



JANUARY 2021

EXECUTIVE ACTION PROPOSALS FOR THE BIDEN ADMINISTRATION TO PROTECT DACA RECIPIENTS AND THEIR FAMILIES

The Deferred Action for Childhood Arrivals (DACA) program has undergone turbulent changes since it was announced in 2012. Terminated and reinstated numerous times since, these changes have not only affected the well-being of close to 800,000 DACA recipients, but they have shown us the urgent need to pass a permanent and inclusive legislative solution that will provide a pathway to citizenship not only to DACA recipients but their family members. In the meantime, **the Biden administration must fulfill its campaign promise to protect DACA recipients and their parents.** As of the date of this writing, the current DACA program is facing a critical threat from a lawsuit brought by Texas and other states that could potentially terminate the program. The Biden administration must do more than simply reinstate the DACA program as it was announced more than eight years ago.

The Immigrant Legal Resource Center (ILRC) works with immigrants, community organizations, legal professionals, law enforcement, and policy makers to build a democratic society that values diversity and the rights of all people. Through community education programs, legal training and technical assistance, and policy development and advocacy, the ILRC's mission is to protect and defend the fundamental rights of immigrant families and the communities in which they live. The ILRC collected the following critical proposals from DACA recipients and legal advocates to ensure that any executive action regarding the DACA program aligns with our community values.

EXECUTIVE ACTION ITEMS TO PROTECT DACA RECIPIENTS AND THEIR FAMILY MEMBERS:

Update the Protection Dates: The original DACA program protects persons who were physically present in the United States on June 15, 2012, had no lawful status on June 15, 2012, and have continuously resided in the country five years prior to that date, June 15, 2007, until the present. Because more than eight years have passed since the original DACA program was announced, these requirements should be updated to dates that reflect when the Biden administration takes new executive action.

Extend the Time Period of Protection for Recipients: While the grant period for deferred action and work authorization under DACA is two years, it would be beneficial to extend the grant period of benefits under DACA beyond two years so that individuals can benefit from the program protections. This would not only increase stability for DACA recipients and their families, but also ease the financial and legal burden to renew less frequently.

Remove a Single Driving Under the Influence (DUI) Conviction from the Significant Misdemeanor Bar: We strongly believe that an individual's criminal history should not bar someone from obtaining an immigration benefit. An individual's history is not an indicator of who that person is, or what they are able to accomplish in the future.

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A single DUI conviction has prevented many individuals, who otherwise qualify for DACA, from benefitting from the program. A single DUI should not bar someone from obtaining DACA, especially since a DUI is not considered a Crime Involving Moral Turpitude or aggravated felony in immigration law and is not generally a ground of removal. Allowing for a single DUI misdemeanor would also align DACA with other programs, like Temporary Protected Status.

Allow the Use of Other Evidence to Meet Program Requirements: Currently, first-time applicants for DACA need to submit evidence to prove continuous residence since June 15, 2007. This has been a burden for community members who were very young at that time. Any new implementation of the program should allow for any credible evidence, like affidavits, to meet this program requirement.

Protect Immigrant Adults Who Arrived as Children: The original DACA program only allowed persons who were under the age of 31 as of June 15, 2012 to apply. Any executive action should eliminate this age limit. This change would continue to protect persons who entered the country as children and ensure that adults are not left out.

Protect Qualifying Immigrants Who Entered as Minors: Currently, the DACA program protects persons who entered the United States prior to their 16th birthday. This age requirement should be extended to the age of 18 to ensure that all eligible immigrants who entered the country as minors, and meet the other program requirements, are eligible for DACA. Protecting those who entered up and until their 18th birthday will reflect and be true to the intention of the program to protect “childhood arrivals.”

Allow for the Freedom to Travel Abroad: The DACA program only permits travel on Advance Parole if it is for an educational, employment, or humanitarian purpose. Meanwhile, persons with Temporary Protected Status or who were granted T or U nonimmigrant status can apply for Advance Parole without needing a specific purpose to travel. Any executive action should allow persons to travel freely with Advance Parole without providing a limiting purpose. Moreover, many persons with DACA who have final orders of removal are fearful of traveling. The Biden administration should explicitly ensure that these persons can safely travel to and return from their trips.

Protect Information from Immigration and Customs Enforcement (ICE): When DACA was announced, the Obama administration assured applicants that it would not use information included in their DACA applications for immigration enforcement purposes. Since then, advocates have learned that ICE has access to information submitted in DACA applications and DACA-related benefits. The Biden administration should ensure that the information submitted by DACA applicants is not only protected from being used for enforcement purposes but from ICE accessing it in the first place.

Ensure that DACA recipients With Final Orders of Removal are Protected: Individuals with final orders of removal who stepped forward to apply for DACA are at a greater risk if the program is terminated, and reports have shown that they can become easy targets for enforcement. The Biden administration should commit to protect these individuals from removal.

Restore DACA Protections for Individuals Who Have Been Denied and Deported: With any executive action, the Biden administration should gather a list of DACA renewal applications that have been denied since 2017 and reinstate their DACA protections. This should include all DACA recipients who had their DACA case improperly revoked or wrongfully denied, including those deported as a result.

Protect the Parents of DACA Recipients: Under the Deferred Action for Parents of Americans and Lawful Permanent Residents Program (DAPA), the Obama administration sought to protect parents of U.S. Citizens (USC) and Lawful Permanent Residents (LPR). DAPA was ultimately challenged and stopped through litigation.

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The Biden administration should revisit other forms of relief listed below, not only for parents of USC and LPR, but also for parents of DACA recipients.

Explore Other Forms of Relief: Before the DACA program was announced in 2012, legal scholars and immigration advocates laid out various forms of administrative relief that can help protect immigrants from deportation without Congressional action.¹ These forms of relief included deferred action, parole in place, and deferred enforced departure. The Biden administration should explore other executive options outside of deferred action to ensure that all people are eligible for relief and bring stability, family unity, and access to education and employment to all individuals who have been living in limbo for far too long.

¹ See Letter from Immigration Law Professors to President Obama, Executive Authority to Grant Administrative Relief to Dream Act Beneficiaries (May 28, 2012) (hereinafter Law Professors' Letter), available at: <https://www.law.uh.edu/iheig/documents/ExecutiveAuthorityForDREAMRelief28May2011>.

