urgent.

The Fight in the Courts is Far From Over

DACA narrowly escaped eradication during the Trump presidency. In a surprise to many, the Supreme Court ruled 5-4 that President Trump's revocation of the program didn't follow proper regulatory procedures and kept the program intact. The Court did not rule on the legality of DACA

regulatory procedures and kept the program intact. The Court did not rule on the legality of DACA itself however and made clear that Trump was free to revoke DACA if he followed proper procedures the second time. ¹

Even though DACA narrowly avoided being overturned in 2020, there's still a real threat DACA will end up before the Supreme Court again. Texas Attorney General Paxton along with eight other states—Alabama, Arkansas, Kansas, Louisiana, Mississippi, Nebraska, South Carolina, and West Virginia—are suing once more claiming the program is illegal. Their lawsuit targets the very heart of DACA, arguing the program itself violates our immigration laws. ² Adding to concerns, the judge assigned to the case previously ruled that an expansion for DACA to 300,000 more people was illegal and also ruled against the Obama Administration's Deferred Action for Parents of Americans (DAPA) program which gave similar protections as DACA to undocumented parents of American citizens. ³

No matter how the district court ultimately decides this case, it is certain to be appealed by one side or the other to the circuit court level and then the Supreme Court. And this time the Court has grown more conservative than it was when it ruled to preserve DACA. Even if Justice Roberts sides with Dreamers again, something that is far from certain, there are still likely five conservative Justices who would rule against it. Sooner or later, DACA appears headed for a collision course with an unfavorable Supreme Court ruling, but there is still time for Congress to act.

Future Presidents Can Still Revoke It.

Even if DACA survives another Supreme Court challenge, the program in its current executive form will never be safe. By their nature, executive actions are revokable. So while DACA as an executive action is certainly secure from presidential repeal so long as Joe Biden is in office, that is only temporary security.

A future threat to DACA could come from anywhere in the Republican Party however. The disdain for the program was hardly unique to Trump and largely preceded him. Here's what a few Republicans who are clearly vying for the Republican nomination in 2024 have said about DACA:

- **Ron DeSantis:** In 2017 then Congressman said DACA was unconstitutional and that Trump was “duty-bound” to rescind it. ⁴
- **Ted Cruz** called the opinion upholding DACA a “joke” and said that Justice Roberts, who wrote the opinion, was “on the wrong side”. ⁵
- **Josh Hawley** said the Supreme Court's decision to protect Dreamers was the “most disappointing week at [the Supreme Court] in years”. ⁶

It's inevitable that a Republican will one day be president again and based on the continued anti-immigrant direction of the party as a whole, DACA would likely be in jeopardy. Whether that occurs in 2024 or 2040, Dreamers need a permanent fix to their status before another Republican

administration. This is the only home they have ever known and they have held up their end of the

administration. This is the only home they have ever known and they have held up their end of the bargain for close to a decade. The average Dreamer is now 26 and has been in the United States since they were seven years old.⁷ We shouldn't allow them to live with this uncertainty any longer.

DACA Isn't Good Enough

DACA itself provides uncertain protection. Dreamers have still been deported despite having good standing in the program. In 2019, Immigration and Customs Enforcement (ICE) began reopening deportation cases against Dreamers years after they had applied for and received protection under the program and after doing nothing to violate the conditions of the program.⁸ And DACA doesn't shield from arbitrary or chance encounters with law enforcement or immigration enforcement. In the past four years Dreamers were deported for nothing more than leaving their wallet in their car.⁹

Dreamers also have to renew DACA every two years; something that over the past four years was shrouded in intense anxiety and uncertainty. Many were hesitant to do so because it required giving their information once more to immigration officials and interacting with the Trump Administration. And even during the Obama years, and again now, they face severe restrictions on their ability to travel. DACA recipients have to be granted "Advanced Parole" to be allowed to leave the country and return, without jeopardizing their DACA status. This means most can never visit families or travel for work.¹⁰ Rather than asking Dreamers to continue to live in immigration limbo, we should work together towards a complete legislative solution to their status.

Conclusion

Now is the time to increase pressure and finally get a solution for Dreamers across the finish line. The Supreme Court's surprise decision keeping DACA, and President Biden's election victory, brought a hard-won reprieve for Dreamers, but it's far from permanent. Further threats to the program are quickly approaching, but we can solve this challenge before they arrive. We have an opportunity to solve Dreamers' uncertainty forever. We owe it to them to seize upon it.

TOPICS

IMMIGRATION 83

ENDNOTES

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