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Impact of DACA on education & employment and the need for a permanent solution

Autumn Roemer
Western Michigan University

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by
Autumn M. Roemer

Honors Thesis Committee
Paul Clements, Ph.D., Chair
Kelsey Kanthack, J.D.

Introduction

On June 15, 2012 the Department of Homeland Security (DHS) announced an executive order from the Obama administration providing relief for undocumented immigrants who arrived in the U.S. when they were children. The move followed decades of calls for aid to the group known as DREAMers and many failed attempts at such. After a long wait for action and no promising signs from Congress, the policy was implemented as a stopgap measure while a long-term solution was in the works. Ten years later, Congress has yet to take action and DREAMers live permanent lives supported by temporary measures (United States Citizenship and Immigration Services n.d.).

Deferred Action for Childhood Arrivals (DACA) and other similar failed proposals were intended primarily to lessen the anxiety and disruption of deportation for those brought into the country as children. It was argued that these individuals breached immigration law through no fault of their own, and have lived a majority of their youth and adult lives calling the U.S. home. Further, they carry out productive lives contributing to the economy and their communities and have no history of crime, taking low priority to government agencies that focus on expelling individuals who may pose a threat to the U.S. or its citizens. Thus, the idea of aid for DREAMers has always been a bipartisan issue.

Recipients of DACA receive deferral from deportation for two years, subject to renewals, and, once approved, they can apply for work authorization and a social security number. This does not provide the recipient with an immigration status or a pathway to any type of status, rather, DACA acknowledges and somewhat guarantees that the U.S. has no motive to pursue the recipient. In some cases recipients are also able to benefit from in-state tuition rates from universities, however this depends on the state. The overall intended impact for recipients is to

relieve concerns of deportation and to facilitate lifestyles productive and beneficial for both the individual, their community and the U.S. government (United States Citizenship and Immigration Services n.d.).

Even after its implementation, the executive action has gone through significant challenges with numerous lawsuits considering its legality and rulings changing its application. The most recent development from lawsuits surrounding the policy partially uphold a July 2021 decision from the U.S. District Court for the Southern District of Texas declaring the program unlawful on the grounds that President Obama exceeded his authority by altering immigration law through an executive order. As a result of this rule, the program currently honors the benefits of existing recipients and approves their renewal applications, though no new applications are to be approved.

A summary of the political history of DACA as well as analysis of employment and educational attainment data for eligible individuals demonstrate the program's successes and shortcomings. From these observations, it is evident that DACA falls short of providing complete support for those productive and beneficial lifestyles it was intended to encourage. In light of these insufficient measures, I argue for numerous improvements to DACA or a potential DREAM Act which would produce better results for more individuals.

History

Timeline Overview

1981 - *Plyler v. Doe* guarantees free public education for undocumented students K-12.

1982 - *Toll v. Moreno* allows G-4 visa holders to establish residency for in-state tuition purposes.

1985 - *Letica "A" v. Board of Regents of the University of California* required the University of

California to allow undocumented immigrants to establish residency in the same manner as U.S. citizens for in-state tuition purposes.

1990 - *Bradford v. Board of Regents of the University of California* establishes that the University of California cannot offer in-state tuition to undocumented individuals while misconstruing residency and domicile, resulting in two active, contradictory rulings. Judge in *Letica "A"* issues a modified holding.

1994 - California Proposition 187 passes, significantly reducing rights and benefits for undocumented individuals, though injunctive relief quickly strikes it down.

1995 - *American Association of Women v. California State University* pushes for a resolution in the University of California case, holding mirrors *Bradford* and determines that undocumented students cannot receive in-state tuition.

1996- Congress passes the Personal Responsibility and Work Opportunity Reconciliation Act requiring states to enact a new and specific state law granting resident tuition to the undocumented if desired.

2001 - The DREAM Act is introduced in Congress for the first time with several reintroductions, though it never passes.

2001-2019 - Several states pass legislation allowing or barring undocumented individuals from receiving in-state tuition while the DREAM Act waits in Congress.

2009 - Barack Obama takes office.

2011 - The Obama administration begins review of deferred action cases.

2012 - The Department of Homeland Security announces DACA as an executive action from the Obama administration.

2014 - The Obama administration announces the Immigration Accountability Executive Action

expanding DACA and introducing DAPA.

Federal lawsuits *Texas v. United States* and *Arpaio v Obama* are filed challenging the Immigration Accountability Executive Action. *Arpaio v Obama* is quickly dropped.

2015 - An injunction on the Immigration Accountability Executive Action halts the expansion from going into effect. DACA remains as it stood prior. Department of Justice appeals. Injunction is upheld in the Fifth Circuit Appeals Court. Department of Justice asks the Supreme Court to review the case.

2016 - SCOTUS upholds the Immigration Accountability Executive Action injunction.

2017 - Donald Trump takes office.

The Trump administration announces plans to rescind Immigration Accountability Executive Action programs.

Plaintiffs in *Texas v. United States* drop the suit, as programs were never implemented.

The Department of Homeland Security rescinds DACA, citing potential litigation mirroring the Immigration Accountability Executive Action programs.

2018 - *Department of Homeland Security v. Regents of the University of California* places an injunction on the rescission, allowing current DACA recipients to continue renewals. Judge rules in favor of plaintiffs that the rescission was not lawful.

2020 - *Department of Homeland Security v. Regents of the University of California* requires DACA to be restored.

DHS suspends DACA again pending review of *Department of Homeland Security v. Regents of the University of California.*

Batalla Vidal v. Wolf and *State of New York v. Trump* challenged DACA's second suspension, requiring the program to be restored again.

2021 - Joe Biden takes office.

Texas v. United States finds the 2012 DACA executive action to be unlawful, halting the program, though an injunction allows current recipients to continue renewal while the Biden administration corrects the error. Department of Justice appeals.

DHS publishes corrections to create DACA lawfully.

2022 - The Fifth Circuit Court of Appeals upholds *Texas v. United States* ruling, stays the injunction.

Texas v. United States returns to Texas for the final rule. Texas District Court maintains DACA's unlawful implementation, extends injunction allowing current recipients to continue renewal.

Pre-DREAM Act

The conditions that led to the creation of DACA began in the sector of education with the 1982 United States Supreme Court (SCOTUS) case *Plyler v. Doe*. In this case SCOTUS ruled against a Texas policy that denied state funding to school districts enrolling undocumented children, guaranteeing undocumented immigrants the right to free public education as a result. The policy stated that only those foreign born individuals who could prove they were legally admitted to the US were eligible for free public education; those without proof of legal admittance could pay tuition to attend. As SCOTUS had never reviewed a case on the matter, many states had created their own policies either allowing or restricting undocumented children from attending public schools. Texas argued that the policy was an issue of residency, but SCOTUS pointed to discriminatory motives, indicating that a group cannot be declared as a non-resident of a state for purposes of enrolling in education based on federal immigration status (Olivas 2020: 10).

SCOTUS' explanation in the *Plyler v. Doe* ruling cited what seemed like a contradiction, that an individual without documented federal residency can be considered a resident of a state. This is permitted because the requirements to be considered a resident in a state are actually quite simple and are not directly related to federal status. Most states allow an individual to be considered a resident after they have lived in that state for a period anywhere from ninety days to twelve months. Though straightforward, this method of eligibility raises questions about vacations away from a state and when time starts to count for an individual who has arrived in a new state. The idea of residency gets more complex with the addition of another similar category, domicile. To establish domicile, an individual is required to legally declare and provide evidence to demonstrate that they intend to live primarily in that state and in no other. Individuals can have residency in multiple states, however they may only maintain domicile in one. While a resident's declaration of domicile does not necessarily benefit a state, it lends significance to the decision to establish a permanent residence there, as "the attendant complexity… discourages (to a limited extent) frivolous claims and thereby protects the states' fiscal resources," such as unemployment (Olivas 2020: 4). The trivial distinction between residency and domicile repeatedly causes complications for legislation concerning undocumented individuals who have resided in the U.S. for a significant period (Olivas 2020: 3-6).

The judge in *Plyler v Doe*, Justice William Brenan, pointed out that the Texas policy was denying a benefit of residency to individuals who met all the requirements by simply claiming that undocumented entry alone prevented an individual from qualifying as a state resident. Essentially, the policy was assuming requirements for domicile in order to receive benefits derived from residency. Justice Brennan ruled the policy discriminatory as it was "merely…

defining a disfavored group as nonresident" (Olivas 2020: 10). The ruling in this case guaranteed undocumented children the right to a free education while living in the U.S., however, this only included public school through the twelfth grade. The relationship between residency and education continued to expand when undocumented youth graduated high school with hopes of continuing their education (Olivas 2020: 3-6, 10).

In 1982, SCOTUS reviewed *Toll v. Moreno,* considering specifically the topics of residency and domicile and their implications for higher education. In this case the University of Maryland had enacted a policy allowing in-state residents to pay less in tuition and fees which was cited to deny those privileges to domiciled G-4 nonimmigrants, a status for the dependents of employees of international organizations. Essentially, G-4 holders are individuals who have been legally granted permission to remain in the US for a period of time and who are not seeking citizenship. SCOTUS declared the policy unconstitutional via the Supremacy Clause, as the G-4 holders were permitted into the U.S. on grounds that they could establish domicile and the Maryland law could not contrast statuses recognized by the federal government. Further, nothing in the requirements of establishing domicile in the state of Maryland indicated that G-4 nonimmigrants could not do so. Additionally, the G-4 holders in question had been exempt from federal and state taxes by the terms of their visas, and the court noted that the state could not seek to regain those taxes through out-of-state tuition, which is typically higher than in-state for that purpose (Olivas 2020: 10-13).

From this case sprang a series due to the plenitude of possible immigration statuses that had not been ruled on, revealing that little had actually been settled by the decision. Many universities continued to follow similar policies, allowing in-state rates for G-4 holders but maintaining that those with other immigration statuses must pay out-of-state tuition. Inevitably,

another case rose to the Supreme Court in 1985. *Letica "A" v. Board of Regents of the University of California* focused on undocumented students who were denied in-state tuition at the university despite having lived in California throughout their youth, brought into the state by their parents, and having graduated from California public schools thanks to *Plyler v. Doe*. The university argued that the students could not receive in-state tuition on the basis that they could not establish state resident status, citing a California residency statute updated in 1983 which declared non-citizens could establish residence unless explicitly prohibited from establishing domicile by the Immigration and Nationality Act, a continuously updated federal act that organizes the structure of immigration law. Regarding in-state tuition, the same California statute defined a resident as a student residing in the state for more than one year and a non-resident as anyone who did not meet that definition (Olivas 2020: 13-15).

The California Attorney General ruled that the policy was valid, but the California Superior Court Judge, Ken Kawaichi, disagreed, stating that the policy required different standards of establishing residency for U.S. citizens compared to non-citizens. The problem came from the state residency statute the university used to create their policy, which uses the word "residence" where it, in fact, discusses domicile. The California statute also claimed that an individual can only have one residence and that a residence cannot be lost until another is gained, qualities attributed to domicile. Thus, the university was expecting students to meet domicile requirements to be considered residents for in-state tuition, a disconnect in intent, according to Kawaichi. Further, the school was using federal policies to determine residency for student fee purposes, two completely unrelated systems, he reasoned. "The incorporation of policies governing adjustment of [federal immigration] status of un-documented aliens into regulations and administration of a system for determining residence for student fee purposes is neither

logical nor rational," Kawaichi wrote, ending proceedings in California (Olivas 2020: 3-6, 14-15).

The case was thrown back into court in 1990 when Bradford, an employee of the University of California, refused to adhere to the decision, alleging the new policy promoted undocumented immigration. Bradford claimed that the Attorney General's Opinion should have been held and the Los Angeles County Superior Court agreed in the whistle-blower case *Bradford v. Board of Regents of the University of California*. The ruling required undocumented students to pay out-of-state tuition once again. Due to the strange nature of the case's revival, in which the defendant had no appeal to rely on, the legislation was stuck in a limbo with two simultaneously active contradictory rulings in two separate counties. *Bradford v. Board of Regents of the University of California* required state schools to charge undocumented students non-resident tuition on the grounds that they cannot establish domicile, while *Letica "A" v. Board of Regents of the University of California* focused on the requirements to declare residency for student fee purposes and required undocumented students to benefit from in-state tuition. Further, *Bradford v. Board of Regents of the University of California* based the ruling on the idea that undocumented immigrants cannot show the intent of permanent residency required for domicile, however the case failed to distinguish between non-citizens with different statuses, some of which do allow domicile to be established. The University of California attempted to have the Bradford case transferred to the county where Letica "A" took place so the same judge could resolve the discrepancies, however this action was denied. The contradiction was acknowledged when Judge Kawaichi issued a modified holding on Letica "A" (Olivas 2020: 16-23).

An immigration restrictionist group, Federation for American Immigration Reform, pushed the conflict to be resolved in *American Association of Women v. California State University*. The case mirrored the reasoning in *Bradford,* that undocumented individuals could not establish domicile because they could not show the required intent. However, the difference between domicile and residency was misrepresented in *Bradford* and in *American Association of Women*. *American Association of Women* also misapplied a holding from *Cabral v. State Board of Control*, which maintained that undocumented non-citizens were state residents for the purpose of applying for state benefits. This mistake was discussed in Kawaichi's modified holding, which pointed to the senselessness of different sets of requirements for establishing residency depending on the purpose. However, the judge in *American Association of Women* held that there was no conflict between *Bradford* and *Letica "A"*, stating that Kawaichi's modified holding significantly backtracked his original ruling. It became clear that the rulings combined to indicate that undocumented students were not required to be considered in the same way as U.S. citizens when it came to establishing residency for student fee purposes. This resulted in a situation where undocumented students could establish residency for instate tuition for CSU but not UC or other public community colleges in California (Olivas 2020: 15-23).

While *American Association of Women* was in courts, California Proposition 187 hit the ballot, a proposal that would have significantly walked back the state benefit rights undocumented immigrants had at the time. The proposal would have overturned *Plyler v. Doe*, denying educational benefits to undocumented children, and only allowing those individuals to receive essential health and medical services. The bill would also require public officials to report individuals they suspected were undocumented. It was passed by the state but federal courts granted injunctive relief almost immediately, striking down the harsh restrictions before

they had an effect. Congress' Personal Responsibility and Work Opportunity Reconciliation Act of 1996 allowed for the challenge against the California Proposition, as the new federal legislation required a state to enact a new and specific state law granting resident tuition to the undocumented if it wanted to do so. This meant undocumented immigrants were barred from receiving resident tuition in any state that had not passed a state law allowing them to do so in 1996 or later (Olivas 2020: 22-27).

Texas was the first state to pass an affirmative law allowing undocumented students to hold resident status in 2001. Nearly two dozen other states passed similar legislation on the rights of undocumented students between 2001 and 2019, some allowing in-state tuition, some allowing financial aid and some allowing both. Four states, Ohio, Michigan, Alaska and Massachusetts, did not make any law regarding immigration during this period, allowing the Personal Responsibility and Work Opportunity Reconciliation Act to bar undocumented students from in-state benefits through inaction. South Carolina passed a law barring all undocumented students from attending public colleges in the state (Olivas 2020: 23-27).

DREAM Act

In 2001 the DREAM Act, standing for Development, Relief, and Education for Alien Minors made its debut in Congress proposed by senators Dick Durbin (D-Illinois) and Orrin Hatch (R-Utah). The DREAM Act was very similar to today's DACA, but with a long-term impact in mind. The latest version in the Senate in 2011 offered the program to those who were 35 or younger at the time of the bill's enactment and had entered the U.S. at least five years prior. DREAM required applicants to have entered the U.S. when they were under 16 and to have lived there continuously for five years to establish residency. They also needed a high school degree or GED and to have demonstrated "good moral character" during their time in the U.S., meaning

any criminal offenses could hurt their chances of approval. The DREAM Act went farther than DACA by providing a path to a long-term status; after six years as a resident, those who were approved could apply for conditional permanent residency status. This status would last for six years and function much like legal permanent resident status (or green card holders), lending eligibility for federal work study, student loans, a drivers license, and potentially in-state financial aid. Conditional permanent residency would be extended into lawful permanent residency at the end of the six year period if they studied at a post-secondary educational institution or served in the U.S. military with good standing along with another round of background checks (National Immigration Law Center 2011) (Olivas 2020: 24).

The proposal was designed to separate a group of immigrants who, due to their age at the time, should not be held responsible for their undocumented entry or loss of status. This was thought to be a win-win proposal, as United States Citizenship and Immigraiton Services (USCIS) could focus deportation efforts on those who may pose an actual threat to the nation and DREAMers could finally establish a solid foothold in the country they knew as home. The bill gained bi-partisan support but has failed to be approved by Congress, despite numerous reintroductions in 2003, 2005 and 2007. These reintroductions fell flat due to scheduling delays and a desire by many to hold out for more comprehensive reform (Olivas 2020: 24-25).

The DREAM Act came closest to fruition in 2007, the first time the bill was actually put to vote in Congress. The Senate struck down the bill with 52 Yeas, 44 Nays and 4 failures to vote from supporters on the record; 60 votes in favor were needed to pass the bill. Many Republican senators, who had previously vocalized support for the bill, changed their tune soon before the vote, claiming that passing partial measures, such as the DREAM Act, would hinder progress on comprehensive immigration reform (Olivas 2020: 39) (United States Senate 2007).

The George W. Bush White House put out a press release before the vote echoing these sentiments and suggesting that the DREAM Act was too generous. “Any resolution of their status, however, must be careful not to provide incentives for recurrence of the illegal conduct that has brought the Nation to this point,” the press release read. However overall reform never came and the DREAM Act simmered on the back burner for five more years with more reintroductions in Congress in 2009, 2010, 2011 and 2017. (Olivas 2020: 39-41).

In 2010 the DREAM Act was attached to another bill in the House of Representatives and passed, but the Senate fell short with 55 Yeas, 41 Nays and 4 failures to vote. Again, the DREAM Act was doomed by hesitance and absence from supporters, even Senator Hatch, who introduced the DREAM Act back in 2001, missed the vote (Olivas 2020: 53-54) (United States Senate 2010).

Despite its failure in Congress, the DREAM Act was highly publicized and inspired state level action. Numerous states continued to roll out legislation on residency, in-state tuition and even state financial aid for undocumented students. However, the DREAM Act’s stint on the federal stage also increased polarization on the topic and caused many politicians to take a public stance on the initiative. Additionally, many DREAMers were publicly vocal about their support and need for a DREAM Act during its time in the spotlight. This resulted in many undocumented people outing themselves at protests and to the media in attempts to increase pressure on Congress. Having exposed their lack of status to the public, these individuals were left without protection when Congress didn’t come through (Olivas 2020: 70)

DACA

Prior to the DREAM Act and DACA, deferred action was a little known concept, though it existed and was invoked by USCIS on numerous occasions. Similar to deferred action,

Congress is known to have passed a few private relief bills in which an exception to immigration law is made to accommodate extreme circumstances. The pursuit of deferred action often followed a failed attempt at private relief, but because of the complex nature and professional knowledge required to request relief from Congress, the path was inaccessible and unknown to many. The status was not even formally recognized by immigration authorities for many years; no application was available and no data was gathered on the allotment of the status. In 2007 USCIS began collecting data regarding deferrals, but still these reports lacked consistency and transparency as lawyers looked into the matter for their clients (Olivas 2020: 63-66).

While awareness about deferred action was growing, its use was decreasing as Barack Obama took office in 2009 facing pressure from the right to tighten the border. This led to a letter published in April 2011 to President Obama from twenty-two Democratic Senators urging him to do something for DREAMers. The Senators asked for an executive action on the matter, as action in the Senate was likely to be shot down by the House, with a Republican majority (Olivas 2020: 68-69).

So, in June 2011 the Obama Administration began review of cases in Baltimore and Denver to develop its stance on immigration law and the potential for expanded deferred action. A nationwide deferred action policy was announced a year later, which stoped deportation proceedings of undocumented immigrants who were brought into the U.S. as children. Rather than through Congress, which was criticized for inaction during Obama's term, the policy went into effect via executive action and thus DACA was born (Olivas 2020: 70) (United States Citizenship and Immigration Services n.d.).

The program included a smaller section of the DREAMer population; not all undocumented immigrants who arrived in their youth can secure relief. Those eligible for DACA

were born June 16, 1981 or later and must be at least 15 to apply. That makes the eligible group aged 15 to 41 today. They must have arrived in the U.S. before they were 16 and have been continuously residing there from June 15, 2007 until the date of their application. Further the applicant must have had no lawful status from when DACA was created until their application, have no felony convictions or other disqualifying offenses, and have achieved or be in pursuit of their high school degree or GED equivalent or have been honorably discharged from the Coast Guard or Armed Forces (United States Citizenship and Immigration Services n.d.)

Once granted DACA, a recipient is eligible to request an Employment Authorization Document (EAD) and a Social Security Number. They are considered "lawfully present and can enter the country. In some states recipients are also eligible for a driver's license and in-state tuition at public universities (Olivas 2020: 91,108) (United States Citizenship and Immigration Services n.d.).

While DACA and the DREAM Act share ideology, they differ in the specifics. The programs offered different cut off ages and dates of arrival as well as different benefits. Most importantly, DACA offered relief in short increments requiring frequent renewal and failed to provide a path to a long term status. Both programs favored the younger generation and neither offered relief for older individuals in the same situation.

Seeing no progress in Congress during his first term, President Obama again moved to address the absent legislation in November 2014, with the Immigration Accountability Executive Action, a collection of executive actions building on DACA. The Immigration Accountability Executive Action expanded DACA itself, lengthening the two year renewal periods to three years, and created Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) offering deferment on deportation for parents of U.S. citizens and lawful permanent

residents, though, like DACA, the program offered them no legal status. However, DACA's success began to dwindle as critics challenged the expansion and the clock ticked on the Obama administration's control of the White House (Olivas 2020: 92).

Challenges

Soon after their implementation, the Immigration Accountability Executive Action faced challenges in lawsuits against the new programs. Much of the trouble with the additions fell on DAPA, as critics pointed to the basis of DACA relief: that individuals who were brought into the U.S. as children breached immigration law through no fault of their own, and thus, that fault was instead on their parents. Immigration restrictionists used this argument against DAPA, though their reasoning misrepresented the program. In actuality, DAPA was only to be available to parents of U.S. citizens or lawful permanent residents, two statuses that were unavailable to recipients of DACA, who were awarded no status at all (American Immigration Council 2016) (Olivas 2020: 92-93).

Federal lawsuits were filed by attorney generals representing 26 states in *Texas v. United States* in Brownsville, Texas, and an Arizona sheriff in *Arpaio v. Obama* in Washington DC. Support was not lacking for the action, however, with 15 states and the District of Columbia as well as hundreds of government officials and advocacy organizations engaging in court in support of the Immigration Accountability Executive Action. *Arpaio v. Obama* was quickly dismissed and SCOTUS declined Arpaio's request to review the matter, but *Texas v. United States* saw the first success in challenging DACA (American Immigration Council 2016) (Olivas 2020: 92-93).

Federal judge Andrew Hanen in Brownsville issued a preliminary injunction for DAPA and the DACA expansion on February 16, 2015, halting anyone from benefiting from the

programs for the duration of the trial, though this did not impact the standing DACA program. The challengers in *Texas v. United States* pointed to the Obama administration's failure to meet a technical requirement of notice-and-comment in the process of creating the executive actions under the Administrative Procedure Act (APA) as well as a violation of the Take Care clause in the Constitution, which prohibits the president from changing the law without taking the care to see it through Congress. They claimed that the new programs would result in an increase in immigration, drug trafficking and organized crime and thus additional responsibilities for the states, in areas such as law enforcement, health care and education. The challengers pointed to the expenses of issuing driver's licenses particularly, as recipients of the new relief programs would be eligible for the permit. This claim of potential irreparable harm and public interest as well as the lapse in technical requirements enabled Hanen to go through with the injunction, which would remain until the conclusion of a trial on the issue or a higher court's order to remove it. The U.S. Government opposed the allegations regarding the APA requirements claiming that the executive action was not subject to such procedures because the programs were general statements of policy and DHS would make the decision to award DACA or DAPA to individual cases. Further, the U.S. noted that the states lacked standing to bring the case as they had not been hurt by the programs (American Immigration Council 2016) (Olivas 2020: 92-93).

The U.S. Department of Justice (DOJ) appealed the injunction, but the Fifth Circuit Appeals court upheld it. SCOTUS agreed to review the case at the request of the Department of Justice and upheld the Fifth Circuit decision in a 4-4 split vote on June 23, 2016. Keep in mind these court proceedings were all to do with the injunction, not debate on the matter itself. These proceedings did not consider the constitutionality of the executive action and the SCOTUS

decision could not be cited as a precedent due to the split decision (American Immigration Council 2016) (Olivas 2020: 92-93).

Following the decision on the injunction, the White House changed hands in January 2017 and new President Donald Trump was set on dismantling DACA as part of his initiative to restrict immigration. In June 2017 the administration announced plans to rescind the programs created by the Immigration Accountability Executive Action, citing the ongoing litigation as well as new immigration priorities. Because DAPA had never taken effect, the plaintiffs in *Texas v. United States* dropped the lawsuit in a voluntary dismissal. That September U.S. Attorney General Jeff Sessions, appointed by President Trump, advised DHS Acting Secretary Elaine Duke to rescind DACA before it met the same time consuming and costly fate. The next day Duke took the advice and issued a memorandum rescinding DACA, detailing a wind down process that would issue renewals for the next six months, after which deferred action along with work permits would expire (Casetext 2020) (Olivas 2020: 109).

Numerous lawsuits challenged DACA's termination following the announcement, the primary being *Department of Homeland Security v. Regents of the University of California*. In this suit the plaintiff argued that the rescission was arbitrary and capricious and in violation of the APA. The D.C. District Court found the plaintiffs likely to succeed and granted an injunction, allowing current DACA recipients to continue renewal but continuing the hold on new applications (Casetext 2020) (Olivas 2020: 109).

In April 2018 the District Court ruled in favor of the plaintiff on the grounds that Duke's memorandum was insufficient to explain the DHS's change of heart regarding the lawfulness of DACA. DHS was given ninety days to reissue the memorandum with a fuller explanation for the determination that DACA lacked statutory and constitutional authority. This highlighted the crux

of the matter, that the DHS had every right to rescind DACA, but went about it in the wrong way (Casetext 2020).

In June of the same year new DHS Secretary Kirstjen Nielsen declined to issue a new explanation, opting instead to reiterate the arguments from the original memorandum, that immigration relief should be enacted through Congress, that they preferred to issue relief on a case-by-case basis without a program defining it, and that they wanted to send a message that immigration laws would be enforced. The District Court did not find the DHS's response to be sufficient and held that the decision to rescind DACA was arbitrary and capricious under the APA. The court also required DHS to restore DACA to its former operations, closing the case in June 2020 (Casetext 2020).

About a month later, Chad Wolf, as Acting Secretary of DHS after several resignations, issued another memorandum again suspending DACA pending the DHS's review of *Department of Homeland Security v. Regents of the University of California*. Wolf's instructions required DHS personnel to reject all pending and future initial requests for DACA or advanced parole, which allows recipients to leave and re-enter the country, as well as a new renewal procedure, requiring annual renewal instead of two year periods (Casetext 2020).

In November, *Batalla Vidal v. Wolf* and *State of New York v. Trump* challenged Wolf's suspension of DACA on the grounds that Wolf was not lawfully serving as the Acting Secretary of DHS and did not have the authority to issue the memorandum, and that the memorandum was, again, arbitrary and capricious in violation of the APA. The District Court held that Wolf was not lawfully holding the Acting Secretary title due to an invalid order of succession following two resignations from the position. This required DHS to restore DACA again in December of 2020 (Department of Homeland Security 2022).

After the Trump administration's failure to suspend DACA through DHS, the original lawsuit brought by Texas and other states challenging the 2012 memorandum's legality came to a decision. In July 2021 Judge Hanen ruled that the memorandum was illegal as its creation violated the APA by forgoing Notice-and-Comment. In combination with DACA's incongruence with federal law, Hanen also rejected the argument that the absence of Notice-and-Comment was justified under the DHS's prosecutorial discretion, as the DACA program created grounds for more than just one case to be deferred. This ruling vacated the 2012 memo and ended the DACA program itself, however a temporary partial stay of protections allowed current recipients to maintain their benefits and renewals filed prior to the decision to be granted. New applications were permitted, however DHS was not to grant any new applications while the Biden administration rectified the Notice-and-Comment error. The DOJ appealed the decision (United States Court of Appeals for the Fifth Circuit 2022).

While waiting on the appeal in September 2021, DHS published a Notice of intention to reinstate DACA on October 31, 2022. In August of the next year DHS published documents fulfilling the Comment requirements. On October 5, 2022 the U.S. Court of Appeals for the Fifth Circuit affirmed Hanen's decision that DACA was unlawfully enacted and preserved the partial stay allowing current recipients to maintain their benefits, then the appeals court sent the case back to Hanen for reconsideration following the Biden administration's corrections (United States Citizenship and Immigration Services 2022) (United States Court of Appeals for the Fifth Circuit 2022).

On October 14, 2022 Judge Hanen issued a final rule not much different from his July 2021 decision. The final rule extended the injunction and partial stay, allowing current DACA recipients to maintain their benefits in two-year periods subject to renewal and new applicants to

submit initial requests, however DHS is prohibited from approving any initial applications (United States Citizenship and Immigration Services 2022).

Data Analysis

DACA and the DREAM Act aimed to stabilize the lives of undocumented immigrants through more than just relief from deportation. The programs also noted emphasis on better employment and educational opportunities for the population, backed by EADs issued with DACA and in-state tuition available at some universities for recipients.

I analyzed the impact DACA's efforts have had using data on those factors from the U.S. Census Bureau's American Community Survey (ACS) years 2005 through 2019. I chose to use this data as it is collected annually and it includes individuals from all parts of the U.S. regardless of citizenship or immigration status. Using the ACS's Microdata feature to recode data I was able to focus my observations.

The universe includes individuals who are foregin born, non U.S. citizens aged 18 to 67 who have at least a high school degree or GED equivalent. Though DACA is available starting at 15 years old, I restricted the data to the population 18 and up in order to reduce potential bias, as individuals under 18 are less likely to be employed or have attained higher education.

From this universe I narrowed the target population to reflect those eligible for DACA due to age and entry year. The eligible population in the data entered the U.S. between 1981 and 2007, and were between 15 and 31 years old in 2012. The ineligible control group included the remainder of the universe, so individuals under 15 or over 31 in 2012 who entered the U.S. before 1981 or after 2007. Due to the nature of the age restriction, which is grounded to 2012, the age boundaries change with each data year.

In order to understand the data, I compared trends in the target population with those of the control group, which is composed of individuals who are too old, too young, entered the U.S. too early or too late to be included in DACA relief. Further, I considered those results in light of DACA's implementation in 2012.

Due to the available data and the way in which the U.S. Census Bureau collects information, restrictions regarding documentation status are not available, the best restrictions applicable to Census data are those of foreign birth and citizenship. This means that in narrowing the universe, some documented individuals may meet those requirements and be included in the data. Immigration statuses such as lawful and conditional permanent resident, asylee, special immigrant juvenile, and crime victims meet those restrictions and could be included in the data presented. As discussed in the above sections, DACA is only available for undocumented individuals, and my analysis aims to compare undocumented individuals who are eligible for DACA with undocumented individuals who are ineligible for DACA due to age and entry year. The presence of documented individuals within the data has the effect of increasing the employment and educational attainment rates displayed in the following sections for both the eligible and ineligible groups. This is because individuals who have a status other than DACA may have had that status for a period beginning before 2012 or may have had parents with status, making earlier employment and education easier. Further, some individuals potentially included in the data with statuses other than DACA may be eligible for benefits unavailable to DACA recipients, making their path to lawful employment or in-state tuition and financial aid easier.

At the same time, the Census Bureau's method of omitting documentation status in their data collection questions allows for a better opportunity to acquire information from undocumented individuals. The undocumented population is often underestimated in size and

underrepresented in statistics due to the nature of living with such a status. It can be dangerous for undocumented individuals to reveal their status, thus making many reluctant to participate in research where they would have to disclose that they are undocumented. Because the Census Bureau disregards information related to status, it is likely that more undocumented individuals felt safe to participate in the survey.

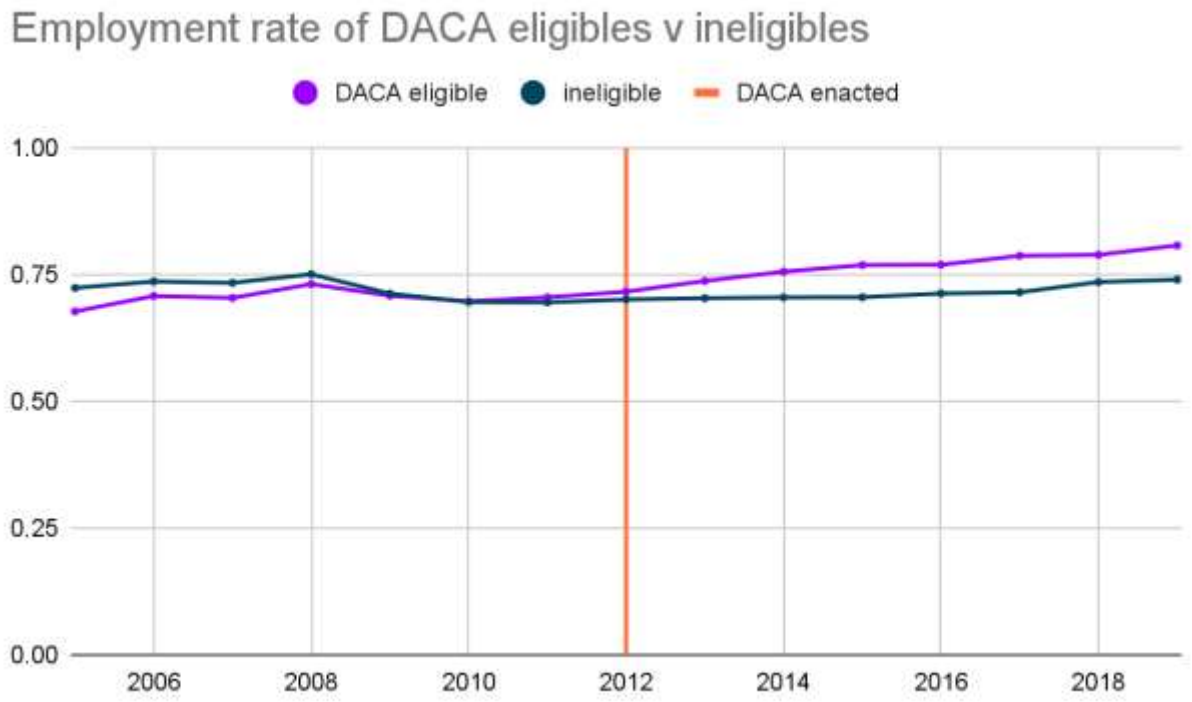
Employment

For the purpose of analyzing employment the universe in these analyses matches the above description with the additional restriction of no current school enrollment. This is to control for potential bias, as those enrolled in school are less likely to be employed.

The employed group in these data sets refers to four response labels in the ACS employment status recode; Civilian Employed, at work; Civilian Employed, with a job but not at work; Armed Forced, at work; Armed Forced, with a job but not at work. Employment is defined by the U.S. Census Bureau as "all civilians 16 years old and over who either (1) were "at work," that is, those who did any work at all during the reference week as paid employees, worked in their own business or profession, worked on their own farm, or worked 15 hours or more as unpaid workers on a family farm or in a family business; or (2) were "with a job but not at work," that is, those who did not work during the reference week but had jobs or businesses from which they were temporarily absent due to illness, bad weather, industrial dispute, vacation, or other personal reasons" (American Community Survey and Puerto Rico Community Survey 2019: 66).

The unemployed group refers to two response labels, Unemployed and Not in Labor Force. Individuals are "classified as unemployed if they (1) were neither "at work" nor "with a

job but not at work" during the reference week, and (2) were actively looking for work during the last 4 weeks, and (3) were available to start a job," according to the U.S. Census Bureau. The Labor Force includes "all people classified in the civilian labor force plus members of the U.S. Armed Forces" (American Community Survey and Puerto Rico Community Survey 2019: 67). Per the Bureau, those Not in the Labor Force are typically students, homemakers, retired workers, seasonal workers in the off season and institutionalized people who are not looking for work (American Community Survey and Puerto Rico Community Survey 2019: 67).



(United States Census Bureau 2005-2019).

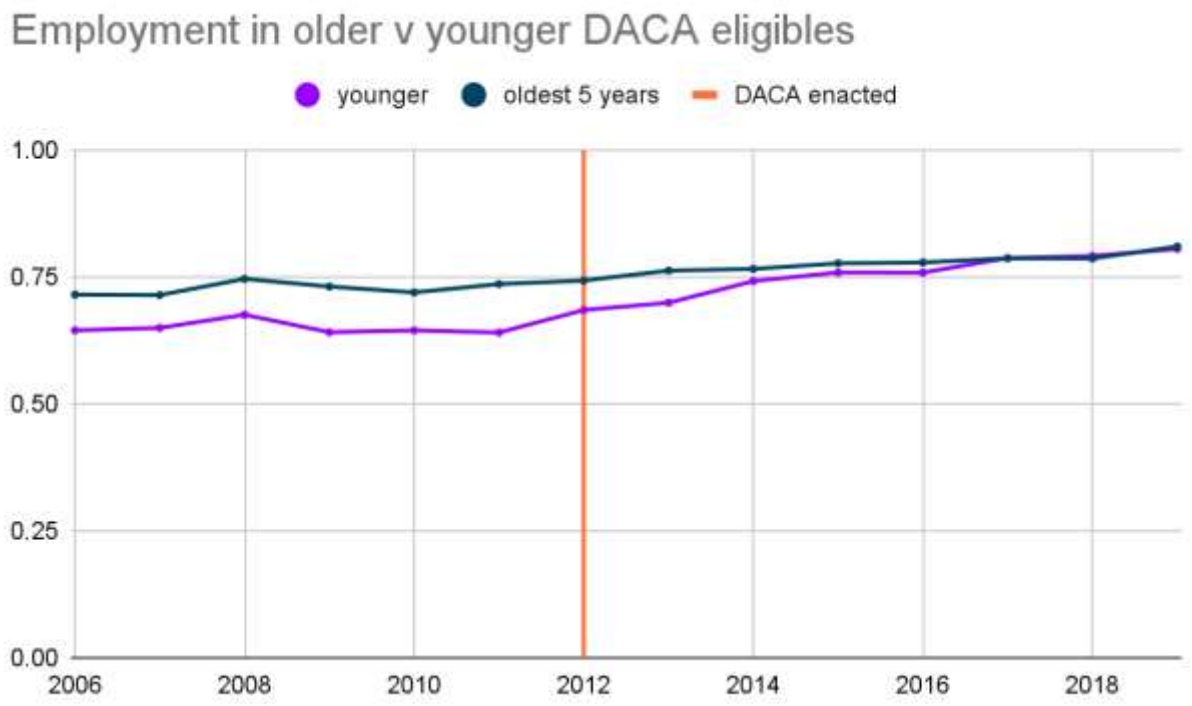
This graph reflects the employment rate among the DACA eligible population and the ineligible control group created by dividing the number of individuals classified as employed in each group by the total number of individuals in that group.

The resulting graph shows the DACA eligible population starting off with an employment rate just below the ineligible group from 2005 through 2008. Both groups see a

small dip below the 70% mark in 2010, after which the eligible group increases steadily to 80% by 2019, while the ineligible group stays stagnant around 70%, reaching 73% by 2019.

Though this result lacks evidence of statistical significance, it does suggest that the longer DACA was in effect, the more impact it had. This follows from the idea that each year the program existed more individuals aged into eligibility as they turned 15. For example, DACA required continued residence in the U.S. beginning in 2007, an individual born in 2007 and brought into the country that year would have only been 5 years old in 2012 when DACA was enacted, but when they turned 15 they would have been eligible to apply.

To consider this a second graph adjusts the universe, including only individuals in the eligible age range. In this second graph the universe includes individuals who are foregin born, non U.S. citizens aged 18 in the data year to 31 in 2012 who have at least a high school degree or GED equivalent and entered the U.S. between 1981 and 2007. From this universe I compared the oldest five years of eligible individuals, aged between 31 and 27 in 2012, with the remaining younger group, aged 26 and under in 2012. Again, due to the nature of the age requirement, which is grounded in 2012, the age boundaries are adjusted for each data year. The requirements for employment and unemployment remain unchanged from the above graph. Data years 2006 through 2019 are displayed in this graph, 2005 is not displayed due to low numbers and potential bias.



(United States Census Bureau 2005-2019).

This graph shows the younger employment rate beginning around 64% in 2006 while the older group starts off just above 70%. The older group creeps up slowly, reaching 74% in 2012 and breaking 80% by 2019. Meanwhile the younger group stays pretty stagnant until an increase to 68% in 2012, after which the group's employment rate sees a consistent increase, catching up to the older group at 80% in 2019.

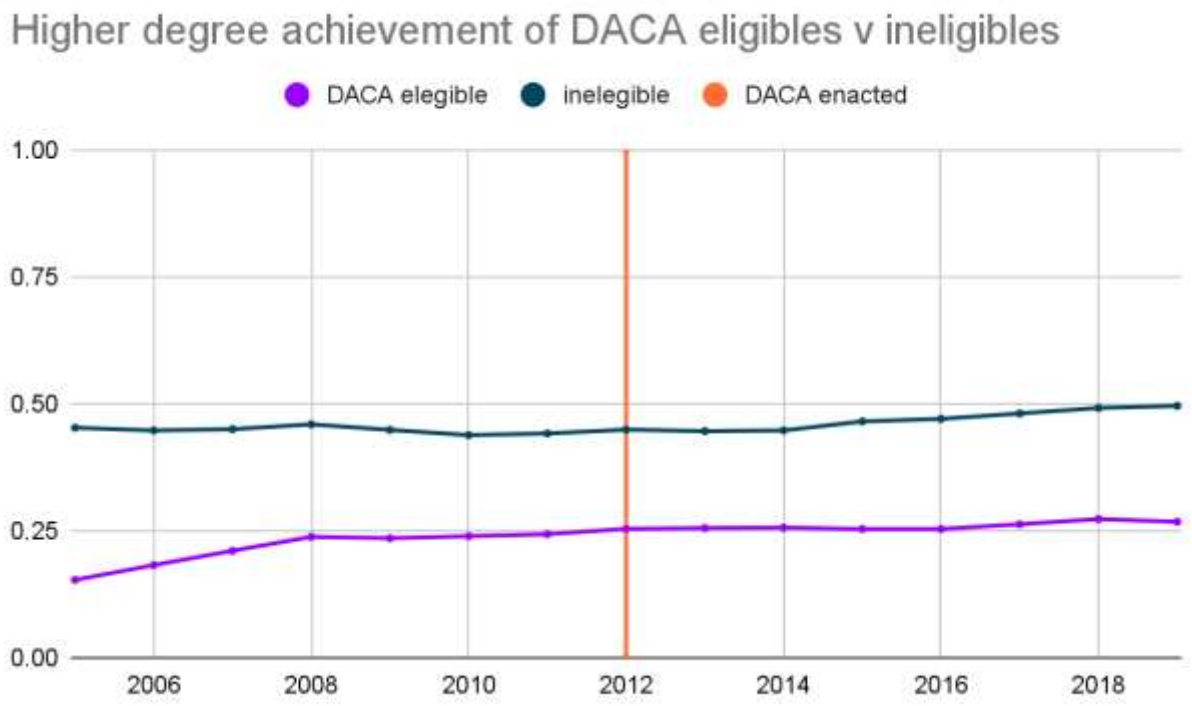
This result supports the idea that DACA had a greater impact on the younger generation compared to the oldest five years of eligibility. This is likely due to the increasingly large gap between the groups, as in 2019 the older group is between 33 and 38 while the younger group is between 18 and 32. When considering a program like DACA's impact on employment, it is notable that when DACA began the older individuals had already navigated life as undocumented without work authorization, while the younger generation likely had not begun working until they were approved for DACA benefits when they turned 15. This means that the

younger generation was able to obtain employment without roadblocks that older individuals experienced. Further, by the time DACA was created, the oldest recipients were 31, likely with jobs and families already. Though DACA may have had some impact on facilitation, older individuals were less likely to reimagine their careers.

Educational Attainment

For the purpose of analyzing educational attainment, the universe in these analyses matches the description at the beginning of this section. Unlike in the education analysis, those currently enrolled in school were included.

The criteria for higher degree achievement in these data sets refers to five response labels in the ACS educational attainment recode; Associate's degree, Bachelor's degree, Master's degree, Professional degree beyond a bachelor's degree, and Doctorate degree. The criteria for no higher degree achievement are the ACS educational attainment recode response labels of Regular high school diploma, GED or alternative credential, Some college but less than 1 year and 1 or more years of college credit no degree.



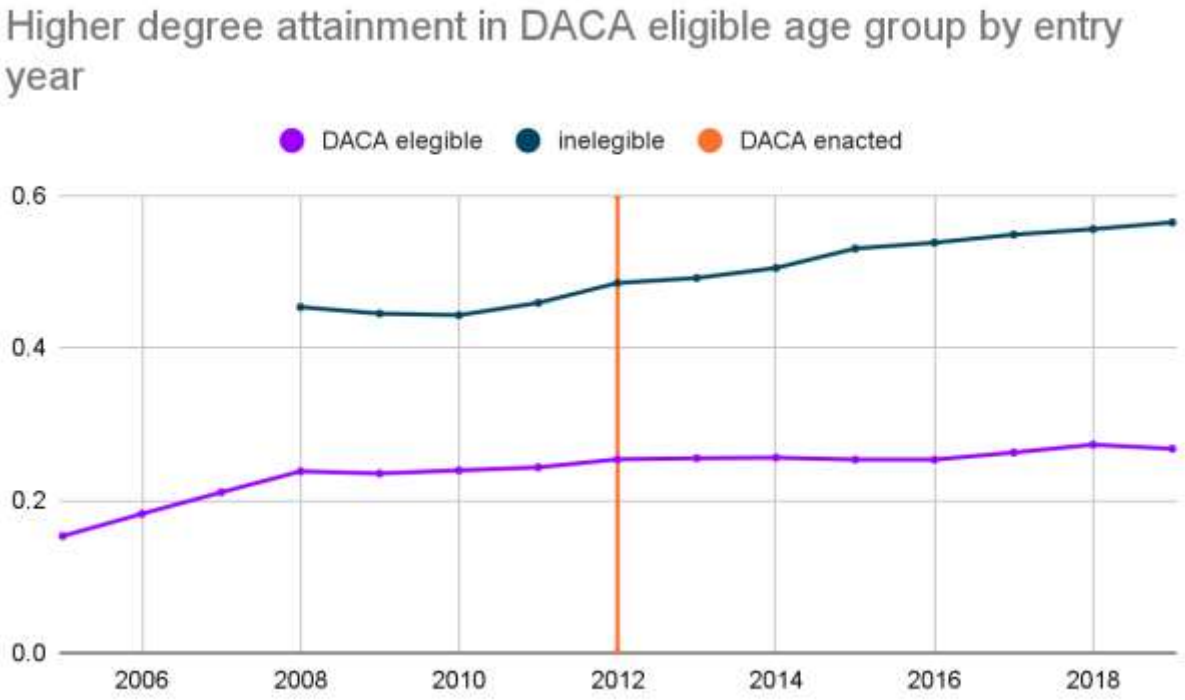
(United States Census Bureau 2005-2019).

This graph reflects the higher educational attainment rate among the DACA eligible population and the ineligible control group created by dividing the number of individuals classified as having attained higher education in each group by the total number of individuals in that group.

This graph shows the DACA eligible population in 2005 with a higher degree achievement rate of 15%, increasing to 23% by 2008. From that point the rate stays stagnant, inching up to a high of 27% in 2018. The ineligible population starts off much higher, with 45% having achieved some form of higher degree in 2005. The rate slouches to 44% from 2006 through 2014, then climbs slightly to 49% by 2019.

Considering the DACA eligible group alone, we see an inconsiderable increase after 2012, suggesting that DACA did not have much of an impact on higher degree attainment for that group. The results of the graph as a whole show the ineligible group consistently out-earning

the eligible group in terms of higher degrees. Initially I suspected this may be due to the age difference between the two groups, as the eligible group includes individuals starting at 18 years old in each data year with a cap that starts at 24 years old in 2005 and increases by one each year reaching 38 in 2019. This is a young group when compared to the ineligible group, which takes the annually increasing minimum of 25 to 39 years old through a solid cap of 67 years old. As a considerably younger group would reasonably have earned less degrees than their older counterparts, I constructed a second analysis to better understand the trend.



(United States Census Bureau 2005-2019).

This graph further narrows the universe to only include those in the DACA eligible age group, so individuals between 15 and 31 years old in 2012. The difference between the two groups is based on the single factor of entry year, eliminating the potential bias of comparing significantly older and younger age groups. Those who arrived in 2007 or earlier make up the eligible group, while those who arrived in 2008 or later make up the ineligible group. The

ineligible group lacks representation on the graph prior to 2008, as they were not yet in the U.S. at that time.

In this result, the DACA eligible group is the same as in the previous graph starting with a higher degree attainment rate of 15% and slowly making its way up to 26% by 2019. Meanwhile, the higher degree attainment rate for the ineligible group starts off at 45% in 2008, the first year the group would have been in the U.S. The rate stays stagnant for a few years, then begins to increase in 2012, reaching 56% in 2019.

From this outcome, we see that the revised ineligible group still consistently earned more degrees than the DACA eligible group. This may be due to the nature of arriving in the U.S. later in one's life, as one would likely have already earned a degree or worked in their country of origin, having earned money to put toward a degree upon arrival. Notably, the ineligible group's rate began to increase in 2012, a four year degree program after the 2008 arrival date. This supports the suggestion that much of the ineligible group arrived with degrees already, and continued to earn them soon after arriving in the U.S. The DACA eligible group, which arrived long before the appropriate age to work or attend university, had no opportunity to prepare for or earn a degree with the comfort of citizenship. Thus, the lower rate of higher degree attainment is to be expected. This observation serves as further support for the previous graph's suggestion that DACA's implementation in 2012 did not have a statistically significant impact on higher degree attainment.

Solution

Put simply, the guaranteed benefits of DACA include lawful presence and a work permit. These do relieve the immediate concerns of deportation and unlawful employment that the group

would otherwise face, however, DACA does very little to significantly relieve long-term problems. Recipients are given very short periods of semi-security without a path to a legitimate status of any kind, little to no assistance in higher education, and no long term solution. Moreover, the challenges against DACA in recent years make even those benefits uncertain, as the program has repeatedly been under threat of dissolution at the whim of DHS and the presidential administration. In order to better accommodate and support the DREAMer population, several improvements must be made to a codified DACA or, better, a DREAM Act passed through Congress.

First, the requirements for DACA eligibility are too narrow and only allow a relatively young group to benefit. The restrictions on age and entry year should be adjusted to include older individuals in the same situation. Many DACA skeptics would oppose wider eligibility under the pretense that a more inclusive relief program would perhaps encourage additional immigrants to forgo documentation in hopes of receiving benefits such as these. This argument does have validity, and a cap, relative to the year of enactment, on the youngest individuals who can apply is logical and would prevent those concerns of individuals taking advantage of the program. However, it is valuable to note that immigrants rarely arrive in the U.S. with a path to status in mind, as they are often fleeing violent or low-income areas without much time to prepare. This means it is unlikely that young immigrants will arrive in the U.S. particularly planning to exploit an immigration procedure.

On the other hand, there is no reason to put an upper age limit on a program such as DACA. The current age restrictions target the working age population, likely because the work of undocumented immigrants benefits the U.S. economy. Including older individuals in relief akin to DACA is harmless and has the potential to improve the lives of many people currently

ineligible for the program or other forms of immigration relief. One may point to the notion that if an older individual were to receive a quasi-status such as DACA, their lack of employment would result in their benefitting from programs for the retired and elderly, making their inclusion a net negative for U.S. citizens. This is simply not the case, as the way DACA stands now recipients are ineligible for any form of federal benefits, meaning potential retired or elderly DACA recipients would have no impact on social security contributed by U.S. citizens.

Next, the DACA periods of relief should be extended. Deferral lasting two years and subject to constant renewal is too short and prevents recipients from making long-term goals and plans. This issue was acknowledged in the Obama administration's 2014 Immigration Accountability Executive Action that attempted to extend DACA deferral to three year periods, however this improvement was never enacted due to lawsuits explained in a previous section. Still, the proposed three year periods are too short for serious planning; that is not even enough time for a standard four year degree program. In combination with fleeting security periods, the lawsuits challenging DACA have produced even more uncertainty, as the program has been halted, partially restricted, terminated, and reinstated as it made its way through the courts. Even now, the program is not processing new applications for DACA as the youngest eligible age group, those born in 2007, are just turning 15 this year, the age required to apply. This is a pure example of the program's legal precariousness preventing those it was intended for from benefiting.

Without certainty regarding the duration of their security, DACA recipients are limited in their personal and professional lives. This also hinders the U.S. government's goals of providing relief to the group in exchange for their contributions to society and the economy. To improve this, DACA deferral periods should be extended for a minimum of six years at a time. This

number comes from the DREAM Act's method, where undocumented immigrants who entered as children and have spent at least five years in the U.S. would gain residency status, replaced after six years by conditional permanent residency status, also for six years. This length of time would be sufficient for individuals to prepare next steps in pursuing a long-term legal status while seeking higher education, starting families, or moving up with their employer.

Also drawing inspiration from the failed DREAM Act, DACA should provide recipients with a specific path to long-term legal status. This would solve the issue of deferral periods all together, treating each renewal, instead, as a step toward an ultimate goal. The DREAM Act laid this path out already, following the six year conditional permanent residency period with an upgrade to lawful permanent residency contingent on the individual serving in the U.S. military or studying at a post-secondary educational institution. Lawful permanent residency, or a green card, is a long-term status with no need for renewal allowing card holders to live and work in the U.S. and travel abroad for reasonable periods of time. Recipients pay taxes and are eligible for federal benefits. They can also apply for citizenship after meeting additional requirements. A path such as this would improve the security recipients feel to allow them to succeed and make permanent ties to the U.S. in the personal and professional realms.

Some take issue with childhood arrivals potentially gaining lawful permanent residency or citizenship and using their status to petition for their parents. This is because of the narrative that childhood arrivals are not to blame for a breach of immigration law, placing the fault on their parents for bringing them; the same story that doomed DAPA. Primarily, this concern has the wrong focus, as those childhood arrivals should be eligible for potential status regardless of the validity of blame on their parents. At the same time, a vengeance against parents of DREAMers is shortsighted. The contributions of DREAMers to communities and the economy

discussed above outweigh the potential negatives of allowing their parents to remain in the U.S. with them. As a last resort, if it should be determined that parents of DREAMers pose a valid threat to the U.S., it could be established that those who gain residency or citizenship through a path such as DACA or the DREAM Act cannot petition for their parents.

A final improvement necessary for DACA recipients to thrive is access to federal benefits. With the current regulations, recipients are not eligible for any type of national assistance, such as food stamps, social security, healthcare insurance or educational financial aid, despite paying billions in federal, state and local taxes each year (Center for American Progress 2019). This is because DACA is not considered a status, merely a grant of legal presence. The absence of wellbeing support like social security, food stamps and healthcare insurance puts DACA recipients at a great disadvantage without security in potential hardship. This lack of support compounds with the absence of college financial aid, increasing the difficulty DACA recipients face in securing employment, pursuing higher education and leading a productive life. Though the program focuses on a flashy work permit and state laws that occasionally permit in-state tuition or financial aid, little at the national level is actually supporting DACA youth to work toward a successful future in the U.S. The work permit alone is not sufficient to support these individuals, as the barrier of cost in attending college can bar them from attaining higher education, and in turn, the lack of access to higher education limits the job opportunities available to them.

However, if recipients were eligible for benefits, like other categories of immigrants, they would have an increased sense of security related to their wellbeing, putting them in a much better position to seek higher education and thus higher paying employment. The DREAM Act model acknowledges this important factor, granting many federal benefits for those who would

become conditional permanent residents and offering lawful permanent residency status to those who attended college.

Summary

Through an assessment of the political history of DACA and the challenges it faced combined with data considering the program's level of success it is apparent that the measures supporting many program recipients are insufficient for a long-term, sustainable future. U.S. Census data shows little improvement for the DACA eligible population in employment or higher education after 2012 in comparison to their ineligible counterparts. In addition, much of the current DACA benefits are insufficient considering the program's goal of supporting educated, employed and successful individuals. With adjustments expanding age and entry year eligibility, longer deferral periods, a path to a legitimate status and access to federal benefits, DACA has the potential to improve more lives at a greater scale.

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