

How Promoting a Merit-based Immigration System can help alleviate the DACA Problem

Abstract

The Supreme Court began hearing arguments on November 12, 2019 as to whether the Department of Homeland Security's decision to wind down the Deferred Action for Childhood Arrivals policy is judicially reviewable, and whether DHS's decision to wind down the DACA policy is lawful. The likely wind down of DACA will affect more than 700,000 individuals who came to the U.S. as children without proper documentation, commonly referred to as "Dreamers," after the DREAM Act was proposed in 2017, but failed to pass. They are generally college-educated, high-skilled workers, members of the military, and heads of families that include U.S. citizen children. Despite overwhelming support (Recent polls indicate that 86% of the American public would like to see those who qualify for DACA granted residency), Congress has failed to provide these individuals with an opportunity to obtain permanent residency. This paper stresses the problems with the current immigration system, emphasizing the need to change the current employment-based visa system that has not been updated to keep up with technological advances in the growing international economy. Although many companies in the country publicly "stand with" those affected by the likely repeal of DACA, lobbying for a change in the employment-based system to allow for qualified individuals to obtain residency through work visas is a better approach than pushing for amnesty, which has failed in the past. Allowing DACA recipients to qualify for employment-based visas alleviates unemployment in the United States while also rewarding those individuals who obtained the skills and education to stay competitive in the current career market.

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“From this day forth, those wishing to immigrate to America shall be admitted on the basis of their skills and their close relationship to those already here... This is a simple test, and it is a fair test. Those who can contribute most to this country--to its growth, to its strength, to its spirit--will be the first that are admitted to this land.”- President Lyndon B. Johnson, remarks at the signing of the Immigration Act on October 3, 1965.¹

In 2012, the Obama administration announced the Deferred Action for Childhood Arrival (DACA) program that allowed qualifying nonresident immigrants who were brought to the United States as children and meet the appropriate criteria, to apply for two-year temporary reprieves from removal and furnishes them with lawful presence to remain in the country.² Lawful presence does not grant recipients of DACA the same benefits as obtaining permanent legal status would, but it allows recipients to obtain temporary work authorization, a driver’s license, the possibility of in-state tuition, and other benefits that are often taken for granted or overlooked by those with legal status to live and work in the country. ³

Since the program was implemented in 2012, over 800,000 of the over one million eligible recipients have obtained the benefits and protections provided by the program. Due to the sense of hope and security that the program created for these individuals, many have obtained well-paying jobs, re-enrolled in college or began to pursue post-secondary degrees, started

¹ <http://www.lbjlibrary.org/lyndon-baines-johnson/timeline/lbj-on-immigration>

² *Beyond Legality: The Legitimacy of Executive Action in Immigration Law*.
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2568947

³ Id.

families, launched businesses, and even started to accumulate debt due to the loss of fear that they may be deported at any time by Immigration and Customs Enforcement officials. ⁴

In 2017, the Trump administration announced that the program widely known as DACA would be repealed because in the view of the current administration it was an unconstitutional exercise of presidential power and doubts as to its legality justify its repeal. ⁵

Since the announcement of DACA's repeal, numerous lawsuits have been filed against the administration for purportedly terminating the program unlawfully in attempts to preserve current protections provided by DACA. In Regents of the Univ. v. United States Dep't of Homeland Sec., the U.S. District Court for the Northern District of California upheld the legality of a preliminary injunction issued by the U.S. District Court for the Northern District of California which allowed for previously registered DACA recipients to renew their deferred action and remain lawfully present in the country for an extended temporary period of time. ⁶ In Batalla Vidal, the U.S. district in New York, issued a second preliminary injunction requiring USCIS to accept DACA renewal applications, same in scope as the order issued in Regents. Shortly thereafter, the U.S. District Court for the District of Columbia issued a final judgment in NAACP v. Trump and Princeton v. Trump that (1) granted in part, summary judgment in favor of DACA recipients and organizations that sued to reverse the termination of the DACA program and (2) ordered that the memorandum terminating the program be vacated. ⁷

The Supreme Court consolidated Regents, Batalla Vidal, and NAACP. into Department of Homeland Security v. Regents of the University of California, Docket No. 18-587 (2019),

⁴ Geoffrey A. Hoffman, Legal Consequence of DACA Rescission, *Houston J. of Int'l Law-Sidebar* (Oct. 23, 2017). Available at SSRN: <https://ssrn.com/abstract=3057468>

⁵ Chemerinsky: *The stakes are enormous for immigrants in upcoming DACA cases*: <http://www.abajournal.com/news/article/chemerinsky-enormous-stakes-for-immigrants-in-upcoming-daca-cases>

⁶ Regents of the Univ. v. United States Dep't of Homeland Sec., No. C 17-05211 WHA, 2017 U.S. Dist. LEXIS 171805 (N.D. Cal. Oct. 17, 2017)

⁷ https://www.nilc.org/issues/daca/status-current-daca-litigation/#_ftnref16

and began hearing arguments on November 12, 2019 as to whether (1) the Department of Homeland Security’s decision to wind down the Deferred Action for Childhood Arrivals policy is judicially reviewable; and (2) whether DHS’s decision to wind down the DACA policy is lawful.⁸

The sense of security that DACA has provided for seven years has unquestionably improved the lives of the over 850,000 young adults who have benefitted from the program, and its likely repeal will have negative economic, social, psychological and educational effects on the them and the nation as a whole. ⁹

Benefits and Contributions

DACA has led to hundreds of thousands of what would otherwise be categorized as “illegal employees” to seek legal employment, obtain driver’s licenses, enroll in postgraduate programs, launch businesses, and start families in the United States. If an individual’s DACA grant has expired or is rescinded, then that person will be considered as having returned to the status they previously had, meaning individuals would lose both protection from deportation and their work authorization. ¹⁰

This protection has created new ways for DACA recipients to contribute to the national GDP and other welfare programs run by the government. Without the constant fear of deportation and empowered with the authority to legally obtain employment in the country, thousands have purchased new cars, homes, invested in businesses, and have begun spending and

⁸ <https://www.scotusblog.com/case-files/cases/department-of-homeland-security-v-regents-of-the-university-of-california/>

⁹ William Finnegan, *Is Ending DACA The Worst Decision Trump Has Made?* The New Yorker, Sept. 18, 2017; John D. Cohen, *Trump’s Decision to End DACA Creates a National Security Threat*, The Hill, Sept. 31, 2017

¹⁰ <https://www.americanprogress.org/issues/immigration/news/2018/08/15/454798/amid-court-challenges-heres-will-happen-daca-ends/>

investing in the country more freely. ¹¹ Nearly 6% of DACA recipients have launched businesses, many employing American citizens¹², additionally, approximately 55% of DACA recipients purchased a vehicle, and more than one in ten have purchased their first home.¹³

Many DACA recipients have jobs that play important roles in their communities such as teachers, nurses, EMTs, engineers, and many are enlisted in the military. Giovana Ortiz-Barrera, for example, who is the a Community Engagement Associate for UNICEF USA, was two years old when she was brought to United States and depends on the DACA protections and work authorization to continue her employment. ¹⁴ Alexis Burguete, who became a high school mathematics teacher, was brought to this country in his mother's arms at months of age. ¹⁵ John Gomez, a software engineer making a five-figure salary, was brought to this country from Colombia when he was only eight years old. ¹⁶

The IZA Institute of Labor Economics estimates that had the Dream Act passed, it would have likely increased the economic contribution of recipients that obtain legal status by an average of 9 to 21 thousand dollars for each worker who obtains legal status. ¹⁷ Nearly 91% of DACA recipients are currently employed across the United States, contributing billions of dollars to our communities, our economy, and in tax revenue.¹⁸ Recent polls indicate that 86% of the American public would like to see those who qualify for DACA granted residency. ¹⁹

¹¹ Ortega, Francesc and Edwards, Ryan D. and Hsin, Amy, The Economic Effects of Providing Legal Status to Dreamers. IZA Discussion Paper No. 11281. Available at SSRN: <https://ssrn.com/abstract=3111154>

¹² <https://www.americanprogress.org/issues/immigration/news/2017/08/28/437956/daca-recipients-economic-educational-gains-continue-grow/>

¹³ <https://www.cato.org/blog/economic-fiscal-impact-repealing-daca>

¹⁴ <https://www.forbes.com/sites/unicefusa/2019/11/07/we-are-americans-we-were-raised-here-a-daca-recipients-story/#336dffdfc54e>

¹⁵ Telephone Interview with Alexis Burguete, DACA recipient- Mathematic Teacher, Victor Valley Union High School District (Sept. 26, 2019).

¹⁶ <https://www.nbcnews.com/news/latino/he-s-successful-software-engineer-daca-end-nears-he-faces-n822936>

¹⁷ Id. at 4

¹⁸ Id. at 12

¹⁹ Washington Post - ABC News, September 2017. https://www.washingtonpost.com/page/2010-2019/WashingtonPost/2017/09/25/National-Politics/Polling/release_491.xml

When President Obama implemented DACA, he emphasized that federal agencies have a restricted amount of resources to deal with approximately eleven million undocumented immigrants currently in the country, and granting upstanding individuals “lawful presence” would empower the Department of Homeland Security to pursue and deport more “dangerous criminals” while protecting those who are contributing members of society.²⁰ By granting protection from deportation for these individuals, the administration freed up resources to deal with the current immigration court backlog of over 500,000 cases which in some states can amount to an average wait time of over 1008 days.²¹

Although a majority of the American public would like to see DACA recipients granted residency in order to use resources to deal with bigger threats, and even though President Trump sent a tweet urging Congress to act by asking if anybody really wanted to throw out “good, educated, and accomplished young people who have jobs, some serving in the military?”²², Congress has not come to an agreement on whether to grant legal status to these young adults who have been in the country for most of their lives through no fault of their own. Dozens of CEOs from companies like Microsoft, Amazon, Netflix, AT&T, Wells Fargo, Google, and Facebook have publicly urged the president to preserve the program. The U.S. Chamber of Commerce issued this statement: “DACA recipients are our friends, neighbors, and co-workers. The Chamber urges Congress to work quickly through the details of a legislative solution that treats these individuals with dignity and fairness.”²³

²⁰ DACA on the Docket, Minn. L. Rev. De Novo (2017).

²¹ https://trac.syr.edu/phptools/immigration/court_backlog/

²² <https://www.vox.com/policy-and-politics/2017/9/14/16306658/trump-daca-deal-tweets>

²³ *Beyond DACA – Defying Employer Sanctions Through Civil Disobedience.*
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3089461

Furthermore, various chief human resource officers of large companies urged members of Congress and the Trump administration to consider in future policymaking the vital role foreign-born workers play in the U.S. economy, noting the importance of foreign-born workers amidst a workforce crisis characterized by six million unfilled job openings.²⁴ For example, a group of politicians, business leaders, and other prominent public figures which include Apple CEO Tom Cook, Madeline Albright, Bill DeBlasio, and President of Harvard University Drew G. Faust, founded the “Dream Coalition”; an organization committed to use their power and voice to lobby in support of undocumented students.²⁵

In a blog post on November 8, 2019, Microsoft President Brad Smith highlighted the contributions of the more than five dozen DACA recipients currently working at Microsoft who helped create their products, secure their services, and manage their funds while also vowing to represent them in court and litigate on their behalf.²⁶ Smith emphasize the need to remember individual contributions like those of a young woman who was brought to the United States at age four, and is a service and security engineer who uses her skills and experience to protect customers across the country from cyber-attacks; or another Microsoft employee that grew up in Los Angeles, who was brought to the United States at four months old and is now a software engineer after completing his education in Computer Science from California Polytechnic University.²⁷

Despite the overwhelming support for the program to continue in the same manner as it has for the past seven years, it merely grants a temporary two-year lawful presence that does not

²⁴ Bill Ong Hing, *Beyond DACA – Defying Employer Sanctions Through Civil Disobedience*, UC Davis L. Rev. (forthcoming Dec. 2017).

²⁵ Madeleine R. Nakada, *Faust Joins ‘Dream Coalition’ to Protect Undocumented Students*, THE HARVARD CRIMSON, Oct. 19, 2017, <http://dev.thecrimson.com/article/2017/10/19/faust-joins-dream-coalition/>

²⁶ <https://blogs.microsoft.com/on-the-issues/2019/11/08/standing-up-for-every-dreamer/>

²⁷ Id.

lead to a permanent path to residency or citizenship, thus leaving thousands with a very uncertain future for those immigrant children who were brought to the United States as children, many of whom have no recollection of their place of birth. Realizing that DACA only provides a temporary solution to the problem and is more like a Band-Aid to the problem, many affected individuals continue to push for a more permanent resolution because of the turmoil that changing administrations causes to them, their family, and their employers.²⁸

The Current System

Equipped with the knowledge that DACA is a short-term reprieve from removal rather than a grant of legal status, many recipients have sought additional opportunities of obtaining legal status in order to stay and work in the country legally and permanently. The current immigration system, which was implemented in 1965 by the Johnson administration, offers various paths to both temporary and permanent residency based on skills, education, and experience designed to bring in “high-skilled” worker from abroad. ²⁹

In order to stay competitive in the global race to attract the best and brightest workers around the world, the United States implemented the Permanent Worker Visa program that allows for foreign nationals with specific skills and education to get preferential treatment and obtain green card status through employment.³⁰ Currently, approximately 140,000 immigrant visas are available each fiscal year for aliens (and their spouses and children) who seek to immigrate based on their job skills. People who possess the right combination of skills, education, and/or work experience and are otherwise eligible for one of the five “Permanent

²⁸ Id. at 14

²⁹ <https://research.newamericaneconomy.org/report/sizing-up-the-gap-in-our-supply-of-stem-workers/>

³⁰ Vignaswari Saminathan, *An Analysis of the United States Employment Immigration System in Attracting and Retaining Skilled Workers and the Effects of Its Dichotomous Objectives - Competitiveness versus Protectionism: A Case for Reform?*, 32 Pace L. Rev. 149 (2012).

Worker Visa Preferences”, may be able to live and work permanently in the United States. The “Permanent Worker Visa Preferences” careers range from extraordinary persons and professionals holding advanced degrees in the sciences, education, business, athletics, and multinational executives and managers to business investors who employ at least ten full-time workers.³¹ Furthermore, the USCIS offer a temporary nonimmigrant worker visas in order to fill positions that are considered “specialty occupations” such occupations related to department of defense research and development, temporary agricultural and non-agricultural workers, and registered nurses working in a health professional area as determined by the U.S. Department of labor. ³² The vast majority of job opportunities for employment-based visa applicants require high-level STEM (Science, Technology, Engineering, and Mathematics) knowledge and are often hard to fill.³³ The need to fill these jobs directly affects corporate profits and investments and being able to hire employees who are already present and were educated in the United States and who speak fluent English and understand the culture would greatly benefit the companies and the country.³⁴

The New American Economy Research Fund reported that between 2010 and 2015, the ratio of STEM jobs posted online to unemployed STEM workers grew dramatically. ³⁵

The National Association of Manufacturing and Deloitte reports that the United States will have to fill 3.5 million STEM jobs by 2025, with more than 2 million of them going unfilled because of the lack of highly skilled candidates in demand.³⁶

³¹ <https://www.uscis.gov/working-united-states/permanent-workers>

³² <https://www.uscis.gov/working-united-states/temporary-nonimmigrant-workers>

³³ *Skilled Labor Supply and Corporate Investment: Evidence from the H-1B Visa Program*
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2877241

³⁴ Jewel Tomasula, *Why we need to keep fighting for Dreamers, for STEM's sake*, SISTER STEM (Aug. 14, 2018), <https://sisterstem.org/2018/08/14/why-we-need-to-keep-fighting-for-dreamers-for-stems-sake/>.

³⁵ *Id.* at 29

³⁶ <https://www.emerson.com/en-us/news/corporate/2018-stem-survey>

The implementation of the DACA program was an important step for nearly a million young people who were raised and educated in the U.S. because thirty percent of them envision themselves in STEM careers.³⁷ Approximately 40,000 or 28.6% of all permanent employment-based immigrant visas granted each year go to the third preference otherwise known as category EB-3 described as skilled workers with at least two years of training or experience, professionals with college degrees, or “other” workers for unskilled labor that is not temporary or seasonal.³⁸ Skilled workers must be able to demonstrate at least 2 years of experience or training and must be performing work for which qualified workers are not available in the U.S. Professionals must be able to demonstrate that they possess a U.S. baccalaureate degree or foreign degree equivalent and must be performing work for which qualified workers are not available in the U.S.³⁹

Current Proposals for Employment-Based Immigration Changes

Although Congress has failed to come to an agreement on what to do about DACA recipients, which is what led to the passing of the program in the first place, there are several proposals by the Trump administration and by certain member of Congress to make changes to the current outdated employment based immigration policies. Throughout his presidency, President Trump has repeatedly emphasized the need for implementation of a Merit-based immigration system as opposed to family-based immigration, in attempts to stay competitive in the international economy.⁴⁰

President Trump’s proposal would assess immigrants for green cards through points assigned for age, skills, job and salary offer, education, and English-language proficiency.

Although the plan lacks details, it calls for raising the percentage of employment-related

³⁷ Id.

³⁸ <https://www.americanimmigrationcouncil.org/research/employment-based-visa-categories-united-states>

³⁹ Id. at 31

⁴⁰ <https://www.migrationpolicy.org/news/trump-administration-merit-based-immigration-points-systems>

immigrants from 12 percent annually to 57 percent and cutting back family-sponsored immigration from about 66 percent per year to approximately 30 percent.⁴¹ The point based system such as the one established in Canada, is appealing for its objective selection criteria and its flexibility that allows for adjustment to qualification criteria and distribution of points in response to continuously changing labor demands.⁴²

In order to qualify for an initial grant of DACA, applicants must, among other requirements: (1) have come to the United States before turning sixteen, (2) have lived in the United States continuously since June 15, 2007, (3) have graduated from high school or obtained a GED certificate or be an honorable discharged veteran of the Coast Guard or Armed Forces, or be “in school”(college, university, or career training) on the date of application, and (4) have not been convicted of a felony or significant misdemeanor. ⁴³ The requirements make it that individuals could not have been older than thirty when the DACA policy was enacted was enacted. Not only do these individuals meet the age requirements for a merit-based point system, but they also meet the proposed English-proficiency requirements.

If President Trump’s administration does a complete overhaul of the immigration system as it has proposed, they should include individuals who meet the DACA requirements to qualify for employment-based visas before companies who seek to fill positions are required to go outside of the country to seek employees. When it comes to the education requirement, a recent survey demonstrates that Forty-four percent of DACA holders have completed secondary education and twenty percent remain in secondary school.⁴⁴

⁴¹ <https://www.shrm.org/resourcesandtools/hr-topics/talent-acquisition/pages/trump-merit-based-points-immigration-systems-canada-australia.aspx>

⁴² *Id.* at 40

⁴³ <https://www.nilc.org/issues/daca/faqdeferredactionyouth/>

⁴⁴ <https://www.migrationpolicy.org/research/profile-current-daca-recipients-education-industry-and-occupation>

The problem with the current employment-based visa system is further outlined by activity of the House of Representatives and the Senate. In response to a large backlog of green card applications for employment based green cards due to the past failure of Congress to authorized an appropriate amount, on July 10, 2019, the House of Representatives passed the “Fairness for High-Skilled Immigrants Act” (H.R. 1044) which would eliminate the current per-country caps for EB immigrants and raise them from 7% to 15% for family-based immigrants.⁴⁵ Although the Fairness for High-Skilled Immigrants Act would alleviate some problems with the current system, it will leave an immigration system in place that to many like Senator Rand Paul, still seems broken.⁴⁶

In a further attempt to solve most of the major issues with the employment based immigration system, on July 11, 2019, Senator Rand Paul of Kentucky introduced the “BELIEVE Act” (S. 2091) which would abolish per-country quotas for employment-based immigration (similar to H.R. 1044), increase merit-based immigration to the U.S. by raise the number of persons who could immigrate through employment from 140,000 to 270,000 annually, and not count persons in shortage occupations (currently nurses) designated by the U.S.⁴⁷ In a time where unemployment is at an all-time low⁴⁸ and the job market is getting more competitive as technology along with other industries continue to advance, the current immigration system needs to be updated in order to keep up with the international markets.

What Comes Next?

⁴⁵ <https://www.shusterman.com/believe-act/>

⁴⁶ <https://www.cato.org/blog/fairness-high-skilled-immigrants-act-wait-times-green-card-grants>

⁴⁷ <https://www.cato.org/blog/sen-pauls-believe-act-raises-skilled-migration-without-tradeoffs>

⁴⁸ <https://www.whitehouse.gov/articles/u-s-unemployment-rate-falls-50-year-low/> (The unemployment rate is the lowest it has been since May 1969.)

The fact that a series of immigration bills are making their way through Congress with bipartisan support demonstrates that there is an urgent demand for employees to fill positions that require particularized skill, experience, and education. When it comes to immigration, the issue has always been a polarizing one for Congress to deal with and no resolution has been passed to alleviate the problems that the individuals who consider themselves “Americans” face every day. It is clear that when it comes to immigration policy, the “humanitarian” to the issue has not been an effective one. Congress has not passed any solution on what to do about these young adult individuals who work, go to school, and have made countless contributions to the United States culture and economy, while also suffering the unsure fate of what will happen to them next. The uncertainty that the inactivity of Congress has created has tolling effects on personal development and direct investment because many DACA recipients dread spending money in a time when there is so much uncertainty, fearing that if DACA is rescinded and nothing else is done, they will likely be put on a “deportable” list and be sent back to a place they do not even recognize by Immigrations and Customs Enforcement.

Several DACA recipients like Alexis Burguete, John Gomez, and Saba Nafees⁴⁹, already have the degrees necessary to fill particular available jobs and there are several more currently enrolled in math, science, computer science, and engineering university programs that may fill the void and thus limit the dependency on foreign workers entering the country on employment-based visas. These individuals also already possess most of the factors that the administration has proposed it will use in determining eligibility for merit-based immigration to the United States.

⁴⁹ https://research.newamericaneconomy.org/report/overcoming-the-odds-the-contributions-of-daca-eligible-immigrants-and-tps-holders-to-the-u-s-economy/#_ftn1 (DACA recipient who graduated from Texas Tech University with a bachelor’s degree in mathematics with the highest honors)

One possible solution for some DACA recipients to remain in the country and create a path to citizenship would be to push for Senator Rand Paul to include a provision in the BELIEVE Act that addresses these individuals and allows them to apply for and receive an employment-based green card. DACA recipients with the proper education and skills should be given priority to foreign workers because they will be easier to train and already possess the English-proficiency along with other social knowledge that allows them to integrate into the workplace more efficiently. an exception should be created for those DACA recipients who qualify for a merit based green card that waives the requirement to leave the country and apply from a foreign country or create a section specifically for people seeking a merit based green card who are already in the country, have good moral character, and possess the proper knowledge and skills for the available in-demand job. Including these individuals in the new plan would help alleviate the uncertainty for thousands of people while also leading them to contribute to the lowering of unemployment and more funding of the economy and welfare system of the country.

One statement that the Trump administration continuously encourages is “America First”, which means that when enacting policies, Congress should concentrate on benefiting Americans before anyone else. If the Trump administration wants to promote this message, doing a complete overhaul of the immigration system and making it a merit-based system is a good start. But in doing so, the administration should include individuals who are already in the country, who have studied in American schools and universities, who have roots set up in the country, and who have a sense of being “American” in the new plan. Rather than go outside of the country to seek employees, the administration should push employers and technology companies to hire workers that are already present in the country.

Apart from the overwhelming public support that the affected individuals have received, many technology companies like Microsoft, with billions of dollars and extraordinary lobbying power have continuously made promises and commitments to “stand with” those affected by the DACA recession and have even promised to pay legal fees for their employees.⁵⁰ In a time where Congress is so divided on an issue such as immigration, these companies should instead use their lobbying power to lobby for a more permanent solution to the problem that will allow them to hire employees without the constant fear that they will lose work authorization within two years.

The evidence that Congress is willing to unwaveringly pass H.R. 1044 and based on the support that the BELIEVE Act has generated, it would seem more tenable for lobbying groups to change their strategy from making the issue a “humanitarian” one and rather push for a change to the current employment-based system that gives priority to DACA recipients before a company is allowed to seek workers from outside countries. Proposing an amnesty type of immigration reform has not worked in the past, and the current congressional situation makes it unlikely that Congress will enact any major immigration reform in the near future. Even if DACA were kept in place, the two-year “Band-Aid”⁵¹ that it delivers does not do anything to create a more permanent solution, it merely grants another two years of uncertainty because with changing administrations, come changing immigration laws and changes to previously implemented policies as we saw with the Obama-Trump transition that prompted this paper. Affected DACA recipients want a more concrete and permanent solution to the problem in order for them to plan make the appropriate plans and investments to secure a stable future for them and their families.

For the last two presidential administrations nothing has been done on the issue and these individuals are tired of being used as political bargaining chips when no real solutions seem

⁵⁰ Id at 28

⁵¹ Id. at 28

obtainable. Many of these individuals choose to pursue majors in fields that they knew would guarantee them a job because of the hope that filling this void in the employment sector would help them obtain residency.⁵² Despite the overwhelming national support to grant DACA recipients legal residency, it is highly unlikely that now more than ever, the Senate will do act to move on any policy that grants these individuals residency because of the bipartisan divide and failure of previous negotiations that all ended in deadlock. ⁵³

If the United States wants to make itself a leader in technology and education while also promoting a merit based system of immigration the country should start by allowing these recipients, at least those who qualify to fill the jobs that are currently available or that they currently occupy, to stay in the country on a permanent basis by granting them work authorization that last for more than an apprehensive two years. The EB-2 or EB-3 or HB Visas are the visas that of these individuals would likely qualify for with their skills and educational backgrounds. If the BELIEVE Act passes, companies and politicians should push to include qualified DACA recipients in these Visa categories in order for them to have a permanent authorization to live and work in the country.

Conclusion

With millions of undocumented immigrants currently living in the country, resources should be limited to dealing with individuals who pose a threat to the safety and security of the nation and its citizens. The individuals who were granted DACA protections have been screened by USCIS and currently have jobs or attend school in the country. Many of these individuals have prepared themselves for STEM careers in attempts to make themselves more marketable as

⁵² Id. at 15 (when asked why he chose mathematics as a major in college, Alexis responded that in middle school, he learned that they gave visas to mathematics and physics professors when there were not enough of them in the country to fill the demand.)

⁵³ <https://www.politico.com/news/2019/11/14/senate-dreamers-daca-trump-supreme-court-070816>

employees, with the hopes that if they follow the rules and fill a job that is otherwise difficult to fill, they can stay in the country and not be deported. Although DACA created some hope for these individuals, the grant of protection from deportation does not lead to any permanent residency or legal status. Whether through HR 1040, the BELIEVE Act, or a complete Merit-based overhaul of current immigration policy as proposed by the Trump administration; technology companies, community organizations, politicians, and those who publicly supports DACA recipients should push to recompense the hardest working individuals who have committed themselves to obtain the proper skills, education, and to stay on the right side of the law with a permanent legal status that leads to citizenship, which to most would be the ultimate reward. Based on the current state of immigration policy in the country, and the number of previous failures to do anything concrete that grants a permanent residency, it is highly unlikely that Congress will do anything to reward these individuals who came to this country as young children, through no fault of their own, with a grant of permanent residency or citizenship. Instead, advocates should push towards an employment-based solution to the problem because these individuals have a pronounced impact on the economy, education, and the culture of the country.

Individuals like those aforementioned software engineers, teachers, and cyber-security experts should be rewarded for their hard work and dedication because they have dedicated themselves to careers that are in high demand and rather than give those jobs to someone abroad, employees who are raised and educated in the United States should be first in line for the very coveted American employment-based visa that leads to citizenship.

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Telephone Interview with Alexis Burguete, DACA recipient- Mathematic Teacher, Victor Valley Union High School District (Sept. 26, 2019).

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