

## Resurrecting the Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) Program

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According to 2017 estimates, there are roughly 10.5 million undocumented immigrants residing in the U.S.—a decline from a peak of 12.2 million estimated during 2007.<sup>1</sup> Of this group, approximately 3.4 million individuals are parents of children who are U.S. citizens and permanent residents.<sup>2</sup> This makes evident that many of these unauthorized residents are long-haulers, likely to be present in the U.S. for years to come, regardless of their unauthorized status. Indeed, the group of individuals, on average, has lived in the U.S. for nearly 20 years, and has clearly planted strong roots in U.S. communities.<sup>3</sup> These immigrants have become de facto members of American society and their presence has long been proven to be vital to the overall economic and socioeconomic well-being of the U.S.<sup>4</sup>

The overwhelming majority of these 3.4 million individuals do not qualify for regularization of their legal status under existing programs, such as Deferred Action for Childhood Arrivals (DACA) or Temporary Protected Status (TPS). DACA and TPS provide protection from detention, deportation, and family separation under current U.S. immigration laws for certain qualifying individuals and provide their beneficiaries with the ability to stay in the country, study, and work—an opportunity unavailable to many unauthorized parents. Consequently, these 3.4 million individuals have a unique situation that calls for action—preferably one that can regularize

their status through a program, providing each parent with a pathway to stay with their families in the U.S. and become more fully integrated into U.S. society.

This idea is not new. The Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) program was introduced in 2014 by then-President Barack Obama. DAPA would have granted provisional relief from detention, deportation, and family separation and approved temporary work permits for any unlawfully present parent of a child who is a U.S. citizen or permanent resident.<sup>5</sup> DAPA was in fact conceived as a program very similar to DACA and TPS. Absent a full congressionally sanctioned immigration reform plan, dealing with the status of these 3.4 million unauthorized migrants through DAPA or a DAPA-like approach remains a feasible path to their regularization. As has been the case in the past, comprehensive immigration reform may face continued obstacles, causing reform efforts to stall. However, through piecemeal reform, in which lawmakers take a more targeted approach through separate stages or pieces of legislation as opposed to an all-inclusive, one-step plan, legislative action to address the undocumented community is more feasible. A DAPA or DAPA-like program could be an important component of a piecemeal approach to their status.



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In other research, a DAPA or DAPA-like program has been presented similarly as an “ID and Tax” approach—a pathway for unauthorized immigrants to receive identification documents, legally work in the U.S., contribute to the tax base, and stay without fear of deportation.<sup>6</sup>

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### CHALLENGES, FEASIBILITY, AND BENEFITS

Although challenges are to be expected when working toward a DAPA program, it remains a feasible solution. DAPA falls short of full legalization and, at the opposite end of the spectrum, is more than nonaction or full deportation. A trial run of the DAPA program would also help clarify the impact of such immigrants across the country and could pave the way for other, more permanent solutions. Similar programs, like DACA and TPS, have already shown positive outcomes.<sup>7</sup> When compared to those lacking lawful status in the U.S., DACA and TPS recipients substantially expanded their economic mobility, education, and overall contributions despite their lack of a pathway to citizenship.<sup>8</sup> DAPA is estimated to benefit significantly more individuals than TPS and four to five times the number affected by DACA.<sup>9</sup> With these estimates, the conclusion can be drawn that DAPA has a greater potential to improve the U.S. economy and impact immigrant families than similar government programs.

Even so, DAPA has been controversial from the beginning. It did not come to fruition in 2014 because multiple states filed lawsuits in the U.S. District Court for the Southern District of Texas, arguing that DAPA violated constitutional and federal statutes.<sup>10</sup> In June 2016, the court issued an injunction that halted the implementation of the DAPA program.<sup>11</sup> The following year, in 2017, the Trump administration rescinded the program altogether. Through policy action, the Biden administration has an opportunity to resurrect DAPA, ensure its constitutionality, and provide relief to this population.

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### OBJECTIVE OF THIS BRIEF

The rest of this brief explores the potential of the DAPA program to provide a politically feasible means of addressing the undocumented population of parents of children who are U.S. citizens and legal permanent residents. It also explains DAPA's potential to keep families together and labor sectors secured. This brief also presents public policy recommendations for a pathway to legal presence for the millions of DAPA-eligible parents and families throughout the U.S.

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### IN FAVOR OF DAPA

A DAPA program would benefit not only 3.4 million unauthorized migrants but millions of children. An estimated 5.1 million children are currently living with at least one undocumented parent in the U.S., according to the Migration Policy Institute's analysis of U.S. Census Bureau data.<sup>12</sup> Of those children, an estimated 4.1 million are U.S. citizens (79%) and another 2% are lawful permanent residents.<sup>13</sup> The majority of the undocumented parents (77%) have 10 years of continuous residency in the U.S., some marking over 20 years.<sup>14</sup> These long lengths of residency have been on the upward trend since 2006 among undocumented parents—partly a result of a decrease in unauthorized residents and a collapse in undocumented migration to the U.S.<sup>15</sup> In the past, migration tended to have a more cyclical pattern, with migrants crossing back and forth over the border seasonally for various reasons such as employment, education, to visit family, and to change living situations.<sup>16</sup> This meant residency lengths were short, with migrants crossing the border frequently. In recent years, as stringent U.S. border enforcement has increased and “zero-tolerance” policies have been implemented, fewer people have attempted to cross the border to avoid the risk of being separated from family and unable to return to the U.S.<sup>17</sup> As a result, not only have there been fewer migrants crossing the border, but migrants already in the U.S. have been indirectly provided with an incentive to lengthen their residency

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indefinitely, with many choosing to settle permanently and have children, raise their family, and make a living in the U.S.<sup>18</sup> These trends present a political opportunity to make the case for a DAPA program, since trends have shown more migrants currently within the U.S. are here for the long haul.

These undocumented parents are set apart from their peers for one reason—their children are U.S. citizens and permanent residents. Detention, mass deportation, and family separation would not only be costly, but would have a direct impact on family unity and well-being, including for their U.S. citizen-children. Children separated from a parent through forced deportation, for example, suffer poor brain development and socioemotional outcomes, low educational performance, and behavioral challenges.<sup>19</sup> Many end up living in foster care,<sup>20</sup> and they are “three to four times more likely to engage in delinquent behavior, and two and a half times more likely to suffer from mental-health issues,” with long-term consequences such as unemployment, substance abuse, and cyclical separation from their own children, according to the Arizona Law Review.<sup>21</sup>

Policymakers and political leaders should consider the harmful effects that can accompany de facto parental deportation; in many cases, a child has no other option but to leave with their deported father or mother.<sup>22</sup> After deportation from the U.S., many children holding U.S. citizenship experience social, emotional, economic, and educational challenges, with little to no access to social and health services, and are often marginalized in their deportation destination.<sup>23</sup> This reality is at odds with the protected rights and values of citizens in the U.S. A DAPA program would encourage U.S. officials’ discretion to deter deportation and avoid harmful detention for U.S. citizens and their families. The solution would allow families to remain whole and foster an environment for success for impacted children with U.S. citizenship.

In addition to their long-term residency, dedication to work, and efforts to provide for their families in the U.S., many undocumented parents contribute to the American workforce,<sup>24</sup> and studies reveal

their beneficial impact on the U.S. economy, especially during times of economic crisis.<sup>25</sup> A December 2020 study during the COVID-19 pandemic showed that one in 20 essential workers throughout the health care, food service, agriculture, and hospitality/housing industries is undocumented. Meanwhile, the majority of these undocumented workers (70%), many of whom are parents of children who are U.S. citizens, have resided in the U.S. for over a decade.<sup>26</sup> These essential jobs held by undocumented parents play a crucial role in the pandemic economic recovery. They help to secure the U.S.’ food supply, provide health care services, and restore the economy. It should be noted that under current conditions, these workers continue their labors, despite low wages and often poor protection from the virus.<sup>27</sup> To secure essential sectors and their workforces, immediate executive action should remove the threat of deportation for these workers and their employers.

After the announcement of DAPA in 2014, congressional testimony noted Council of Economic Advisors (CEA) figures showing that “blocking” or refusing to pass the DAPA program would result in a \$7.5 billion loss to the U.S. economy over 10 years.<sup>28</sup> If enacted, over 10 years the DAPA program has the potential to “increase the national gross domestic product by \$90 billion” while decreasing the federal deficit by anywhere from \$25 billion to \$60 billion.<sup>29</sup> The CEA also estimated DAPA would increase the average wage for native-born U.S. workers by .1%.<sup>30</sup> And once work permits are granted, DAPA-eligible individuals will be able to lawfully pay taxes, contribute to Social Security, and reach levels of economic mobility not possible without lawful status. The DAPA program could lead to an estimated \$21.2 billion increase in payroll taxes to local and state governments in just five years.<sup>31</sup> Enabling the full potential and contributions of the DAPA-eligible population could therefore boost the U.S. economy, and provide a path to resolving the status of millions of undocumented immigrants.

However, enforcement and immigration priorities in the last few years have instead favored restrictive policies such as “zero-tolerance” for immigration offenses

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and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, which amended the Immigration and Nationality Act by adding Section 287(g), authorizing the federal government to deputize selected state and local law enforcement officers to enforce and perform functions as immigration agents.<sup>32</sup> However, studies show various problems related to the Section 287(g) program, including underreporting of crimes, widespread racial profiling, being costly to localities, and insufficient oversight from U.S. Immigration and Customs Enforcement (ICE).<sup>33</sup>

Policies like this undermine the trust between local communities and law enforcement and fail to protect those who need protection. For example, two cases reported by the American Civil Liberties Union (ACLU) demonstrate how courthouse arrests supported by Section 287(g) are stopping immigrants from seeking justice against their abusers: that of one woman who sought court protection after experiencing abuse from her boyfriend, and another, a father seeking custody of his children from his ex-wife's violent boyfriend. Both individuals were apprehended in the courthouse by ICE officials while attending court proceedings.<sup>34</sup> These actions, enabled by Section 287(g), set a precedent where "prosecutors surveyed reported that crimes including domestic violence, sexual assault, and human trafficking were harder to investigate and prosecute because immigrant crime survivors feared immigration consequences if they came forward," explains a recent ACLU report.<sup>35</sup>

Undocumented individuals are less likely to seek medical attention or report medical symptoms, fearing such actions will result in immigration consequences.<sup>36</sup> Immigrants have increasingly forfeited health care to reduce their risk of deportation.<sup>37</sup> This situation could pose a significant public health threat. For example, throughout the COVID-19 pandemic, undocumented immigrants of racial minority groups have been 4.1 times more likely to be hospitalized and 2.8 times more likely to die upon contracting the virus when compared to their white, non-Hispanic counterparts.<sup>38</sup>

Regardless of high racial disparities in the spread of COVID-19, immigrants prioritize avoiding deportation and family separation above all else. With many undocumented immigrant parents avoiding ICE detection, even while compromising health, and lacking the luxury of being able to safely work from home, it remains difficult to track the disease and prevent its spread. This poses a threat to not only immigrant communities, but also to all members of U.S. society. The DAPA program can ease pressures by alleviating the fear of deportation for many individuals, especially racial minorities, by granting lawful presence. This would foster trust and cooperation between immigrants, law enforcement, and health officials as risk of negative consequences decreases.

## A LEGISLATIVE PATH FOR DAPA

The Biden administration has made immigration reform a priority. To honor this commitment, in early 2021 the administration first announced its plans to set forth comprehensive immigration reform (CIR) with President Biden's proposed legislative bill titled the U.S. Citizenship Act of 2021. This piece of legislation is an attempt at a wide-sweeping immigration reform that creates an earned pathway to citizenship for the estimated 11 million undocumented individuals in the U.S.<sup>39</sup> To preserve family unity, promote economic growth, and protect vulnerable populations, the bill allows undocumented individuals to apply for a five-year temporary legal status.<sup>40</sup> After five years, the individual can then apply for a three-year green card status, and at the end of this eight-year process, if they choose, can apply for citizenship.<sup>41</sup> The qualifications for citizenship eligibility are straightforward: the individual must have been present in the U.S. since January 1, 2021, pay their taxes, pass further background checks, and "show knowledge of English and U.S. civics."<sup>42</sup> If the individual is considered a Dreamer, TPS-holder, or immigrant farmworker, they may be eligible to immediately apply for green card status and have a quicker pathway

to citizenship.<sup>43</sup> Of course, undocumented parents of children who are U.S. citizens will have the opportunity to be eligible to obtain a pathway to citizenship if the U.S. Citizenship Act of 2021 is enacted. Interestingly, individuals who do not qualify for DACA or TPS and are not farmworkers would fundamentally be placed under a DAPA-like program for five years.

However, although the U.S. Citizenship Act of 2021 is less of an overhaul than the CIR of the Obama administration in 2014, the likelihood that legislators on both sides of the aisle will adopt this reform is unclear. With a 50–50 split in the Senate, the new administration may have to be open to a piecemeal reform. Two pieces to that reform would be DACA and TPS. More difficult but possible would be obtaining at least 60 votes through bipartisan cooperation to survive the filibuster in the Senate.

More recently, the House passed two legislative bills: the Farm Workforce Modernization Act and the DREAM Act of 2021. The Farm Workforce Modernization Act would provide legal status to undocumented essential workers in the U.S. agricultural workforce; the aim is to help stabilize the farm and food industry.<sup>44</sup> Through the DREAM Act, the Biden administration wants lawmakers to provide legal status to immigrants who were children upon their arrival to the U.S.<sup>45</sup> But again, the challenge will be to push both items through the Senate filibuster. Of course, if enacted, these current legislative efforts would cover some of the DAPA parent population—particularly in the agriculture industry, in which many parents are farmworkers. The Farm Workforce Modernization Act, the DREAM Act, and the U.S. Citizenship Act of 2021 are hopeful signs that children who are U.S. citizens and their families may benefit from a legislative solution that provides general relief to undocumented residents. However, it is critical for the administration and Congress to legislatively target vulnerable populations, such as parents of children who are U.S. citizens, to ensure effective legislation that secures their lawful presence in the U.S.

As part of a piecemeal approach, DAPA may stand a chance. Otherwise, if done only by executive action, it may face two main obstacles: invalidation by future presidents and legal challenges. While executive action provides an immediate means of addressing a pressing issue, a legislative path is optimal for ensuring a long-term solution for this population. Beneficiaries of DAPA, DACA, TPS, and Deferred Enforced Departure (DED), who are often essential workers, deserve a permanent solution; in addition, there is a broad range of support from the American public to grant some form of legal status to undocumented individuals residing in the United States.<sup>46</sup> But if a piecemeal approach is the way, it is critical to push for DAPA: it provides a temporary solution for individuals to remain in the U.S., balancing arguments for and against legalization of the long-term unauthorized resident population.

As part of a piecemeal reform or as a program implemented by executive action, DAPA or a DAPA-like program should include a minimum of three-year to five-year lawful presence with renewable status, deferred action of deportation, and eligibility to apply for a temporary work permit within the U.S.<sup>47</sup> Applicants would be required to provide proof of their child's legal status and pass a criminal background check.<sup>48</sup> In order for DAPA to be most effective, the policy should be sure to include an appropriate qualification date that provides all parents of children who are U.S. citizens the opportunity to be eligible to avoid child-parent separation.

DAPA would provide relief from deportation only to undocumented parents of children who are U.S. citizens or have lawful permanent status. Eligibility would not pertain to all 10.5 million undocumented residents. However, since the pool of eligible voters impacted by DAPA could potentially increase in key battleground states, politicians might support DAPA and other legislative reforms that would protect a segment of their voting constituents and preserve family unity.<sup>49</sup>

## CONCLUSION

Resurrection of DAPA or a DAPA-like program, by executive action and concurrent comprehensive legislative action or as part of a piecemeal reform, would provide the new administration and policymakers a pathway to address the unauthorized population of the U.S. Given the narrow path to accomplish CIR via the U.S. Citizenship Act of 2021, the Biden administration must keep in mind subgroups of the overall unauthorized population—those eligible for DACA, TPS, or DAPA, immigrant farmworkers, and other essential workers. However, leveraging DAPA's feasibility, President Biden has already shown a possible willingness to take a more targeted approach, as demonstrated by the Farm Workforce Modernization Act and the DREAM Act of 2021.<sup>50</sup> DAPA, with its target population, would end cycles of parent-child separation, secure essential workforces, and provide economic mobility to families. Failure to provide a solution will compromise the U.S. workforce and households and promote cycles of fear among the immigrant community. DAPA would provide a fair and humane policy solution by granting legal status in the U.S. for 3.4 million parents of children who are U.S. citizens or permanent residents. This inclusive, equitable solution can recognize a major segment of the essential members in our communities and help secure their place in the country they are helping to build and restore.

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