



Statement of the American Immigration Lawyers Association

Submitted to the Committee on the Judiciary of the U.S. Senate

Hearing on October 3, 2017

“Oversight of the Administration’s Decision to End Deferred Action for Childhood Arrivals”

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For more than two decades, Congress has been unable to pass critically needed reforms to the immigration system, leaving our country unable to fully capture the enormous benefits immigrants and their families bring to American communities, businesses, the economy, and our nation. Now, at a moment of crisis, Congress has the opportunity to provide a solution to protect the hundreds of thousands of young people, known as Dreamers, who were brought to this country as children and have become integral, valuable members of communities across the United States. On September 5, 2017, the Trump Administration rescinded the Deferred Action for Childhood Arrivals (DACA) program placing about 800,000 DACA recipients at risk of deportation. The president has charged Congress with passing a bill that protects Dreamers before DACA expires on March 5, 2018, but he has offered few details for the kind of solution he would support.

As the national bar association of over 15,000 immigration lawyers and law professors, the American Immigration Lawyers Association (AILA) has members nationwide who have represented thousands of Dreamers and DACA applicants. AILA members have also assisted the families of DACA recipients and the businesses that employ them in all sectors of the American economy.

A Permanent Solution Focused on Protecting Dreamers and the Economy

AILA urges every member of Congress to support and call for an immediate vote on the Dream Act (S. 1615 and H.R. 3440), which provides permanent legal status and an opportunity to apply for citizenship to Dreamers. The Dream Act has bipartisan support in both the House and the Senate and represents the best opportunity to unify both parties to grant protection for a broad population of Dreamers.

Protecting Dreamers would not only benefit them and their families, but also would be the right decision for our country. Overwhelmingly, the American public supports protecting Dreamers: 86 percent say Dreamers should be allowed to live and work in the United States.¹ Economic studies have shown that Dreamers are valued members of their communities and will contribute as much as \$1 trillion dollars in GDP over the next decade.² Ending DACA and deporting

Dreamers would result in major losses in economic growth and jobs, and harm the economy to the order of billions of dollars in lost revenue, including to Social Security and Medicare.³

Members of Congress from both sides of the aisle clearly understand the broad public support for Dreamers. In addition to the bi-partisan Dream Act, several bills that provide permanent protection for Dreamers have been introduced in Congress including the American Hope Act (H.R. 3591), the Recognizing America's Children Act (H.R. 1468), and most recently the SUCCEED Act (S.1852) sponsored by Republican Senators Tillis, Lankford, and Hatch. All the bills recognize the need to provide protection from deportation and permanent legal status for applicants who undergo lengthy, rigorous national security and criminal background checks and demonstrate that they meet specific eligibility requirements.

All the bills also recognize the need to provide an opportunity for those who qualify to apply for citizenship. This reflects the overwhelming support of the American public: A September 2017 Fox News poll concluded that 4 out of 5 Americans support providing Dreamers with an opportunity to apply for citizenship.⁴

The SUCCEED Act

Led by Republicans, the SUCCEED Act demonstrates the growing willingness within the Republican party to protect Dreamers. At this time, however, AILA cannot recommend senators support the bill, which has the most demanding eligibility requirements of all the bills, including highly restrictive age cut-offs and stringent work and education requirements. It also has unnecessarily harsh exclusions for crimes that would block Dreamers who were convicted of traffic offenses and other minor or non-violent offenses like driving without a license and shoplifting, for which they never spent a day in jail. Thousands of deserving Dreamers would not qualify under the SUCCEED Act.

Of the bills, the SUCCEED Act has the longest wait period requiring a minimum of 15 years before a person can apply for citizenship, an extremely long time before being fully recognized as a member of American society. The SUCCEED Act also includes unacceptable provisions that undermine due process by forcing applicants to give up any opportunity to apply for other forms of relief if they fail to maintain any of the bill's strict program requirements. The bill includes sweeping language intended to block the children and spouses of Dreamers from obtaining "any immigration benefit," despite the longstanding ability of Lawful Permanent Residents to sponsor this narrow category of close family members. These significant flaws in the bill exclude too many Dreamers from receiving protection and impose consequences that deprive the very people the bill is intended to protect of the right to due process.

Protect Dreamers Without Adding Extraneous Reforms

Since the President announced the end of DACA, opponents of immigration have seized the opportunity to demand increases in border security and interior enforcement to be added in exchange for passing the Dream Act. Holding relief for Dreamers hostage to assuage an unending appetite for enforcement is wrong. First, those calling for additional enforcement have not demonstrated that there is a need for it or that spending billions of dollars in Americans'

taxpayer funds on hiring thousands of Border Patrol or removal officers, further expanding detention beds, or building a massive border wall would even be an effective tool for enforcing immigration laws.⁵ Second, most of the enforcement bills proposed in the 115th Congress--especially those that are reported to be in the White House immigration priorities—are highly punitive in nature, would severely undermine due process and would result in mass deportations of undocumented people who are contributing members of American society. Some of these proposals, such as the Davis Oliver Act (H.R. 2431), are almost certainly unconstitutional.⁶ Americans do not support the wholesale deportation of people who have been living in the United States without legal status.⁷

Calls for adding enforcement to the Dream Act, or proposals to restrict legal immigration like the RAISE Act (S.1720), will almost certainly result in congressional inaction, leaving Dreamers unprotected and at-risk of deportation. Congress should bring the Dream Act for a vote without adding proposals on extraneous immigration issues unrelated to protecting this highly compelling population.

Among the current bills introduced in Congress to protect Dreamers, the SUCCEED Act is the only one that includes enforcement provisions. For example, the bill forces people traveling on nonimmigrant visas to give up their rights to any immigration benefit or relief if they overstay their visa – even by as little as 24 hours – or unintentionally violate the terms of their visa – such as a student who accidentally drops below a full course load. The SUCCEED Act also would extinguish the president’s parole authority and restrict advance parole in a way that will hurt businesses, families, and other travelers, and disrupt the functioning of the legal immigration system.

Extend the DACA Renewal Deadline

With only five months before the DACA program expires, Congress must act now to protect Dreamers. Until Congress acts, AILA urges the President and the Elaine Duke, Acting Secretary of Homeland Security, to take steps to ensure DACA recipients do not lose their protection and are not subject to enforcement. The current October 5 renewal deadline should be extended into the new year to give more time for DACA recipients to renew their status and work permits. It will be extremely difficult, and a hardship in many cases, for the estimated 154,000 DACA recipients who need to renew their status to complete the renewal process by October 5, just two days from this hearing. An extension of the deadline would provide DACA recipients more time to collect the \$495 application fee and gather the necessary documents to complete the renewal application. On September 29, U.S. Citizenship and Immigration Services (USCIS) announced that it had received only 39,400 renewal applications—in other words only one fourth of the people who need to submit renewals have done so, and about 114,000 must submit within the next two days.⁸

Ensure Confidentiality of Information Submitted by DACA Applicants

In addition, AILA urges Acting Secretary Duke to clarify the agency’s confidentiality policy to assure people who have applied for DACA that the information they submitted about themselves and their family members will be kept confidential and will not be used for immigration

enforcement purposes. The current policy (which was revised on September 5, 2017) states that it will share information for enforcement purposes in cases where the requester meets the criteria for the issuance of a Notice To Appear. However, it also says that information will not be “proactively provided to ICE and CBP” (referring to Immigration and Customs Enforcement, and Customs and Border Protection). The policy leaves unclear whether USCIS will share information on DACA applications if requested by ICE, and if so, under what circumstances.⁹

AILA recommends that DHS make it clear that it will adhere to the prior confidentiality policy that existed before the September 5 revision, as well as the terms of the November 7, 2011 memorandum, “Revised Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Removable Aliens.” DACA recipients, as well as their family members, guardians, friends, and others whose names are disclosed during the DACA application process, should not be subject to immigration enforcement as a result of an application for relief or as a result of their support of the applicant.

Finally, we ask the President to reconsider his decision to rescind the DACA program in the event Congress cannot pass the Dream Act by March 5, 2018. The President has stated that he is concerned about Dreamers and wants to find a solution that protects them. He and the vast majority of Americans recognize that it would be unfair to DACA beneficiaries to take away their protection from deportation, which was extended by the federal government, and send them back to countries they may not even remember.

Dreamers call America their home. They have lived here, gone to school here, and worked here. They have contributed significantly to this country and some have even committed their lives to defending our country by serving in the military. AILA calls upon Congress and the President to act so that these young people will always be able to call America their home.

¹“Fox News Poll: 83 Percent Support Pathway to Citizenship for Illegal Immigrants,” Fox News, <http://www.foxnews.com/politics/2017/09/28/fox-news-poll-83-percent-support-pathway-to-citizenship-for-illegal-immigrants.html>.

²“The Economic Benefits of Passing the Dream Act,” Center for American Progress, <https://www.americanprogress.org/issues/immigration/reports/2017/09/18/439134/economic-benefits-passing-dream-act/>.

³“Ending DACA Will Impose Billions in Employer Compliance Costs,” CATO Institute, <https://www.cato.org/blog/ending-daca-will-impose-billions-employer-compliance-costs>; “Five Myths about DACA,” CATO Institute, <https://www.cato.org/publications/commentary/five-myths-about-daca>; “Study: The Impact of Deferred Action for Childhood Arrivals (DACA) Program Repeal on Jobs,” FWD.us and Center for American Progress, <https://dreamers.fwd.us/wp-content/uploads/2017/08/20170823-DACA-Job-Loss-Report.pdf>; “Draining the Trust Funds: Ending DACA and the Consequences to Social Security and Medicare,” Immigrant Legal Resource Center and Tom Wong, <https://www.ilrc.org/report-daca-economic-cost>.

⁴ Fox News, <http://www.foxnews.com/politics/interactive/2017/09/28/fox-news-poll-september-28-2017.html>

⁵ See AILA recommendations on Trump Administration and congressional proposals to increase spending on enforcement: <http://www.aila.org/infonet/fy2018-budget-funding-for-a-massive-deportation-m>; <http://www.aila.org/advo-media/aila-correspondence/2017/aila-statement-opposing-house-dhs-appropriations>

⁶ For example, see AILA’s analysis of H.R. 2406, H.R. 2407, and H.R. 2431: <http://www.aila.org/advo-media/issues/enforcement/house-immigration-enforcement-only-bills>.

⁷ For example, a September 21-26, 2017 Quinnipiac University poll found 77 percent of Americans support permanent status for people who are undocumented. <http://www.pollingreport.com/immigration.htm>.

⁸ “Immigrants line up to renew work permits as program ends,” Washington Post, September 29, 2017, https://www.washingtonpost.com/national/immigrants-line-up-to-renew-work-permits-as-program-ends/2017/09/29/980f3612-a527-11e7-b573-8ec86cdfef1ed_story.html?utm_term=.5d9232f10de5.

⁹ In its FAQs released on September 5, 2017, DHS stated that “[i]nformation provided to USCIS in DACA requests *will not be proactively provided to ICE and CBP* for the purpose of immigration enforcement proceedings, unless the requestor meets the criteria for the issuance of a Notice To Appear or a referral to ICE under the criteria set forth in USCIS’ Notice to Appear guidance.” (Emphasis added). See Question 7, DHS “Frequently Asked Questions: Rescission Of Deferred Action For Childhood Arrivals (DACA)” <https://www.dhs.gov/news/2017/09/05/frequently-asked-questions-rescission-deferred-action-childhood-arrivals-daca>.