

US Attorney General Jeff Sessions Is Wrong: There Is No Legal Justification for Ending DACA

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*Making good on a campaign pledge to his right-wing nativist base, **Donald Trump** has rescinded the Deferred Action for Childhood Arrivals (DACA) program. DACA was established by **President Barack Obama** to encourage young people without immigration papers, who were brought to the United States as children, to come out of the shadows and sign up for temporary protection against deportation. Trump's heartless decision will throw approximately 800,000 "Dreamers" currently enrolled in DACA into limbo.*

Did Trump Really Struggle With the Decision?

The White House claimed that Trump was conflicted about this difficult decision. He recently referred to Dreamers as "absolutely incredible kids," promising, "We're going to deal with DACA with heart ... because, you know, I love these kids." Trump told reporters,

"We love the Dreamers. We think the Dreamers are terrific."

But Trump "counts only winners and losers, never bothering with moral principles or democratic norms," wrote conservative blogger **Jennifer Rubin**.

"The debate, if there is one, is over whether to disappoint his rabid anti-immigrant base or to, as is his inclination, double down on a losing hand."

Too cowardly to announce the controversial verdict himself, Trump sent his racist, anti-immigrant attorney general **Jeff Sessions** to make the fateful announcement. Sessions called the DACA program an "open-ended circumvention of immigration law through unconstitutional authority by the executive branch," saying it circumvented the "legislative process."

A Political Decision, Not a Legal Issue

Sessions claimed that rescinding DACA was essential to forestall a looming legal challenge. Ten state attorneys general had threatened litigation if Trump didn't end DACA by September 5, 2017. But that was a "convenient pretext," **Wayne A. Cornelius** wrote in a Los Angeles Times op-ed. DACA has never been overturned in court. More than 100 law professors who specialize in immigration [signed a letter in August](#) stating that DACA was a "lawful exercise of prosecutorial discretion."

In a [Facebook post yesterday](#), Obama wrote:

“Let’s be clear: the action taken today isn’t required legally. It’s a political decision, and a moral question.”

Obama is correct. In 1999, **Justice Antonin Scalia** wrote for the majority in *Reno v. American-Arab Anti-Discrimination Committee*, an immigration case, that presidents have a long history of “engaging in a regular practice ... of exercising [deferred action] for humanitarian reasons or simply for its own convenience.”

California **Attorney General Xavier Becerra**, writing at HuffPost, concurs:

“Presidents of both parties ... have exercised discretion in their enforcement of immigration laws in a constitutional manner, safeguarding groups of individuals who are not priorities for deportation and thereby reserving enforcement resources for higher priorities.”

Becerra cited **Dwight Eisenhower**, **John Kennedy** and **Lyndon Johnson**, who permitted Cubans to remain in the United States before Congress enacted legislation to allow them to stay. **Ronald Reagan** allowed about 200,000 Nicaraguan immigrants to remain in the US even though Congress had not passed authorizing legislation. And **George H.W. Bush** permitted almost 200,000 Salvadorans fleeing civil war to stay in the US.

Sessions also claimed,

“We are a people of compassion and we are a people of law,” disingenuously adding, “The compassionate thing is to end the lawlessness, enforce our laws.”

Didn’t Trump encourage lawlessness when he recently pardoned the notorious racist, Arizona sheriff **Joe Arpaio**? For 18 months, Arpaio had brazenly defied a court order to stop racial profiling. Indeed, **Matthew Yglesias** from Vox wrote this tongue-in-cheek tweet:

“Pardons for racist sheriffs who defy court orders, deportations for folks who crossed the border illegally when they were six years old.”

Compassionate? The decision to end DACA “is inhumane, cruel and shameful,” stated **Vanita Gupta**, president and CEO of the Leadership Conference on Civil and Human Rights. Obama, former vice-president **Joe Biden**, House **Minority Leader Nancy Pelosi** (D-California) and **Sen. Bernie Sanders** (D-Vermont) also called Trump’s decision “cruel.”

“There is no legal, ethical or moral justification for ending DACA, which is a lawful program. President Trump manufactured this unnecessary crisis,” Gupta added.

DACA Makes Economic Sense

A report from the Center for American Progress found that 87 percent of DACA beneficiaries are using their work permits and 83 percent of those working also attend school.

In a July 21 letter to Trump signed by 20 state attorneys general, California’s Becerra wrote

that DACA “represents a success story” for the Dreamers enrolled in the program. “The consequences of rescinding DACA would be severe, not just for the hundreds of thousands of young people who rely on the program — and for their employers, schools, universities, and families — but for the country’s economy as a whole.”

Besides “lost tax revenues,” Becerra added, “American businesses would face billions in turnover costs, as employers would lose qualified workers whom they have trained and in whom they have invested.”

David Zalesne, president of Owen Steel, asked,

“Why would you take people out of the work force, who are part of the system and paying taxes?”

Moody’s Analytics chief economist **Mark Zandi** told the New York Times that five years after DACA is repealed, the US gross domestic product would be \$105 billion lower than if DACA were to remain in force.

More than 400 chief executives, many from the nation’s largest corporations, signed an open letter urging Trump and Congress to protect the Dreamers. They predicted, “Our economy would lose \$460.3 billion from the national GDP and \$24.6 billion in Social Security and Medicare tax contributions” if DACA is ended.

Sixty-four percent of Americans, including 41 percent of Republicans, support DACA, an NBC-Survey Monkey poll concluded.

Using Their Personal Data Against Them

After filling out the requisite paperwork and clearing a background check, DACA enrollees were granted renewable two-year periods of relief from deportation and issued work authorization.

People who applied for DACA were required to certify that they had come to the US before the age of 16; had continuously resided here since June 15, 2007; were either currently in school, had graduated from high school, had obtained a GED, or had been honorably discharged from the military; had not been convicted of a felony or serious misdemeanor; didn’t pose a risk to national security; and were under age 30 at the time of application.

DACA applicants also had to provide their names, addresses, social security numbers, fingerprints, photos and dates of entry into the United States. Relying on assurances that this information would not be used to deport them, nearly one million young people came out as undocumented and applied for DACA.

As Trump rescinded DACA, the Department of Homeland Security stated that Immigration and Customs Enforcement (ICE) would not “proactively” use the data Dreamers provided to target them, except for national security or criminal investigations.

A White House memo titled “[Talking Points — DACA Rescission](#),” says,

“In general, individuals who will no longer have DACA will not proactively be

referred to ICE and placed in removal proceedings unless they satisfy one of the Department's enforcement priorities.”

Any DACA recipient who is arrested by police could be deported, **Leon Fresco**, an immigration attorney who represents several DACA recipients, told the Daily Beast. Upon arresting a person, police routinely notify ICE. Then ICE officers can ask whether the arrestee is a DACA recipient, that is, present in the US without legal papers.

“They're saying we will not give your information unless ICE tells USCIS [US Citizenship and Immigration Services] they need it to deport you, which basically means we'll give your information out whenever ICE says it's necessary to deport you,” Fresco said.

DACA recipients whose data is used to initiate deportation proceedings may have an entrapment defense. They could claim violation of due process based on outrageous government conduct for falsely assuring them their data would not be used to deport them.

A recent study by the Center for American Progress concluded that more than 1,000 people daily could lose their work permits once DACA is rescinded.

DHS advised that it would not accept any further DACA applications. Current enrollees in the program can continue to work until their permits expire. If a permit is set to expire by March 5, 2018, the enrollees can apply for a two-year renewal if they do so by October 5, 2017.

Throwing the Ball to Congress

Sessions suggested that Congress could act to reinstate DACA “should it so choose.” This sounds a lot like “repeal and replace,” the GOP attempt to abolish Obamacare — and take away health care from 20 million people — with no “replacement” in sight.

There are several pending bills that would partially or fully protect DACA. This dysfunctional Congress, however, has been unable to agree on any legislation, including repealing and replacing Obamacare, since Trump's term began. Indeed, immigration reform has eluded Congress for many years.

Speaker of the House Paul Ryan (R-Wisconsin), who decides whether to bring bills to the floor of the House of Representatives, said,

“These are kids who know no other country, who were brought here by their parents and don't know another home. And so, I really do believe that there needs to be a legislative solution.”

We can expect intense wrangling in Congress with different sectors of the Republican Party trying to extract concessions for supporting DACA.

Trump Tries to Defuse the Anger

Less than 12 hours after Sessions's announcement, Trump, apparently alarmed by the powerful public outcry against the rescission of DACA, tried to soften the blow by 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!”

Trump also issued a statement saying,

“I have advised the Department of Homeland Security that DACA recipients are not enforcement priorities unless they are criminals, are involved in criminal activity, or are members of a gang.”

In practice, however, Trump’s advisement may not deter individual ICE agents from using personal information Dreamers provided to deport them.

What will happen in the next six months? How will this announcement affect the lives of the 800,000 Dreamers, many of whom are experiencing fear and foreboding, not knowing what their futures hold?

The White House Talking Points memo advised,

“The Department of Homeland Security urges DACA recipients to use the time remaining on their work authorizations to prepare for and arrange their departure from the United States — including proactively seeking travel documentation — or to apply for other immigration benefits for which they may be eligible.”

However, the future of DACA is not set in stone. Congress members respond to public pressure. Throughout the country, people have taken to the streets in support of the Dreamers. As the six-month period ticks down, the resistance will grow. It will invariably impact both Congress and the president.

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