

## Advocating for Dreamers after the Supreme Court DACA decision

The Deferred Action for Childhood Arrivals (DACA) program, established in 2012, enabled many undocumented immigrants who had come to the U.S. before age 16 to receive a temporary reprieve from deportation and work permits. In Massachusetts, more than 8,000 immigrants successfully applied, gaining access to better jobs, higher education, and other opportunities. As of December 2019, there were about 5,600 active DACA recipients in Massachusetts, and 649,000 nationwide.<sup>1</sup>

But in September 2017, President Trump announced he would end DACA within six months. Multiple legal challenges delayed the DACA rescission, and renewals continue today, though no new applications have been approved since 2017. In November 2019, the DACA cases went before the U.S. Supreme Court, which is expected to issue a decision by the end of June 2020.

### What could the Supreme Court decide?

The Trump administration argues that the DACA rescission is completely within its discretion and not subject to judicial review, but also says it ended DACA because it was illegal from the start. If the Supreme Court agrees that the termination of DACA is not reviewable by the courts, **the Trump administration would be free to terminate DACA and determine what to do with pending renewals.** In this scenario, the validity of DACA renewals issued during litigation could be called into question.

Should the Court find it has the authority to review the DACA rescission, it could find that:

- 1. DACA is unlawful**, in which case all immigrants covered by DACA could quickly lose their legal protection (along with their work permits). **This is the worst-case scenario, and quick and vigorous advocacy would be needed to protect DACA recipients and their families.**
- 2. DACA is lawful, but the administration can still end it:** The Court may disagree with the rationale for ending DACA, and thus reverse the DACA rescission, but still find that the Trump administration has discretion to end the program. (The Court reached a similar conclusion last year in the Census citizenship question case.)<sup>2</sup> **In this scenario, DACA renewals issued during litigation would almost certainly be considered valid. In the current context, this may be the best plausible scenario.** The administration could move quickly to rescind DACA on different grounds, or choose to do the right thing – restore DACA and keep it in place while Congress works on a permanent solution.

### What can Congress do to protect DACA recipients?

#### Limit immigration enforcement against Dreamers and their families:

The Acting Director of Immigration & Customs Enforcement (ICE) has said the agency will move to deport DACA recipients with prior removal orders if the Supreme Court allows the program's rescission.<sup>3</sup> We also know ICE has access to the information that DACA put in their applications, despite many assurances that with few exceptions, it would not be used for enforcement.

Members of Congress can stand up for Dreamers by calling for firm commitments not to round up DACA holders and/or their families, and by prohibiting information-sharing between U.S. Citizenship and Immigration Services (USCIS) and ICE (possibly through legislation)

#### Pass legislation to protect Dreamers:

The U.S. House of Representatives passed the Dream and Promise Act in June 2019,<sup>4</sup> laying out a path to citizenship for current DACA recipients, other Dreamers who didn't qualify for DACA, and Temporary

Protected Status holders. Massachusetts' entire House delegation voted for the bill, and both our U.S. Senators support it as well, but the legislation is opposed by Senate leadership.

The Senate can still pass the Dream and Promise Act, reflecting Americans' strong support for Dreamers. If no agreement can be reached on permanent protection for Dreamers, Congress should at least pass an interim measure to protect current DACA recipients for two more years, recognizing the enormous harm that would be inflicted by separating families already hard-hit by COVID-19.

### **What can state and local governments do?**

State and local leaders can **advocate** for federal action, but also **support initiatives within their purview** that would offer some relief and protection, such as access to driver's licenses regardless of immigration status, universal representation in deportation proceedings, and tuition and financial aid equity at state colleges and universities. Some of these goals may have to wait until the next session, but legislators can still adopt the Safe Communities Act and Work and Family Mobility Act.

### **What can the private sector and advocates do?**

DACA recipients will need immediate support in two main categories: **legal assistance** to help them avoid deportation and find other ways to stay lawfully in the U.S., and **financial assistance** to address what could be a radical change in their economic situation as they lose their work permits.

The COVID-19 crisis is likely to intensify both needs, as nonprofit legal services providers are stretched well beyond their capacity with unemployment, housing, workplace safety and other urgent issues, and many families have lost their sources of income. As undocumented immigrants, DACA recipients would no longer qualify for key programs such as Unemployment Insurance.

**Employers** and **colleges** can help fill the legal assistance gap by providing free legal counsel to DACA recipients, as many already do. Colleges can create new scholarships to ensure that students can complete their education even if their incomes have sharply dropped, or the loss of DACA has made them ineligible for scholarships they had previously received.

**Philanthropies** can create targeted funds to support DACA recipients and their families, especially in the next several months, when loss of DACA will compound what are already profound economic shocks from COVID-19. They can ensure they reach DACA recipients by partnering with organizations with well-established connections to Dreamers. Individual donors can support these funds, as well as scholarship programs for Dreamers.

**Advocates** can keep raising awareness of the urgent need to protect and support Dreamers, putting pressure on public officials and urging friends and family members across the U.S. – whose elected officials may be less supportive than those in Massachusetts – to do the same.

### **Whatever the Supreme Court decides, let Dreamers know you stand with them!**

*This briefing note was written by Jessica Chicco and Marion Davis of MIRA. It was last updated on May 20, 2020. For more information, email [jchicco@miracoalition.org](mailto:jchicco@miracoalition.org).*

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<sup>1</sup> [https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/DACA\\_Population\\_Receipts\\_since\\_Injunction\\_Dec\\_31\\_2019.pdf](https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/DACA_Population_Receipts_since_Injunction_Dec_31_2019.pdf)

<sup>2</sup> <https://www.scotusblog.com/2019/06/opinion-analysis-court-orders-do-over-on-citizenship-question-in-census-case/>

<sup>3</sup> <https://www.vox.com/2020/1/25/21080610/daca-ice-supreme-court-john-roberts-matthew-albence-deport>

<sup>4</sup> For a summary, see: <https://immigrationforum.org/article/american-dream-and-promise-act-bill-summary/>