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Immigration Policy: A Look at Its History and Its Future

Melisa Fumbarg

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Immigration Policy: A Look at Its History and Its Future

By Melisa Fumbarg

I. INTRODUCTION ........................................................................................................... 183
II. HISTORICAL BACKGROUND ..................................................................................... 186
III. DACA .......................................................................................................................... 192
   A. DACA's Components ........................................................................................... 192
   B. DACA's Constitutionality Debate ...................................................................... 195
      1. Deferred Removal .............................................................................................. 201
      2. Work Authorization .......................................................................................... 204
      3. Social Security and Benefits ............................................................................ 206
   C. DACA's Rescission ............................................................................................... 210
IV. DEPORTATIONS ......................................................................................................... 217
   A. Prosecutorial Discretion .................................................................................... 220
   B. Stipulated Removals ............................................................................................ 221
   C. Individual Rights .................................................................................................. 223
V. FUTURE PREDICTIONS .............................................................................................. 225
VI. CONCLUSION ............................................................................................................ 227
I. INTRODUCTION

Illegal, criminal, nuisance, job stealer, uneducated, un-American, second-class citizen. Imagine living your life and having to constantly hear insults spoken about you. You were somehow, maybe by no fault of your own, categorized with roughly eleven million other people. Eleventh million people with different characteristics and journeys are all placed under the same stereotype, but even worse, they are not only judged for their differences, they are criminalized for it.

Now, imagine not having a voice to stand up for yourself. You work hard, do what you can to make a living, try to live a respectable life, are patriotic, and hope your neighbors recognize this. However, some of your neighbors do not, but you have no voice to tell them to look at your accomplishments and to see you differently; you are powerless.

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*Melisa Fumbrag, J.D., Pepperdine University School of Law, 2019; B.A. in journalism and minor in history, summa cum laude, California State University Northridge, 2015. The author would like to thank her family for all of their love and support and for always instilling the importance of education, open-mindedness, compassion, and appreciation for the beauty in diversity.*


2 Although 78% of undocumented immigrants come from North America and Central America, there are 1.3 million people who originate from Asia and 0.7 million people from South America. Within these regions, there are multiple countries. Thus, the 11 million undocumented immigrants have unique backgrounds and cultures that cannot be categorically seen as one. Bryan Baker & Nancy Rytina, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2012*, DEP’T OF HOMELAND SEC.: OFF. OF IMMIGR. STATS. (Mar. 2013), https://www.dhs.gov/sites/default/files/publications/ois_ill_pe_2012_2.pdf.

3 Being undocumented, especially for children and young adults, can be a difficult experience because of their “isolation from peers, the struggle to pursue an education, fears of detention and deportation, and the trauma of separation from family and loved ones.” *Undocumented Americans*, AM. PSYCHOLOGICAL ASS’N, http://www.apa.org/topics/immigration/undocumented-video.aspx (last visited Apr. 8, 2019). This can leave these individuals feeling powerless. Id. Moreover, undocumented individuals cannot vote and, thus, cannot fully participate in civic
Most people have probably heard of undocumented individuals being referred to as some of the above terms.\textsuperscript{4} Yet, these are not just empty words.\textsuperscript{5} Unfortunately, society treats undocumented individuals as second-class citizens.\textsuperscript{6} These people are missing a piece of paper that makes them “American,” and that is the single most important factor getting in the way of their “American dream” for life, liberty, and the pursuit of happiness.

Like anything in life, or at least anything political, no argument comes without a counter-argument. There are people who will argue that undocumented individuals have deliberately broken the law and are not simply missing a piece of paper which could imply some sort of “administrative mistake.”\textsuperscript{7} Within this group of people, some are more accepting of undocumented children and adults who arrived in

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\textsuperscript{4} Fox News Latino issued a poll that found that 46% of Latino voters find the term “illegal immigrant” offensive and only one-third found the term “accurate.” Gene Demby, \textit{In Immigration Debate, 'Undocumented' Vs. 'Illegal' Is More Than Just Semantics}, NAT’L PUB. RADIO (Jan. 30, 2013), https://www.npr.org/sections/itsallpolitics/2013/01/30/170677880/in-immigration-debate-undocumented-vs-illegal-is-more-than-just-semantics. Furthermore, the terminology distinction between “undocumented,” “unauthorized,” “illegal,” “alien,” and some other terms, not only have social connotations but also have political ones. \textit{Id}. Thus, while there is no official “correct” way of saying the same thing, word choice can matter a great deal. \textit{Id}.

\textsuperscript{5} Studies show that individuals can have negative consequences as a result of stereotypes. \textit{Exploring the Negative Consequences of Stereotypes}, UNIV. OF ARIZ. NEWS (Nov. 20, 2003), https://uanews.arizona.edu/story/exploring-negative-consequences-stereotyping. Moreover, when it comes to stereotypes about undocumented individuals whom are predominately Latino, the consequences are not just individualized but have a deeper significance in the American public that affects social and political constructs. Tyler Reny & Sylvia Manzano, \textit{The Negative Effects of Mass Media Stereotypes of Latinos and Immigrants}, Vandenhoek & Ruprecht Verlage, 195, 196 (July 6, 2016), http://tylerreny.github.io/pdf/pubs/reny_manzano_stereotypes_2016.pdf.


\textsuperscript{7} Demby, \textit{supra} note 4.
the country as children. However, there are others who are not so forgiving. Within each side of the aisle, there are countless mindsets, arguments, and solutions. Since there is yet to be a concrete solution, lawmakers continue to debate immigration policy.

This comment will examine immigration in the United States, specifically by addressing questions involving the constitutionality of Deferred Action for Childhood Arrivals (DACA) and removal procedures. Part II will look at the historical background of immigration policy in the United States, including past amnesties and the latest reform, DACA. Part III will analyze DACA and why it was rescinded. Part IV will discuss one the most detrimental consequences of DACA being rescinded—deportation, and the constitutional limits of removal procedures. Part V will deploy some future predictions on immigration and the next steps Congress should take to ensure that there is effective reform. Part VI will conclude the comment with a brief overall view on immigration, DACA, and deportation proceedings.

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9 Id. While, 70% of Americans supporting DREAMers is the majority, 30% are opposed to DACA and even more are opposed to other forms of immigration reform. Id. For example, “65% of voters overall agreed with Trump’s position that any bill codifying Obama-era protections for illegal immigrants brought to the U.S. as children should be accompanied by funding for a wall, ending chain migration, and ending the diversity visa lottery program.” Saagar Enjeti, White House Correspondent, Poll: Majority Of Americans Agree With Trump On DACA Immigration, DAILY CALLER (Jan. 22, 2018), https://dailycaller.com/2018/01/22/poll-majority-of-americans-agree-with-trump-on-daca-immigration/.

10 See infra notes 15–62 and accompanying text.

11 See infra notes 63–240 and accompanying text.

12 See infra notes 241–309 and accompanying text.

13 See infra notes 310–22 and accompanying text.

14 See infra notes 323–30 and accompanying text.
II. HISTORICAL BACKGROUND

It was not customary in early American history to question immigration policies.\(^\text{15}\) That changed in the late 1800s, when immigration increased, and the nation’s economy took a downfall.\(^\text{16}\) Following the Civil War, several states enacted immigration policies.\(^\text{17}\) It was not until 1875 that the Supreme Court in \textit{Henderson v. Mayor of New York}\(^\text{18}\) held that immigration was a federal responsibility and changed the scope from the states to the federal government, which is the system in place today.\(^\text{19}\)

Some of the first immigration policies in the nation included the Chinese Exclusion Act of 1882 and the Alien Contract Labor Laws of 1885 and 1887.\(^\text{20}\) These laws barred various laborers from migrating to the United States.\(^\text{21}\) Another immigration policy in the same time period was The General Immigration Act of 1882, which was designed to profit from immigration by creating a fifty cent tax on each immigrant.\(^\text{22}\) At the same time, this law made the immigration process more selective by preventing entrance to "idiots,


\(^{16}\) Id.

\(^{17}\) Id.

\(^{18}\) \textit{Henderson v. Mayor of New York}, 92 U.S. 259 (1875). See Jennifer Chacon, \textit{Who is Responsible for U.S. immigration policy?}, AM. BAR ASS’N (“Article I, Section 8, clause 4 of the Constitution entrusts the federal legislative branch with the power to ‘establish a uniform Rule of Naturalization.’ This clear textual command for uniformity establishes that the federal government, specifically Congress, is responsible for crafting the laws that determine how and when noncitizens can become naturalized citizens of the United States.”). Moreover, on the federal level there is also the Department of Homeland Security, which is under the Executive Branch purview. However, “the policies and practices of state and local governments throughout the country continue to shape the lived experience of the immigrants within their jurisdiction. Notwithstanding the letter of the law, federal immigration law is always mediated by powerful intervening forces at the state and local level.” Id.

\(^{19}\) \textit{Early American Immigration Policies}, supra note 15.

\(^{20}\) Id.

\(^{21}\) Id.

\(^{22}\) Id.
lunatics, convicts, and persons likely to become a public charge.”

Ultimately, the federal government opened the well-known Ellis Island immigration service in 1892. As a response, the national-origin quota system enactment of 1921 and revision of 1924 called for limited immigration by “assigning each nationality a quota based on its representation in past U.S. census figures.” In 1924, Congress also established the U.S. Border Patrol as part of the Immigration Service.

During the “post-war years,” Congress enacted several other immigration policies. In 1951, the United States and Mexico created an official accord—the Mexican Agricultural Labor Program (MALP), also known as the “Bracero Program.” This program coordinated hundreds of thousands of agricultural workers from Mexico to work with American employers as “non-immigrant laborers.” In the late 20th Century, the United States went through many more changes in its immigration policies.

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23 Id.
26 Id.
27 Id.
29 Id.
30 Id.
In 1986, “Congress passed the Immigration Reform and Control Act (IRCA). This legislation has two major facets: amnesty and enforcement.”\(^{31}\) The IRCA allowed amnesty for undocumented individuals if they satisfied one of two conditions: “they had resided continually in the U.S. since January 1982 or they had completed 90 days of agricultural work between May 1985 and May 1986.”\(^{32}\) About 94% of the amnesty applicants received approval, which gave legal status to an estimated three million people.\(^{33}\)

The 1990 Immigration Act amplified obtainable visas by 40%.\(^{34}\) The Act “retained family reunification as the major entry path, while more than doubling employment-related immigration.”\(^{35}\) Furthermore, “the law also provided for the admission of immigrants from ‘underrepresented’ countries to increase the diversity of the immigrant flow by creating a lottery system.”\(^{36}\)

During the 1990s and early 2000s, Congress passed another four amnesties.\(^{37}\) The first, Section 245(i) of 1994, pardoned approximately 578,000 people in exchange for a $1,000 fine.\(^{38}\) The second was the Nicaraguan Adjustment and Central American Relief Act (NACARA), passed in 1997, which gave an estimated one million Central Americans legal status.\(^{39}\) The third, the Haitian Refugee Immigration and Fairness Act (HRIFA) of 1998 included Haitians because they had previously been excluded from

\(^{31}\) Historical Overview of Immigration Policy, supra note 25.

\(^{32}\) Id.

\(^{33}\) Id. After more than a decade, in 2000, the IRCA program allowed those who were originally denied reapplying for a chance of obtaining legal status. Id.

\(^{34}\) Id.

\(^{35}\) Id.

\(^{36}\) Id. This was the beginning to the now controversial Diversity Immigrant Visa Program which was created to increase immigration from a variety of countries as well as give those without connections to the U.S. more opportunities to migrate. The cap for selecting lottery “winners” went from 55,000 people per year to 50,000 per year more recently. However, with more than 13 million applicants, the chances of being selected are minimal. The Diversity Immigrant Visa Program: An Overview, AM. IMMIGR. COUNCIL (Nov. 13, 2017), https://www.americanimmigrationcouncil.org/research/diversity-immigrant-visa-program-overview.

\(^{37}\) Historical Overview of Immigration Policy, supra note 25

\(^{38}\) Id. This amnesty was later renewed in 1997 and again in 2000. Id.

\(^{39}\) Id.
NACARA.\textsuperscript{40} Lastly, in 2000, the Legal Immigration Family Equity Act (LIFE) passed for individuals waiting to become green card holders who were unable to be processed due to large volumes of applications.\textsuperscript{41}

Following September 11, 2001, immigration became more serious and the government sought to fix problems with the system.\textsuperscript{42} The Border Protection, Anti-terrorism, and Illegal Immigration Control Act of 2005 enacted by the House created greater protection both domestically and on the border.\textsuperscript{43} The Comprehensive Immigration Reform Act of 2006 (CIRA) provided an amnesty for undocumented individuals in the country while also pushing for legal immigration.\textsuperscript{44} However, no compromise bill ever became law.\textsuperscript{45} The Senate again tried to pass CIRA of 2007 to try to accomplish the same thing.\textsuperscript{46} Although the bill received bipartisan support in the Senate, it “was widely unpopular with the American public . . . essentially killing it.”\textsuperscript{47}

In 2001, the bipartisan Development, Relief, and Education for Alien Minors Act (DREAM Act) attempted to “provide[] legal status and eventually a path to citizenship for undocumented youth who entered the United States as adolescents, stayed in the country unlawfully to finish high school, had good moral character, and remained in the United States to pursue higher education or military service.”\textsuperscript{48} However, despite the bipartisan support of the DREAM Act, it failed to pass and become law.\textsuperscript{49} The DREAM Act had similar content to that of the majority opinion in \textit{Plyler v. Doe}, which held that the States could not refuse to give public education to

\textsuperscript{40} \textit{Id.}
\textsuperscript{41} \textit{Id.}
\textsuperscript{42} \textit{Id.}
\textsuperscript{43} \textit{Id.}
\textsuperscript{44} \textit{Id.}
\textsuperscript{45} \textit{Id.}
\textsuperscript{46} \textit{Id.}
\textsuperscript{47} \textit{Id.}
\textsuperscript{49} \textit{Id.}
children who failed to prove their lawful presence in the country because, in essence, it would penalize children for their parents’ decisions.\textsuperscript{50}

In the following decade, the DREAM Act came close to passing, but even tougher conditions did not persuade Congress to pass it.\textsuperscript{51} As a result, “the stalled DREAM Act left the problem of undocumented youth and the burdened United States immigration system unaddressed.”\textsuperscript{52} President Obama’s frustration over the defeat of the DREAM Act resulted in the following statement:

In an incredibly disappointing vote today, a minority of Senators prevented the Senate from doing what most Americans understand is best for the country. As I said last week, when the House passed the DREAM Act, it is not only the right thing to do for talented young people who seek to serve a country they know as their own, it is the right thing for the United States of America. Our nation is enriched by their talents and would benefit from the success of their efforts. The DREAM Act is important to our economic competitiveness, military readiness, and law enforcement efforts.\textsuperscript{53}

Thereafter, in 2012, President Obama announced the DACA program to allow “DREAMers” to be in the United States without the fear of deportation and to work legally.\textsuperscript{54}

After a few years, President Obama tried to expand DACA even more by eliminating some of the restriction to DACA as well as establishing the Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), a similar policy for undocumented parents of U.S. citizens and lawful permanent

\textsuperscript{50} 457 U.S. 202, 205, 230 (1982).
\textsuperscript{51} Kuchins, supra note 48, at 708–09.
\textsuperscript{52} Id. at 709.
\textsuperscript{53} Id.
\textsuperscript{54} Id.
residents.\textsuperscript{55} Jeh Charles Johnson, Secretary of Homeland Security, issued the “DAPA Memo” on November 20, 2014 outlining the terms of the DACA expansion and DAPA.\textsuperscript{56} As for DACA, the memo outlined an age gap removal so that anyone who entered the country prior to the age of sixteen could be eligible regardless of their age when applying as well as changing the date-of-entry.\textsuperscript{57} Furthermore, DACA would last three years instead of two.\textsuperscript{58} As for DAPA, the memo outlined that a process similar to that of DACA could apply to parents of U.S. citizens and lawful permanent residents who continuously resided in the country since January 1, 2010, among some other requirements.\textsuperscript{59} However, DACA’s expansion and DAPA encountered adverse treatment from the public and certain state leaders.\textsuperscript{60} Eventually, the program’s legal merits did not meet the scrutiny of the Court in a deadlocked decision in \textit{Texas v. United States} and DAPA never became law.\textsuperscript{61}

A few years later, President Trump announced the rescission of DACA with the following statement:

> Officials from 10 States are suing over the program, requiring my Administration to make a decision regarding its legality. The Attorney General of the United States, the Attorneys General of many states, and virtually all other top legal experts have advised that the program is unlawful and unconstitutional and


\textsuperscript{56} Id.

\textsuperscript{57} Id.

\textsuperscript{58} Id.

\textsuperscript{59} Id.

\textsuperscript{60} Defending DAPA and Expanded DACA Before the Supreme Court, AM. IMMIGR. COUNCIL (Apr. 11, 2016), https://www.americanimmigrationcouncil.org/research/defending-dapa-and-expanded-daca-supreme-court.

\textsuperscript{61} Texas v. United States, 86 F. Supp. 3d 591, 606 (S.D. Tex. 2015), aff’d, 809 F.3d 134 (5th Cir. 2015), as revised (Nov. 25, 2015), cert. granted, 136 S. Ct. 906, 193 L. Ed. 2d 788 (2016).
cannot be successfully defended in court. There can be no path to principled immigration reform if the executive branch is able to rewrite or nullify federal laws at will.62

What about DACA made it “unconstitutional?” That question, as well as questions regarding what will happen now that DACA is revoked, with regard to economic repercussions, employment, identification, and deportation, will be discussed in the following sections.

III. DEFERRED ACTION FOR CHILDHOOD ARRIVALS

A. DACA’s Components

DACA is technically known as an executive memorandum.63 Janet Napolitano, Secretary of Homeland Security under President Obama, issued it on June 15, 2012.64 Though it is a memorandum, it acts in the same way as an executive order.65 The memorandum laid out the components of prosecutorial discretion observed by the

65 Percha, supra note 63. There are slight differences between “executive action,” “executive order,” and “executive memorandums and proclamation.” Id. An executive action encompasses any action by the president. Id. An executive order is “an official, legally binding mandate passed down from the president to federal agencies...Executive orders are printed in the Federal Register, and they’re numbered consecutively for the sake of keeping them straight.” Id. An executive memorandum is very similar except for the fact that they do not have to be printed in the Federal Register. Id.
Executive Branch in its protection of “certain young people” who entered the country unlawfully. 66

In DACA, President Obama called for prosecutorial discretion in deferring removal of specified young people who met the requirements of the program. 67 The requirements included: (1) having arrived in the United States under the age of sixteen; (2) having lived continuously in the United States for at least five years; (3) being a high school student, high school graduate, student with general education development certificate, or honorably discharged veteran of the Coast Guard or Armed Forces of the United States; (4) not having felony convictions; (5) not having significant misdemeanor offenses or multiple misdemeanor offenses, or posing a threat to national security or public safety; and (6) being under the age of thirty-one. 68

Furthermore, individuals who requested deferred action had to first pass a background check and requests were decided on a case-by-case basis. 69 DACA applied to individuals even if they were in removal proceedings. 70 The memorandum also briefly stated that once individuals received deferred action status, they could apply to obtain work authorization in order to work during this period. 71 Thus, part of the program was that DACA recipients received deferred action status and work authorization in two-year intervals, subject to renewal after those two years. 72

Moreover, part of the program meant that once the USCIS granted individuals their deferred action status and work authorization, these individuals could be eligible to receive social security numbers from the Social Security Administration. 73 As a result, these individuals could also receive certain benefits that were

66 Napolitano Memorandum, supra note 64. See infra notes 261–67 and accompanying text.
67 Id.
68 Id.
69 Id.
70 Id.
71 Id.
72 Id.
not previously extended to undocumented individuals, such as Medicare.\textsuperscript{74} However, DACA recipients were not eligible for federal welfare or federal student aid.\textsuperscript{75}

The motives behind DACA were explained in the memorandum as the following:

\begin{quote}
Our Nation’s immigration laws must be enforced in a strong and sensible manner. They are not designed to be blindly enforced without consideration given to the individual circumstances of each case. Nor are they designed to remove productive young people to countries where they may not have lived or even speak the language. Indeed, many of these young people have already contributed to our country in significant ways. Prosecutorial discretion, which is used in so many other areas, is especially justified here.\textsuperscript{76}
\end{quote}

By issuing DACA and releasing this statement, the Obama Administration demonstrated its support of undocumented young people and showed that if Congress failed to act, the President would.\textsuperscript{77} However, the memorandum made clear that DACA had its limitations:

\begin{quote}
This memorandum confers no substantive right, immigration status or pathway to citizenship. Only the Congress, acting through its legislative authority, can confer these rights. It remains for the executive branch, however, to set forth policy for the exercise of discretion within the framework of the existing law. I have done so here.\textsuperscript{78}
\end{quote}

\textsuperscript{74} Telephone interview with Barry P. McDonald, J.D., Professor of Law at Pepperdine Univ. School of Law, a recognized expert in constitutional law (Oct. 11, 2017).


\textsuperscript{76} Napolitano Memorandum, supra note 64.

\textsuperscript{77} Id.

\textsuperscript{78} Id.
B. DACA’s Constitutionality Debate

President Trump rescinded DACA because of its alleged unconstitutionality. The debate stems from the executive making decisions that are in Congress’ power. Although other presidents have issued executive orders throughout history, the issue lies with the various components of DACA. DACA’s components should be analyzed separately to determine which, if any, are in fact unconstitutional. Moreover, even if the President does not have a direct power from the Constitution, the President enjoys certain powers that Congress has vested under Executive authority. Thus, the President may act using his direct and implied executive powers to execute the objectives and needs of the country.

The Obama Administration touted DACA as “an enforcement policy.” However, many of DACA’s opponents criticized DACA as a “legislative rule . . . which could only be promulgated in accordance with the Administrative Procedure Act (APA), which binds more federal agencies, including DHS.” In accordance with

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80 Id.
81 McDonald, supra note 74.
82 Id.
83 Id.
84 Id.
86 Id. See Crane v. Napolitano, 920 F. Supp. 2d 724, 730–31 (N.D. Tex. 2013), aff’d sub nom. Crane v. Johnson, 783 F.3d 244 (5th Cir. 2015) (several ICE deportation officers and the State of Mississippi sued Napolitano on August 15, 2012 in response to the DACA memorandum). The plaintiffs claimed that the initiative violated:

1) federal statutes requiring the initiation of removals; (2) federal law by conferring a non statutory form of benefit—deferred action—to more than 1.7 million aliens, rather than a form of relief or benefit that federal law permits on such a large scale; (3) federal law by conferring the legal benefit of employment authorization without any statutory basis and under the false pretense of “prosecutorial discretion;” (4) the constitutional allocation of
the APA, all agency rules initially have to be declared as a draft
before they can become a law in order to give the public a period of
time to comment on it.\textsuperscript{87} As a result, the public shapes and ultimately
alters agency rules. Under the APA, individuals have other rights.\textsuperscript{88}
Those claiming that they were legally wronged by an agency action
are entitled to judicial review.\textsuperscript{89}

Although the Supreme Court has yet to hear a case about
DACA's constitutionality, some of the legal discussions may be
similar to those discussed in \textit{Texas v. United States} regarding
DAPA.\textsuperscript{90} The Supreme Court deadlocked in its decision and
affirmed the Fifth Circuit Judgment by an equally divided Court.\textsuperscript{91}
In that case, the Fifth Circuit addressed immigration questions
regarding DAPA that dealt with "federalism, separation of powers,
and the ability and advisability, if any, of the Judiciary to hear and
resolve such a dispute."\textsuperscript{92} The case reached the Court as a result of
twenty-six states protesting DAPA under the APA and the Take Care
Clause of the Constitution.\textsuperscript{93} The states challenged DAPA on three
grounds:

First, they asserted that DAPA violated the procedural
requirements of the APA as a substantive rule that did
not undergo the requisite notice-and-comment
rulemaking. Second, the states claimed that DHS
lacked the authority to implement the program even if

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\textsuperscript{87} \textit{Id.}
\textsuperscript{88} \textit{Id.}
\textsuperscript{89} \textit{Torres v. U.S. Dep't of Homeland Sec.}, No. 17cv1840 JM(NLS), 2017 U.S.
\textsuperscript{90} \textit{Texas v. United States}, 86 F. Supp. 3d 591, 605–06 (S.D. Tex.), aff'd, 809
F.3d 134 (5th Cir. 2015), \textit{as revised} (Nov. 25, 2015).
\textsuperscript{91} \textit{United States v. Texas}, 579 U. S. _____,136 S. Ct. 2271, 195 L. Ed. 2d 638
(2016).
\textsuperscript{92} \textit{Texas v. United States}, 86 F. Supp. 3d at 605–06.
\textsuperscript{93} \textit{Texas v. United States}, 809 F.3d at 146.
it followed the correct rulemaking process, such that DAPA was substantively unlawful under the APA. Third, the states urged that DAPA was an abrogation of the President's constitutional duty to 'take Care that the Laws be faithfully executed.'94

The Court held that Congress intended that the APA have a judicial review process for those legally wronged by Agency action.95 Thus, the states claimed they were entitled to such judicial review because of what they endured as a result of DAPA.96 The Court held that Texas established that having to issue driver's licenses to DAPA recipients would result in a considerable cost for the state.97 Texas calculated that if DAPA were enacted, there would be 500,000 Texas residents who could become recipients.98 Texas would, in turn, spend $130.89 on each of those 500,000 licenses, totaling millions of dollars.99

The Court further held that Texas' financial burden was "fairly traceable to DAPA."100 The Court stated that even if Texas could avoid the cost by charging for the licenses, "it could not avoid injury altogether."101 The Court held that the state's interests fell "within the zone of interest of the INA" which the state claimed was violated.102

In conclusion, the Court failed to extend the DAPA ruling to DACA. The Court held that "DACA and DAPA are not identical."103 The court reasoned that:

DACA involved issuing benefits to self-selecting applicants, and persons who expected to be denied

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94 *Id.* at 149.
95 *Id.*
96 *Id.* at 152.
97 *Id.* at 155.
98 *Id.*
99 *Id.*
100 *Id.* at 156.
101 *Id.*
102 *Id.* at 162–63.
103 *Id.* at 174.
relief would seem unlikely to apply. But the issue of self-selection is partially mitigated by the finding that the government has publicly declared that it will make no attempt to enforce the law against even those who are denied deferred action (absent extraordinary circumstances).104

Furthermore, the court noted that “[e]ligibility for DACA was restricted to a younger and less numerous population, which suggests that DACA applicants are less likely to have backgrounds that would warrant a discretionary denial.”105 This shows that despite having similar DAPA and DACA applications, there were substantial factors that made a difference.106 Lastly, the Court held “that the states have established a substantial likelihood that DAPA would not genuinely leave the agency and its employees free to exercise discretion,” even though there was a lack of evidence suggesting DACA did, in fact, have discretionary denials.107 Thus, questions regarding DACA’s constitutionality still remained, though it is established that it was not as clearly unlawful at DAPA.108

One of the basic questions regarding the constitutionality of DACA and other executive orders revolves around the doctrine of separation of powers and whether the President enjoys the power to make such an action that establishes immigration policy as well as other national benefits.109 However, when it comes to immigration and DHS, it has been established that “decisions as to how to marshal DHS resources, how to best utilize DHS manpower, and where to concentrate its activities are discretionary decisions solely within the

104 Id.
105 Id.
106 Id.
107 Id. at 175–76.
108 Id. at 174.
109 In Texas v. United States, the states claimed that in its expansion of DACA and in its enactment of DAPA, “DHS has not only abandoned its duty to enforce the laws as Congress has written them, but it has also enacted ‘legislation’ contrary to the Constitution and the separation of powers therein.” 86 F. Supp. 3d 591, 646 (S.D. Tex.), aff’d, 809 F.3d 134 (5th Cir. 2015), as revised (Nov. 25, 2015), cert. granted, 136 S. Ct. 906, 193 L. Ed. 2d 788 (2016).
purview of the Executive Branch, to the extent that they do not violate any statute or the Constitution.”\textsuperscript{110}

Moreover, “as a general principle, the decision to prosecute or not prosecute an individual is, with narrow exceptions, a decision that is left to the Executive Branch’s discretion.”\textsuperscript{111} However, ultimately,

\[\text{the conditions for entry [or removal] of every alien, the particular classes of aliens that shall be denied entry altogether, the basis for determining such classification, the right to terminate hospitality to aliens, [and] the grounds on which such determinations should be based, have been recognized as matters solely for the responsibility of the Congress.}\] \textsuperscript{112}

Thus, since both the President and Congress share some power over immigration and DHS, there was a constitutionality debate regarding whether DACA was actually legal or not. In the Constitution,

\[\text{The President’s power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker. The Constitution limits his functions in the lawmaking process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad. And the Constitution is neither silent nor equivocal about who shall make laws which the President is to execute. The first section of the first article says that ‘All legislative Powers herein granted shall be vested in a Congress of the United States.’}\] \textsuperscript{113}

However, even if the President does not have a direct power from the Constitution to make laws, the President can also issue an order

\textsuperscript{110} Id. at 645.
\textsuperscript{111} Id. at 644 (quoting Heckler v. Chaney, 470 U.S. 821, 831 (1985)).
\textsuperscript{112} Id. at 645.
\textsuperscript{113} Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 587–88 (1952) (Jackson, J., concurring).
that stems from an act of Congress. Thus, the President’s power is not as limited as may seem because a lot of power has been vested in the Executive to “take care that the Laws be faithfully executed.”

In some situations, the President may act as a result of Congress’ express or even implied approval and as such, “his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate. In these circumstances, and in these only, may he be said (for what it may be worth), to personify the federal sovereignty.” The President may also be somewhere in between having an express or implied power and having no power at all. In these instances, the President has to rely on his presidential powers. However, the President and Congress may have coexisting authority, or at least uncertainty regarding the distribution of authority, in which case, Congressional lack of concern or action, may give the President more independent responsibility. On the other hand, the President could be over-reaching and acting without any power or approval. In these circumstances, the President’s “power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter.”

Although DACA, often seen as all-encompassing—meaning that it deferred removal, gave work authorization, and gave social security numbers and certain benefits, the constitutionality debate

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114 Id. at 585.
115 Id. at 587.
116 Id. at 635–36. As a result of the President’s high level of authority in these situations, “[i]f his act is held unconstitutional under these circumstances, it usually means that the Federal Government as an undivided whole lacks power... the burden of persuasion would rest heavily upon any who might attack it.” Id. at 636–37.
117 Id. at 637.
118 Id.
119 Id. Under this middle ground, “any actual test of power is likely to depend on the imperatives of events and contemporary imponderables rather than on abstract theories of law.” Id.
120 Id. When reviewing the President’s decisions in these types of cases, “[c]ourts can sustain exclusive Presidential control in such a case only be disabling the Congress from acting upon the subject. Presidential claim to a power at once so conclusive and preclusive must be scrutinized with caution, for what is at stake is the equilibrium established by our constitutional system.” Id. at 637–38.
does not apply equally to all parts.121 Since the President enjoys certain powers which allow him to implement laws that would help further the country’s objectives, some aspects of DACA may well be within the President’s power while others may not.122 Therefore, it makes more sense to look at DACA as these various parts and then weigh the President’s power to actually implement all of these various components based on the Executive’s plenary power and the power vested by Congress.123

1. Deferred Removal

Through the Immigration and Nationality Act (INA), Congress “created a complex and detailed federal immigration scheme governing the conditions under which foreign nationals are admitted to and remain in the United States, and providing for the removal of non-citizens not lawfully admitted to this country.”124 The INA gives the Secretary of Homeland Security the power to enforce immigration and naturalization related laws.125 DHS does not have the means to remove all removable people, which in turn gives immigration officials broad discretion.126 In fact, DHS estimates that it can remove less than 400,000 undocumented individuals per year out of the more than eleven million people total.127 While removing all eleven million people could be feasible in approximately thirty years, it remains unrealistic as it is not the best use of U.S. resources and each future president in office would have to commit to such an agenda.128

121 McDonald, supra note 74.
122 Id.
123 Id.
125 Id. at *5.
126 Id.
Furthermore, relocating millions of people who have already built their homes in the country is not the best image for the country. Thus, the Secretary may exercise prosecutorial discretion and decide not to remove someone or “defer” their removal action. Deferred action is historically a common practice within DHS, and DHS officers enjoy wide discretion for humanitarian reasons or for the government’s own convenience.

Part of the goal when implementing DACA was enhancement of DHS’ resources. DACA “seek[s] not to decrease the total number of removals but to prioritize removal of individuals who pose a threat to public safety over removal of those who do not. The policy is designed to make the Department of Homeland Security’s expenditure of resources more efficient and effective.”

In making immigration enforcement decisions, the executive considers a variety of factors such as the danger posed to the United States of an individual’s unlawful presence, the impact of removal on the nation’s international relations, and the ‘human concerns’ of whether the individual ‘has children born in the United States, long ties to the community, or a record of distinguished military service.’ More generally, the Supreme Court has recognized that all agencies have discretion to prioritize in light of the Secretary’s and, ultimately, the President’s assessments ‘whether agency resources are best spent on this violation or another, whether the agency is likely to succeed if it acts, whether the particular enforcement action requested best fits the agency’s overall policies, and, indeed, whether the agency has enough resources to undertake the action at all.”

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immigration.html. Mass deportations would also pose problems of being achieved only through “military-style roundup” and dismissing legal procedures and constitutional restraints on officers. Id.

130 Id.
131 Arpaio, 797 F.3d at 15.
132 Id.
133 Id. at 16 (quoting Heckler v. Chaney, 470 U.S. 821, 831(1985)).
The DACA and DAPA memos explain that the deferred action policies "apply to individuals who 'are extremely unlikely to be deported given [the] Department’s limited enforcement resources—which must continue to be focused on those who represent threats to national security, public safety, and border security.'" 134

Since deferred removal has been common practice, this part of DACA is not widely criticized as unconstitutional. 135 However, there are many DACA opponents who claim that deferring action on such a grand scale is beyond the scope of the executive’s discretion. 136 Ultimately, there are two possible arguments a court could make if the Court decides to review this specific issue:

(1) that a system that provides for such a broad change, which could potentially provide a path to permanent residency for one million people, is substantive in nature and not merely an enforcement measure; 137 or

(2) that Congress did not give the President the authority to defer deportation, and so, it cannot survive strict scrutiny. Though, other Presidents from different political ideologies have used their implicit or explicit authority from Congress to defer deportations. 138

Nonetheless, Congress did give DHS wide discretion in enacting the INA, and Janet Napolitano as Secretary under President Obama was entitled to exercise her discretion, whether or not the scale of her decision is of issue. 139 Moreover,

Prosecutorial discretion is one component of a much broader range of authority inherent in the executive branch’s responsibility to implement the law. The role of the executive branch of the government has never been limited to blindly administer laws passed by the legislative branch. The effective implementation of any law (whether criminal, tax, environmental,

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134 Id. at 17.
135 McDonald, supra note 74.
136 Id.
137 Krent, supra note 85.
138 Id.
139 Id.
securities, or immigration law) requires the executive branch to interpret the law and to develop strategies to implement it.\textsuperscript{140}

Thus, the issue with DACA lies more so with the other components of the program.

2. Work Authorization

The work authorization was one of the components of DACA that made a huge difference for recipients.\textsuperscript{141} DACA applicants were eligible to apply for employment authorization and, if approved, were given a permit known as an Employment Authorization Document (EAD).\textsuperscript{142} DACA recipients then had the opportunity to obtain jobs, which they could not have had before their EAD’s.\textsuperscript{143} Many DACA critics have argued that DACA recipients and other undocumented immigrants take jobs from Americans.\textsuperscript{144} In a statement regarding DACA’s rescission, Attorney General Sessions stated that “[DACA] also denied jobs to hundreds of thousands of Americans by allowing those same jobs to go to illegal aliens.”\textsuperscript{145}


\textsuperscript{142} Napolitano Memorandum, supra note 64.

\textsuperscript{143} Id.


However, it defies logic to allow individuals lawful presence in the country but deny them the opportunity to work.

Furthermore, both sides of the debate seem to have statistics either proving or disproving that DACA recipients take jobs from Americans either because they are paid less or take jobs Americans do not want, rather than based on merit.\textsuperscript{146} The argument is just part of the political rhetoric and both sides will prove what they want without the whole picture. Regardless of which side people fall on in the debate, it is clear that immigration and immigrant workers boost the economy and help create jobs, whether or not those immigrants are considered to have \textit{stolen} those jobs.\textsuperscript{147}

A recent survey of DACA recipients showed that “[w]ork authorization is critical in helping DACA recipients participate more fully in the labor force. The data show that 91 percent of respondents are currently employed. Among respondents age 25 and older, employment jumps to 93 percent.”\textsuperscript{148} Furthermore,

The data illustrate that DACA recipients continue to make positive and significant contributions to the economy, including earning higher wages, which translates into higher tax revenue and economic growth that benefits all Americans. In addition, DACA recipients are buying cars, purchasing their first homes, and even creating new businesses. The survey’s results also show that at least 72 percent of the top 25 Fortune 500 companies employ DACA recipients.\textsuperscript{149}

\textsuperscript{146} Felbab-Brown, \textit{supra} note 144. Felbab-Brown suggests that “[t]he impact of immigrant labor on the wages of native-born workers is low... However, undocumented workers often work the unpleasant, back-breaking jobs that native-born workers are not willing to do.” She provides a solution that “fixing immigration is not about mass deportations of people but about creating a legal visa system for jobs Americans do not want. And it is about providing better education opportunities, skills-development and retooling, and safety nets for American workers.” \textit{Id.}


\textsuperscript{148} Wong, \textit{supra} note 141.

\textsuperscript{149} \textit{Id.}
Overall, DACA recipients are estimated to provide $460.3 billion to the U.S. economy in the next ten years.\textsuperscript{150} However, that economic growth could be lost without DACA.\textsuperscript{151}

The question that still remains is whether allowing DACA recipients to legally work was constitutional. There is not much guidance in answering this question. There have been other work-related amnesties in the past.\textsuperscript{152} Furthermore, although some may dislike that DACA recipients have jobs, the legal issue with DACA does not seem to lie in the work authorization component of the program.\textsuperscript{153}

3. Social Security and Benefits

As part of DACA, recipients are eligible to receive social security numbers.\textsuperscript{154} The social security cards say that they are “valid for work only with DHS Authorization,” which is what the EAD is for.\textsuperscript{155} It seems that DACA opponent’s biggest frustrations with DACA stemmed from this part of the program.\textsuperscript{156} Opponents saw the social security card as giving recipients public benefits.\textsuperscript{157} However, the constitutionality debate regarding this component of DACA is not even largely about immigration but rather about federalism.\textsuperscript{158}

Americans have rights to social security benefits from the Federal Government.\textsuperscript{159} However, with DACA, merely having a social

\textsuperscript{150} Id.
\textsuperscript{151} Id.
\textsuperscript{152} See supra Section II.
\textsuperscript{153} McDonald, supra note 74.
\textsuperscript{154} Types of Social Security Cards, SOC. SEC. ADMIN. (Feb. 17, 2018), https://www.ssa.gov/snumber/cards.htm (last visited Apr. 6, 2019).
\textsuperscript{155} Id.
\textsuperscript{156} McDonald, supra note 74.
\textsuperscript{157} Id.
\textsuperscript{158} Texas v. United States, 86 F. Supp. 3d 591, 605–06 (S.D. Tex. 2015), aff’d, 809 F.3d 134 (5th Cir. 2015), as revised (Nov. 25, 2015), cert. granted, 136 S. Ct. 906, 193 L. Ed. 2d 788 (2016).
\textsuperscript{159} Understanding the Benefits, SOC. SEC. ADMIN., https://www.ssa.gov/ pubs/EN-05-10024.pdf (Feb. 17, 2018). Although there are
security number does not mean that recipients are entitled to those same exact benefits. In fact, DACA beneficiaries cannot obtain access to federal benefits. These federal benefits that DACA recipients are ineligible for include federal medical coverage such as the Affordable Care Act and federal student financial aid. DACA recipients can have benefits only if provided by the states of the individual’s residency.

Some states are more willing than others to provide benefits for DACA recipients and other undocumented individuals. The federalism debate happens when the federal government forces the states to recognize their benefits as mandatory.

other sources of benefits, the Federal Government, through the Social Security Administration, handles many of the benefit programs such as retirement, Medicare, and disability among others. Id.


162 Id.

163 Id.


165 See Printz v. U.S., 521 U.S. 898, 920 (1997) (explaining that “[m]uch of the current U.S. Federalism has been developed as a reaction to the failures of the Articles of Confederation, which persuaded the Framers that using States as instruments of national governance was ineffectual and provocative of conflict between the states and national government”). Generally, Federalism is described as:

[A] system of government in which the same territory is controlled by two levels of government. Generally, an overarching national government is responsible for the federal governance, governing the issues that affect the entire country, while the smaller subdivisions, states, and cities, govern the issues of local concern. Both the national government and the smaller political subdivisions have the power to make laws and both have a certain level of autonomy from each other.
Before DACA, a similar question came before the Supreme Court in *Plyler*.\(^{166}\) In that case, the Court reviewed a Texas law that denied undocumented children free public education.\(^{167}\) The Court noted that, "[t]he Fourteenth Amendment provides that ‘[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.’"\(^{168}\) The Court held that, "[W]hatever his status under the immigration laws, an alien is surely a ‘person’ in any ordinary sense of that term. Aliens, even aliens whose presence in this country is unlawful, have long been recognized as ‘persons’ guaranteed due process of law by the Fifth and Fourteenth Amendments.\(^{169}\)

Furthermore, the Court reasoned that:

To permit a State to employ the phrase ‘within its jurisdiction’ in order to identify subclasses of persons whom it would define as beyond its jurisdiction, thereby relieving itself of the obligation to assure that its laws are designed and applied equally to those persons, would undermine the principal purpose for which the Equal Protection Clause was incorporated in the Fourteenth Amendment. The Equal Protection Clause was intended to work nothing less than the abolition of all caste-based and invidious class-based legislation. That objective is fundamentally at odds with the power the State asserts here to classify persons subject to its laws as nonetheless excepted from its protection.\(^{170}\)

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\(^{167}\) Id.

\(^{168}\) Id. at 210.

\(^{169}\) Id. (quoting Shaughnessy v. Mezei, 345 U.S. 206, 212 (1953); Wong Wing v. United States, 163 U.S. 228, 238 (1896); Yick Wo v. Hopkins,118 U.S. 356, 369 (1886)).

\(^{170}\) *Plyler*, 457 U.S. at 213.
While the Court noted that receiving a public education is not a constitutional "right," it also made clear that education is not a "benefit", because education is an integral part of society that impacts the democratic system.\textsuperscript{171} The Court held that:

In light of the discretionary federal power to grant relief from deportation, a State cannot realistically determine that any particular undocumented child will in fact be deported until after deportation proceedings have been completed. It would of course be most difficult for the State to justify a denial of education to a child enjoying an inchoate federal permission to remain.\textsuperscript{172}

In conclusion, the court held that the states did not show that it had a substantial interest in denying education.\textsuperscript{173}

A similar question was presented to the Fifth Circuit in \textit{Texas v. United States} regarding DAPA.\textsuperscript{174} Although the central issue revolved around state issued driver's licenses, the general issue was the benefits that the federal government gave to undocumented individuals with state funded resources.\textsuperscript{175} The Court held that Texas' financial burden can be "fairly traceable to DAPA."\textsuperscript{176} Thus, the Court concluded that the States had a claim against DAPA and thus affirmed the preliminary injunction.\textsuperscript{177} However, even if DAPA is analogous to DACA, the Court did not establish that DACA is also unconstitutional.\textsuperscript{178} It also defies logic to allow DACA beneficiaries to stay in the country, work, and pay taxes but deny them the same benefits other tax payers enjoy. Thus, even this question about social security and benefits remains open to interpretation.

\textsuperscript{171} \textit{Id.} at 221.
\textsuperscript{172} \textit{Id.} at 226.
\textsuperscript{173} \textit{Id.} at 230.
\textsuperscript{174} \textit{Texas v. United States}, 809 F.3d 134, 134 (5th Cir. 2015), \textit{as revised} (Nov. 25, 2015).
\textsuperscript{175} \textit{Id}.
\textsuperscript{176} \textit{Id.} at 156.
\textsuperscript{177} \textit{Id.} at 188.
\textsuperscript{178} \textit{Id.} at 174.
C. DACA's Rescission

After looking at the various components of DACA and weighing each part's constitutionality, a question that remains is, what, if anything, can be done if DACA were constitutional and President Trump rescinded it based on inaccuracies? Since DACA was an executive order, this Administration could argue that President Obama's enforcement policies should not bind his successor and should be free from judicial review.\textsuperscript{179} However, President Trump will likely continue to be challenged for his decisions.

There are some possible enforcement mechanisms against President Trump's decision.\textsuperscript{180} First, there are constitutional safeguards should someone allege and succeed in claiming that President Trump's revocation of DACA was discriminatory.\textsuperscript{181} However, based on President Trump's campaign rhetoric, this claim is unlikely to succeed.\textsuperscript{182} Second, individuals can argue "detrimental reliance" on DACA that should not be taken away absent review to determine its arbitrariness.\textsuperscript{183} DACA recipients could argue that they have paid for education, attained careers, and paid taxes in reliance of DACA.\textsuperscript{184} This could lead to the argument that the government was unjustly enriched by DACA.\textsuperscript{185} On the other hand, this claim is also unlikely to succeed because DACA was not intended to give enforceable rights but rather last so long as the President's policies did not change, which they now have under President Trump.\textsuperscript{186} Third, a court may review based on a "legal decision" rather than a question of "agency priority," which courts cannot review.\textsuperscript{187} The Court may choose to rule on it as a legal decision because the Court

\textsuperscript{179} Krent, \textit{supra} note 85.

\textsuperscript{180} \textit{Id.}

\textsuperscript{181} \textit{Id.}

\textsuperscript{182} \textit{Id.}

\textsuperscript{183} \textit{Id.}

\textsuperscript{184} \textit{Id.}

\textsuperscript{185} \textit{Id.}

\textsuperscript{186} \textit{Id.}

\textsuperscript{187} \textit{Id.}
has yet to rule on DACA’s revocation. Overall, if DACA is considered constitutional, Trump’s reversal may still be valid unless courts look at the detrimental reliance or assert judicial review, both of these are possible.

Furthermore, the United States Court of Appeals for the Second Circuit denied the Department of Homeland Security’s writ of mandamus and lifted a stay of the district court’s discovery order for evidence missing from the record regarding DACA’s rescission. The plaintiffs identified evidence missing from the record. The plaintiffs noted that the memorandum terminating DACA stated that USCIS was unable to find specific DACA denials based on discretion even though the applicant satisfied the requirements. Thus, the plaintiffs argued that the evidence used by then-Acting Secretary Duke was not in the Court record.

The Court reasoned that:

> It is difficult to imagine that a decision as important as whether to repeal DACA would be made based upon a factual record of little more than 56 pages, even accepting that litigation risk was the reason for repeal. Accordingly, ‘there is a strong suggestion that the record before the [District Court] was not complete,’ entitling the plaintiffs to discovery regarding the completeness of the record.

Thus, the government will have to complete the factual record behind the DACA rescission. Whether or not the evidence will prove anything significant or make a difference is unknown. However, more information will at least help give more insight about DACA and why it was rescinded.

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188 Id.
189 Id.
191 Id.
192 Id. at *12.
193 Id.
194 Id. at *12.
Even if the above methods for review of DACA’s revocation fail to be introduced or succeed, individuals will likely continue to raise claims against the government for their DACA revocation. For example, the plaintiff in Inland v. Duke, a 23-year old named Jesus Alonso Arreola Robles, lost his deferred action status and work authorization. The Plaintiff had lived in the United States since he was one, received DACA protections three times (2012, 2014, and 2016), worked two to three jobs at once, supported his family, and did not have any criminal convictions. The Plaintiff’s DACA status was to expire in August 2018, but it was revoked early in March 2017. The alleged reasoning behind his revocation was that he was driving someone who U.S. Customs and Border Patrol (CBP) agents had arrested near San Diego, California.

As a result, they arrested the Plaintiff for “suspicion of aiding in the smuggling of undocumented immigrants” but did not charge him with a crime. Nevertheless, they issued the Plaintiff a Notice to Appear (NTA), which commenced the removal action. The immigration judge released him following the hearing. Thereafter, USCIS notified the Plaintiff that his DACA status and EAD were automatically terminated. The Plaintiff sued, claiming that notice of his DACA termination was improper as it was not given with sufficient time and he was not given an opportunity to respond or appeal the decision. Furthermore, the Plaintiff claimed that he lost his job due to his DACA and EAD revocations, which resulted in additional hardship.

The Court held for the Plaintiff by granting his motion for a preliminary injunction. The Court reasoned that the DACA

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196 Id. at *3–4.
197 Id. at *3–5.
198 Id. at *4.
199 Id. at *4–5.
200 Id.
201 Id.
202 Id.
203 Id.
204 Id. at *6.
205 Id. at *32.
revocation had to be in accordance with the Napolitano Memo and the Standard Operating Procedures.\textsuperscript{206} Moreover, the Court held that the Ninth Circuit has held that APA jurisdiction exists where “discretion has been legally circumscribed by various memoranda.”\textsuperscript{207} Thus, the court was able to review USCIS’ decision because there are rules in place to review agency action.\textsuperscript{208} The court held that agency rules must be logical, and that deportation decisions that are unrelated to an individual’s suitability to be in the U.S. are “arbitrary and capricious.”\textsuperscript{209} Moreover, an issuance of an NTA is insufficient to terminate an individual’s DACA and EAD per the APA guidelines.\textsuperscript{210} The Ninth Circuit Court of Appeals has held in the past that losing out on the chance to pursue a profession amounts to “irreparable harm,” and the Court in this case found the Plaintiff’s argument persuasive.\textsuperscript{211} In conclusion, the Court held that “the harms that would be experienced by Plaintiff and his family . . . outweigh any potential injury to Defendants. In addition, the public has a strong interest in ensuring that the nation’s immigration laws are robustly—and fairly—enforced. These factors therefore weigh in Plaintiff’s favor.”\textsuperscript{212}

Most recently, on January 9, 2018, Judge Alsup from the United States District Court for the Northern District of California issued a preliminary injunction blocking DACA’s rescission pending a final judgment that was brought forth by numerous plaintiffs.\textsuperscript{213} Judge

\textsuperscript{206} Id. at *7–8 (quoting Alcaraz v. Immigration & Naturalization Serv., 384 F.3d 1150, 1161 (9th Cir. 2004)).

\textsuperscript{207} Id.

\textsuperscript{208} Id. at *7 (quoting Mendez-Gutierrez v. Ashcroft, 340 F.3d 865, 868 (9th Cir. 2003)).

\textsuperscript{209} Id. at *16 (quoting Judulang v. Holder, 565 U.S. 42, 55 (2011)).

\textsuperscript{210} Id. at *16–17.

\textsuperscript{211} Id. at *27–28 (quoting Enyart v. Nat’l Conf. of Bar Exam’rs, Inc., 630 F.3d 1153, 1165 (9th Cir. 2011)).

\textsuperscript{212} Id. at *31–32.

\textsuperscript{213} Regents of the Univ. of Cal. v. Dep’t of Homeland Sec., No. C 17-05211 WHA, 2018 U.S. Dist. LEXIS 4036, at *1 (N.D. Cal. Jan. 9, 2018). The plaintiffs in this case filed five similar lawsuits. “The Regents of the University of California, on its own behalf and on behalf of its students, and Janet Napolitano, in her official capacity as President of the University” brought the first. California, Maine, Maryland, and Minnesota brought the second. The “City of San Jose, on its own behalf and on behalf of its employees who are DACA recipients” filed the third.
Alsup ordered that DHS allow DACA beneficiaries to renew their status, while ensuring fair discretion on a case-by-case basis. However, applications from new applicants were not ordered to be processed and the advance parole feature was discontinued. Judge Alsup held that the plaintiffs established the four elements required for a preliminary injunction: “(1) likelihood of success on the merits; (2) irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in their favor; and (4) that the injunction is in the public interest.”

Regarding the first element, likelihood of success on the merits, Judge Alsup held that the plaintiffs showed likelihood in succeeding:

[O]n their claim that the rescission was arbitrary, capricious, an abuse of discretion, or not otherwise in accordance with law. Specifically, plaintiffs are likely to succeed on their claims that: (1) the agency’s decision to rescind DACA was based on a flawed legal premise; and (2) government counsel’s supposed “litigation risk” rationale is a post hoc rationalization and would be, in any event, arbitrary and capricious.

Regarding the second element, irreparable harm, Judge Alsup held that plaintiffs could show harm in rescinding DACA. First, individual DACA beneficiaries will lose their lawful presence in the country, be forced to give up their jobs, and face possible deportations. Moreover, entity plaintiffs will lose important

“[I]ndividual DACA recipients Dulce Garcia, Miriam Gonzalez Avila, Saul Jimenez Suarez, Viridiana Chabolla Mendoza, Norma Ramirez, and Jinray Latthivongskorn” initiated the fourth lawsuit. The “County of Santa Clara and the Service Employees International Union Local 521” brought the fifth lawsuit. Id. at *35–37.

214 Id. at *91.

215 Id.

216 Id. at *60 (quoting Winter v. Natural Resources Defense Council Inc., 555 U.S. 7, 20 (2008)).

217 Id. at *61.

218 Id.

219 Id.
students and employees who they relied on because of their DACA status.  

As to the last two factors, Judge Alsup held that hundreds of thousands of people will be affected which is a significant public interest. Moreover, it is odd that President Trump, who is the executive, seemed in favor of the very act that the agency was rescinding as proven by a September 2017 tweet by the President stating “[d]oes anybody really want to throw out good, educated and accomplished young people who have jobs, some serving in the military? Really!”  

Moreover, President Trump encouraged Congress, tweeting: “Congress now has 6 months to legalize DACA (something the Obama Administration was unable to do). If they can’t, I will revisit this issue!” These statements, along with President Obama’s reasoning for implementing DACA in the first place, prove how significant DACA is and how detrimental it would be to lose it before the case is heard on its merits.  

Moreover, on a larger scale, the whole country will face difficulties. Employers could lose valuable employees. As a result, those employees who are losing their jobs will not only lose the ability to contribute to the country as taxpayers, but may not be able to support their own families. Moreover, those individuals and their families will lose healthcare benefits. The public will feel the burden of these consequences. Thus, the public interest outweighs any hardship DHS could face.

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220 Id. at *87. Entity plaintiffs include universities, states, and cities.
221 Id. at *89.
222 Id.
223 Id.
224 Id.
225 Id. at *90.
226 Id.
227 Id.
228 Id.
229 Id.
230 Id.
On February 26, 2018, the Supreme Court declined to take Judge Alsup’s decision under review. This was considered a hindrance for President Trump because the injunction will stay in place for now and DACA will not end. The Supreme Court did not discuss the merits, but instead said that the case should take its course through the appellate process. The next court that will hear the case is the U.S. Court of Appeals for the Ninth Circuit, a fairly liberal court. However, until a final decision is made, many uncertainties remain with the program.

Individuals like Mr. Robles and the current litigation plaintiffs who are losing their DACA status or face uncertainties as to their status will suffer serious setbacks. Although DACA did not give lawful status, it did give lawful presence. Consequences of DACA’s rescission include economic and employment repercussions and identification concerns. DACA recipients, who were eligible for better paying jobs with the employment cards are likely to lose their jobs. Furthermore, these individuals “came out of the

231 Domenico Montanaro, Supreme Court Declines To Take DACA Case, Leaving It In Place For Now, NAT’L PUB. RADIO (Feb. 26, 2018), https://www.npr.org/2018/02/26/588813001/supreme-court-declines-to-take-up-key-daca-case-for-now.
232 Id.
233 Id.
234 Id.
235 Id.

238 Id. See also Giovanni Peri, The Economic Cost of Repealing DACA, ECONOFACT (Sept. 11, 2017), http://econofact.org/the-economic-cost-of-repealing-daca (“DACA allowed these young individuals to find jobs that offer better pay for their skills and encouraged them to achieve more schooling, as they could benefit from such investment by accessing the legal labor market.” Moreover, “[t]he idea that ‘downgrading’ the working options of DACA recipients, by removing their legal status or, even worse, by deporting them, will create skilled jobs that unemployed Americans can and will take, seems particularly farfetched now”).
shadows” to apply for DACA and now face losing the right to be in the country.\textsuperscript{239}

One of the scariest and most realistic consequences of DACA’s rescission is the rise in deportations.\textsuperscript{240} The next section will discuss the deportation process generally and constitutional protections for those facing removal.

IV. DEPORTATIONS

DACA recipients and many other undocumented immigrants fear being deported under the Trump Administration.\textsuperscript{241} So what legal rights do individuals in this situation have? Deportations are civil matters, unless they are a consequence of a criminal action, but the actual removal process is civil.\textsuperscript{242} Regardless, there are some constitutional protections afforded to people facing removals.\textsuperscript{243} While the government enjoys a lot of discretion in removing undocumented individuals, it is important to know that there still are some limited rights and protections afforded to those individuals, including Due Process rights.\textsuperscript{244}

\textsuperscript{239} Kuchins, supra note 48, at 714.
\textsuperscript{241} Kate Sweeney, For Dreamers, Fear of Deportation is Scary – But Waiting is Even Worse, Wash. Post, Apr. 27, 2018, https://www.washingtonpost.com/news/posteverything/wp/2018/04/27/for-dreamers-fear-of-deportation-is-scary-but-waiting-is-even-worse/?utm_term=.9357817f6b50. Apart from worrying about being deported, the uncertainty may be even more stressful for some. Id.
\textsuperscript{243} Due Process in Immigration Proceedings, United States Court of Appeals for the Ninth Circuit, at E-1, https://cdn.ca9.uscourts.gov/datastore/uploads/immigration/immig_west/E.pdf (citing Salgado-Diaz v. Gonzales, 395 F.3d 1158, 1162 (9th Cir. 2005)) (last visited Apr. 7, 2019); Gonzaga-Ortega v. Holder, 736 F.3d 795, 804 (9th Cir. 2013); Vilchez v. Holder, 682 F.3d 1195, 1199 (9th Cir. 2012); United States v. Reyes-Bonilla, 671 F.3d 1036, 1045 (9th Cir. 2012); Pangilinan v. Holder, 568 F.3d 708, 709 (9th Cir. 2009)).
\textsuperscript{244} Id.
There have been many news articles and stories about extreme cases of removals. One example reported in April 2017 involved Juan Manuel Montes-Bojorquez, a 23-year-old DACA recipient who was brought to the United States as a child.\(^{245}\) He is thought to be the first person deported with DACA status.\(^{246}\) U.S. Customs and Border Patrol officer approached Montes-Bojorquez when he did not have his DACA identification.\(^{247}\) Thereafter, he was held in custody, interrogated, and asked to execute documents.\(^{248}\) Within three hours, he was left in Mexico.\(^{249}\) Montes-Bojorquez has filed a lawsuit against the government with help from the National Immigration Law Center.\(^{250}\) His attorney, Nora A. Preciado said that Montes-Bojorquez “was funneled across the border without so much as a piece of paper to explain why or how . . . .”\(^{251}\)

Another extreme example of the government cracking down on undocumented immigrants involves Oscar and Irma Sanchez, parents to two-month-old Isaac Enrique Sanchez.\(^{252}\) The baby had a serious condition that could only be cured with surgery.\(^{253}\) However, the parents would need to travel to another hospital to save their son, which required passing a U.S. Customs and Border Patrol checkpoint.\(^{254}\)

While the couple thought about their situation, a border patrol officer arrived at the hospital for them.\(^{255}\) The couple agreed that the


\(^{246}\) Id.

\(^{247}\) Id.

\(^{248}\) Id.

\(^{249}\) Id.

\(^{250}\) Id.

\(^{251}\) Id.


\(^{253}\) Id.

\(^{254}\) Id.

\(^{255}\) Id. It is suspected that a nurse at the hospital alerted the authorities.
officer would escort them to the other hospital for their baby to have the operation but that once they got to the hospital, they would be placed into custody by immigration officials.\textsuperscript{256} At the hospital, the couple, who had no criminal history, was never left alone because a U.S. Customs and Border Patrol Officer constantly followed them.\textsuperscript{257} Furthermore, both parents were individually taken to get booked.\textsuperscript{258} This case raised questions about why the government treated the Sanchez family like hard criminals even though they did not pose a safety risk.\textsuperscript{259} This case also raised questions about tracking people in sensitive areas such as hospitals, places of worship, and schools.\textsuperscript{260}

There have been many other situations similar to the Montes-Bojorquez and Sanchez cases. Some may question how the

\begin{enumerate}
\item Id.
\item Id.
\item Id.
\item Id.
\item Id. According to U.S. Immigration and Customs Enforcement:

locations treated as sensitive locations under ICE policy would include, but are not be limited to: Schools, such as known and licensed daycares, pre-schools and other early learning programs; primary schools; secondary schools; post-secondary schools up to and including colleges and universities; as well as scholastic or education-related activities or events, and school bus stops that are marked and/or known to the officer, during periods when school children are present at the stop; Medical treatment and health care facilities, such as hospitals, doctors’ offices, accredited health clinics, and emergent or urgent care facilities; Places of worship, such as churches, synagogues, mosques, and temples; Religious or civil ceremonies or observances, such as funerals and weddings; and [d]uring a public demonstration, such as a march, rally, or parade.

On the other hand, courthouses are not treated as sensitive locations. Although “enforcement actions are not to occur at or be focused on sensitive locations” there are exceptions when “exigent circumstances exist; other law enforcement actions have led officers to a sensitive location, or prior approval is obtained from a designated supervisory official.”\textit{FAQ on Sensitive Locations and Courthouse Arrests}, U.S. IMMIGR. & CUSTOM ENFORCEMENT, https://www.ice.gov/ero/enforcement/sensitive-loc (last visited Apr. 6, 2018).
government can get away with these extreme acts of removal. The answer is that the government has a lot of leeway in deportation decisions. There are two major ways in which the government is able to deport people in large numbers without much opposition. Those methods include prosecutorial discretion and stipulated removal, which will be discussed in the following sections, as well as various rights afforded to people facing removal because of these methods.

A. Prosecutorial Discretion

Prosecutorial discretion has been defined as “the authority of an agency or officer to decide what charges to bring and how to pursue each case.”261 When an officer decides not to deport an individual, the officer has “favorably” utilized their discretion.262 Moreover, U.S. law has consistently utilized a priority system in deciding when to prosecute.263 The Supreme Court “has made it clear that an agency’s decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency’s absolute discretion.”264

When it comes to immigration, prosecutorial discretion can work for both removals and deferred action. The fact is that “[t]he federal government has broad and plenary powers over the subject of immigration and the status of non-citizens.”265 Under the Immigration and Nationality Act (INA), the Secretary of Homeland Security has the power of “administration and enforcement of all laws relating to immigration and naturalization.”266 Obviously, politics play a role, meaning that the Secretary can exercise

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262 Id.
263 Id.
264 Id. (citing Heckler v. Chaney, 470 U.S. 821, 831 (1985)).
266 Id. at *5 (citing 8 U.S.C. § 1103(a)(1)).
discretion to remove or defer removal based on how liberal or conservative the administration is.

The Department of Homeland Security has outlined that:

Department personnel have full authority to arrest or apprehend an alien whom an immigration officer has probable cause to believe is in violation of the immigration laws. They also have full authority to initiate removal proceedings against any alien who is subject to removal under any provision of the INA, and to refer appropriate cases for criminal prosecution. The Department shall prioritize aliens described in the Department’s Enforcement Priorities (Section A) for arrest and removal. This is not intended to remove the individual, case-by-case decisions of immigration officers.267

B. Stipulated Removals

Stipulated removal is a process in which individuals sign away their right to a hearing before an immigration judge and agree to formal removal from the United States.268 Although the process of stipulated removals seems voluntary, there has been some disapproval of it.269 One of the reasons behind the negativity is that individuals waive their right to their day in court even though they may be eligible to remain in the country had they seen the judge.270 Stipulated removals do not take into consideration anything that a judge would, “including the length of their presence here, their family ties to the U.S., their status as crime victims, or their fear of


269 Id.

270 Id.
being persecuted or tortured if they are returned to their home country.”

The government has deported more than 160,000 people in the past ten years through stipulated removals. Of these individuals deported through stipulated removal, 96% were not represented by lawyers. Stipulated removals have to be signed “knowingly, voluntarily, and intelligently.” However, there have been many cases of coercion. Individuals are told that they can get released from jail by signing the form. However, they could also be released on bond if they lacked criminal history. Moreover, individuals who are coerced into signing are held in detention centers far away from family. Many of these people do not speak English, and the majority of them pose no risk.

Stipulated removals have increased throughout the country. The process has been supported with inducements at all levels, from Immigration and Customs Enforcement (ICE) officers to immigration judges. ICE officers are often given quotas for stipulated removals, regardless of whether the process is being carried out

\footnote{id}{Id. at 2.}
\footnote{id}{Id. at 1.}
\footnote{id}{Id. Most immigrants who are deported through stipulated removals lack resources and, thus, do not have legal counsel. As such, they need the government to give them the legal information about stipulated removals. However, ICE officials are often wrong and deceptive when it comes to explaining the law. Id. at 2.}
\footnote{id}{Id. at 2.}
\footnote{id}{Id. Moreover, there is no indication that stipulated removals are forbidden, discouraged, or at least treated with more sensitivity when it comes to susceptible groups such as those with mental challenges and juveniles. Id. at 6–7.}
\footnote{id}{Id.}
\footnote{id}{Id.}
\footnote{id}{Jennifer Lee Koh, Jayashri Srikantiah, and Karen C. Tumlin, Deportation Without Due Process, NAT’L IMMIGR. LAW CTR., at 1–2, 6, 15 (Sept. 2011), https://www.nilc.org/wp-content/uploads/2016/02/Deportation-Without-Due-Process-2011-09.pdf. Around 80 percent of those removed through stipulated removals had been detained civilly for lacking proper immigration paperwork and not because of a crime. Id. at 7.}
\footnote{id}{Id.}
\footnote{id}{Id.}
\footnote{id}{Id. at 3.}
fairly. Furthermore, judges receive “case completion” credit for moving through their caseload. Although the process is expedited and thus, saves time and money, it comes with a cost of Due Process and rule of law violations.

There have been suggestions as to how to improve stipulated removals to ensure that people’s rights are not being overlooked. A judge could hold a short hearing to ensure that the stipulated removal is understood and being signed knowingly, voluntarily, and intelligently. Furthermore, there could be more lawyers and translators appointed to oversee stipulated removals. Moreover, there should be more education for both the individuals facing removal and the officers. Finally, there should be some limitations in stipulated removal procedures for individuals who are vulnerable and may be eligible to remain in the country.

C. Individual Rights

Individuals facing removal have limited rights to ensure that they are treated fairly under the laws of the United States. The Courts have held that although immigration proceedings do not require full constitutional protection, the proceedings must abide by the Fifth Amendment Due Process. Furthermore, immigations facing deportation have a right to a fair hearing and a chance to present evidence. Therefore, deporting an individual without a hearing may be a violation of their Due Process right.

Under 28 U.S.C. § 2241(c)(3) and 8 U.S.C. § 1252 individuals may have courts review immigration proceedings initiated by agency

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282 Id. at 5.
283 Id.
284 Id. at 1–2.
285 Id. at 18.
286 Id. (citing 8 C.F.R. § 1003.25(b)).
287 Id.
288 Id.
289 Id.
290 Due Process in Immigration Proceedings, supra note 243 at E-1.
291 Colmenar v. INS, 210 F.3d 967, 971 (9th Cir. 2000).
292 Due Process in Immigration Proceedings, supra note 243 at E-1.
actions. As a result, “[f]ederal district courts may grant a writ of habeas corpus if a petitioner is ‘in custody in violation of the Constitution or laws or treaties of the United States.”

Moreover, the Supreme Court has explained that “[a]t its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest.” However, “Congress began limiting habeas jurisdiction in immigration cases in 1996 with the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA).” In 2005, Congress passed the REAL ID Act which “expressly eliminated habeas review over all final orders of removal, but restored to the appellate courts jurisdiction over ‘constitutional claims or questions of law’ in all cases—criminal and non-criminal.”

Although Congress has attempted to limit the rights of undocumented individuals facing removals under IIRIRA and the REAL ID Act, judicial review has not been completely eliminated. There are laws in place such as §§ 1252(a)(5) and 1252(b)(9) which help make certain that immigrants get their “day in court.”

Besides the right to their day in court, undocumented individuals facing deportation orders are also protected from indefinite detentions. In reviewing detentions, “if removal is not reasonably foreseeable, the court should hold continued detention unreasonable . . .” There is a six-month period for the government to show the reasonableness of removal. That does not mean that after six months detainees will be released. However, the Court has held

294 Id.
297 Singh v. Gonzales, 499 F.3d 969, 977 (9th Cir. 2007).
298 Medina, 2017 U.S. Dist. LEXIS 114477, at *36–37 (quoting Singh v. Gonzales, 499 F.3d 969, 979 (9th Cir. 2007)).
299 Id.
301 Id. at 690.
302 Id. at 701.
303 Id.
that indefinite detentions pose a constitutional issue.\textsuperscript{304} The Fifth Amendment Due Process Clause stops the government from depriving individuals of their liberty, a significant part of that is freedom from imprisonment.\textsuperscript{305} Individuals in immigration court also have a right to counsel.\textsuperscript{306} However, the individual is generally responsible for obtaining and paying for counsel.\textsuperscript{307} Unlike criminal defendants, detained immigrants do not have the same Sixth Amendment appointment of counsel rights.\textsuperscript{308} While this is a huge obstacle for many; the right to counsel still exists.\textsuperscript{309}

V. Future Predictions

In rescinding DACA, President Trump gave Congress six months to act. President Trump explained that DACA would not end abruptly but rather the “[p]ermits will not begin to expire for another six months, and will remain active for up to 24 months. Thus, in effect, I am not going to just cut DACA off, but rather provide a window of opportunity for Congress to finally act.”\textsuperscript{310} Although the six months mark no longer applies after Judge Alsup’s decision, Congress should act as if it wants a legislative rule rather than a judicial one.\textsuperscript{311} It takes Congress sometimes years, let alone just a few months to act on anything. Thus, skeptics, cynics, and even

\textsuperscript{304} Id.
\textsuperscript{305} Id. at 690.
\textsuperscript{306} Ingrid Eagly, Access to Counsel in Immigration Court, AM. IMMIGR. COUNCIL (Sept. 28, 2016), https://www.americanimmigrationcouncil.org/research/access-counsel-immigration-court.
\textsuperscript{307} Id.
\textsuperscript{308} Id.
\textsuperscript{309} Id. Some of the obstacles include finding an attorney, especially once detained; paying for an attorney; and getting attorneys to remote detention centers. Statistically, only 37% of immigrants are represented by attorneys. Of those who are represented, their chances of success are much higher, especially since the government always has trained attorneys on its side. Id.
\textsuperscript{310} Trump, supra note 62.
realists who want to see Congress enact some sort of DACA implementation and immigration reform should be worried. Furthermore, President Trump’s goal for Congress to enact DACA through an official act does not come without strings.\textsuperscript{312} President Trump gave Congress a list of demands in exchange for immigration reform that would include a DACA-like policy.\textsuperscript{313}

One of President Trump’s demands to Congress is “to build a wall along the southern border—a centerpiece of his presidential campaign . . . .”\textsuperscript{314} Among the other demands, President Trump wants to see the asylum system fixed, reduced funding for sanctuary cities, more immigration judges, and an end to the lottery system.\textsuperscript{315} President Trump said that his demands “must be included as part of any legislation addressing’ DACA because without changes, ‘illegal immigration and chain migration, which severely and unfairly burden American workers and taxpayer, will continue without end.’”\textsuperscript{316} This list is viewed unfavorably among Democrats and even many Republicans.\textsuperscript{317} Thus, Congress will likely continue arguing over immigration, making the future of DACA unknown.

Moreover, President Trump held a meeting to negotiate a bipartisan immigration plan before a government shutdown on January 19, 2018.\textsuperscript{318} However, the measures laid out by some members of Congress were much more expansive and the negotiation reached an impasse.\textsuperscript{319}

The stress of the immigration talks worsened when President Trump allegedly said, “[w]hy are we having all these people from

\begin{footnotesize}
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\item \textsuperscript{313} \textit{Id.}
\item \textsuperscript{314} \textit{Id.}
\item \textsuperscript{315} \textit{Id.}
\item \textsuperscript{316} \textit{Id.}
\item \textsuperscript{317} \textit{Id.}
\item \textsuperscript{319} \textit{Id.}
\end{itemize}
\end{footnotesize}
shithole countries come here?'” This comment did not go well with lawmakers, the press, or world leaders. These events left even more uncertainties about the stability and future of any immigration plans.

DACA’s reinstatement by Judge Alsup is likely to be temporary, as it is only an injunctive relief. The best solution is not a court order, but legislation which will legally bind the country with some sort of reform. However, if Congress fails to act, it is likely that any other court order or court decision will come with many more administrative issues and appeals. The only way to see real change is through a final law, whether through Congress or the Supreme Court.

Although there are many unknowns regarding DACA and immigration policies in general, one thing is certain—Congress should act because too many people are affected, and it should consider all sides when doing so. However, the bottom-line should be the people. DACA affects real people, whether they are citizens or undocumented, and they deserve to have Congress act and speak on their behalf because that is what the members were elected to do.

VI. CONCLUSION

Imagine being targeted and living in constant fear. Imagine being stereotyped and misunderstood. Imagine being criminalized.

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321 James Griffiths, Shame on Trump! World reacts to Trump’s ‘shithole countries’ remarks, CNN, Jan. 12, 2018, https://www.cnn.com/2018/01/12/politics/trump-shithole-countries-reaction-intl/index.html. Some of the criticism includes: “UN human rights spokesman Rupert Colville [who] condemned Trump’s remarks as ‘shocking and shameful’ and going against the world’s ‘universal values...’ I'm sorry, but there's no other word one can use but racist . . . .’” The Haitian government said that it was “deeply shocked” and was against the “abhorrent and obnoxious remarks . . . .” Id. Former Mexican President Vicente Fox, asked “[w]ith what authority do you proclaim who's welcome in America and who's not. America's greatness is built on diversity, or have you forgotten your immigrant background, Donald?” Id.

Imagine being powerless. Imagine being foreign. Imagine being undocumented. This comment has examined some of the very real harsh realities that undocumented individuals face.

The United States is a country with a rich history of immigration. In fact, immigrants who wanted a better life founded the United States. The individuals arriving in the United States are seeking that same opportunity. However, people who are undocumented are being criminalized for lacking a piece a paper. Although coming to the United States without documentation is illegal, the majority of undocumented individuals do not pose a safety risk. For this reason, there have been numerous amnesty and government programs that allow individuals to remain in the country.

DACA has been one of the most controversial and prominent government programs in the present day. President Obama authorized an executive memorandum which allowed undocumented immigrants who arrived in the country as children to be given deferred removal status, work authorization, and social security cards. When President Trump rescinded DACA, he did so because of its alleged unconstitutionality. There is little guidance as to whether DACA is, in fact, unconstitutional. Regardless, the power to act will now either be legislative or judicial.

Unless, and until there is concrete action, DACA recipients and other undocumented immigrants are now facing harsher realities. One of the biggest consequences is an increase in deportation procedures. The government may remove individuals with prosecutorial discretion and stipulated removals. Although individuals facing removal have limited rights, they do have rights.

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324 See supra Section II.
325 See supra Section III.
326 Id.
327 Id.
328 See supra Section IV.
329 Id.
330 Id.
The government needs a reminder of these rights when officials choose to abuse their power at the expense of immigrants who face harsh and unfamiliar systems.

Understanding the immigration system, its history, and its many facets is crucial to understand the political and social scheme of the United States. Immigration policies, especially those regarding undocumented immigrants, impact millions. One cannot simply analyze the debate one-sidedly because there is so much more that actually goes into making a decision such as the one President Obama made in enacting DACA, the one President Trump made in rescinding DACA, what the DHS goes through in its removal procedures, and what Congress and the courts alike need to consider when making a decision regarding the fate of immigration policies.

Lately, DREAMers have created a social movement. Immigration reform is at the center of most political debates. Politicians have long pushed back in addressing immigration policies, especially policies that deal with young undocumented immigrants. However, the time to act is now; the people are waiting for their leaders. Many individual’s livelihood and their chance at pursuing the American Dream depend on it.