

Executive Summary

The Materialization of a Dream: Creating a Pathway to Permanent Residency for DACA Recipients

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Deferred Action for Childhood Arrivals (DACA) was introduced by the secretary of homeland security under the Obama administration as an executive branch memorandum on June 15, 2012. DACA enabled approximately 700,000 individuals facing deportation to remain in the U.S. and legally work. The program benefits applicants from around the world, with participants from over 150 countries. From 2017 until December 2020, DACA renewals were being adjudicated, though no new applications were being accepted due to actions taken by the Trump administration. In December 2020, the government restored the program through a court order. President Joe Biden has announced a plan to preserve and even expand the DACA program and to do much more. He has also announced that he will push for the Development, Relief, and Education for Alien Minors Act, known as the DREAM Act, which would give Legal Permanent Resident (LPR) status to all DACA recipients.

The circumstances around Dreamers present a compelling case for putting procedures in place that would enable their lawful residency in the U.S. With their history of being active and productive individuals—working, studying, and even protecting the U.S. through military service—as well as their promise of growth toward accomplishing so much more, overlooking an unlawful entry into the U.S. and enabling fulfillment of this dream would hardly be a form of forgiveness; it would be a rational solution to a unique predicament.

The research paper that accompanies this summary provides an overview of the DACA program, including a discussion of its impact and current procedures. It also examines proposed acts related to DACA and past actions granting relief from deportation. Similar incorporation of provisions into new laws on immigration reform would not be unprecedented, and lawmakers can glean several ideas of importance from these acts when defining the components of a future act enabling DACA recipients to lawfully apply for permanent residency and, eventually, citizenship.

The paper offers key points for a permanent residency strategy for DACA recipients. This includes:

Legal Mechanisms

Executive Order: Expand DACA and give LPR status to Dreamers through mechanisms such as:

- Parole in place (PIP): Rely on the National Defense Authorization Act (NDAA) for further justification of use; ensure strict compliance with the Administrative Procedures Act (APA) through detailed regulations, seeking public input and going through the regular rulemaking process; ensure a narrow, focused scope (covering at least those eligible for DACA); and rely on humanitarian and public benefit arguments.
- Temporary Protected Status (TPS): Make TPS available for use alongside DACA and PIP.

Executive Order: Set up a mechanism for LPR (with the duration of the application process not to exceed four years).

- Create a new immigrant category for those who meet the DACA criteria (for those not already qualifying under existing “green card” categories).

Simultaneous Congressional Action: Ensure measures implemented through executive orders become permanent by amending the Immigration and Nationality Act (INA) or creating a specific program.

Logistics and Impact on Applicants

Speed: Temporary status and LPR status pathways should both be as expeditious as possible.

- The DACA, PIP, and TPS applications should require minimal documentation;
- If feasible, allow for the automatic conferral of LPR status (though unlikely, highly unprecedented, and challenging without mechanisms to reach the undocumented);
 - Automatic conferral could be implemented for those already identified through the DACA, PIP, and TPS programs, through the ability to request it simultaneously with the program applications or through the use of an online registration system.
 - Green cards could be sent directly to program participants.
- Alternatively, implement an expedited and streamlined LPR application and adjudication process;
 - Provide a notification to all DACA, PIP, and TPS program registrants (e.g., through approval notices that become effective upon action by recipients such as providing a signature or attending an interview).
 - For DACA, PIP, and TPS program participants who must newly apply, allow for expedited U.S. Citizenship and Immigration Services (USCIS) adjudication timelines (e.g., through premium processing).
 - Provide an option for online filing of applications, delegate specific USCIS service centers and increase hiring, and provide rapid issuance of receipt notices with transparency, consistency, and public information describing procedures.

Minimize Level of Subjectivity: Issue guidance to USCIS on adjudication to minimize denials.

Expansion of Eligibility—Qualification Criteria and Processing for Dreamers and Dependents:

- Create a new immigrant category mirroring DACA requirements;
 - Those enrolled or previously enrolled in DACA, PIP, or TPS could automatically be granted LPR status.
 - Other Dreamers could first apply for DACA, PIP, or TPS and then receive LPR status, or apply directly for LPR status on the basis of the same criteria.
- Expand to include those without education but who meet certain work experience requirements;
- Increase the maximum entry age to 18;
- Include those admitted to technical school, or with community connections;
- Do not include history, government, and English testing requirements or national security or public safety threat exclusions proposed in other acts;
- If feasible, enable Dreamers to include parents on applications (which may be controversial);
- Allow for children who are U.S. citizens and have parents who are Dreamers to sponsor their parents prior to turning 21.

Work and Travel: Create work authorization options that are more immediate than existing Employment Authorization Document (EAD) options.

- Allow for the request of work and travel authorization with DACA, TPS, and PIP applications;
- Allow for automatic work authorization when a DACA, TPS, or PIP application is submitted.

Border: Provide clear policy and instructions to U.S. Customs and Border Protection (CBP) to avoid questioning or denial of admission at Ports of Entry (POE).

Confidentiality: Explicitly prohibit the use of biographic information or other data by U.S. Immigration and Customs Enforcement (ICE).

- Enable the use of a “safe address” to keep physical addresses confidential.

Costs: Waive fees altogether, or reduce them without requiring a formal fee waiver application.

Measures taken to enable Dreamers to apply for permanent residency should:

- Be expeditious in order to reduce the risk of deportation prior to the completion of adjustment of status;
- Enable Dreamers to overcome unlawful entry, overstay, and visa violations;
- Enable Dreamers to include spouses and children on adjustment of LPR applications;
- Allow for streamlined procedures for those already granted DACA;
- State and enforce that biographic data may not be used by ICE for immigration enforcement;
- Potentially allow conditional permanent residency status for those not yet meeting LPR status requirements (under a format requiring a full application process);
- Pause deportation for eligible Dreamers (potentially including applicants who meet all requirements except for enrollment in high school);
- Expand eligibility for those with no education but eligible work experience.